

CRIME AND COURTS ACT 2013

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.

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).

Part 2: Deferring the passage of sentence to allow for restorative justice

505. Section 1 of the Powers of Criminal Courts (Sentencing) Act 2000 (“the 2000 Act”) provides for courts to defer for up to six months passing sentence after an offender has been convicted if the offender consents and undertakes to comply with any requirements that the court considers it appropriate to impose. The current provisions also provide for the offender to be returned to court (in case of breach) before the end of the period of deferment. They also provide for the court to appoint a supervisor.
506. *Paragraph 5* inserts a new section 1ZA into the 2000 Act to make it explicit that the court’s existing power to defer sentence after conviction includes a power to defer sentence to allow for restorative justice activities in cases where the offender and every other person who would be a participant in the activity consents (new section 1ZA(1) and (3)).
507. A restorative justice activity is an activity:
- involving the offender and one or more victims;.
 - which seeks to bring home to the offender the impact of their offending on the victim or victims; and
 - which gives the victim or victims the opportunity to talk about, or otherwise express, the impact of the offending upon them (new section 1ZA(2)).
508. New section 1ZA(6) of the 2000 Act requires those persons running restorative justice activities to have regard to any guidance that the Secretary of State issues, with a view to encouraging good practice in the delivery of such activities.
509. A victim is a victim of, or other person affected by, the offending (new section 1ZA(7)). Restorative justice activities might include the victim and offender meeting face to face to discuss the crime, or giving the victim an opportunity to explain by other means to the offender the impact of the crime. These activities can conclude with an agreement which involves the offender making some form of reparation to the victim.

510. The court may have regard to the offender's engagement (or lack of engagement) when they pass their sentence. However, the participation of the offender in restorative justice activities will not automatically affect the sentence that he or she receives. It will be for the court to decide on the sentence that is ultimately imposed.

Part 3: Removal of limits on compensation orders made against adults

511. [Part 3](#) makes changes to the current power of magistrates' courts (in section 131 of the 2000 Act) to impose a compensation order on an offender who has caused personal injury, loss or damage to a victim. The maximum value of a single compensation order made by a magistrates' court is currently £5,000. There is no limit on the value of a compensation order made by the Crown Court.
512. [Paragraph 8](#) amends section 131 of the 2000 Act to provide that the current £5000 limit will only apply in the case of a compensation order imposed on a young offender (that is an offender under the age of 18). The effect of the amendment is that in future there will be no limit on the value of a single compensation order handed down to an adult offender by a magistrates' court.
513. [Paragraph 9](#) makes a consequential amendment to section 33B of the Environmental Protection Act 1990, which concerns offences related to the deposit or disposal of waste. The amendment updates the reference to section 131 of the 2000 Act and makes it clear that section 131 will only apply in relation to young offenders.

Part 4: Electronic Monitoring of offenders

514. [Part 4](#) broadens the provisions in the CJA 2003 that enable the courts to impose an electronic monitoring requirement as part of a community order or suspended sentence order.
515. [Paragraphs 12 and 13](#) amend sections 177 and 190 of the CJA 2003 so as to add "electronic monitoring requirement" to the list of primary requirements that may be imposed as part of a community order or suspended sentence order respectively, so that electronic monitoring may be imposed for the purpose of monitoring compliance with other requirements of the order or for the purpose of monitoring an offender's whereabouts.
516. [Paragraph 16](#) extends the definition of "electronic monitoring requirement" to enable the courts to impose the monitoring of an offender's whereabouts as a requirement as well as for monitoring compliance with other requirements. [Paragraph 16](#) also makes express provision that an offender subject to an electronic monitoring requirement (whether one imposed for the purpose of monitoring whereabouts or one imposed for the purpose of monitoring compliance) must submit to the fitting, installation, inspection or repair of the tagging equipment and must not interfere with that equipment. Tampering with a tag to the extent that it stops functioning constitutes a breach of an electronic monitoring requirement and the provision simply puts the matter beyond doubt.
517. The use of location data gathered under an electronic monitoring requirement (whether one imposed for the purpose of monitoring whereabouts or one imposed for the purpose of monitoring compliance) is subject to the requirements of the Data Protection Act 1998. [Paragraph 17](#) inserts a new section 215A into the CJA 2003 which imposes a duty on the Secretary of State to issue a code of practice on the retention, use and sharing of such data.
518. Amendments to section 218 of the CJA 2003 restrict the power for courts to impose requirements for the purpose of monitoring whereabouts to cases where the court has been notified by the Secretary of State that the necessary electronic monitoring facilities are available in the local justice area. In addition, courts must be satisfied that the offender can be fitted with any necessary apparatus under the arrangements

currently available and that arrangements are generally operational throughout England and Wales under which the offender's whereabouts can be monitored (see [paragraph 18](#)).

519. [Paragraph 20](#) allows for the transfer of electronic monitoring arrangements to Northern Ireland when the offender lives, or intends to move to, that jurisdiction, and where the court is satisfied that arrangements are in place for the requirement to be enforced.

Part 5: Community Orders: further provision

520. [Paragraph 22](#) removes uncommenced elements of section 67 of the 2012 Act and makes a minor consequential amendment to the CJA 2003. This removes a court's power to take no action if an offender is brought back to court as a consequence of a breach of a community order. The effect is that if a court finds that an offender has breached an order without reasonable excuse, it must make the order more onerous, revoke the order and re-sentence for the original offence, or impose a fine.
521. [Paragraph 23](#) amends section 150 of the CJA 2003. This section, itself amended by the 2012 Act, inadvertently prevented the court from giving a 16 or 17 year old a Youth Rehabilitation Order for the new aggravated offence of knife possession. [Paragraph 23](#) corrects this technical error, so that the new provisions work as they were originally intended to.

Part 6: Statements of assets and other financial circumstances of offenders etc

522. [Part 6](#) makes changes to the current powers of courts to order offenders to provide a statement of their financial circumstances in various contexts. These powers exist in order to support courts in fixing a fine or other financial order that is proportionate and equitable with regard to an offender's circumstances. The provisions in Part 6 make it clear that courts can order such a statement to provide details of an offender's assets as well as their income or outgoings. Courts' powers under existing provisions are broadly framed, and provide them with discretion to require such details as they see fit. As a result, these changes will give courts the discretion to request information about offenders' assets, rather than requiring them to do so in every case.
523. [Paragraph 24](#) amends the power of courts under section 162 of the CJA 2003 to order a statement of an offender's financial circumstances before sentencing him or her. Section 162, as amended, makes it clear that a court can order an offender to provide such a statement of his or her assets and other financial circumstances as the court may require.
524. [Paragraph 25](#) amends the power of magistrates' courts (in section 84 of the Magistrates' Courts Act 1980) to require a statement of an offender's means before considering whether to issue a distress warrant or commit to custody in cases involving offenders who have defaulted on a fine or other sum payable on conviction. This change makes it clear that a statement required under section 84 may relate to an offender's assets as well as to the offender's other financial circumstances.
525. [Paragraph 26](#) makes consequential amendments to the offence under section 20A of the Criminal Justice Act 1991 of failing to provide information about financial circumstances to a court after an official request. The amendments make it clear that the references in the section to a statement of financial circumstances include references to a statement of assets, of other financial circumstances or of both.
526. [Paragraph 27](#) amends the power of courts (in section 13B of the Crime and Disorder Act 1998) to order a statement of financial circumstances when considering whether to impose a parental compensation order on the parent or guardian of a child under 10 who, were it not for their age, would by their behaviour have committed an offence. The amendments make it clear that the statement may relate to assets as well as to other financial circumstances.

527. *Paragraph 28* makes consequential amendments to the offence under Schedule 5 to the Courts Act 2003 of making a false statement in response to a request for information about financial circumstances. It also amends the power of magistrates' courts under Schedule 6 to that Act to order a statement of financial circumstances from a fine defaulter in respect of whom the court is considering making a work order. The amendments make it clear that the statements concerned may relate to assets as well as to other financial circumstances.

Part 7: Information to enable a court to deal with an offender

528. *Part 7* creates a new data sharing gateway to enable the Secretary of State (in practice the Department for Work and Pensions) and a Northern Ireland Department and Her Majesty's Revenue and Customs ("HMRC") to share social security information and finances information on defendants with Her Majesty's Courts and Tribunals Service ("HMCTS") and the Service Prosecuting Authority ("the SPA") for service court proceedings.
529. *Paragraph 29(9)* defines terms used in *paragraph 29*, including "finances information" and "social security information". "Finances information" is certain information about a defendant's income, gains or capital and "social security information" is certain information which is held for the purposes of functions relating to social security. *Paragraph 29* refers to a Northern Ireland Department to ensure that social security information on Northern Ireland residents held on the DWP's database can be shared with HMCTS and the SPA.
530. *Paragraph 29(1) and (2)* enable the Secretary of State, a Northern Ireland Department and HMRC to share social security and finances information respectively with a "relevant person", which will be a person in HMCTS or the SPA because of the definition of "relevant person" in *paragraph 29(9)*. *Paragraph 29(3) and (6)* secure that information can be further disclosed by a relevant person to a court or service court at any time after a defendant has been charged with an offence but only where the court or service court is inquiring into or determining a person's financial circumstances in connection with dealing with the person for an offence. This will assist the court when it is imposing a fine or compensation order. *Paragraph 29(5)* prohibits further disclosure of any information shared with HMCTS or the SPA (except to a court or service court as mentioned above or to relevant persons who want the information so that it can be put before a court or service court as mentioned above). *Paragraph 29(5)* does not apply in the circumstances set out in *paragraph 29(7)* (for example, where disclosure is to the defendant or his or her representative; where disclosure is of summary information from which the defendant cannot be identified; where disclosure is of information that has already been disclosed to the public with lawful authority; and where disclosure is necessary to comply with a duty imposed by or under any Act or with an order of a court or tribunal).
531. *Paragraph 30* makes it an offence to disclose or use any information shared with HMCTS or the SPA in contravention of *paragraph 29(5)*. *Paragraph 30(3)* provides for the maximum penalties to be imprisonment not exceeding two years and/or a fine if tried on indictment, and imprisonment not exceeding 6 months (increasing to 12 months when section 154(1) of the CJA 2003 is brought into force) and/or a fine not exceeding the statutory maximum if tried summarily.

Part 8: Related amendments in Armed Forces Act 2006

532. *Part 8* makes amendments in relation to the sentencing powers available to service courts under the Armed Forces Act 2006. It makes provision equivalent to or consequential on, the amendments to criminal courts' sentencing powers in Part 1 (punitive elements), Part 3 (compensation orders), Part 4 (electronic monitoring) and Part 6 (statements of assets and other financial circumstances).

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

- 533. *Paragraph 32* amends section 178 of the Armed Forces Act 2006 so that the duty on courts to include a punitive element in a community order or to impose a fine applies to service courts imposing a service community order.
- 534. *Paragraph 33* amends section 182 of the Armed Forces Act 2006 so that that duty also applies to service courts imposing an overseas community order on an offender who is aged 18 or over when convicted. *Paragraph 34* amends section 270 of the Armed Forces Act 2006 so that existing restrictions on the requirements that may be included in a service community order or overseas community order are subject to that duty.
- 535. *Paragraph 36* amends section 284 of the Armed Forces Act 2006 so that the £5,000 limit to which the Service Civilian Court is currently subject when imposing a service compensation order applies only where the offender is aged under 18 on conviction.
- 536. *Paragraph 37* amends sections 182 and 183 of the Armed Forces Act 2006 to provide that an electronic monitoring requirement may not be included in an overseas community order.
- 537. *Paragraph 38* amends section 266 of the Armed Forces Act 2006 to make it clear that a service court's power to make a financial statement order includes power to require information about an offender's assets as well as other financial circumstances.