

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 3: Sentencing and punishment of offenders

Chapter 1: Sentencing

General

Section 63: Duty to consider compensation order

361. **Section 63** amends section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 and strengthens the obligation on the court to consider ordering a person convicted of an offence to pay compensation.
362. The section inserts a new subsection (2A) in section 130, which places the court under an express duty to consider making a compensation order in any case where it is empowered to do so under that section. Compensation may be ordered for any loss or damage, personal injury or bereavement, or to make payments for funeral.
363. *Subsection (2)* inserts a similar provision into the Armed Forces Act 2006.

Section 64: Duty to give reasons for and to explain effect of sentence

364. **Section 64** replaces the existing section 174 of the 1991 Act with a new version of that section retaining a general duty to explain a sentence and reducing the specific requirements on the court.
365. The substituted version of section 174 retains, in *subsection (2)*, the general duty on a court to explain in open court and in ordinary language the court's reasons for deciding on a sentence. The substituted section 174 also retains the general duty, in *subsection (3)*, to explain to an offender the effect of the sentence and the implications of the offender not complying with the sentence.
366. *Subsection (4)* makes corresponding amendments to the Armed Forces Act 2006.
367. The substituted section 174 provides, in *subsection (4)*, that the Criminal Procedure Rules may prescribe cases in which either the duty to state the court's reasons for deciding on the sentence, or the duty to explain the matters mentioned in *subsection (3)* does not apply. It also provides that Criminal Procedure Rules may make provision about how an explanation of the matters mentioned in section *subsection (3)* is to be given.
368. The substituted section 174 goes on to set out, in *subsections (6) to (8)*, a revised and reduced list of the particular duties on courts to explain aspects of a sentence. These duties include, in *subsection (6)*, identifying relevant sentencing guidelines and

explaining how they were applied or why they were not applied. In *subsection (7)* there is a duty to explain the impact on the sentence of a reduction for a guilty plea.

In *subsection (8)* a court must explain, in giving a juvenile a discretionary custodial sentence, why a non-custodial sentence could not be justified, and in making a youth rehabilitation order with intensive supervision and surveillance or with fostering, why the order is appropriate.

369. The substituted section 174 removes specific duties to explain the court's consideration of the thresholds for imposing a custodial sentence or community order. The new section 174 also removes the particular exception from the general duty to explain a sentence where the sentence is fixed by law (mandatory minimum sentences). These considerations are now covered by the general duty on courts contained in *subsections (2) and (3)* of the substituted section 174.
370. **Section 65:** Sentencing where there is aggravation related to transgender identity
371. **Section 65** amends section 146 of the 1991 Act. Section 146 provides that it is a factor increasing the seriousness of an offence, which affects the severity of the sentence, if the offender demonstrates, or was motivated by, hostility based on the victim's sexual orientation or disability. The section adds transgender identity (or presumed transgender identity) to the personal characteristics which will constitute an aggravating factor. The umbrella term "transgender" is not defined but *subsection (6)* (which inserts new subsection (6) into section 146) makes it clear that "being transgender" includes, but is not limited to, being transsexual.
372. **Section 65** also amends Schedule 21 to the 1991 Act, which sets out the starting points which a court should adopt when determining a minimum term for a mandatory life sentence imposed for murder.

Community orders

Section 66: Duration of community order

373. **Section 66** makes provision about when a community order comes to an end.
374. Currently a community order must specify a date by which all the requirements in the order must have been complied with. This date may not be more than three years after the date of the order. However, there is no express provision about when the order itself comes to an end.
375. *Subsections (1) and (2)* amend section 177(5) of the 1991 Act and insert new subsections (5A) and (5B). These amendments provide that a community order comes to an end on the date specified under section 177(5). (This is subject to specific provision in relation to an unpaid work requirement, where the order continues in force until the requirement is complied with.) Where an order imposes two or more requirements, a court may specify end dates for each of those requirements, and where it does so, the last of those end dates must be the same as the date specified under section 177(5) (that is, the date at which the order comes to an end).
376. *Subsections (3) and (4)* allow magistrates' courts and the Crown Court respectively to extend the duration of an order by up to 6 months where the offender has breached a requirement in an order.
377. *Subsection (5)* allows magistrates' courts and the Crown Court to extend the duration of an order otherwise than for breach of the order.

Section 67: Breach of community order

378. **Section 67** amends Schedule 8 to the 1991 Act, which makes provision about breach of a requirement imposed as part of a community order and a court's powers in relation to such a breach.

379. **Schedule 8** already provides a court with the option of dealing with breach of an order by either varying the order to make its requirements more onerous (for example, by extending the duration of a requirement or adding a new one), or revoking the order and re-sentencing the offender as if the offender had just been convicted. There is currently no option to take no action.
380. **Schedule 8** provides that in dealing with an offender for breach the court must take into account the extent to which he has already complied with the order. If the offender has willfully and persistently failed to comply with a community order the court can re-sentence the offender to custody even if the original offence was not serious enough to justify a custodial sentence.
381. The section gives a court the option of taking no action in relation to a breach. It also gives a court a new power to fine an offender in relation to a breach (and in that case the order will continue in force).
382. **Subsection (2)** amends paragraph 9(1) of Schedule 8 in two ways: it provides a magistrates' court with the option of taking no action; and it provides the court with a new power to impose a fine on the offender of not more than £2,500 in relation to the breach.
383. **Subsection (5)** makes substantially the same provision as **subsection (2)**, but in relation to the Crown Court
384. **Subsection (7)** inserts a new provision giving the Secretary of State a power by order (subject to the negative Parliamentary procedure) to amend the maximum amount of a fine which may be imposed by the magistrates' court or Crown Court in relation to a breach of a community order. The power may only be exercised if it appears to the Secretary of State that there has been a change in the value of money. The power replicates the power of the courts in relation to breach of a youth rehabilitation order (see paragraph 10 of Schedule 2 to the 2008 Act).

Suspended sentence orders

Section 68 and Schedule 9: Changes to powers to make suspended sentence order

385. **Section 68** amends provisions relating to suspended sentences. Currently a court cannot suspend prison sentences that are longer than 12 months. The courts are also currently required to attach at least one "community requirement" to a suspended sentence even if they consider that no community requirement is necessary in the circumstances. (Community requirements are available to address issues of offender behaviour through treatment programmes such as alcohol or drug addiction and poor cognitive skills.)
386. **Subsection (1)** amends section 189 of the 1991 Act to enable courts to suspend longer sentences of imprisonment, namely those between 14 days and two years. The amended section also provides the court with discretion as to whether or not to impose community requirements. The section retains the current position whereby the sentence of imprisonment will not take effect unless the offender fails to comply with a community requirement or is convicted of a further offence during the period of suspension.
387. **Subsection (2)** provides that, where a court imposes consecutive sentences, the power to make a suspended sentence order is limited to cases where the sentence does not exceed two years in total.
388. **Subsections (3) and (4)** clarify that the provisions relating to the length of supervision periods (the period during which the offender is subject to one or more community requirements) apply only to those orders with community requirements.
389. **Subsection (6)** gives effect to Schedule 9, which makes consequential and transitional provision (see below).

390. *Subsection (7)* provides that the new provisions apply to offences committed before, and after, the section comes into force where the offender is sentenced after the section comes into force.

Schedule 9: Changes to powers to make suspended sentence orders: consequential and transitory provision

391. *Paragraphs 1 to 19* of Schedule 9 make various amendments which are consequential on the changes to powers to make suspended sentence orders introduced by section 68, in particular to ensure requirements that are only appropriate for suspended sentences with community requirements do not apply where they would be inappropriate or unnecessary for suspended sentence without community requirements.
392. *Paragraph 20* of Schedule 9 contains a transitory provision to apply the new provisions to detention in young offender institutions, since pending the coming into force of section 61 of the Criminal Justice and Court Services Act 2000 (which will abolish a sentence of detention in a young offender institution), such a sentence is still possible.

Section 69: Fine for breach of suspended sentence order

393. At present the court has no power to impose a fine for breach of a suspended sentence order. Section 69 inserts a new provision into paragraph 8 of Schedule 12 to the 1991 Act. This will enable the court to impose a fine of up to £2,500 for breach of a suspended sentence order where it decides not to give effect to the custodial sentence.
394. A suspended sentence order is breached where an offender fails to comply with any community requirement or is convicted of another offence during the period for which the sentence is suspended. Any fine is enforced as it would be had it been imposed on conviction
395. *Subsection (3)* inserts a new provision giving the Secretary of State a power by order (subject to the negative Parliamentary procedure) to amend the maximum amount of a fine which may be imposed by the magistrates' court or Crown Court in relation to a breach of a suspended sentence order. The power may only be exercised if it appears to the Secretary of State that there has been a change in the value of money. The power replicates the power of the courts in relation to breach of a youth rehabilitation order (see paragraph 10 of Schedule 2 to the 2008 Act). It also replicates a power conferred by section 67(7) of the Act in relation to a fine for breach of a community order.

Requirements under community orders and suspended sentence orders

Section 70: Programme requirement

396. *Section 70* amends section 202 of the 1991 Act which makes provision in relation to "programme requirements". These may be imposed as part of a community order or a suspended sentence order with a view to addressing particular aspects of offender behaviour such as treatment of alcohol or drug addiction and poor cognitive skills.
397. *Subsection (4)* amends section 202(1) of the 1991 Act by reducing the number of matters the court must specify when imposing a programme requirement. It removes the requirement for a court to specify (a) the particular accredited programme in which the offender must participate, and (b) the place at which the offender must participate in an accredited programme. It retains the requirement for a court to specify the number of days on which the offender must take part in an accredited programme. By the amendments to section 202(6) of the 1991 Act, it will be for the responsible officer to determine those matters.
398. *Subsection (5)* repeals section 202(4) and (5) of the 1991 Act, which specify a number of conditions that have to be met before a court may impose a programme requirement. These conditions currently require a court to include only certain

accredited programmes, and prevent the court from including a programme requirement if compliance with that requirement would involve the co-operation of someone other than the offender and the responsible officer, unless that person has consented. The effect of *subsection (5)* is that those conditions will no longer apply.

Section 71: Curfew requirement

- 399. **Section 71** amends section 204 of the 1991 Act, which makes provision in relation to curfew requirements.
- 400. *Subsection (2)* amends section 204(2) by increasing the maximum period in any day for which the court may impose a curfew requirement from twelve to sixteen hours.
- 401. *Subsection (3)* amends section 204(3) by increasing the maximum period for which a curfew requirement may be imposed from six to twelve months from the date on which the community order is made.
- 402. It remains the case that, before imposing a curfew requirement, the court must obtain and consider the effect that the curfew might have on other people living at the curfew address. Compliance with a curfew requirement is normally monitored electronically by the offender wearing a 'tag'.

Section 72: Foreign travel prohibition requirement

- 403. **Section 72** amends sections 177 and 190 of the 1991 Act to enable a court to impose a prohibition on foreign travel as a requirement in a community order or suspended sentence order. The effect of the new requirement is to prohibit travel to a country or countries (or territory or territories) outside the British Islands (the United Kingdom, the Channel Islands and the Isle of Man).
- 404. Currently courts can already impose a number of requirements that restrict offenders' movements in some way. These include curfews, residence requirements, and exclusion requirements. However, there is no requirement which gives courts an express power to prohibit an offender from travelling outside the British Islands.

Section 73: Mental health treatment requirement

- 405. **Section 73** amends section 207 of the 1991 Act which makes provision about mental health treatment requirements in community orders or suspended sentence orders.
- 406. Currently, a court cannot make a mental health treatment requirement unless it is satisfied on the evidence of a registered medical practitioner approved for the purposes of section 12 of the Mental Health Act 1983 that the mental condition of the offender requires treatment and may be susceptible to it, and other disposals under the Mental Health Act 1983 are not warranted.
- 407. **Section 73** removes the condition that a court can only impose a mental health treatment requirement on the evidence of a registered mental health practitioner approved for the purposes of section 12. It remains the case that the court may not include a mental health treatment requirement unless the offender has expressed willingness to comply with it.

Section 74: Drug rehabilitation requirement

- 408. **Section 74** amends section 209 of the 1991 Act, which makes provision in relation to drug rehabilitation requirements.
- 409. It removes the requirement that the treatment and testing period of a drug rehabilitation requirement must be at least six months. The effect of this is that there will be no minimum treatment and testing period. The change provides the court with greater discretion in determining the appropriate length of the requirement.

Section 75: Alcohol treatment requirement

410. **Section 75** amends section 212 of the 1991 Act, which makes provision in relation to alcohol treatment requirements.
411. It removes the requirement that the period of an alcohol treatment requirement must be at least six months. The effect of this is that there will be no minimum period. The change provides the court with greater discretion in determining the appropriate length of the requirement.

Section 76: Alcohol abstinence and monitoring requirement

412. **Section 76** inserts new section 212A into the 1991 Act. This has the effect of creating a new alcohol abstinence and monitoring requirement which may be imposed as a requirement of a community order or suspended sentence order.
413. Under new section 212A(1)(a) a court has the power to order an offender either to abstain from consuming alcohol for a specified period or not to consume alcohol so that during a specified period they have a level of alcohol higher than a level specified by the order in their body. An offender on whom such a requirement is imposed would have to submit to monitoring for the purposes of ascertaining whether they were complying with the requirement under new section 212A(1)(a).
414. New section 212A(2) limits the maximum period of the new requirement to 120 days. (However, *subsection (7)* of section 76 amends section 223(3) of the 1991 Act with the effect that the Secretary of State has a power to amend the maximum period. This power would be exercisable subject to the affirmative resolution procedure, and is common to a number of other requirements.)
415. New section 212A(3) gives the Secretary of State a power to prescribe a minimum period for the requirement.
416. New section 212A(4) gives the Secretary of State a power to prescribe the level of alcohol an offender must not exceed under a requirement set out under new section 212A(1)(a)(ii). Such a requirement may not be imposed unless an order has been made to prescribe alcohol levels. An order which prescribes alcohol levels may do so by reference to the proportion of alcohol in the offender's breath, blood, urine or sweat, or by some other means.
417. New section 212A(6) gives the Secretary of State a power by order to prescribe arrangements for monitoring of compliance with the requirement. Such an order may prescribe arrangements for monitoring by electronic or other means.
418. New section 212A(8) to (12) makes provision about the conditions for imposing the new requirement. There are four conditions.
419. The first is that consumption of alcohol must be an element of the offence before the court, or the court must be satisfied that consumption of alcohol was a contributing factor to the commission of the offence.
420. The second is that the court must be satisfied that the offender is not dependent on alcohol.
421. The third is that the court must not include an alcohol treatment requirement (under section 212 of the 1991 Act) in the order.
422. The fourth is that the court must have been notified by the Secretary of State that arrangements for monitoring have been made in the local justice area.
423. *Subsections (2) to (11)* of section 76 make further amendments to the 1991 Act and the Armed Forces Act 2006 as a consequence of the creation of the new requirement. *Subsection (6)* amends section 215 of the 1991 Act to prevent the court from imposing

an electronic monitoring requirement in respect of the new requirement. This is because electronic monitoring provisions may be included in the new requirement itself (see new section 212A(7)(a)).

Section 77: Piloting of alcohol abstinence and monitoring requirements

424. **Section 77** requires the provisions creating the new alcohol abstinence and monitoring requirement to be commenced initially for the purposes of a pilot. *Subsection (1)* allows the Secretary of State (after having made a piloting order or orders) to make a general commencement order. Under *subsection (5)(a)* an order made by the Secretary of State may amend the alcohol abstinence and monitoring requirement provisions under section 76 to enable the provisions to be brought into force generally with amendments, and *subsection (5)(b)* would allow the Secretary of State to amend other provisions of the Act in consequence of these changes. *Subsection (6)(a)* makes it clear that *subsection (5)(a)* includes a power to confer order or rule making powers on the Secretary of State.
425. *Subsection (7)* contains a power exercisable by the Secretary of State, after having made a piloting order or orders, to make an order to repeal section 76, to amend the 1991 Act to reverse the effect of that section on that Act or to make other consequential amendments or repeals.
426. *Subsection (9)* provides for an order under the new section to be made by statutory instrument. *Subsection (10)* provides that a general commencement order, or an order to amend or to repeal section 76, may not be made unless the order has been laid before and approved by each House of Parliament.

Section 78: Overseas community orders and service community orders

427. **Section 78** makes amendments to provisions of the Armed Forces Act 2006 relating to both service and overseas community orders which can be made by service courts. These amendments flow from changes made to the 1991 Act by Chapter 1 of Part 3 of the Act.
428. *Subsections (2) and (3)* provide that the foreign travel prohibition requirement introduced by section 67 of the Act and the alcohol abstinence and monitoring requirement introduced by section 76 are not available for inclusion as a requirement in an overseas community order.
429. *Subsection (4)* makes provision which applies in the Services context the Act provisions about the duration of community orders made by civilian courts. *Subsections (6) and (8)* make a change to the provisions about overseas and service community orders that is consequential on section 66(5).
430. *Subsections (5) and (9)* make provision in relation to the imposition of fines for breaches of overseas community orders.
431. *Subsection (10)* makes provision which makes a change in the service context which results from the provisions in section 74 to disapply the minimum term of a drug rehabilitation requirement.
432. As with other amendments made to armed forces legislation, this section is designed to ensure that sentencing law and practice of service courts is, where practicable, aligned with the law and practice of civilian courts in England and Wales.

Youth sentences

Section 79: Referral orders for young offenders

433. **Section 79** amends sections 16 and 17 of the Powers of Criminal Courts (Sentencing) Act 2000 (PCC(S)A 2000), which set out the circumstances in which the court has the power to give a referral order to an offender under the age of 18.
434. A referral order refers the offender to a youth offender panel and requires the offender to attend meetings of the panel and enter into a contract with the panel to undertake rehabilitative activities for a period of between 3 and 12 months.
435. Sections 16(2) and 17(1) of the PCC(S)A 2000 impose a duty on a youth court or magistrates' court either to make a referral order or to discharge offenders absolutely where they have pleaded guilty to their first offence (or where they are before the court for more than one offence, at least one of these offences) unless certain exceptions apply. Those exceptions are: if the offence (or at least one of the offences) that the offender is being sentenced for is fixed by law (section 16(1)(a)) or the court proposes to impose a custodial sentence or a hospital order in respect of the offence (or where the offender is before the court for more than one offence, at least one of these offences). Where the exceptions apply the duty does not apply.
436. Typically, these exceptions apply only in a very few cases so the powers of the court when sentencing a first time offender who has pleaded guilty are very limited. The court can never impose a community sentence on an offender where section 16 of the PCC(S)A 2000 applies.
437. Sections 16(3) and 17(2) to (2C) of the PCC(S)A 2000 provide a discretionary power for a youth or magistrates' court either to make a referral order or absolutely discharge offenders where they have pleaded guilty to the offence (or where they are before the court for more than one offence, at least one of these offences), even if it is not their first offence. But the court may only do so in circumstances where the offender has not previously received a referral order (section 17(2B)) or has received a referral order on one occasion but is recommended as suitable for another by an 'appropriate officer' (usually an officer of the local youth offending team) (section 17(2C)).
438. *Subsection (1)* amends section 16(1)(c) of the PCC(S)A 2000 to widen the powers of a youth or magistrates' court to deal with offenders where they have pleaded guilty to their first offence (or where they are before the court for more than one offence, at least one of these offences). As a result of this amendment, where the exceptions in 16(1)(a) and (b) do not apply, the court will no longer have to choose between making a referral order or absolutely discharging the offender: it will now be able to choose to conditionally discharge the offender instead.
439. *Subsection (2)* amends section 17 PCC(S)A 2000. It removes the existing conditions set out in section 17(2A) to (2C) and amends section 17(2) in order to widen the powers of a youth or magistrates' court to deal with an offender who has pleaded guilty to an offence (or, where the offender is before the court for more than one offence, to at least one of those offences), even if it is not the offender's first offence. As a result of the amendment, the court is no longer prevented from offering referral orders to offenders who have previously received referral orders in the past. There is no limit to the number of referral orders that a repeat offender can receive. The offender does not need to be recommended as suitable for a second or subsequent referral order by an appropriate officer.

Section 80: Breach of detention and training order

440. A detention and training order (DTO) is a custodial sentence for young offenders aged between 12 and 17 created by sections 100 to 107 PCC(S)A 2000. In broad terms, the offender spends the first half of the specified period in custody (detention and training)

and the second half in the community subject to various requirements and under the supervision of the **youth offending team**.

441. *Subsections (2) to (7)* amend section 104 of the PCC(S)A 2000 to extend the powers of the court to punish an offender who has breached their DTO by failing to comply with the supervision requirements imposed on them
442. *Subsection (2)* retains the power of the court to impose a period of detention in punishment for the breach. It also creates a new power for the court to impose an additional period of supervision.
443. *Subsection (3)* inserts new subsections (3A) to (3D), which make further provision about the periods of supervision or detention, into section 104:
- new subsection (3A) sets the maximum period for which the court may impose supervision or detention as a punishment for breach. This is to be the shorter of 3 months or the period beginning with the date of the failure to comply with the requirement and the last day of the term of the DTO.
 - new subsection (3B) stipulates how that period is to be determined if the failure to comply with a requirement took place over two or more days.
 - new subsection (3C) is especially important as it provides that the court may impose a period of supervision or detention for breach even after the term of the DTO has finished. This means that those subject to a DTO will not be able to avoid being given a further period of detention or supervision by delaying their breach hearings until after the term of their DTO expires as has happened following the case of *H v Doncaster Youth Court, Doncaster Youth Offending Service*¹ where the court had held that a further period of detention could only be imposed from the date on which the court made a finding that the offender had failed to comply with supervision requirements, rather than from the actual failure to comply, and only up to the end of the original DTO period.
 - new subsection (3D) provides that where the court imposes a period of detention or supervision for breach, it takes immediate effect and can overlap with a period of supervision under the DTO.
444. *Subsection (4)* inserts new section 104(4A) into the PCC(S)A 2000. This provides that where an offender is over 18 when a court orders a further period of detention in respect of a breach of a DTO, the offender will be sent to prison. This subsection needs to be read with section 74(8) of the Act which provides that an offender aged between 18 and 21 will not be sent to prison under section 104(4A) until such time as section 61 of the Criminal Justice and Court Services Act 2000 is commenced (and the sentence of detention in a young offenders institution is abolished). Until that time 18 to 21 year olds will be sent to youth detention accommodation, which includes young offender institutions (see section 107 of the PCC(S)A 2000).
445. *Subsection (6)* extends the right of appeal to the Crown Court that currently exists where an offender is given a further period of detention for breach of a DTO to the new power to impose an additional period of supervision.
446. *Subsection (7)* inserts new sections 104A and 104B into the PCC(S)A 2000. New section 104A applies certain provision in the PCC(S)A 2000 relating to DTOs to orders under section 104(3)(aa) that an offender serve a further period of supervision, with the necessary modifications:
- section 104A(1) and (2) applies section 103 (which provides for how a period of supervision under a DTO operates);

These notes refer to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) which received Royal Assent on 1 May 2012

- section 104A(3) to (5) applies section 104 (which deals with breach of DTO supervision requirements) and section 105 (which makes provision for when an offender commits an offence when subject to supervision).
447. In broad terms, the further period of supervision works in a similar way to the period of supervision under a DTO. In particular, requirements can be imposed on the offender under section 103 of the PCC(S)A 2000, as applied, and enforced under section 104 of that Act, again as applied. And, if the offender commits an imprisonable offence while subject to a further period of supervision, then the offender can be detained in youth detention accommodation under section 105, as applied.
448. The fact that a court can deal with an offender who breaches requirements imposed in respect of a further period of supervision in the same way that it can deal with someone who has breached the supervision requirements of a DTO, means that there could be a series of orders under section 104(3)(aa). If an offender breaches a DTO and is given a further of supervision which the offender then also breaches, the court can once again respond by imposing further supervision (or detention or a fine). And if requirements attached to that further period of supervision are also then breached, another period of supervision could be ordered in respect of that breach and so on. This continues to be the case until the offender completes the order of the court without breaching it.
449. New section 104B provides for the interaction between the new power to impose periods of detention beyond the end of the original DTO and other sentences. Subsections (1) to (4) provide for the interaction between a period of further detention and a DTO. New subsection 104B(5) provides a power for the Secretary of State to make regulations to provide for the interaction between a period of detention imposed for breach and custodial sentences other than a DTO.
450. A further period of detention can be imposed for breach after the term of the DTO has ended. It can also be imposed in respect of the breach of a requirement attached to a period of further supervision under section 104(3)(aa), which may itself have been imposed after the end of the DTO. It is therefore possible for a period of detention to be imposed under section 104(3)(a) after the offender has turned 18 or even 21. For this reason it is necessary to set out for the courts how the breach period will interact with adult sentences.
451. *Subsections (10) and (11)* apply the provision made by the section to any breach of a DTO that occurs after commencement.

Section 81: Youth rehabilitation order: curfew requirement

452. A youth rehabilitation order is a community sentence provided for by the 2008 Act. As part of the sentence a court may impose one or more of 18 different requirements that the offender must comply with for a period of up to three years. The requirements can include curfew, supervision and mental health treatment requirements. These requirements are similar to requirements that can be attached to community orders for adults.
453. **Section 81** mirrors the amendments to the curfew requirement for community orders in section 71 of the Act by increasing the maximum number of hours in a day for which a curfew can be imposed from twelve to sixteen hours a day and the length of time for which a curfew requirement may be imposed from six to twelve months.

Section 82: Youth rehabilitation order: mental health treatment requirement

454. **Section 82** amends paragraph 20 of Schedule 1 to the 2008 Act to make provision for mental health treatment requirements in youth rehabilitation orders. It mirrors the amendments to mental health treatment requirements in section 73 for adults by removing the requirement for evidence from a medical practitioner approved for the purposes of section 12 of the Mental Health Act 1983. It remains the case that the

court cannot include a mental treatment requirement unless the youth has expressed a willingness to comply with it.

Section 83: Youth rehabilitation order: duration

455. This section amends the current provisions in Schedules 1 and 2 to the the 2008 Act which set out the duration of youth rehabilitation orders. Under the current provisions where an order has multiple requirements which may themselves be time limited it can be unclear when the order is completed. In some cases this can result in the requirements being completed before the end date of the order requiring the case to be returned to court to revoke the order.
456. *Subsection (1)* amends Schedule 1 to the 2008 Act to enable the court to specify different completion dates for different requirements attached to an order and for the end date of the order to be the same as the last completion date for a requirement.
457. *Subsection (2)* inserts new sub-paragraphs (6A) to (6D) in paragraph 6 of Schedule 2 to allow a magistrates' court to extend the end date of an order by up to 6 months where a further requirement is imposed but only on one occasion. If the order is extended under these provisions then it may extend beyond the three year maximum length set out in Schedule 1.
458. *Subsection (3)* inserts new sub-paragraphs (6A) to (6D) in paragraph 8 of Schedule 2 which makes the same amendments to the powers in the Crown Court as subsection (2) does to the powers of the magistrates' court.
459. *Subsection (5)* inserts a new paragraph 16A in Schedule 2 relating to the exercise of powers of the magistrates' court or Crown court when dealing with breach of a youth rehabilitation order to cancel or replace requirements in the order. Sub-paragraph (1) of new paragraph 16A allows a court to amend the end date of an order where either the offender or responsible officer requests this. Further provisions limit the extension of the end date to a maximum period of 6 months beyond the end date of the original order and allow the overall length of the order to extend beyond the maximum of three years where the order is so extended. This power to extend is limited to one occasion only. Sub-paragraph (6) provides that the court amending the length of the order must be a youth court where the offender is aged under 18 at the time the application to extend is made or an adult magistrates' court where the offender has reached the age of 18.

Section 84: Youth rehabilitation order: fine for breach

460. **Section 84** provides for the fine available to a court to deal with breach of a youth rehabilitation order under Schedule 2 to the 2008 Act to be increased to a maximum amount of £2,500. Currently the maximum fine in both the magistrates' courts and the Crown Court is £250 if the offender is aged under 14, or £1,000 in any other case.

Fines

Section 85: Removal of limit on certain fines on conviction by magistrates' court

461. **Section 85** removes limits on fines of £5,000 or more (however that amount is expressed) on conviction by the magistrates' court. The section applies to fines set out in primary and secondary legislation. The section also modifies powers to create offences which are punishable on summary conviction by a fine with a limit of £5,000 or more, so that they are punishable by a fine of any amount. The section gives the Secretary of State a power to disapply the removal of limits and to set alternative limits, subject to certain restrictions. The section applies to sentences on summary conviction, i.e. on conviction in a magistrates' court for an offence which is triable only summarily or triable either way (see *subsection (16)*).

462. *Subsection (1)* provides that relevant offences which are punishable on summary conviction by fines of £5,000 or more (however that sum is expressed), are punishable by a fine of any amount. Where the maximum amount of a fine which may be imposed on summary conviction is £5,000, that sum is expressed in different provisions in different ways. In some cases the amount is expressed as the specific figure of £5,000. In some cases it is expressed as ‘an amount not exceeding the prescribed sum,’ or ‘the statutory maximum,’ or ‘level 5 on the standard scale.’ In each case the amount is £5,000. This subsection applies in respect of each of those formulations, and any other formulation which has the same effect.
463. *Subsection (2)* provides that where a relevant power could be exercised to create an offence punishable on summary conviction by a fine of £5,000 or more, the power may be exercised to create an offence punishable by a fine of any amount.
464. *Subsection (3)* provides that an offence or power is relevant if it is a common law offence or it is contained in an Act or secondary legislation immediately before *subsection (1)* of this section comes into force. It is a relevant offence or power whether or not it is in force at that time.
465. *Subsection (4)* sets out a series of limitations on the provisions in *subsections (1) and (2)*. These limitations relate to fines for offences committed before the day on which *subsection (1)* of this section comes into force, to the operation of restrictions on fines that may be imposed on a person under 18, and to fines imposed by a Crown Court following committal for sentence from the magistrates’ court, where the Crown Court is exercising its own sentencing jurisdiction.
466. *Subsection (5)* gives the Secretary of State powers by regulations to disapply *subsection (1) or (2)*. *Subsection (6)* gives the Secretary of State power by regulations to make alternative provision in respect of offences or powers in respect of which the power in *subsection (5)* is exercised.
467. *Subsections (7) and (8)* deal with the situation where a fine is expressed as a proportion of £5,000 (however expressed). For instance, some offences under the Companies Act 2006 contain offences punishable by a fine of an amount per day not exceeding 10% of the statutory maximum. The Secretary of State may make regulations to specify or describe a higher amount than £5,000 for these purposes
468. *Subsection (9)* imposes the same limitations in respect of regulations under section 85 as are imposed by *subsection (4)* (described above).
469. *Subsections (10) and (11)* make further provision about the scope of the powers to make regulations in this section.
470. *Subsections (12) and (13)* provide that regulations made under this section are to be made by statutory instrument, using the affirmative resolution procedure.
471. *Subsection (14)* makes particular provision to deal with the possibility that the power under the Criminal Justice Act 1982 to raise the sum specified as level 5 on the standard scale to reflect increases in the value of money may be exercised before the day on which *subsection (1)* of this section comes into force. It provides that, if that happens, references in this section to £5,000 have effect as if they were references to the new sum.

Section 86: Power to increase certain other fines on conviction by magistrates’ court

472. **Section 86** makes provision in relation to fines or maximum fines of fixed amounts which are less than £5,000. (Such fines are not affected by section 85(1) or (2). Nor are they affected by the powers in section 88, which only relate to amounts expressed as levels 1 to 4 on the standard scale.)

These notes refer to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) which received Royal Assent on 1 May 2012

473. *Subsections (1) and (2)* provide that the Secretary of State may make regulations in respect of relevant offences which are punishable by a fine of a fixed amount (i.e. a sum set out as a figure in the legislation) of less than £5,000. The regulations may specify or describe an amount in place of the original amount.
474. *Subsections (3) and (4)* provide that the Secretary of State may make regulations in respect of powers to create offences which are punishable by a fine of a fixed amount (i.e. a sum set out as a figure in the legislation) of less than £5,000. The regulations may specify or describe an amount in place of the original amount.
475. *Subsection (5)* provides that the amount which may be specified or described may not exceed the greater of £5,000 or the sum specified as level 4 on the standard scale. (Section 88 gives the Secretary of State powers to amend levels 1 to 4 on the standard scale.)
476. *Subsection (6)* sets out a series of limitations on the powers in this section. These limitations relate to fines for offences committed before the day on which section 85(1) comes into force, to the operation of restrictions on fines that may be imposed on a person under 18, and to fines imposed by a Crown Court following committal for sentence from the magistrates' court, where the Crown Court is exercising its own sentencing jurisdiction.
477. *Subsections (7) and (8)* make further provision about the scope of the powers to make regulations in this section.
478. *Subsections (9) and (10)* provide that regulations made under this section are to be made by statutory instrument, using the affirmative resolution procedure.
479. *Subsection (11)* makes particular provision to deal with the possibility that the power under the Criminal Justice Act 1982 to raise the sum specified as level 5 on the standard scale to reflect increases in the value of money may be exercised before the day on which section 86(1) comes into force. It provides that, if that happens, references in this section to £5,000 have effect as if they were references to the new sum.

Section 87: Power to amend standard scale of fines for summary offences

480. **Section 87** gives the Secretary of State power by order to alter the sums specified as levels 1 to 4 on the standard scale of fines for summary offences.
481. *Subsection (1)* provides that the Secretary of State may by order substitute for the sums specified as levels 1 to 4 on the standard scale, such sums as the Secretary of State considers appropriate. Level 1 is currently £200, level 2 is £500, level 3 is £1,000 and level 4 is £2,500.
482. *Subsection (2)* prevents the Secretary of State from altering the sums in a way which alters the ratio of the levels to each other.
483. *Subsections (5) and (6)* provide that orders made under this section are to be made by statutory instrument, using the affirmative resolution procedure.
484. *Subsection (7)* provides that an order altering the sums does not affect fines for offences committed before the order comes into force.

Section 88: Withdrawal of warrants of control issued by fines officer

485. **Section 88** relates to the withdrawal of "warrants of control", as the current warrants of distress will be termed when the provisions in Part 3 of the Tribunals, Courts and Enforcement Act 2007 come into force (until then, they will continue, by way of transitional saving, to be termed warrants of distress). Section 88 makes a number of amendments to Schedule 5 of the Courts Act 2003 including the insertion of four new paragraphs.

486. **Section 88(4)** inserts a new paragraph 37A into Schedule 5 to the Courts Act 2003. Paragraph 37A allows a fines officer, in certain circumstances, to issue a replacement notice indicating an intention to take further action under paragraph 38 of the Schedule (for example to issue a warrant of distress, which may be a replacement for a warrant previously withdrawn, or to make an attachment of earnings order). Paragraph 37A also allows for an appeal against the replacement notice to be made to the magistrates' court within 10 working days.
487. **Section 88(8)** inserts a new paragraph 40A, into Schedule 5 to the Courts Act 2003. Paragraph 40A provides fines officers with the power to withdraw warrants that they have issued, in specified circumstances. A fines officer may withdraw a warrant of control if there is an outstanding sum due and if the fines officer is satisfied that the warrant was issued by mistake (which in this context will include a mistake made in consequence of the non-disclosure or misrepresentation of a material fact).
488. **Section 88(8)** also inserts a new paragraph 40B into Schedule 5 to the Courts Act 2003. Paragraph 40B provides magistrates' courts with a power to discharge a distress warrant issued by a fines officer (the court presently has power under section 142(1) of the Magistrates' Court Act 1980 to discharge its own warrant, but not to discharge one issued by a fines officer). If the fines officer has issued a distress warrant and refers the case to the magistrates' court the court may discharge the warrant if there is an outstanding amount to be paid and the power conferred by section 142(1) of the 1980 Act would have been exercisable by the court if the court had issued the warrant. In other words, the court is now able to reopen the case to rectify mistakes, if the distress warrant had been issued by a fines officer, in the same way it can do so if the warrant was issued by the court.
489. **Section 88(8)** inserts a new paragraph 40C into Schedule 5 to the Courts Act 2003. Paragraph 40C places duties on fines officers where a warrant of control has been withdrawn or discharged. Where the warrant has been withdrawn by the fines officer or discharged by the court and the court has not discharged a collection order, then the fines officer must take (or retake) one or more of the steps specified in a further steps notice, or deliver a replacement notice and take one or more steps specified in that notice, or refer the case to (or back to) the magistrates' court.

Repeal of uncommenced provisions

Section 89 and Schedule 10: Repeal of sections 181 to 188 of Criminal Justice Act 2003

490. **Section 89(1)** repeals those sections of the 1991 Act which would have introduced custody plus and intermittent custody orders for sentences of less than 12 months (sections 181 to 188). Those provisions have never been commenced. Sentences of less than 12 months are now to be brought within Chapter 6 of Part 12 of the 1991 Act: see section 111. Schedule 10 makes amendments which are consequential on the repeal of sections 181 to 188.