

SCHEDULES

SCHEDULE 4

Section 104

REFERRAL ORDER: FURTHER COURT PROCEEDINGS

PART 1

REFERRAL BACK TO COURT FOR FURTHER PROCEEDINGS

Introductory

- 1 This Part of this Schedule applies where a youth offender panel refers an offender back to court under Chapter 1 of Part 6 (referral orders).

Mode of referral back to court

- 2 To make the referral, the panel must send a report to the appropriate court explaining why the offender is being referred back to court.

Bringing the offender before the court

- 3 (1) Where the appropriate court receives a report under paragraph 2, the court must cause the offender to appear before it.
- (2) For that purpose, a justice acting in the same local justice area as the appropriate court may—
- (a) issue a summons requiring the offender to appear before the appropriate court at the place and time specified in the summons, or
 - (b) if the report is substantiated on oath, issue a warrant for the offender's arrest which requires the offender to be brought before the appropriate court.

Detention and remand of arrested offender

- 4 (1) This paragraph applies where an offender—
- (a) is arrested under a warrant issued under paragraph 3(2), and
 - (b) cannot immediately be brought before the appropriate court.
- (2) The person in whose custody the offender is—
- (a) may arrange for the offender to be detained in a place of safety for a period of not more than 72 hours from the time of the arrest, and
 - (b) must, within that period, bring the offender before a youth court (or, if the offender is aged 18 or over, a magistrates' court other than a youth court).
- (3) A person detained in accordance with arrangements under sub-paragraph (2)(a) is deemed to be lawfully detained.

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- 5 (1) This paragraph applies where the court before which the offender is brought under paragraph 4(2) (“the alternative court”) is not the appropriate court.
- (2) The alternative court may—
- (a) direct that the offender is to be released immediately, or
 - (b) remand the offender.
- (3) Section 128 of the Magistrates’ Courts Act 1980 (remand in custody or on bail) applies as if the court referred to in subsections (1)(a), (3), (4)(a) and (5) were the appropriate court.
- (4) If the offender is aged under 18, any power conferred by that section to remand the offender in custody includes a power to remand the offender to accommodation provided by or on behalf of a local authority.
- (5) If a court remands the offender to accommodation provided by or on behalf of a local authority, it must designate, as the authority which is to receive the offender, the local authority for the area in which it appears to the court that the offender resides or will reside.

Powers of court on referral back

- 6 Paragraphs 7 to 10 apply where the offender was referred back to court under—
- (a) section 92(3) (offender’s failure to attend panel meeting);
 - (b) section 98(3) (no prospect of agreement on youth offender contract);
 - (c) section 98(4) (unreasonable failure to sign record of agreement);
 - (d) section 100(3) (breach of contract);
 - (e) section 100(6) (unreasonable failure to sign record of variation);
 - (f) section 100(8) (change of circumstances);
 - (g) section 101(5) (final meeting: order not discharged);
 - (h) section 102(2) (panel requesting revocation of order).

Power of court where it upholds panel’s decision

- 7 (1) Sub-paragraph (2) applies where the appropriate court is satisfied, for any decision of the youth offender panel which resulted in the referral back to court, that—
- (a) so far as the decision relied on any finding of fact by the youth offender panel, the panel was entitled to make that finding in the circumstances, and
 - (b) so far as the decision involved any exercise of discretion by the youth offender panel, the panel reasonably exercised that discretion in the circumstances.
- (2) The court may revoke the referral order (or each of the referral orders).
- (3) Revocation of an order under sub-paragraph (2) has the effect of revoking any related order under paragraph 9(2), 12 or 15 (extension of compliance period).
- (4) Where an order is revoked under sub-paragraph (2) or by virtue of sub-paragraph (3), the appropriate court may re-sentence the offender for the offence in respect of which the revoked order was made (but assuming that a referral order is not available).
- (5) In re-sentencing the offender under sub-paragraph (4), the appropriate court must take into account—

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- (a) the circumstances of the offender’s referral back to the court, and
 - (b) where a youth offender contract has taken effect between the offender and the panel, the extent of the offender’s compliance with the contract.
- (6) A power under sub-paragraph (2) or (4)—
- (a) may not be exercised unless the offender is before the appropriate court, and
 - (b) is not affected by the expiry of the compliance period (whether before or after the offender was referred back to court), in a case where a youth offender contract has taken effect.

Appeal

- 8 An offender re-sentenced under paragraph 7(4) for an offence may appeal to the Crown Court against the sentence.

Power of court to impose fine or extend period for which contract has effect

- 9 (1) This paragraph applies where—
- (a) the reference back to court was made under—
 - (i) section 92(3) (offender’s failure to attend panel meeting),
 - (ii) section 100(3) (breach of contract), or
 - (iii) section 101(5) (final meeting: order not discharged),
 - (b) the offender is before the appropriate court,
 - (c) the appropriate court is satisfied that the offender has failed without reasonable excuse to comply with a youth offender contract which has taken effect between the offender and a youth offender panel, and
 - (d) the appropriate court does not revoke the order under paragraph 7.
- (2) The appropriate court may make an order extending the length of the compliance period, but—
- (a) not to more than 12 months, and
 - (b) not if the compliance period has already expired.
- (3) The court may order the offender to pay a fine of an amount not exceeding £2,500.
- (4) Expiry of the compliance period (whether before or after the offender was referred back to court) does not affect the power to impose a fine under sub-paragraph (3).
- (5) A fine imposed under sub-paragraph (3) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.

Consequences of court not revoking referral order or orders

- 10 (1) This paragraph applies where, having considered the matters in sub-paragraph (1) of paragraph 7, the appropriate court does not revoke the referral order (or orders) to which the offender is subject.
- (2) The offender remains subject to the referral order (or orders) in all respects as if the referral back to court had not occurred (subject to any order under paragraph 9(2) (extension of compliance period)).
- (3) But if—

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- (a) a youth offender contract has taken effect in pursuance of the referral order (or orders),
 - (b) the compliance period has expired, and
 - (c) the referral order (or each of the referral orders) has not been revoked,
- the court must make an order declaring that the referral order (or each of the referral orders) is discharged.
- (4) An order under sub-paragraph (3) has the effect of discharging any related order under paragraph 9(2), 12 or 15 (extension of compliance period).

Exception where court satisfied as to completion of contract

- 11 (1) This paragraph applies where—
- (a) the reference back to court was made under section 101(5) (final meeting: order not discharged), and
 - (b) the court decides (contrary to the decision of the panel) that the offender’s compliance with the youth offender contract has, or will by the end of the compliance period have, been such as to justify the conclusion that the offender has, or will have, satisfactorily completed the youth offender contract.
- (2) The court must make an order declaring that the referral order (or each of the referral orders) is discharged.
- (3) An order under sub-paragraph (2) has the effect of discharging any related order under paragraph 9(2), 12 or 15 (extension of compliance period).

Referral back for extension of compliance period

- 12 (1) This paragraph applies where—
- (a) the reference back to court was made under section 103(2) (request for extension of compliance period),
 - (b) the youth offender contract has taken effect and the compliance period has not expired, and
 - (c) the offender is before the appropriate court.
- (2) If 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 contract took effect, it may make an order extending the length of the compliance period but—
- (a) not by more than 3 months, and
 - (b) not to more than 12 months.
- (3) When deciding whether to make an order under sub-paragraph (2), the court must take into account the extent of the offender’s compliance with the contract.

Power to adjourn hearing and remand offender

- 13 (1) This paragraph applies where a youth court or other magistrates’ court holds a hearing in proceedings under this Part of this Schedule.
- (2) The court may adjourn the hearing.
- (3) Where the court adjourns the hearing under sub-paragraph (2), it may—

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- (a) direct that the offender be released immediately, or
 - (b) remand the offender.
- (4) Where the court remands the offender under sub-paragraph (3)—
- (a) it must fix the time and place at which the hearing is to be resumed, and
 - (b) the remand must require the offender to be brought before the court at that time and place.
- (5) Where the court adjourns the hearing under sub-paragraph (2), but does not remand the offender—
- (a) it may fix the time and place at which the hearing is to be resumed, but
 - (b) if it does not do so, it must not resume the hearing unless it is satisfied that the following persons have had adequate notice of the time and place for the resumed hearing—
 - (i) the offender,
 - (ii) if the offender is aged under 14, a parent or guardian of the offender, and
 - (iii) a member of the specified youth offending team.
- (6) The powers of a magistrates’ court under this paragraph may be exercised by a single justice of the peace, notwithstanding anything in the Magistrates’ Courts Act 1980.
- (7) This paragraph—
- (a) applies to any hearing in proceedings under this Part of this Schedule in place of section 10 of the Magistrates’ Courts Act 1980 (adjournment of trial) where that section would otherwise apply, but
 - (b) is not to be taken to affect the application of that section to hearings of any other description.

PART 2

FURTHER CONVICTIONS DURING REFERRAL

Introductory

- 14 This Part of this Schedule applies where—
- (a) a referral order has been made in respect of an offender and has not been discharged or revoked,
 - (b) the offender is aged under 18, and
 - (c) a court is dealing with the offender for an offence (“the new offence”).

Power of magistrates’ court to deal with further offence by extending compliance period

- 15 (1) This paragraph applies if the court dealing with the offender for the new offence is a youth court or other magistrates’ court.
- (2) An order under this paragraph is available in respect of the new offence if neither the new offence nor any offence connected with it is one the sentence for which is fixed by law.

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- (3) The court may sentence the offender for the new offence by making an order extending the length of the compliance period, but not to more than 12 months.

Supplementary

- 16 (1) This paragraph applies where a court makes an order under paragraph 15 in respect of the new offence.
- (2) The court must not deal with the offender for the new offence, or any offence connected with it, by making an order of the kind mentioned in section 89(3) (orders not available where court makes referral order).
- (3) In respect of any offence connected with the new offence, the court must make—
- (a) an order under paragraph 15, or
 - (b) an order for absolute discharge.

Further convictions: power of any court to revoke referral orders

- 17 (1) This paragraph applies where, in dealing with the offender for the new offence, the court makes an order other than—
- (a) an order under paragraph 15, or
 - (b) an order for absolute discharge or an order for conditional discharge.
- (2) If it appears to the court to be in the interests of justice to do so, the court—
- (a) may revoke the referral order (or any one or more of the referral orders), and
 - (b) if it revokes a referral order, may re-sentence the offender for the offence in respect of which the revoked order was made (but assuming that a referral order is not available).
- (3) Revocation of a referral order under sub-paragraph (2) has the effect of revoking any related order under paragraph 9(2), 12 or 15 (extension of compliance period).
- (4) When re-sentencing the offender under sub-paragraph (2)(b), if a youth offender contract has taken effect between the offender and the panel, the court must take into account the extent of the offender's compliance with the contract.
- (5) For the purposes of this paragraph it does not matter whether the new offence was committed before or after the offender was referred to the panel.