

CRIMINAL JUSTICE AND IMMIGRATION ACT 2008

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 2: Sentencing

Section 11: Restriction on power to make a community order

188. This section provides that the community order is available to the courts as a sentencing option only for offences where the court can impose imprisonment or for persistent offenders who have previously been fined three or more times, even though the current offence does not justify a community sentence.
189. *Subsection (1)* adds a new section 150A to the 2003 Act. A court may make a community order only where the offence is punishable with imprisonment or where section 151(2) of the Act as amended by the section confers such a power. Section 151(2) provides a power to make a community order where an offender has, since the age of 16, received three or more sentences comprising only a fine. Section 150A also provides that for these purposes an either-way offence is to be regarded as punishable with imprisonment if the sentencing court has the power to impose custody for the offence.
190. *Subsections (2) to (7)* amend section 151 of the 2003 Act. Read together with amendments to section 151 in Schedule 4 related to youth rehabilitation orders, the restriction on making community orders in cases where the current offence is not imprisonable is limited to persons over the age of 18.
191. *Subsection (3)* adds a new subsection (A1) to section 151 making it clear that section 151(2) operates in two cases: where the particular offence before the court is imprisonable, but not serious enough to warrant a community sentence; and where the offence is not imprisonable. In neither case would a community order be available without the operation of section 151 in future.
192. *Subsection (4)* amends section 151(1) so that it operates on imprisonable offences and *subsection (5)* adds a new subsection 151(1A) which makes corresponding provision for non-imprisonable offences.