

# CRIME AND COURTS ACT 2013

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2: Courts and Justice**

#### *Schedule 16: Dealing non-custodially with offenders*

#### **Part 1 – Community Orders: punitive elements**

498. **Part 1** of Schedule 16 amends section 177 of the Criminal Justice Act 2003 (“the CJA 2003”) so as to require a court imposing a community order either to include a requirement that fulfils the purpose of punishment in the order or to impose a fine (or do both) unless there are exceptional circumstances that would make that unjust.
499. At present, when a court imposes a community order it may choose from a menu of thirteen possible requirements, namely:
- Unpaid work (known as community payback);
  - Residence (requiring an offender to reside at a place specified in the court order);
  - Mental health treatment;
  - Drug rehabilitation;
  - Alcohol treatment;
  - Supervision (requiring an offender to attend appointments as instructed by a probation officer);
  - Attendance centre (requiring an offender under 25 to attend a particular centre at specified times);
  - Prohibited activity (requiring an offender to refrain from participating in certain activities as set out in the court order);
  - Curfew (confining an offender to a specified place for a specified number of hours per day);
  - Exclusion (prohibiting the offender from entering a place specified in the court order);
  - Programme (requiring the offender to participate in an accredited programme such as anger management courses);
  - Activity (requiring the offender to participate in certain activities such as basic skills classes).
  - Foreign travel prohibition requirement.

*These notes refer to the Crime and Courts Act 2013  
(c.22) which received Royal Assent on 25 April 2013*

500. Section 76 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“the 2012 Act”) provides for a fourteenth community order requirement: an alcohol abstinence and monitoring requirement. Under section 77 of the 2012 Act, this requirement must be piloted before it can be rolled out nationally.
501. When dealing with an offender for his or her offence the court is required to have regard to the five statutory purposes of sentencing (namely: punishment, crime reduction, rehabilitation, public protection and reparation). However, none of the requirements of the community order currently has to fulfil any specific one of these purposes.
502. Under *paragraph 2*, when a court is imposing a community order it must either include in the order at least one requirement that has the purpose of punishment, or impose a fine, or do both (new section 177(2A) of the CJA 2003). New section 177(2A) does not set out which requirements fulfil the purpose of punishment; this will be for the court to decide in all the circumstances of the particular offence and offender before it.
503. The requirement for a community order to include a punitive element applies in all cases except where the court considers that there are exceptional circumstances relating to the offender or to the offence which would make the imposition of a punitive requirement or a fine unjust (new section 177(2B) of the CJA 2003).
504. When a court imposes a community order, the requirements imposed must, in the court’s opinion, be the most suitable for the offender and any restrictions on the offender’s liberty must be commensurate with the seriousness of the offending. *Paragraph 3* makes these conditions subject to the new duty on the court to impose a punitive element (by virtue of the amendment made to section 148 of the CJA 2003).