

YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part I: Referrals to youth offender panels

Section 13 and Schedule 1: Referral back to court

70. The sanction for a young offender's non-compliance with a contract is for him or her to be sent back to court for re-sentencing. A referral back to court can be triggered by: failure to attend a meeting; failure to agree a contract; refusal to sign a contract; failure to meet the requirements of an agreed contract; or a request by the offender for referral back to court. The mechanics of the referral back procedure are contained in Part I of Schedule 1.
71. *Schedule 1* stipulates that the appropriate court to which the young offender is to be referred back (and which will carry out the re-sentencing) is the youth court or, where the young offender has reached the age of 18, the adult magistrates' court. The youth offender panel will send a report to the court by way of notification. The court will then require the young offender to attend court for a hearing by issuing a summons or warrant as appropriate.
72. At such a hearing the court must consider the circumstances of the young offender's referral back to the court. The court must then make a finding of fact in respect of the report submitted by the youth offender panel.
73. Where the court is satisfied that the referral back was justified, *paragraph 5* empowers the court to revoke the referral order and to sentence the young offender afresh, with the same sentencing options (other than referral) as were available to the court which originally sentenced the offender. In reaching a decision on a fresh sentence, the court should consider the report of the youth offender panel and take into account the extent of the young offender's compliance with the contract up to the point of the referral back. The offender will have a right of appeal to the Crown Court against any sentence imposed.
74. It is hoped that inappropriate referrals back to the court will be rare, but where (for example) the court finds that an alleged breach is unsubstantiated or that a breach has indeed occurred but that it was a minor issue given the particular circumstances of the case, it should not revoke the referral order. If the panel refers the offender back to court because no contract has been agreed, but the court does not revoke the referral order, youth offender panel should continue to try to negotiate a contract. Any contract agreed before the referral back to court will have continued in force during the resulting court proceedings with the panel continuing to monitor the young offender's progress and compliance.
75. Part II of Schedule 1 provides for cases where a young offender who, having been referred by a court to a youth offender panel, is part-way through the referral period

when he finds himself back before a court charged with a further offence. Where that offence (and any other further offences for which he is being sentenced on that occasion) occurred before the referral order was made, the court may sentence the offender for the further offence (or offences) by way of an extension to the existing referral period. Since any extension to the order must not extend its overall length beyond the maximum period of 12 months, this sentencing option will not be available where the original referral was for a full 12 months. Similarly, since the power of referral relates to young offenders aged from 10 to 17, this sentencing option will not be available if the young offender has reached the age of 18.

76. The option to extend an existing referral order also applies where a court is dealing with a further offence committed after the order had been made, although this course of action is only likely to be appropriate in exceptional circumstances. *Paragraph 12* of Schedule 1 requires the court to take account of any exceptional circumstances and, where they lead the court to make an extension of the original referral order, to give reasons for doing so in open court. The court's decision must be in line with the youth justice system's principal aim of preventing offending by children and young people.
77. The Secretary of State may vary the cases in which extensions to referral orders may be imposed by way of sentence for further convictions. Any such amendment would be made by regulations subject to the *affirmative resolution procedure* (i.e. Parliament will be asked to discuss and approve it).
78. The requirements of a youth offending contract under a referral order are incompatible with a custodial sentence and may interfere with aspects of other orders. Where a court decides to sentence in respect of further convictions otherwise than by extending an existing referral order, *paragraph 14(2)* of Schedule 1 automatically revokes the referral order and any extension order. This, in turn, will cause the contract drawn up with the youth offender panel to expire.

79 In these circumstances, the court may re-sentence the offender for the offence in respect of which the revoked referral or extension order was made. But in doing so the court must take into account how far the young offender may have already complied with any contract that has been agreed.
80. The only exception to the automatic revocation is where the court gives an absolute discharge for the further offence as then there will be no difficulty with the existing referral order continuing to stand.