



Sentencing Act 2020

2020 CHAPTER 17

THIRD GROUP OF PARTS Disposals

PART 6

ORDERS RELATING TO CONDUCT

CHAPTER 1

REFERRAL ORDERS FOR OFFENDERS AGED UNDER 18

Making referral orders

83 Referral order

- (1) In this Code “referral order” means an order—
 - (a) which requires an offender to attend each of the meetings of a youth offender panel established for the offender by a youth offending team, and
 - (b) by virtue of which the offender is required to comply, for a particular period, with a programme of behaviour to be agreed between the offender and the panel in accordance with this Part (which takes effect as a youth offender contract).
- (2) For the court’s power to order other persons to attend meetings of the panel, see section 90.
- (3) For provision about—
 - (a) the youth offender panel, see section 91;
 - (b) the youth offender contract, see section 96.
- (4) For the purposes of this Code, references to an offender being referred to a youth offender panel are to a referral order being made in respect of the offender.

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84 Referral order: availability

- (1) A referral order is available to a court dealing with an offender for an offence where—
 - (a) the court is a youth court or other magistrates' court,
 - (b) the offender is aged under 18 when convicted,
 - (c) neither the offence nor any connected offence is an offence the sentence for which is fixed by law,
 - (d) the court is not proposing to—
 - (i) impose a custodial sentence, or
 - (ii) make a hospital order (within the meaning of the Mental Health Act 1983),in respect of the offence or any connected offence,
 - (e) the court is not proposing to make—
 - (i) an order for absolute discharge, or
 - (ii) an order for conditional discharge,in respect of the offence, and
 - (f) the offender pleaded guilty to the offence or to any connected offence.
- (2) But a referral order is not available unless the court has been notified by the Secretary of State that arrangements for the implementation of referral orders are available in the area in which it appears to the court that the offender resides or will reside (and the notice has not been withdrawn).

85 Duty and power to make referral order

- (1) Where a referral order is available—
 - (a) the court must make a referral order if the compulsory referral conditions are met;
 - (b) otherwise, the court may make a referral order.
- (2) The compulsory referral conditions are met where—
 - (a) the offence is an imprisonable offence,
 - (b) the offender pleaded guilty to the offence and to any connected offence, and
 - (c) the offender has never been—
 - (i) convicted by or before a court in the United Kingdom of any offence other than the offence and any connected offence, or
 - (ii) convicted by or before a court in another member State of any offence.
- (3) For the effect of making a referral order on the court's other sentencing powers, see section 89.

86 Making of referral order: general

- (1) A referral order must specify—
 - (a) the youth offending team which is to establish a youth offender panel for the offender, and
 - (b) the period for which any youth offender contract which takes effect by virtue of the order is to have effect.
- (2) That period must be—

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- (a) not less than 3 months, and
 - (b) not more than 12 months.
- (3) The youth offending team specified in the order must be the team which has the function of implementing referral orders in the area in which it appears to the court that the offender resides or will reside.
- (4) On making a referral order the court must explain to the offender in ordinary language—
- (a) the effect of the order, and
 - (b) the consequences which may follow—
 - (i) if no youth offender contract takes effect between the offender and the panel, or
 - (ii) if the offender breaches a youth offender contract.

Nothing in this subsection affects the court's duty under section 52 (duty to give reasons for and explain effect of sentence).

87 Referral order consecutive to earlier referral order

- (1) Where—
- (a) a court makes a referral order (“the later order”), and
 - (b) the offender is subject to an earlier referral order,
- the court may direct that any youth offender contract under the later order is not to take effect until the earlier order is revoked or discharged.
- (2) For this purpose, the reference to an earlier referral order includes an order made under section 16 of the Powers of Criminal Courts (Sentencing) Act 2000 (referral orders).

88 Making of referral order: connected offences

- (1) This section applies where a court makes referral orders in respect of two or more connected offences.
- (2) The referral orders have the effect of referring the offender to a single youth offender panel.
- (3) Accordingly, provision made by the orders under section 83(1)(a) and section 86(1)(a) (which relates to the youth offending team and a youth offender panel) must be the same for each referral order.
- (4) The court may direct that the period specified under section 86(1)(b) in any of the referral orders is to run—
- (a) concurrently with, or
 - (b) in addition to,
- the period specified in another of the referral orders.
- (5) But a direction under subsection (4) must not result in a total period of more than 12 months.
- (6) For the purposes of this Chapter, each of the orders mentioned in subsection (1) is associated with each other of those orders.

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89 Making of referral order: effect on court's other sentencing powers

- (1) This section applies where a court makes a referral order in respect of an offence.
- (2) In dealing with the offender for any connected offence, the court must—
 - (a) sentence the offender by making a referral order, or
 - (b) make an order for absolute discharge.
- (3) In dealing with the offender in respect of the offence or any connected offence, the court may not—
 - (a) order the offender to pay a fine,
 - (b) make any of the following orders—
 - (i) a youth rehabilitation order;
 - (ii) an order under section 1(2A) of the Street Offences Act 1959;
 - (iii) a reparation order;
 - (iv) an order for conditional discharge.
- (4) The court may not make—
 - (a) an order binding the offender over to keep the peace or to be of good behaviour, or
 - (b) an order under section 376 (binding over of parent or guardian),
 in connection with the offence or any connected offence.
- (5) Nothing in section 85 or subsection (2) affects any power or duty of a magistrates' court under—
 - (a) section 25 (power and duty to remit young offenders to youth courts for sentence),
 - (b) section 10(3) of the Magistrates' Courts Act 1980 (adjournment for inquiries), or
 - (c) section 35, 38, 43 or 44 of the Mental Health Act 1983 (remand for reports, interim hospital orders and committal to Crown Court for restriction order).
- (6) Nothing in this section affects any power of a court, where it revokes a referral order, to re-sentence an offender for the offence in respect of which the order was made.

90 Order requiring parents etc to attend meetings

- (1) This section applies where a court makes a referral order.
- (2) The court—
 - (a) may make an order requiring—
 - (i) the appropriate person, or
 - (ii) if there are two or more appropriate persons, one or more of them,
 to attend the meetings of the youth offender panel, and
 - (b) must do so if the offender is aged under 16 when the referral order is made.
- (3) If the offender is—
 - (a) a looked-after child, and
 - (b) aged under 16 when the referral order is made,
 the person or persons required under subsection (2) to attend those meetings must include at least one representative of the responsible authority.

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- (4) But an order under subsection (2) must not require a person to attend those meetings—
- (a) if the court is satisfied that it would be unreasonable to do so, or
 - (b) to an extent which the court is satisfied would be unreasonable.
- (5) For the purposes of this section, each of the following is an appropriate person in relation to an offender—
- (a) if the offender is a looked-after child—
 - (i) a representative of the responsible authority, and
 - (ii) each person who is a parent or guardian of the offender with whom the offender is allowed to live;
 - (b) otherwise, each person who is a parent or guardian of the offender.
- (6) In this section—
- “looked-after child” means a child who is (within the meaning of the Children Act 1989 or the [Social Services and Well-being \(Wales\) Act 2014 \(anaw 4\)](#)) looked after by a local authority, and
 - “responsible authority”, in relation to a looked-after child, means the authority by which the child is looked after.
- (7) The court must forthwith send a copy of an order under subsection (2)—
- (a) to each person required by the order to attend meetings of the panel, and
 - (b) to any responsible authority whose representative is required by the order to attend meetings of the panel,
- unless the person was present, or the authority was represented, in court when the order was made.