

Status: Point in time view as at 06/10/2008.

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SCHEDULES

SCHEDULE 2

ENFORCEMENT ETC. OF COMMUNITY ORDERS

PART II

BREACH OF REQUIREMENT OF ORDER

Issue of summons or warrant

2.—(1) If at any time while a relevant order is in force in respect of an offender it appears on complaint to a justice of the peace 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 complaint is in writing and on oath, issue a warrant for his arrest.

[^{F1}(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, before the court responsible for the order;
- (b) in the case of any other order—
 - (i) if the order was made by the Crown Court, before that court;
 - (ii) if the order was made by a magistrates' court, before a court of summary jurisdiction acting for the petty sessions district concerned.

(3) If—

- (a) a warrant is issued under this paragraph requiring an offender to be brought before the Crown Court, and
- (b) the offender cannot forthwith be brought before the Crown Court because it is not being held,

the warrant shall have effect as if it directed the offender to be brought before a magistrates' court having jurisdiction in the place where he is arrested.

(4) Where an offender is brought before a magistrates' court in pursuance of sub-paragraph (3), that court shall commit the offender in custody or on bail to the Crown Court.]

F1 Sch. 2 para. 2(2)-(4) substituted (6.10.2008) for Sch. 2 para. 2(2) by [Criminal Justice \(Northern Ireland\) Order 2008 \(S.I. 2008/1216 \(N.I. 1\)\)](#), arts. 1(4), **47(2)**; S.R. 2008/383, **art. 2**, Sch. (subject to transitional provisions in art. 3)

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Powers of court of summary jurisdiction

3.—(1) [^{F2}Where under paragraph 2 an offender is brought or appears before a court of summary jurisdiction and it is proved to the satisfaction of the court] 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, namely—

- (a) it may impose on him a fine not exceeding £1,000;
- (b) subject to paragraph 6(3) to (5), it may make a community service order in respect of him;
- (c) where the relevant order is a probation order and the case is one to which [^{F3} Article 37 of the Criminal Justice (Children) (Northern Ireland) Order 1998 applies, it may make an order under that Article] requiring him to attend at an attendance centre; or
- (d) ^{F4} . . . , it may revoke the order and deal with him, for the offence in respect of which the order was made, in any manner 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), a court of summary jurisdiction—

- (a) shall take into account the extent to which the offender has complied with the requirements of the relevant order; and,
- (b) may assume, in the case of an offender who has wilfully and persistently failed to comply with those requirements, that he has refused to give his consent to a community sentence which has been proposed by the court and requires that consent.

(3) ^{F5}

(4) ^{F6}

F2	Words in Sch. 2 para. 3(1) substituted (6.10.2008) by Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)), arts. 1(4), 47(3); S.R. 2008/383, art. 2, Sch. (subject to transitional provisions in art. 3)
F3	1998 NI 9
F4	Words in Sch. 2 para. 3(1)(d) repealed (6.10.2008) by Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)), arts. 1(4), 47(4)(a), 102(2), Sch. 6 Pt. 1; S.R. 2008/383, art. 2, Sch. (subject to transitional provisions in art. 3)
F5	Sch. 2 para. 3(3) repealed (6.10.2008) by Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)), arts. 1(4), 47(4)(b), 102(2), Sch. 6 Pt. 1; S.R. 2008/383, art. 2, Sch. (subject to transitional provisions in art. 3)
F6	Sch. 2 para. 3(4) repealed (6.10.2008) by Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)), arts. 1(4), 47(4)(b), 102(2), Sch. 6 Pt. 1; S.R. 2008/383, art. 2, Sch. (subject to transitional provisions in art. 3)

Powers of Crown Court

4.—(1) Where^{F7} an offender is brought or appears before the Crown Court and it is proved to the satisfaction of the court that he has failed to comply with any of the requirements of the relevant order, that court may deal with him in respect of the failure in any one of the following ways, namely—

- (a) it may impose on him a fine not exceeding £1,000;
- (b) subject to paragraph 6(3) to (5), it may make a community service order in respect of him;

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- (c) where the relevant order is a probation order and the case is one to which^{F8} Article 37 of the Criminal Justice (Children) (Northern Ireland) Order 1998 applies, it may make an order under that Article] requiring him to attend at an attendance centre; or
 - (d) it may revoke the order and deal with him, for the offence in respect of which the order was made, in any manner in which it could deal with him if he had just been convicted by or before the court of the offence.
- (2) In dealing with an offender under sub-paragraph (1)(d), 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) may assume, in the case of an offender who has wilfully and persistently failed to comply with those requirements, that he has refused to give his consent to a community sentence which has been proposed by the court and requires that consent.
- (3) 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.

F7 Words in Sch. 2 para. 4(1) repealed (6.10.2008) by Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)), arts. 1(4), 47(5), 102(2), Sch. 6 Pt. 1; S.R. 2008/383, art. 2, Sch. (subject to transitional provisions in art. 3)

F8 1998 NI 9

Exclusions

5.—(1) Without prejudice to paragraphs 7 and 8, 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 3 or 4 in respect of a failure to comply with any requirement of the order.

(2) An offender who ^{F9}is required by a probation order to submit to treatment for his mental condition, or his dependency on drugs or alcohol, shall not be treated for the purposes of paragraph 3 or 4 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.

F9 prosp. subst. by 1998 NI 20

Supplemental

6.—(1) Any exercise by a court of its powers under paragraph 3(1)(a), (b) or (c) or 4(1)(a), (b) or (c) shall be without prejudice to the continuance of the relevant order.

(2) A fine imposed under paragraph 3(1)(a) or 4(1)(a) shall be deemed for the purposes of any statutory provision to be a sum adjudged to be paid by a conviction.

(3) The number of hours which an offender may be required to work under a community service order made under paragraph 3(1)(b) or 4(1)(b)—

(a) shall be specified in the order and shall not exceed 60 in the aggregate; and

(b) where the relevant order is a community service order, shall not be such that the total number of hours under both orders exceeds the maximum specified in Article 13(2).

(4) Article 13(4) and, so far as applicable—

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- (a) the provisions of this Order relating to community service orders; and
- (b) the provisions of this Schedule so far as so relating,

shall have effect in relation to a community service order under paragraph 3(1)(b) or 4(1)(b) as they have effect in relation to a community service order in respect of an offender.

(5) Where the provisions of this Schedule have effect as mentioned in sub-paragraph (4), the powers conferred by those provisions to deal with the offender for the offence in respect of which the community service order was made shall be construed as powers to deal with the offender for the failure to comply with the requirements of the relevant order in respect of which the community service order was made.

(6) In its application to combination orders, sub-paragraph (3) shall have effect as if the reference to Article 13(2) were a reference to Article 15(1).

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