

CRIMINAL JUSTICE AND IMMIGRATION ACT 2008

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 2: Sentencing

Section 35: Referral conditions

294. This section amends section 17 of the 2000 Act which sets out the circumstances in which a magistrates' court must or may impose a referral order when sentencing a child or young person. When a child or young person is given a referral order, he or she is required to attend a **youth offender panel**, which is made up of two volunteers from the local community and a panel adviser from a youth offending team. The panel, with the young person, their parents/carers and the victim (where appropriate), agree a contract lasting between three and 12 months. The aim of the contract is the prevention of reoffending by the offender.
295. Under section 16 of the 2000 Act, a referral order cannot be given at present to an offender where the sentence: is fixed by law; is so serious that the court decides a custodial sentence is absolutely necessary; or the offence is relatively minor and the court proposes to give an **absolute discharge**.
296. Subject to those exceptions, under the 2000 Act a referral order must be given to a child or young person where the following conditions are met, namely:
- the offence is punishable with imprisonment,
 - the offender pleads guilty to the offence and any connected offence,
 - the offender has not previously been convicted of an offence, and
 - the offender has never been bound over to keep the peace.
297. *Subsection (2)* amends section 17(1) of the 2000 Act so as to remove the condition that the offender must never have been bound over to keep the peace. As a result the fact that the offender has previously been bound over to keep the peace would not be a bar on the making of a mandatory referral order.
298. A referral order may be given to a child or young person where the following conditions are met, namely:
- the offence is one that is not punishable with imprisonment,
 - the offender pleads guilty to the offence and any connected offence,
 - the offender has not previously been convicted of an offence, and

These notes refer to the Criminal Justice and Immigration Act 2008 (c.4) which received Royal Assent on 8 May 2008

- the offender has never been bound over to keep the peace.
299. A referral order may also be given to a child or young person where the offender is being dealt with for two or more connected offences and the following conditions are met, namely:
- the offender pleads guilty to at least one of those offences and not guilty to at least one,
 - the offender has not previously been convicted of an offence, and
 - the offender has never been bound over to keep the peace.
300. *Subsection (3)* inserts a new subsection (2) into section 17 of the 2000 Act, the effect of which is modify the conditions that must be met before a discretionary referral order may be made. As with mandatory referral orders, the fact that the offender has previously been bound over to keep the peace would no longer be a bar to making a discretionary order. In addition, it would now be possible to make a discretionary order where the offender had one previous conviction and where, in respect of that previous conviction, a referral order had not been made.
301. *Subsection (4)* repeals section 17(5) of the 2000 Act. As a result a conditional discharge would no long be treated as a conviction for the purposes of section 17.