



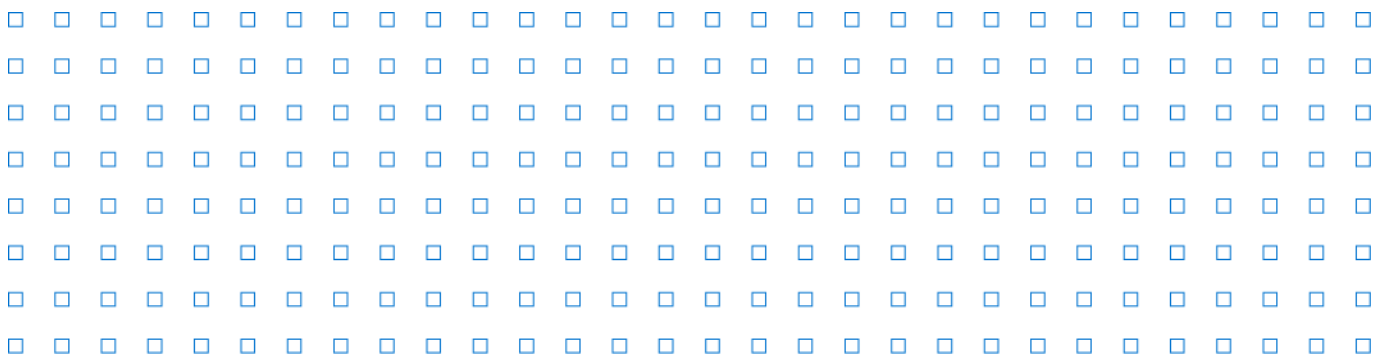
Ministry
of Justice



Youth Justice Board
Bwrdd Cyfiawnder Ieuencid

Referral Order Guidance

Revised April 2015





Ministry
of Justice



Referral Orders and Youth Offender Panels

Guidance for the courts, Youth Offending Teams and Youth Offender Panels

This information is also available on the Ministry of Justice website: www.Gov.uk

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Scope and status

This statutory guidance is published jointly by the Ministry of Justice and the Youth Justice Board. It replaces the previous guidance published in December 2012. It contains guidance to youth offending teams and community panel members, including guidance on the selection of community panel members and the conduct of youth offender panels. It is also provided to courts for information.

Enquiries

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1. Introduction

This Guidance is primarily for youth offender teams and youth offender panel members and has been revised to take into account legislative changes provided for in the Criminal Justice and Courts Act 2015. The amendments to the Powers of the Criminal Courts (Sentencing) Act 2000 provide greater flexibility and powers for the court when dealing with a breach of a youth offender contract or further offending. Where a restorative justice process has been agreed as part of a Referral Order, the changes will, importantly for victims who want to participate, allow for the process to be completed. It also updates and improves the Guidance in the light of experience of the practical application of referral orders since their introduction nationally in 2002.

The referral order is a unique sentence directly involving the local community, by means of the volunteer youth offender panel members, in holding the young offender to account for their actions.

Where a young person is before a court charged with a criminal offence for the first time and pleads guilty, the Court must pass (in most cases) a referral order. The young offender if aged under 16 years old is required to attend a youth offender panel with their parents/guardian or local authority representative if under the care of the local authority and may be required to make restitution or reparation to their victim based on a restorative justice approach. The youth offender panel is headed by two volunteers from the local community and a member of the youth offending team. Under the order the young offender agrees a contract with the panel which can include reparation or restitution to their victim, for example, repairing any damage caused or making financial recompense, as well as undertaking a programme of interventions and activities to address their offending behaviour.

Under the current Guidance, panels should give victims the opportunity to attend a panel meeting at an appropriate time or times during the course of the referral order or to have their views represented subject to their wishes and informed consent. Victims should also have the opportunity of getting more information on the referral order process and the offender's progress if they would like to.

Under the terms of the Referral Order the young offender's progress and compliance with the contract is monitored by the panel which holds regular review hearings attended by the offender and which may be attended by their parents and/or carer (parents or local authority representatives will not always attend if the young person is 16 and over). In the event of non-compliance or where the offender refuses to agree a contract, the Panel can refer the young person back to the court which has the power to then re-sentence the offender.

The legislation

- 1.1 The Powers of the Criminal Courts (Sentencing) Act 2000 (sections 16–32 and Schedule 1), as amended, makes provision for the referral order, a sentence for young offenders pleading guilty. Its primary aim is to prevent young people reoffending and provide a restorative justice approach within a community context.
- 1.2 In summary the legislation sets out the circumstances in which a youth court or other magistrates' court¹ when dealing with a person under 18 for an offence, must or may impose a referral order.
- 1.3 Under section 16(1) of the Powers of Criminal Courts (Sentencing) Act 2000 a referral order **cannot** be given to an offender where:
 - the sentence is fixed by law (such as in cases of murder);
 - the offence is so serious that the court proposes to impose a custodial sentence;
 - the court is proposing to make a hospital order;
 - the offence is relatively minor and the court proposes to give an absolute or a conditional discharge.
- 1.4 Subject to those exceptions, the circumstances in which a referral order **must** be imposed are where:
 - the offender (aged 10–17) pleads guilty to the offence and any connected offence;
 - and referral is available to the court and;
 - the offence is punishable with imprisonment and;
 - the offender has not previously been convicted of an offence.
- 1.5 The legislation also sets out discretionary conditions under which a referral order may be made. The conditions are set out in more detail under [section 3](#), but, in summary, these allow a court to give a referral order where, subject to the exceptions identified in paragraph 1.4 above:
 - the compulsory referral conditions are not all satisfied and;
 - pleads guilty to the offence and at least one of any connected offences.
- 1.6 The court determines the length of the order (between three and twelve months) according to the seriousness of the offence.
- 1.7 Section 43 of the Criminal Justice and Courts Act 2015 amends the Powers of Criminal Courts (Sentencing) Act 2000 to provide for

¹ A Crown Court might also impose a referral order – see [section 3](#).

alternatives to revocation for a breach of a youth offender contract. This includes imposing a fine up to a maximum of £2500 on an offender or extending the youth offender contract up to a maximum of 12 months. Section 44 of the Act 2015 amends provisions in Part II of Schedule 1 to the 2000 Act to give the court the power to extend a second or subsequent referral order in respect of additional or further offences in the same way as is currently available for a first referral order. Section 45 of the Act 2015 amends provisions in Paragraph 14 of Schedule 1 to the 2000 Act, providing the court with a discretionary power to be exercised in the interest of justice over whether to revoke an existing referral order for further or additional offences. All references throughout this Guidance to the Powers of Criminal Courts (Sentencing) Act 2000 are as amended by the Criminal Justice and Courts Act 2015. A copy of the revised legislation is attached at Annex A

The referral process

When the court makes a referral order the young offender is referred to a youth offender panel. The initial panel meeting, which the young offender is required to attend, and which parents or carers may be required to attend, should be held within 20 working days of the order being made. The victim does not have to attend the initial panel and they can participate in a later panel meeting when they are ready. There will not always, however, be an identifiable victim in every case and the victim may not also want to participate.

- 1.8 At this initial panel meeting with the young offender and their parents or carers the panel members review the offence and its consequences; victims should be invited to participate either by attending the panel or having their views represented, unless this would involve a risk to the safety of the victim. The young offender is invited to agree with the panel a contract which should include two core elements:
 - reparation/restoration to the victim or wider community; and
 - a programme of interventions/activities to address reoffending risk.
- 1.9 The panel will monitor the young offender's compliance with the contract. If, at the end of the referral order period, the contract has been successfully completed, the conviction will be spent (see section [3.24–3.29](#) for more detailed explanation of spent conviction). If the offender is unwilling to agree a contract (more than one attempt may be made to find agreement) they will be referred back to the court which may revoke the order and impose an alternative sentence. If the young person fails to comply with the order, they may be referred back to court, which has powers to revoke the order and impose an alternative sentence.

Youth offender panels

- 1.10 Youth offender panels must comprise at least two volunteers who are representative of the local community, plus a member of the youth offending team, who should act as an adviser. The community panel members should take the lead in the panel meeting and one of them will chair; the youth offending team panel adviser should provide background information and advice to the community panel members.
- 1.11 Youth offender panels should operate on the restorative justice principles of responsibility, reparation and reintegration. Restorative justice enables offenders to become aware of and take responsibility for the consequences of their offending and to have the opportunity to make reparation to victims and the wider community. Victims have the opportunity, if they wish, to say how they have been affected by the offence, ask questions, receive an explanation and/or an apology and discuss how the offender can make practical reparation for the harm that has been caused.
- 1.12 Flowchart [Annex B](#).

2. Bringing agencies and the community together

- 2.1 At panel meetings, the discussion with the offender, victims and family members and the drawing up of the contract should be led by the community panel members, one of whom will chair. The community panel members will be encouraged to suggest interventions for inclusion in contracts that draw on community rather than just youth offending team resources. Panel meetings should be held in community venues, where possible (see paragraphs [8.10–8.12](#)).
- 2.2 Since victims are given the opportunity to become involved in the referral order process, a restorative justice approach within a community context should strengthen the liaison between youth offending teams and local community based organisations such as Victim Support.

Communication with the courts

- 2.3 Close liaison between youth offending teams and the courts is essential for effective practice and so that sentencers are well informed and have confidence in referral orders and youth offender panels. Youth offending teams should give the highest priority to establishing effective communication and liaison with their local courts in accordance with National Standards for Youth Justice Services and the Youth Justice Board's case management guidance. The YOT service agreements with the courts must ensure there are satisfactory agreed arrangements which are reviewed and updated on a regular basis. In particular there should be agreed procedures for the effective management of custody threshold cases.
- 2.4 Youth offending teams should provide regular reports to Judges, magistrates and their legal advisers on the operation of referral orders and youth offender panels, including aggregate and, where necessary, specific feedback on the contents of contracts and the outcomes of orders.
- 2.5 Youth offending teams should have regular liaison meetings with magistrates and it is recommended that regular joint events are arranged for judges, magistrates and their legal advisers and community panel members.

3. Making referral orders in court

The availability of referral orders

- 3.1 The referral order is available in the youth (magistrates') court, the adult magistrates' court and the Crown Court.
- 3.2 Referral orders are available where a Crown Court judge sits as a magistrates' court under section 66 of the Courts Act 2003. When the Crown Court is dealing with an appeal the referral order is also available since in that capacity the Court has all the same sentencing powers as the lower court, by virtue of Section 48(4) of the Senior Courts Act 1981.²
- 3.3 Where a young defendant has been convicted by a court away from their home area, the convicting court may when making a referral order, specify the "home" youth offending team as being responsible for implementing the order. The advantage of doing this is that it avoids the convicting court having to remit the case to another area for a further hearing and avoids unnecessary delay and expense. In these circumstances it is desirable that the Court should also liaise with the 'home' area YOT to enable the young person to be given reporting instructions prior to leaving court.
- 3.4 If a young person is being sentenced with adults in an adult magistrates' court and a referral order is potentially under consideration it is recommended that a Youth Court magistrate is included on the bench.

Pre-sentence considerations

- 3.5 A referral order is the main sentencing disposal in cases where the young person pleads guilty and is convicted for the first time of an imprisonable criminal offence, but is not appropriate in all cases (see compulsory and discretionary conditions set out in [3.8–3.9](#) below).
- 3.6 Its availability has been restricted to exclude offences for which the sentence is fixed by law. The making of a referral order is precluded if the court is proposing to impose a custodial sentence, a hospital order or an absolute or conditional discharge.

Pre-sentence reports (PSRs)

- 3.7 Where the court may consider imposing a custodial sentence – what is described in this guidance as a 'custody threshold' case – a written

² Which will become the Senior Courts Act 1981 when relevant provisions of the Constitutional Reform Act 2005 are brought into force.

pre-sentence report (PSR) is required. The PSR will review the options actually available to the court, i.e. custody, a longer referral order (see later references to custody threshold in [7.4](#) and [8.37](#)) or where the compulsory conditions are not met a youth rehabilitation order or reparation order. In other cases, where custody is **not** being considered and if no PSR has been provided in writing, the youth offending team should be prepared to provide verbal information to the court.

The compulsory referral order conditions

3.8 The court **will be required** to make a referral order in the following circumstances:

- a) where the young offender has not previously been convicted;³ and
- b) where the young offender pleads guilty to an imprisonable offence (and any associated offences),

unless the sentence is one that is fixed by law or the court proposes to give the young offender a custodial sentence, an absolute or conditional discharge or make a hospital order.

The discretionary referral order conditions

3.9 Under section 17 of the Powers of Criminal Courts (Sentencing) Act 2000, where the compulsory referral conditions are not met and the offender pleads guilty to the offence **or** at least one of any connected offence being dealt with by the court the court may make a referral order.

3.10 In the event of a not guilty plea, without an associated guilty plea to at least one of the connected offences, a referral order is **not** available to the court. For the purposes of this provision connected offences are defined as any other offence for which the offender is being dealt with at the same time, whether or not he is convicted of the offences at the same time or by or before the same court.

Effect of making a referral order on courts' other sentencing powers

3.11 A referral order should **not** be combined with any other disposal (including a fine) other than an absolute discharge in respect of an associated offence. The court may not make an ancillary order binding over the young offender to keep the peace or be of good behaviour or make a parental bindover in respect of the offender's parents when making a referral order. However, the court **may** make other ancillary orders and these can include costs and compensation orders.

³ Other changes to the Powers of Criminal Courts (Sentencing) Act 2000 mean that a conditional discharge will no longer be treated as a conviction for the purposes of a referral order and a referral order can be made even if previously the offender had been bound over previously to keep the peace.

Setting the length of orders

- 3.12 The length of the order between 3–12 months is determined by the court, and is based on the seriousness of the offence.
- 3.13 The period of the order is based on the seriousness of the offence. It will be for the youth offender panel to assess the level of intervention necessary to prevent the young person from offending.
- 3.14 The youth offending team will identify the young offender's likelihood of reoffending when carrying out the ASSET assessment of the offender, and, using the Scaled Approach to determine the recommended level of intervention and will highlight these in the report for the youth offender panel. As well as a reparation element to repair the harm caused by the offence, a programme of interventions and activity aimed at preventing reoffending will be included in the contract that the youth offender panel agrees with the offender. More information on the Scaled Approach can be found on the Ministry of Justice website at: <http://www.justice.gov.uk/youth-justice/the-scaled-approach>
- 3.15 Courts may make referral orders for more than one offence. However, the offender will be referred to only one youth offender panel, and there will be only one contract. Different orders may be of different lengths, and may run concurrently or consecutively, but the total time period for any contract may not exceed twelve months.
- 3.16 The compliance period of the order will run for the length of time set by the court starting from the date when the contract with the youth offender panel is agreed and signed, not the court date.

Ordering parental attendance

- 3.17 Constructive engagement with offenders' parents is an important aspect of the youth offender panel process.
- 3.18 Section 20 of the Powers of Criminal Courts (Sentencing) Act 2000 allows the court when making a referral order (and requires the court to do so if the offender is under 16), to make an order requiring a parent or guardian (or representative of a local authority if the child is looked after by a local authority) to attend the meetings of the youth offender panel. If a parent or guardian of the offender fails to comply with the order and the offender is aged under 18 at the time of such failure, the panel may refer the matter to a Youth Court acting in the local justice area in which it appears the offender resides or will reside and the court may issue a summons or a warrant for the arrest of the parent or guardian, to secure attendance at court.

Where it is shown that the parent or guardian failed without reasonable excuse to comply with an order made under section 20 and the court is satisfied that a parenting order would be desirable in the interests of preventing the offender committing further offences, the court may make a parenting order under paragraph 9D of Schedule 1 to the Powers of

Criminal Courts (Sentencing) Act 2000). Paragraphs 9D(2) to (7) make provision about what a parenting order may require. Failing to comply with the order without reasonable excuse is an offence punishable with a fine of up to level 3 on the standard scale (currently £1,000) – see section 9(7) of the Crime and Disorder Act 1998 applied by paragraph 9D(7) of Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000.

Only in **exceptional** circumstances of parental non-attendance, may the youth offending team proceed with or re-convene the panel and agree a contract providing that, to safeguard the young person's rights, particularly if they are under 16 years, the offender is fully supported by an appropriate and sufficiently independent adult, acceptable to the offender as well as to the panel.

The format of the referral order

3.19 A suggested pro forma for referral orders is at Annex C. This includes:

- the name and address of the offender
- details of the offence
- the length of the order
- the name of the youth offending team responsible for the referral order (this will be the youth offending team for the area in which the young offender is living, or is expected to live in the future)
- details of those parent(s)/guardian(s)/local authority representative(s) required to attend panel meetings
- details of any ancillary orders.

3.20 The court must explain to the offender in ordinary language what will happen as a result of the referral order being made, and what the consequences of not agreeing or complying with the contract will be.

3.21 A copy of the order must be given to the offender, and sent on the same day to anyone required by the court to attend panel meetings, but not in court when the order was made.

3.22 A copy of the referral order must also be sent on the same day to the youth offending team named in the order.

3.23 It is important that the panel has the full facts of the offence. The Crown Prosecution Service has agreed to supply youth offending teams with an offence information package/offender history, whenever a referral order is made.

Spent convictions under Rehabilitation of Offenders Act 1974

- 3.24** The conviction will be spent as soon as the order is discharged (the conviction is spent from the date the contract “ceases to have effect”). This is in recognition of the fact that referral orders are made on young offenders convicted for the first time and pleading guilty. The referral order gives the young person the chance to make amends for the offence and to put the offence behind them.
- 3.25** The rehabilitation period of a referral order is only as long as the referral order or contract. This means that the conviction will normally become spent at the conclusion of the order (contract). However, where the court makes a compensation order in conjunction with a referral order, the conviction will be spent only when both the compensation order has been paid and the referral order (or contract) has been concluded (s5(8), s6(2) ROA 1974). If the compensation is paid before completion of the referral order then both will become spent on the date on which the referral order (or contract) ends. However, if when the referral order is completed the compensation has not yet been paid, then the rehabilitation period for the referral order will not end until payment is completed.
- 3.26** Youth offending teams and panel members should explain to the young person the consequences of a criminal record and what is meant by a spent conviction.
- 3.27** Official records will still be kept and the conviction may be cited in court in future criminal proceedings. The benefit for the young person is that, with certain exceptions, he/she does not have to disclose the conviction to others such as employers or insurers and that an employer cannot refuse to employ (or dismiss) someone because he or she has a spent conviction unless an exception applies.
- 3.28** Spent convictions may be made available to potential employers in certain circumstances as set out in the Exceptions Order to the 1974 Act. The main exceptions relate broadly to work with children, the sick, the vulnerable, the administration of justice and where issues of financial probity are in question. In such cases an enhanced Criminal Records Bureau check is usually required and the Referral Order will be disclosed as part of that check. Passport control requirements may also need to be investigated. This should be explained to the young offender.
- 3.29** Part 2 of the Sexual Offences Act 2003, which replaces Part 1 of the Sex Offenders Act 1997, requires those convicted or warned for relevant sexual offences listed in Schedule 3 to the Act to notify the police of certain personal details (including their name and address) within 3 days of their conviction or caution. The offender must then notify the police whenever these details change and then reconfirm their notified details at least once every twelve months. The general principle is that the notification requirement will apply to young offenders who have been reprimanded, warned or convicted for an offence listed in Schedule 3 to the Act. That Schedule lists all of the relevant offences with the thresholds.

4. The role of youth offending teams

Introduction

- 4.1 The YOT manager has specific responsibility for all statutory duties of youth offending teams and YOTs are responsible in law for delivering referral orders and youth offender panels. The YOT must act in accordance with the legislation and follow relevant guidance, which includes National Standards for Youth Justice Services (National Standards), the Victims Code of Practice (see [Annex A](#) for the relevant legislation and [Annex D](#) for extract from the Victims Code of Practice), Restorative Justice Council's Best Practice Guidance and National Occupational Standards.
- 4.2 The main YOT tasks in the referral order process are:
- a) recruiting, training, appraising and supporting Referral Order coordinators, YOT panel advisers and the volunteer community panel members;
 - b) assessing offenders and producing reports for youth offender panels;
 - c) engaging with victims, offering them the opportunity to participate depending on informed consent and risk assessment;
 - d) attending and advising at youth offender panels;
 - e) case supervision, monitoring the compliance of offenders with contracts, including arranging referral back to court following the panel decision;
 - f) collecting statistical and other information required for the Youth Justice Performance Framework;
 - g) regular liaison with sentencers, including regular dialogue and information and feedback concerning panel contracts and case outcomes.
- 4.3 The youth offender panel adviser fulfils an essential role by:
- a) supporting the panel process and the Panel Members;
 - b) providing information and advice on services, processes, the legal framework, proportionality, the Scaled Approach and potential interventions;
 - c) assessing and monitoring risk to the safety and wellbeing of all participants;
 - d) ensuring effective coordination between the Panel Meeting and the YOT team;

- e) advising the panel of any comments made by the sentencing court and ensuring these are taken into account in setting the contract; and
- f) ensuring the contract is effective and fair, includes appropriate reparation and activities to reduce reoffending risk in accordance with the scaled approach.
- g) from April 2013, prior to participation in panels, YOT panel advisers and panel members will need to be trained in Restorative Justice Conference Facilitation training, as well as have a clear understanding of the role and commitment to the panel and conference process and the principles that support it, as described in the newly upgraded Restorative Conferencing Panel Matters training (2012). The changes to training support the commitment to widen the use of restorative justice whilst ensuring that its use meets the minimum National Occupational Standards (2010) set by the Restorative Justice Council and Skills for Justice.

4.4 The case manager is responsible for ensuring that the contract is monitored and the case is supervised in accordance with the requirements of the Scaled Approach, the case management guidance and National Standards. The case manager must ensure that regular assessments of the young offender on the likelihood of reoffending are carried out, in accordance with National Standards and case management guidance, using ASSET and that case and statistical information is appropriately recorded. The case manager must ensure that any reparation undertaken by the young person is risk assessed, that there are appropriate health and safety provisions and that it is within the terms of the agreement contained in the contract. The case manager must ensure that all parts of the contract are delivered within the period of the order and that any failure to comply by the young offender is notified to the panel within the timescales set out in National Standards. Any decision made by the panel with regard to a referral back to court must be acted upon as required by National Standards.

4.5 It is essential that the YOT manager agrees with local sentencers effective arrangements for liaison concerning Referral Orders and youth offender panels, including regular dialogue, information and feedback on the contents of contracts, case outcomes and the effective management of custody threshold cases. Youth offender panel volunteers should be encouraged to attend liaison meetings with sentencers and to be part of the feedback process.

5. Recruiting, training and supporting community panel members

Selection criteria

5.1 The Secretary of State has a statutory duty to issue guidance to youth offending teams on the criteria to be applied in appointing members of youth offender panels. To ensure that youth offender panels are representative of the local community there should be no unnecessary restrictions on recruitment. The selection criteria are based on personal qualities rather than professional qualifications. Training will form an integral and compulsory part of the recruitment process to ensure that community panel members are equipped with the appropriate skills.

5.2 The required personal qualities are as follows:

Motivation

a commitment to working with young offenders and parents to prevent further crime and with victims to deal with the consequences of crime

Good character

personal integrity

discretion and a firm commitment to confidentiality

understanding and good judgement, a level-headed approach to young offenders and crime

an ability and strong commitment to work without prejudice with people of different ages, ethnic, cultural and social backgrounds

Communication skills

effective listening and communication skills

an ability to engage with young people

an ability to understand documents, to identify and comprehend relevant facts, and to follow arguments

an ability to think logically, to weigh arguments and to reach logical conclusions

objectivity

commonsense and realistic expectations

Sound temperament

an ability to relate to, and work with, others as a member of the panel team

a willingness to listen to advice and to the views of others

maturity, patience and the ability to remain calm

Commitment and reliability

a willingness to undertake all the required initial training, further training and ongoing assessment and appraisal

a commitment to serve as a panel member a required minimum number of times per year and to undertake the relevant preparatory work in each case

a commitment to serve for at least one year following completion of the initial training.

- 5.3 The recruitment and selection process should provide information on applicants' suitability based on these criteria. Selectors should be looking at applicants' potential, bearing in mind that some will have more experience than others of participating in selection procedures, interviews and group situations.
- 5.4 Volunteers are normally encouraged to serve on youth offender panels for terms of up to three years. Towards the end of any period of three years service, there will be a full performance review by the YOT and subject to satisfactory performance, the period of panel service may be extended at the discretion of the YOT manager and dependent on the needs of the panel and the availability of the volunteer. The YOT manager has the discretion to end a panel member's period of service at any time where training and practice competencies have not been maintained.

Barriers to involvement

Age

- 5.5 The minimum age requirement is 18 years old.
- 5.6 Beyond this stipulation, age should not be an automatic barrier to recruitment. The aim of the recruitment strategy should be to recruit a pool of community panel members encompassing a broad range of ages and experience.

Previous offending history

- 5.7 Sexual offences, offences against children or a criminal conviction within the last two years will render a person unsuitable. Particular attention should also be paid to previous convictions for drugs-related offences, violent offences, other offences of a serious nature and evidence of recent persistent offending. However, where the applicant can demonstrate that he or she does not present a reoffending risk, previous offending need not necessarily be a bar to recruitment and is a matter for the YOT manager's discretion.
- 5.8 Where there is any doubt as to how the individual's previous offending may affect his or her suitability as a youth offender panel member, they

should not be accepted as a volunteer; and the YOT manager should decline, giving the applicant an explanation of the reasons.

- 5.9 Full criminal record checks will be carried out, and anyone applying to be a community panel member must declare any convictions (whether 'spent' or 'unspent' under the Rehabilitation of Offenders Act 1974), cautions, reprimands or final warnings.

Youth justice members

- 5.10 There should be a balance on youth offender panels between those who bring an entirely fresh perspective to the panel process and those with experience of the youth justice system (including, but not necessarily confined to, the youth offending team member). Community panel members must be recruited on the strength of their personal qualities as volunteers, not as representatives of any group or profession.
- 5.11 Currently serving magistrates are not eligible to be youth offender panel members in their own area, but, subject to [5.16](#) below, are not prohibited from applying for panels outside their court area or from seeking appointment in their own area after resignation or retirement.

Personal involvement

- 5.12 It will be inappropriate for panel members to be involved in any case concerning a young offender who is a family member or close acquaintance or with whom they have previously been involved in a different capacity. Panel administrators need to develop procedures to ensure checks are made in advance and where community panel members discover that there is any potential conflict of interest they must immediately advise the panel administrator.

The recruitment and selection process – equal opportunities

- 5.13 Each youth offending team's recruitment strategy should be based on the demographic profile of the local population. Youth offending teams must aim to attract applicants who are properly representative of the local community, taking care to ensure that opportunities for participation in youth offender panels are open to all, regardless of age, ethnic or racial origin, gender, sexual orientation, social background, religion, disability or any other irrelevant factor. Recruitment will need to take into account relevant local authority procedures for volunteers.

The application form

- 5.14 An application form for volunteers applying to be youth offender panel members should be made available to applicants as well as general information about being a panel volunteer. An example application form is attached at [Annex F](#).

- 5.15 Applicants may be rejected on the basis of relevant facts revealed by their forms (for example, if they do not meet the age criterion) and all other applicants should be invited to interview.
- 5.16 Criminal record checks must be carried out including spent convictions and cautions, and written references must also be taken up. Referees should be asked to assess whether the applicant is suitable for youth offender panel work with young offenders and victims.

The interview

- 5.17 All eligible applicants should be invited to attend an interview. There should be at least two interviewers, with sound knowledge and understanding of referral orders and trained in interviewing. One should be either a manager from the youth offending team or the project co-ordinator. When arranging the times and locations of interviews, youth offending teams should be flexible and aim to meet all reasonable needs of applicants. Some applicants may be rejected on interview but all those eligible applicants who appear to possess the necessary personal qualities for panel membership should be invited to attend the training days.

The introductory training

- 5.18 The introductory training for youth offender panel members consists of the following three elements, all of which can be accessed through the Youth Justice Interactive Learning Space (yjils.justice.gov.uk):
- Foundation Training – two e-learning modules:
 - Exploring the Youth Justice System: An Introduction'
 - Engaging Young People who Offend'
 - RJ Panel Matters Part 1: Restorative Justice Conference Facilitators Training – three days (or 20 hours) plus four hours pre-reading
 - RJ Panel Matters Part Two: Panel Matters Administration Training – two days

Any issues arising during the training which might affect a trainee's suitability to serve as a panel member should be dealt with as soon as possible.

Withdrawals

- 5.19 On finding out more about youth offender panels, an applicant may wish to withdraw from the selection process. Indeed, it is an important objective of the training for applicants to assess their suitability in the light of their increasing understanding of panel membership. But, equally, applicants who are suitable should be given the confidence to proceed to panel membership.

Community panel member agreement

- 5.20 Following the full eight days training, prospective community panel members should be invited to a final interview to agree their recruitment. A community panel member agreement should be signed by the community panel member and by the manager of the youth offending team. An example community panel member agreement is attached at [Annex G](#).

Expenses

- 5.21 No volunteer should be out of pocket as a result of applying to be a community panel member. Basic travel and child care costs incurred in attending interviews and training days should be reimbursed by the youth offending team. Rates will depend on local factors, but should cover standard class public transport, the cost of petrol, and the standard local cost of childcare.

Ongoing support, supervision and training

- 5.22 Upon recruitment, community panel members should be allocated to a supervising member of the youth offending team. The management of volunteers should be in accordance with the YJB guidance 'Volunteering in the Youth Justice System'.
- 5.23 It is the responsibility of the supervising member of the youth offending team to ensure that the necessary support and training are available and to monitor the performance of the community panel members allocated to him or her. This will involve observation at panel meetings and receiving feedback from other panel members and youth offending team staff.

[YOTs should keep up to date with changes in practice as set out by the Restorative Justice Council.](#)

- 5.24 Where specific training needs are identified, these should be discussed with the community panel member and the necessary arrangements made. All community panel members should receive at least one full day of additional or refresher training each year. Various subjects may be appropriate for this (for example, working with sex offenders or offenders with serious mental health problems). Community panel volunteers should also have the opportunity to meet local Youth Court magistrates and, if possible, to observe the Youth Court.
- 5.25 De-briefing after panel meetings will be an important part of training and development for panel members. Appraisal and review meetings may be supplemented by peer supervision groups facilitated by the youth offending team, at which community panel members can discuss cases and their own performance. Networking with neighbouring youth offender panels with opportunities to exchange information and practice experience can also be useful for training and development purposes.

- 5.26** Youth offending teams should hold regular meetings for community panel members on at least a quarterly basis to deliver information, training and support.
- 5.27** Formal one-on-one appraisal and review meetings should be held at least once a year. These will provide the opportunity for the supervising members of youth offending teams to discuss community panel members' overall performance and development, and to receive feedback to help them understand the needs of community panel members. There should be full and open discussion, where necessary identifying problem areas and agreeing suggestions for improvement. These meetings should also be used for the renewal of community panel member agreements, where both the community panel member and the youth offending team agree to this.
- 5.28** At the end of a three year period of service, the service of a community panel member will only be renewed following a formal YOT review of performance. Further service will be subject to satisfactory review and strictly at the discretion of the YOT manager.

Termination procedures

- 5.29** Terminating the service of community panel members is the responsibility of youth offending team managers. The decision to terminate should be based on measurable standards of serious misconduct or poor performance. Youth offending team managers should be sure to collect all facts before taking action, and examine all motives to ensure that termination is not retaliatory or discriminatory.
- 5.30** Any decision by a youth offending team manager to terminate the service of a community panel member is confidential, and the volunteer's privacy and dignity must be protected. Discussion should be limited to the parties directly involved. Any community panel member whose service is terminated has the right to appeal through the local complaints procedure.
- 5.31** If a supervising youth offending team member finds that a community panel member has committed serious misconduct – e.g. failure to notify arrest for a criminal offence, conviction of a serious criminal offence, discriminatory behaviour or a breach of confidentiality – then the supervising youth offending team member has the right to suspend the community panel member in accordance with local policies while the case is investigated by the youth offending team manager. The community panel member will be informed of the youth offending team manager's decision within one month of the suspension, and has the right to appeal against this decision through the agreed local complaints procedure.

Complaints procedure

- 5.32 Community panel members should feel free to raise any concerns that they may have with supervising members of youth offending teams at any time, and especially at one-on-one appraisal and review meetings.
- 5.33 Community panel members should have clear, written information about procedures for dealing with concerns and grievances and this should include an opportunity to meet the youth offending team manager if the matter cannot be resolved in other ways. The YOT management committee will determine arrangements for any appeal against a decision by the YOT manager. The complainant must be informed of this right to appeal. A model procedure is attached as Annex H and may be adapted as appropriate.

6. Engaging victims

Restorative Justice

- 6.1 Youth offender panels should operate on restorative justice principles, enabling young offenders, by taking responsibility and making reparation, to achieve reintegration into the law-abiding community. Victims must be given the opportunity to participate actively in the resolution of the offence and its consequences, subject to their wishes and informed consent. The youth offender panel process is an opportunity to address the victim's needs for information, answers to questions and reparation for harm done. Victims who attend restorative justice processes such as youth offender panel, can derive considerable benefit and they generally report high levels of satisfaction with the process. The presence of victims also can substantially enhance the beneficial impact of the panel on both young offenders and parents.

Involving victims

- 6.2 It is **essential** that youth offending teams facilitate the involvement of victims. The involvement of victims must be entirely voluntary and based on informed consent. Victims may choose to attend a panel meeting, to have their views represented, to submit a statement, to be kept informed, or not to participate in the referral order process in any way. They need clear information about the options they have and be given time to make up their mind, without pressure.

Contacting victims

- 6.3 All contact with victims should conform fully with the Victims Code of Practice ([Annex D](#)) and be handled with sensitivity and in accordance with anti-discriminatory practice. Staff involved in any contact with victims must have appropriate specialised training, including in victim awareness, anti-discriminatory practice and restorative approaches. An example victim contact form is attached as [Annex E](#).
- 6.4 Unless the victim has indicated otherwise, the YOT should contact the victim within five working days of the court order. It is usually helpful to send an information leaflet and to follow up with a personal contact by telephone, offering a visit or meeting as appropriate. Victims should have an opportunity, as a matter of course, for a face to face meeting with a YOT worker who will explain the process and the choices available. Explanations about referral orders and the options for victim participation should be clear, unbiased and timely. Every effort should be made to meet with victims in order to inform them of the opportunity to take part in the panel process and the positive outcomes for victims, as well as the potential benefits for young offenders.

Supporting victims

- 6.5 The victim's potential vulnerability needs to be carefully considered. Information about support services for victims, for example local Victim Support services, should be made available as appropriate, in accordance with the Victims Code of Practice. Victims deciding to attend a panel should be invited to bring someone to support them if they wish. Young victims should normally have a parent/carer and/or supporter with them and, if under 16, their parent's or carer's consent must be obtained. The youth offending team member, in the course of preparing the panel report, will make a general risk assessment. In exceptional circumstances, where there is an assessed risk to the safety of the victim, young offender or other participant, the decision may be made not to offer the victim the option of attending the panel. In these circumstances, an explanation should be given to the victim and other options for participation in the panel process should still be made available.
- 6.6 When victims choose to attend the panel, they should be fully consulted as to time and venue and the panel meeting should be arranged to meet the convenience of victims wishing to attend. The youth offending team worker should also explain the structure of the meeting and discuss their particular contribution and possible suitable reparation. If in a particular case the YOT practitioner anticipates the panel will need to discuss sensitive personal issues with the young offender and family and it might not be appropriate for the victim to stay for the entire panel meeting, this should be fully discussed and agreed with the victim beforehand.
- 6.7 If requested by the victim, the YOT may in certain circumstances inform the victim about the contents of the contract and the young person's progress in completing the contract. If the young person consents to its disclosure (in writing), the contract can be disclosed, subject to the removal of personal details such as their address, phone number, date of birth, particular health and mental health issues, details of treatment or counselling they may be receiving and personal details about people other than the young person, e.g. about the young person's family members (see para 8.39). If the young person does not consent, then disclosure of information about the contract, or proposed contract terms, must be limited to what is sufficient for the victim to enable them to give their consent to participate in the referral order process. Any other information contained in the contract which does not fall within this category must not be disclosed to the victim. For example, the victim will need to know about a contract term that involves mediation between them and the offender but is unlikely to need to know about a contract which relates to unpaid work arrangements. If the victim is interested in meeting the young person, but does not want or is not able to attend the initial panel meeting, there are other options, for example by attending a panel progress meeting or taking part in another restorative process, such as victim/offender meeting or restorative or family group conference.

- 6.8** Victims wishing to attend panel meetings should be asked how best they can be supported. They may, subject to the panel's agreement, choose to be accompanied by a friend, relative or anyone else of their choosing. Victim supporters should also be consulted when arranging meeting times and have the opportunity to discuss the structure of the panel meeting and their contribution.
- 6.9** Victims who choose not to attend the panel meeting may have their views represented by the youth offending team member, or they may record a statement to be presented at the panel meeting, describing the effect of the offence and outlining their views on reparation. Alternatively, a victim may wish to have another family member or friend represent them at the panel where they feel unable to attend themselves.
- 6.10** All contracts should contain an element of reparation. This should be to the victim, or, if there is no identifiable victim or the victim does not wish to participate, then reparation should be to the local community. If the victim is not attending the panel, it will be important to clarify what reparation, if any, the victim would welcome. It will, however, be essential not to raise expectations that may not be fulfilled. Any direct reparation, including letters of apology, must proceed only in accordance with the victim's wishes. Reparation activity must always be supervised and a report on the young offender's engagement in this provided to the youth offender panel.
- 6.11** No victim or victim supporter should be out of pocket as a result of attending a panel meeting. Basic travel and childcare costs should be reimbursed by the youth offending team. Rates will depend on local factors, but should cover standard class public transport, the cost of petrol and the standard local cost of childcare. Where someone has a disability appropriate transport and support should be provided to enable them to attend each panel.

Corporate victims

- 6.12** When businesses or other organisations, such as schools or local authority departments are involved as victims of offences, someone from the business or organisation who has been directly affected by the offence should be invited to attend the panel.

Financial reparation

- 6.13** The court may wish to consider making a compensation order alongside the referral order.

However, there is also the option of including financial reparation into the contract and advice from the YOT should be available to enable the courts to consider this option.

Young Victims

- 6.14 Special care should be taken by suitably trained workers in contacting children or young people who are victims and their parents or carers. The consent of their parents or carers should be obtained and young victims should be offered additional support to enable them to participate if they wish to. Support may include other family members or supporters present at panel or other options such as video links, phone conferencing or one way mirror facilities where available.

Victim Support

- 6.15 Youth offending teams should regularly review and update protocols with local victim services, particularly Victim Support, in accordance with National Standards. With victims' consent YOTs can refer victims to these organisations for support before, after and, in some cases, during panel meetings; and in some cases there may be ongoing liaison to coordinate support for victims.
- 6.16 There should be regular monitoring by the YOT of victims' views, experience and satisfaction with Referral Orders, youth offender panels and restorative justice conferences.

7. Assessing offenders

- 7.1 The youth offending team should immediately allocate a worker to each young offender placed on a referral order and in any event before the end of the next working day following the making of the order. An example of good practice is to allocate the case and arrange the date of the initial panel meeting at court. The allocated YOT worker should meet the offender and their parent(s)/guardian(s) within five working days of the court hearing. The YOT worker should clearly explain the referral order and panel procedures, including the young person's rights and choices, and carry out an ASSET assessment of the offender.
- 7.2 The YOT worker should produce a report for the youth offender panel in accordance with the case management guidance based on the ASSET assessment, any CPS advance disclosure, an assessment of the victim's wishes regarding reparation and restorative justice interventions, an assessment of the consequences of the offence and information from other relevant sources such as YOT case records, specialist assessments and information from other agencies. The report should include in full any advisory observations made by the sentencing court regarding areas of concern which the panel was asked to consider. The key positive and risk factors identified in the ASSET should be highlighted so that these can be addressed in the programme of interventions to be included in the contract. It may indicate the type of reparation which is most appropriate in accordance with the victim's wishes. The panel report also should indicate clearly the level of interventions recommended for the rehabilitative elements in the contract in accordance with the Scaled Approach. The report should be balanced, impartial, focused and analytical, free from discriminatory language or stereotypes, verified and factually accurate and understandable to the young person and their parent/carer. Subject to [7.4](#) below, the report generally should not make specific recommendations regarding the content of the contract. The panel members should have updated information on the range of reparation and intervention opportunities which are currently available and can be included in the contract for any particular case.
- 7.3 The panel report should be made available to all panel members a minimum of two working days before the panel meeting, distributed in accordance with local protocols to ensure that confidentiality is safeguarded.

Assessing offenders – custody threshold cases

- 7.4 'Custody threshold' cases are those where the court has indicated that custody is being considered but, as a first time guilty plea case, a referral order is the only available non-custodial alternative and cases where the court may choose to make a referral order instead of a

custodial sentence. The latter will include, for example, where a referral order is made on second conviction when a Detention and Training Order was given on first conviction. In these cases, it is essential that a pre-sentence report proposal for a referral order is presented as a robust and credible sentencing option which should involve a referral order **intensive contract**.

- 7.5 The YOT should consider convening an informal 'pre-sentence panel' involving all parties and youth offender panel volunteers to consider the likely content of a Referral Order intensive contract and use it to inform the pre-sentence report proposal. A provisional date for the first formal panel meeting should be set within 5 working days of the court hearing.
- 7.6 The young person and parents/carers will need to understand fully that a pre-sentence panel does not create a presumption as to likely sentence, but provides an option for consideration by the court as an alternative to custody: the sentencing decision rests with the court alone and custody **may** still be given. Where a pre-sentence panel is not able to be convened, the YOT should consider including within the report proposal an outline of the areas (based on the ASSET assessment) that the YOT will be presenting to the youth offender panel for consideration in determining a Referral Order intensive contract. YOTs should consider commissioning similar resources to those available for other community sentences in custody threshold cases; the full range of intensive community intervention options, including non-electronic curfews and restrictions, should be considered to match the requirements of the case.
- 7.7 When, in such a case, the court has made a referral order, the YOT panel report should draw attention to any draft intervention plan included in the pre-sentence report, referring as appropriate to the court's expectation that the contract will reflect the plan. The panel report should fully reflect any comments made by the court when making the referral order, including any references to what might be included in the panel contract. All parties should meet at the first formal panel to agree the contract formally. The YOT should ensure that the panel is convened within 5 working days of the court sentence so that contract activities and YOT contact with the young person starts with the minimum of delay. If, exceptionally, this is not possible, a minimum requirement is that the young offender is seen by the YOT caseworker within 5 working days. To maintain sentencer confidence there should be effective liaison arrangements for regular exchange of information about contracts and outcomes affecting custody threshold cases.

8. Initial panel meetings: agreeing contracts

Introduction

- 8.1 National Standards require that an initial panel meeting must take place within 20 working days of the referral order being made. The period of the order does not begin until the contract has been signed at the initial panel meeting. The contract activities to be undertaken by the offender must begin within five working days of the contract being agreed and signed.
- 8.2 The YOT officer at court must make contact with the young offender and the parent(s) following the making of the order, to ensure that they fully understand the process and thinking behind the order. The YOT officer allocated to the case must meet the young person and the parent(s) or primary carer within three working days of the court hearing in accordance with National Standards. If appropriate, the YOT must contact the victim within the same timescale, unless the victim has asked not to be contacted.
- 8.3 The key purposes of the initial panel meeting are for the victims to have a voice and opportunity of reparation and for the young offender to acknowledge responsibility, understand the impact of the offending behaviour on the victim and others, have the opportunity to agree to repair harm and to formally agree the contract with the panel. The effective conduct of initial panel meetings will be crucial in providing a restorative process which addresses the needs and wishes of victims. More detailed information on the conduct of panel meetings, and on the roles of participants, is given in the training material for community panel members, Restorative Justice Conference Facilitation training.
- 8.4 The panel meeting must not be used as an opportunity for a 'retrial.' The facts of the case, as found by the court, should be accepted. The panel meeting should concentrate on the consequences of the offence for the victim and wider community, how and why the offence came to be committed, how the harm is to be repaired and the risk of reoffending minimised.

Deciding attendance

Those ordered by the court to attend

- 8.5 The referral order from the court should include the details of the offender and any parent(s)/guardian(s)/local authority representative(s) ordered to attend.

Voluntary attendees

- 8.6 The youth offending team should ensure that identifiable victims, and representatives of all corporate victims, are given the opportunity to attend panel meetings as appropriate, unless the YOT panel adviser assesses that attendance would represent a risk to the safety or welfare of the victim or other participants.
- 8.7 Victims and offenders are each entitled to be accompanied by an adult supporter of their choosing. Youth offending teams should facilitate the attendance of supporters unless there are exceptional circumstances that would make this inappropriate. Other people who are assessed as having an important influence on the young person may also be invited to attend. Decisions on who may attend are subject to the agreement of the panel.

Legal representatives

- 8.8 Young offenders will not be legally represented at panel meetings and supporters should not act as legal representatives. This could hinder the process of directly involving the young people and enabling them to take responsibility for their offending and future behaviour. Lawyers may be present as parents, carers or supporters, but, wherever possible, offenders should speak for themselves throughout the youth offender panel process.

Arranging panel meetings

- 8.9 Panel meetings will often need to be conducted in the evenings or weekends and in accessible locations, so that offenders, families, community panel members and victims with daytime work/study/other commitments are not precluded from attending. However, youth offending teams should also bear in mind that some prospective participants will have evening commitments and be available during the daytime. Victims and their supporters should be consulted about dates and times at the same time as offenders, families and the community panel members, to give the greatest chance of finding a time suitable for all participants. Panel meetings should be arranged to meet the convenience of victims wishing to attend but should not be held during any educational provision which the offender is required to attend.
- 8.10 Youth offending teams should consider the needs and preferences of victims when selecting the venue for the meeting. In general, venues should be community-based, informal and non-institutional, for example, community sports and leisure centres, adult education centres, family centres, youth clubs and schools, rather than youth offending team premises or police stations. However, in some cases, especially where one of the participants is likely to be volatile, there should be a risk assessment and, if there are safety concerns, such premises may be more appropriate.
- 8.11 Ideally, there should be separate waiting areas for use by offenders, their families, victims and their supporters. All venues should be secure and easily accessible for community panel members, the offender, the family and victims. Panel meetings should not be held in people's homes. Participants who have special needs, such as disability or who do not speak English as a first language, should be consulted to ensure that arrangements enable them to participate fully on an equal basis.

Dealing with non-attendance

- 8.12 The young person should have appropriate preparation and support from the YOT before attending the first panel meeting. Where the young person fails to attend the initial panel meeting the youth offending team member should attempt to establish the reason. Where there appear to be reasonable grounds for the absence (for example, ill health) and a reasonable prospect of attendance in the future, the meeting should be rearranged. Every effort should be made to ensure that this occurs promptly.
- 8.13 It is the panel and not the youth offending team that makes the decision to refer a case back to court. The youth offending team panel member should report to the panel on the offender's failure to attend the initial panel meeting with an explanation of the attempts made to secure attendance. The YOT must ensure that a record is kept of all attempts to contact the young offender and their parents/carers. The panel should then decide whether the case should be referred back to court or whether to adjourn to another meeting date. Where the reason appears to be unacceptable, or no reason is provided, the panel should refer the young offender back to the court to consider resentencing, stating the reasons in writing. The youth offending team case worker must report to the court on the referral back within ten working days.
- 8.14 Where the parent(s)/guardian(s)/local authority representatives ordered to attend fail to do so, the reason should be investigated by the youth offending team. Where there appear to be reasonable grounds, the meeting may be rearranged, however, where there appears to be no good reason, and no prospect of attendance in the future, the panel should refer the case back to court. The court has powers to make a Parenting Order or take action in accordance with section 63 of the Magistrates' Courts Act 1980. If the young person is under 16 years, the panel must not proceed without the attendance of a parent/guardian or other appropriate adult to support the young person.

Role of the parent(s)

- 8.15 Parents and guardians have a responsibility to take what action they can to prevent their child from offending and support them through the whole of the youth justice process, including interventions ordered by the court and programmes which are a part of the referral order contract. Panel members should therefore keep in mind the need to engage parents during the panel hearing and encourage them to provide active support for their child to help ensure that the contract is fulfilled. It may be appropriate to raise the possibility of additional assistance through YOT parenting interventions and support. Note that in some cases the parent or guardian may also be the victim of the offence and this will call for special understanding and acknowledgement; it is important to ensure they are offered the same support as other victims and that their needs as victims are met.

Conduct of panel meetings

- 8.16 Offenders, parents and victims should feel that they have been treated with respect and fairness. Panel members should always be sensitive to and address the diverse needs of victims, young offenders and their parents/carers. It may be helpful for panel members to have feedback from participants after the panel meeting.

Agreeing contracts

- 8.17 While the youth offending team panel adviser may provide information and, where necessary, advice, agreeing the contract with the young person should be led by the community panel members. However, panels may also need to take into account information that has been provided by the sentencing bench. Contracts should be negotiated with the young people, not imposed on them. If it is not possible to negotiate a satisfactory contract the panel will need to refer the matter back to court for an alternative sentence. This also applies if a young person having pleaded guilty in court subsequently denies the offence at the panel meeting and refuses to participate in the referral process; the panel should not engage in a discussion on the matter of conviction and the case should be referred back to court unless the young person is prepared to agree a satisfactory contract.

The contents of contracts

- 8.18 The two core elements of every referral order contract are:
- a) **reparation** to the victim and/or the wider community and
 - b) a **programme of interventions**, delivered or organised by the youth offending team, which addresses the factors likely to be associated with any reoffending.

In custody threshold cases the referral order **intensive contract** should include more intensive support and supervision and may include non-electronic curfew and restrictions.

- 8.19 Contracts must take into account the young person's school or work attendance or religious observance. YOT advisers and panel members may need to clarify these commitments, so that they may be taken into account as appropriate in agreeing contracts.

Reparation

- 8.20** Reparation is a fundamental part of the referral order and a key element in every panel contract. Where possible reparation should be based on the victims' wishes; otherwise reparation can be to the wider community, as appropriate.
- 8.21** Reparation to individual victims should, as far as possible, be determined by the wishes of the victim, whilst having regard to proportionality, and may include an explanation, an apology, verbal or written, and practical recompense, including financial compensation, for the harm that has been caused.
- 8.22** It will be important for youth offending teams to try to establish before the initial panel meeting what reparation, if any, the victim would welcome – particularly when the victim has chosen not to attend the initial panel meeting. However, in working with victims, youth offending teams should avoid raising unrealistic expectations. The contents of contracts must be agreed by the youth offender panel and the young person, and should reflect the capabilities of the young person and the nature of the offending behaviour, as well as the views of the victim.
- 8.23** No direct reparation or letter of apology should be given to a victim without his or her express prior consent. For contracts which include financial reparation it is essential that the YOT has financially sound and robust procedures in place to ensure the reparation is carried out in a secure and efficient manner.
- 8.24** Even if there is no victim participation at the initial panel meeting, provision can be made in the contract for subsequent victim participation at either progress meetings or specific victim mediation or conference meetings, subject to the victim's consent.
- 8.25** Reparation to the wider community should make young people aware of the impact that their offending behaviour has on their community and enable them to make amends. Youth offending teams should have a range of local community reparation programmes, consisting of activities that young people may carry out for the benefit of the community. Communities should be able to propose projects which would benefit the community and YOTs should work in partnership with other criminal justice agencies including neighbourhood police teams to establish coordinated and meaningful community engagement.

8.26 It is important that community reparation activities for individual young people who have been given referral orders should be meaningful to them and as far as possible be determined by the impact of their offence on the community. This may include: physical work (such as clearing up litter, graffiti or vandalism, or helping with other environmental improvements and conservation); and/or helping people (such as working with elderly or disabled people, or helping to get messages across to other young people at risk of offending). Community reparation should not interfere with attendance at school or work and should include reparation activity in the evenings or at weekends.

8.27 These activities will normally be most successful when the value of the work being carried out by the young people is apparent to both them and their communities.

8.28 The amount of community reparation to be included in a contract should take into account the wishes of the victim and be proportionate to the seriousness of the offence. The length of the order set by the court will have been determined primarily by the seriousness of the offence (see paragraph [3.12](#)). The following is a guide to the hours of reparation that youth offender panels should normally expect to include in contracts for orders of different lengths as set by the court:

Length of order	Amount of Reparation
3–4 months	3–9 hours
5–7 months	10–19 hours
8–9 months	20–29 hours

8.29 For orders of 10–12 months, youth offender panels should normally include a minimum of 30 hours of reparation in contracts; and, in certain custody threshold cases, a considerably higher number of hours will be appropriate and should equate with the unpaid work element of community orders where the young offender is aged 16 or 17.

Interventions

8.30 The aim of interventions included in a referral order contract should be to prevent reoffending, reflecting the principal aim of the youth justice system.

8.31 Youth offender panels should be able to draw on a wide range of interventions to draw up a package of interventions, including positive activities, tailored to the individual case, taking into account the level and type of offending. The interventions may include:

- offending behaviour programmes
- family counselling
- sports or youth work
- mentoring
- psychiatric or psychological assessment
- anger management
- constructive leisure programmes
- road or fire safety
- cognitive behaviour programmes
- employment or careers advice
- victim awareness
- a facilitated restorative process including the victim (with consent from both parties)
- substance misuse programmes (including alcohol and solvents)
- weapon awareness programmes
- requirement to attend school
- requirement to stay away from specified places or people.
- curfew (not electronically monitored)
- attendance at an attendance centre (which may include programmes listed above)

8.32 The interventions should address the key risk factors identified by the youth offending team through the ASSET assessment of the young person. The youth offending team reports for initial panel meetings should always highlight key risk factors, i.e. those sections on ASSET with the highest scores. In agreeing contracts with the young person, youth offender panels should give particular consideration to these and the level of interventions should be determined by the Scaled Approach.

Voluntary activities

- 8.33 The panel may agree voluntary rather than enforceable activities with the young person. For example, welfare needs may be identified which are beyond the scope of the referral order, either because the period of the referral order is too short to address all those needs or to do so would be disproportionate in relation to the offence. The YOT may be asked to access services provided by social services and other agencies. Any voluntary activities should be recorded but clearly distinguished from the programme comprising the contract. The panel should make clear that voluntary aspects are not part of the enforceable elements of the contract.

Contact between the young person and the youth offending team

- 8.34 There should be regular contact between the young person and a YOT practitioner in line with the Scaled Approach and National Standards requirements, the contact level increasing or decreasing in the light of further YOT assessment of risk.

The resources available to youth offender panels

- 8.35 Community panel members and victims, with their local knowledge, may also be able to identify activities and should be encouraged to suggest forms of reparation and interventions for inclusion in contracts that draw on community rather than just youth offending team resources. It may be appropriate to include activities that build on or develop the young person's skills.

Contents of contracts, proportionality and custody threshold cases

- 8.36 Contracts are determined by panel members at the panel meeting in agreement with the young person and, where appropriate, their parent or guardian. The reparation element of the contract should be proportionate to the seriousness of the offence and the length of the order, while the contract elements which address the key risk factors and level of reoffending risk should be determined in accordance with the Scaled Approach. In some cases this may mean a more intensive programme is warranted although the order is relatively short.
- 8.37 In custody threshold cases where the court had been considering custody it is **essential** that the elements of the Referral Order intensive contract provide a fully adequate and robust response to the offence and offending risk factors. The most intensive level of contact with the YOT including 25 hours a week of reparation and intervention/activity comparable with other community sentence intensive options may well be appropriate, but electronic monitoring cannot be included. Such cases should be readily referred back to court by the panel in the event of failure to agree a satisfactory contract or non-compliance.

Agreeing the contract

- 8.38 Contracts should be written in ordinary language and, as appropriate, read aloud to the young offender to ensure that the contents are fully understood. The consequences for the young person of not complying with the contract should also be clearly explained. The agreed contract should be signed by the young offender and the chair of the panel. It is good practice for the parent(s)/guardian(s) to be invited to sign the contract as well. A pro forma for referral order contracts is at [Annex I](#).
- 8.39 A copy of the signed contract should be given to the young offender. Copies should also be given to the parent/guardian/local authority representative, and to anyone else who will be assisting the young person in complying. In addition to the information which victims are entitled to receive (see para. 6.7), copies of the contract can be made available to victims who wish to receive one, if the young offender has consented. Written consent from the young offender must be obtained. The young offender's personal details such as their address, phone number, date of birth, particular health and mental health issues, details of treatment or counselling they may be receiving and personal details about people other than the young person, e.g. about the young person's family members, must be removed from the contract before disclosure in every case. Copies should be supplied for information purposes to the sentencing court.

Duration of the contract

- 8.40 The referral order compliance period will start on the date the contract is signed at the panel meeting and will last for the time period defined by the court in the court order. At the expiry of the defined time period, subject to satisfactory completion, the referral order is terminated (see [9.17–9.18](#) for more information on early revocation).
- 8.41 It is important for young people to start carrying out the activities agreed in referral order contracts **as soon as possible** after signing the contract. The youth offending team case worker must ensure that activity to comply with the contract begins **within five working days** of the contract being signed in accordance with National Standards.

Failure to agree a contract

- 8.42 If a contract is not agreed at the initial panel meeting, a further meeting may be held. It is important that this second meeting be held within ten working days. However, if it seems that there is no prospect of a contract being agreed, the young offender should be referred back to the court promptly to consider resentencing.

Health and safety

- 8.43 Youth offending teams are responsible for ensuring the health and safety of young people carrying out activities agreed in referral order contracts, of victims receiving direct reparation, and of anyone else involved.
- 8.44 Insurance against otherwise uninsured losses as a result of referral order activities should be considered by the youth offending team with its partner agencies. Referral order activities should be included in the insurance arrangements that youth offending teams have in place for other court orders.

9. Progress meetings

Monitoring compliance with contracts

- 9.1 The youth offending team caseworker must keep a record of the offender's compliance, or non-compliance, with the contract. This information will be essential if the offender is referred back to court in the event of non-compliance with the contract.
- 9.2 The youth offender panel must hold progress meetings with the offender at least once every three months. The number of progress meetings required will depend on the length of the contract and the level of supervision considered necessary in each case. At each meeting the panel should set the date of the next meeting.
- 9.3 It may not be necessary for all the original participants (except those ordered by the court to attend all panel meetings) to attend progress meetings. Wherever possible, it is desirable that at least one community panel member from the initial panel meeting is present at all panel meetings to provide continuity. However, it is **essential** that the legal requirement is met that the youth offender panel consists of at least two community panel members and one member from the YOT.
- 9.4 The youth offending team caseworker must provide a progress report for discussion at the meeting. Discussion should focus on the offender's success in complying with the contract, and the effect that this has had, but also highlight any particular difficulties with the terms of the programme of activity, to ensure that the offender is receiving adequate support from those who have agreed to supervise activities. Where the young person's compliance has been good, the progress meeting will be an opportunity to acknowledge and reinforce the progress; and will be also be an opportunity in suitable cases to assess whether the panel should consider at the relevant time an application to court for early revocation of the order (see section [9.17](#)).
- 9.5 The young offender may request a progress meeting, either to vary the contract or to seek revocation of the order and they should be informed of this opportunity.

Non-compliance/referral back to court

- 9.6 If the offender seems not to be complying with the contract, for example by failing to, attend a panel or satisfactorily complete elements in the contract, the YOT caseworker must follow up by visiting, sending a letter or telephoning the young offender within one working day to determine whether the reason is acceptable or unacceptable in line with local definition. Where the explanation is unacceptable, a formal written warning **should** be given within 24 hours. Where two formal warnings

are given and there is a further unacceptable failure to comply, with the agreement of the line manager, breach action should be initiated and a youth offender panel meeting should be arranged within ten working days (or immediately in the case of a child or young person assessed as vulnerable or a high Risk of Serious Harm to others to determine whether to refer the young person back to Court or put in place additional support that will enable the young person to successfully complete the contract.

Where there is a single serious unacceptable failure to comply, a panel meeting should be convened within 10 days to determine whether the young person will be referred back to Court or immediately in the case of a child or young person assessed as vulnerable or a high Risk of Serious Harm to others. This panel can reconvene more than once.

- 9.7 The panel should identify any recent changes in circumstance in a young person's life that may affect compliance, assess whether the YOT or other agencies have provided the required support to the young person and identify with assistance from the young person and their parent/carer what support they may need to enable future compliance.
- 9.8 In some cases, the panel may agree that the contract was too demanding thereby making it too difficult to comply with, and should consider varying the contract. Any variation or panel discussion about compliance and the outcomes of it, should be communicated to the young person, their parent/carer and relevant support services. For more information please see the YJBs Compliance Panel Framework – Managing and Monitoring Compliance, particularly section 5.
- 9.9 However, where it is clear that a young person is unwilling to address non-compliance and/or work to a new plan following the panel, then consideration should be given to referring the offender back to court to consider resentencing and the panel's reasons for referring the case back must be set out in a written report for the court. The court should be informed of successful compliance with the contract as well as the areas of non-compliance. The youth offending team member must report to the court on the referral back **within ten working days**. The appropriate court will be the youth court or, where the young person has reached the age of 18, the adult magistrates' court. The court will require the young person to attend the hearing by issuing a summons or warrant. In the latter case, the police are responsible for executing the warrant.
- 9.10 At the hearing, the court will consider the circumstances of the referral back, and make a finding of fact in respect of the report submitted by the youth offender panel. The youth offending team should inform the panel and, where appropriate, the victim of the outcome.
- 9.11 Where the court is satisfied that the referral back was justified, the referral order may be revoked and the offender resentenced, with the full range of sentencing options available – other than a referral order – that

would have been available to the court which originally sentenced them. In reaching a decision on resentencing, the court will consider the youth offender panel's report, and take into account how far the offender may already have complied with the contract. There is a right of appeal to the Crown Court against any sentence imposed.

- 9.12 Where the court finds that the referral back was not justified, or that there has been non-compliance but it decides not to revoke the order, the youth offender panel will be required to continue with the existing contract, or, where there is no contract, continue as if the matter had not been referred back to the court. Any contract agreed before the referral back to court will continue to be in force during the court proceedings.
- 9.13 Additionally, the Court has two further alternatives to revocation for a breach of a youth offender contract where the court finds that the terms of the youth offender have not been complied with. This includes imposing a fine up to a maximum of £2500 on a young person or extending the youth offender contract up to a maximum duration of 12 months. The power for the court to extend the youth offender contract is not available when the referral order has already expired, although the court still has the power to fine the young person. The young person must be present for the court to impose a fine or extend the length of a youth offender contract for a breach of the referral order contract.
- 9.14 The powers of the court to impose a fine or extend the length of the youth offender contract for a breach of a referral order contract will apply in the following circumstances where:
- a) the young person is referred back to court for failure to attend any part of a panel meeting (under section 22(2) (b) of PCC(S) A 2000)
 - b) following a progress meeting with the Youth Offender Panel, the young person is referred back to the court where it appears to the panel that the young person has breached of the terms of the youth offending contract (under section 26(5) of PCC(S) A 2000.
 - (c) the panel determine at the final meeting that the young person's compliance with the terms of the contract has not been such as to justify the conclusion that the young person has satisfactorily completed the contract (under section 27 (4) of PCC(S) A 2000.
- 9.15 Any breach and subsequent revocation should ensure that the victim/s views are known prior to breach. If a referral order is revoked then the victim/s should have a say in how that impacts on any outstanding direct mediation/reparation in which they are involved and whether that continues by the means of any subsequent referral order made or whether it ceases.

Extension of order in interest of justice

- 9.15 Where the young person has been unable to comply with the order for unforeseen circumstances such as their own illness, illness or death of a close family member, or the family, with permission, were out of the jurisdiction for a time, then the panel may wish to refer the case back to court to seek an extension of the contract in the interests of justice for up to 3 months, subject to the total 12 month limit for an order. .

When an order is extended in the interests of justice, the period of extension must not exceed three months and the total period must not exceed 12 months (paragraph 9ZD of Schedule 1 to the PCC(S)A 2000). It should be noted, however, that where a case is referred to a court for an extension in the interests of justice this is the only option available to the court; it will not have the power to revoke the order and resentence.

Varying the contract

- 9.16 A variation of the contract may be requested for one or more of the following reasons:
- a) a difficulty with a specific element of the contract (for example, coping with victim/offender mediation)
 - b) a change in circumstances which makes some aspect of the contract difficult to comply with (for example, starting a new course of study or employment which would clash with programmed meetings or activities); and
 - c) a belief that the contract, if fully complied with, would be unacceptably onerous.
- 9.17 The panel should discuss the reason for the request to vary the contract with the young offender. Where it is agreed that variation would be appropriate, a revised contract should be agreed. However, the programme of activity aimed at preventing reoffending and reparation to the victim or wider community should not be undermined by any variation, so in some cases alternative interventions will have to be considered. The revised contract should be explained in clear language and signed by the young offender and the panel and copied to the offender.
- 9.18 The YOT may also vary the level of YOT contact, increasing or decreasing it in the light of further YOT assessment of risk in accordance with the Scaled Approach.

Revocation of the order in the interests of justice

- 9.19 A referral order may be revoked early where it is in the interests of justice to do so. It is unlikely that it will be in the interests of justice to do this before the midpoint of the order has been reached. This is because it is unlikely that all elements of the contract would have been successfully completed during this period. The procedure for revocation

will begin with a recommendation by the youth offender panel at a progress meeting. The panel will compile a written report, agreed by all parties present and this will be given to the YOT, who will then make a formal application to the Court.

It is impossible to list all the circumstances where early revocation might be appropriate. However, the following example might, depending on the other circumstances of a particular case, provide some clarity:

Example

- a) All the elements of the contract have been completed successfully
- b) The young person is assessed as having a low likelihood of re-offending.
- c) Good progress has been made.

Where, on an application of the type set out in the paragraphs above, the court finds that the revocation is not in the interests of justice, the youth offender panel will be required to continue with the existing order and may not make a further application of this type until three months have passed, except with the consent of the Court.

Revocation of the referral order due to change of circumstances

- 9.20 Exceptionally, where there has been a change in the young offender's circumstances which would make it impossible to comply with the contract (for example, where the offender is moving abroad), an application can be made by the young offender to the panel for the revocation of the order. The panel should discuss the request to revoke the order with the young offender. Where it is agreed that revocation would be appropriate, and that a variation of the contract would not be sufficient, the offender should be referred back to court for the court to consider revocation and resentencing.

10. Further offending

- 10.1 If during the period of the original referral order a young offender is convicted of another offence, the court may sentence by way of an extension to the existing referral order. The court can make such an extension where the offence was committed before 13 April 2015, when the amendments to the Powers of Criminal Courts (Sentencing) Act 2000 come into force. The Court may also extend the existing referral order when dealing with a further offence committed after the original referral order.
- 10.2 In both instances, the original order must be for less than twelve months and the offender must be under 18 years old.
- 10.3 If a further offence has been committed and the referral order extended but the contract has yet to be signed, this should be expedited and a panel held **within 5 working days** of the extension being given by the court.
- 10.4 The court also has the power to extend a second or subsequent referral order in respect of additional or further offences in the same way as for the original referral order.
- 10.5 The total referral order period may not exceed twelve months.
- 10.6 YOTs should develop clear and concise guidelines in relation to the potential management of multiple extended referral orders. YOTs should ensure that existing victim and reparative work continues and is not affected.
- 10.7 Where the court decides not to order an absolute or a conditional discharge, it has a discretionary power, to be exercised in the interests of justice to revoke an existing referral order for further or additional offences. The court may direct that the new youth offender contract should not take effect until the earlier order has been revoked or completed, as this enables the existing referral order contract and any related restorative justice programme to be completed.
- 10.8 The court still has the power to revoke the original order and any orders. As soon as the original order is revoked, the referral order process is at an end. The youth offending team should ensure that panel members and, where appropriate, the victim are informed within ten working days of any revocation, together with a brief explanation of the circumstances.
- 10.9 In sentencing for the further offence, the court may also resentence for the original referral order offence. The court must take into account how far the offender may already have complied with the contract.

- 10.10 Youth Offending Teams should ensure that any restorative justice or victim work under the existing referral order continues when a new referral order is imposed, even if that existing order is revoked. The Court will need to be informed of the current progress of the existing Order by the YOT and whether or not there is actually ongoing restorative or reparative work being undertaken.
- 10.11 Administratively, the Panel can hold an initial panel meeting for the new referral order before the existing referral order is discharged (to seek to avoid a break between the old and new contract). The contract can be signed but can include a section of the new contract where the date it comes into effect is stated.

11. Final meetings

- 11.1 A final meeting must be held during the last month of the contract period and should be convened no later than one week before the expiry of the order. At this meeting, the panel should review the young offender's compliance and give them feedback.
- 11.2 As with the progress meetings, it may not be necessary for all the original participants (except those ordered by the court to attend all panel meetings) to attend the final meeting, but it is desirable that at least one of the original panel members is present.
- 11.3 Where the panel is satisfied that the contract has been fully complied with, the order will be discharged from the end of its period. This decision may be taken by the panel even where the young person is unable to attend the meeting, but has otherwise successfully complied with the terms of the contract. Under the terms of the Rehabilitation of Offenders Act 1974, the referral order conviction is 'spent' as soon as the order has been completed (see paragraphs [3.24–3.29](#)).
- 11.4 If the panel is not satisfied that the offender has successfully completed the order, the offender must be referred back to court to consider resentencing. The court and the young offender must be provided with the panel's decision in writing.
- 11.5 The youth offending team should provide a 'sign off' letter or certificate of completion when the contract has been successfully completed. Where victims have indicated that they wish to be kept informed, they should also be advised of the outcome. Similarly the sentencing bench may also be informed. A final panel meeting report pro forma and example YOT letter to the young offender are attached as [Annexes J](#) and [K](#).

Annex A

EXTRACT FROM THE POWERS OF CRIMINAL COURTS (SENTENCING) ACT 2000 (as amended from 3 December 2012)

Part III

Mandatory and Discretionary Referral of Young Offenders

Referral orders

16 Duty and power to refer certain young offenders to youth offender panels

- (1) This section applies where a youth court or other magistrates' court is dealing with a person aged under 18 for an offence and--
 - (a) neither the offence nor any connected offence is one for which the sentence is fixed by law;
 - (b) the court is not, in respect of the offence or any connected offence, proposing to impose a custodial sentence on the offender or make a hospital order (within the meaning of the Mental Health Act 1983) in his case; and
 - (c) the court is not proposing to discharge him absolutely or conditionally in respect of the offence.

- (2) If--
 - (a) the compulsory referral conditions are satisfied in accordance with section 17 below, and
 - (b) referral is available to the court,the court shall sentence the offender for the offence by ordering him to be referred to a youth offender panel.

- (3) If--
 - (a) the discretionary referral conditions are satisfied in accordance with section 17 below, and
 - (b) referral is available to the court,the court may sentence the offender for the offence by ordering him to be referred to a youth offender panel.

- (4) For the purposes of this Part an offence is connected with another if the offender falls to be dealt with for it at the same time as he is dealt with for the other offence (whether or not he is convicted of the offences at the same time or by or before the same court).

- (5) For the purposes of this section referral is available to a court if--
 - (a) 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

- (b) the notice has not been withdrawn.
- (6) An order under subsection (2) or (3) above is in this Act referred to as a "referral order".
- (7) No referral order may be made in respect of any offence committed before the commencement of section 1 of the Youth Justice and Criminal Evidence Act 1999.

17 The referral conditions

- (1) For the purposes of section 16(2) above and subsection (2) below the compulsory referral conditions are satisfied in relation to an offence if the offence is an offence punishable with imprisonment and the offender--
 - (a) pleaded guilty to the offence and to any connected offence; and
 - (b) has never been convicted by or before a court in the United Kingdom of any offence other than the offence and any connected offence.
- (2) For the purposes of section 16(3) above, the discretionary referral conditions are satisfied in relation to an offence if--
 - (a) the compulsory referral conditions are not satisfied in relation to the offence;
 - (b) the offender pleaded guilty--
 - (i) to the offence; or
 - (ii) if the offender is being dealt with by the court for the offence and any connected offence, to at least one of those offences.
- (3) The Secretary of State may by regulations make such amendments of this section as he considers appropriate for altering in any way the descriptions of offenders in the case of which the compulsory referral conditions or the discretionary referral conditions fall to be satisfied for the purposes of section 16(2) or (3) above (as the case may be).
- (4) Any description of offender having effect for those purposes by virtue of such regulations may be framed by reference to such matters as the Secretary of State considers appropriate, including (in particular) one or more of the following--
 - (a) the offender's age;
 - (b) how the offender has pleaded;
 - (c) the offence (or offences) of which the offender has been convicted;
 - (d) the offender's previous convictions (if any);
 - (e) how (if at all) the offender has been previously punished or otherwise dealt with by any court; and
 - (f) any characteristics or behaviour of, or circumstances relating to, any person who has at any time been charged in the same proceedings as the offender (whether or not in respect of the same offence).

Making of referral orders: general

- (1) A referral order shall--
 - (a) specify the youth offending team responsible for implementing the order;

- (b) require the offender to attend each of the meetings of a youth offender panel to be established by the team for the offender; and
 - (c) specify the period for which any youth offender contract taking effect between the offender and the panel under section 23 below is to have effect (which must not be less than three nor more than twelve months).
- (2) The youth offending team specified under subsection (1)(a) above shall be the team having the function of implementing referral orders in the area in which it appears to the court that the offender resides or will reside.
- (3) On making a referral order the court shall 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 under section 23 below; or
 - (ii) if the offender breaches any of the terms of any such contract.
- (3A) Where a court makes a referral order in respect of an offender who 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 under section 23 until the earlier order is revoked or discharged.
- (4) Subsections (5) to (7) below apply where, in dealing with an offender for two or more connected offences, a court makes a referral order in respect of each, or each of two or more, of the offences.
- (5) The orders shall have the effect of referring the offender to a single youth offender panel; and the provision made by them under subsection (1) above shall accordingly be the same in each case, except that the periods specified under subsection (1)(c) may be different.
- (6) The court may direct that the period so specified in either or any of the orders is to run concurrently with or be additional to that specified in the other or any of the others; but in exercising its power under this subsection the court must ensure that the total period for which such a contract as is mentioned in subsection (1)(c) above is to have effect does not exceed twelve months.
- (7) Each of the orders mentioned in subsection (4) above shall, for the purposes of this Part, be treated as associated with the other or each of the others.

19 Making of referral orders: effect on court's other sentencing powers

- (1) Subsections (2) to (5) below apply where a court makes a referral order in respect of an offence.
- (2) The court may not deal with the offender for the offence in any of the prohibited ways.

- (3) The court--
 - (a) shall, in respect of any connected offence, either sentence the offender by making a referral order or make an order discharging him absolutely; and
 - (b) may not deal with the offender for any such offence in any of the prohibited ways.

- (4) For the purposes of subsections (2) and (3) above the prohibited ways are--
 - (a) imposing a community sentence on the offender;
 - (b) ordering him to pay a fine;
 - (c) making a reparation order in respect of him; and
 - (d) making an order discharging him conditionally.

- (5) The court may not make, in connection with the conviction of the offender for the offence or any connected offence--
 - (a) an order binding him over to keep the peace or to be of good behaviour; or
 - (b) an order under section 150 below (binding over of parent or guardian).

- (6) Subsections (2), (3) and (5) above do not affect the exercise of any power to deal with the offender conferred by paragraph 5 (offender referred back to court by panel) or paragraph 14 (powers of a court where offender convicted while subject to referral) of Schedule 1 to this Act.

- (7) Where section 16(2) above requires a court to make a referral order, the court may not under section 1 above defer passing sentence on him, but section 16(2) and subsection (3)(a) above do not affect any power or duty of a magistrates' court under--
 - (a) section 8 above (remission to youth court, or another such court, 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).

20 Making of referral orders: attendance of parents etc

- (1) A court making a referral order may make an order requiring--
 - (a) the appropriate person, or
 - (b) in a case where there are two or more appropriate persons, any one or more of them,to attend the meetings of the youth offender panel.

- (2) Where an offender is aged under 16 when a court makes a referral order in his case--
 - (a) the court shall exercise its power under subsection (1) above so as to require at least one appropriate person to attend meetings of the youth offender panel; and
 - (b) if the offender falls within subsection (6) below, the person or persons so required to attend those meetings shall be or include a representative of the local authority mentioned in that subsection.

- (3) The court shall not under this section make an order requiring a person to attend meetings of the youth offender panel--
- (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.
- (4) Except where the offender falls within subsection (6) below, each person who is a parent or guardian of the offender is an "appropriate person" for the purposes of this section.
- (5) Where the offender falls within subsection (6) below, each of the following is an "appropriate person" for the purposes of this section--
- (a) a representative of the local authority mentioned in that subsection; and
 - (b) each person who is a parent or guardian of the offender with whom the offender is allowed to live.
- (6) An offender falls within this subsection if he is (within the meaning of the Children Act 1989) a child who is looked after by a local authority.
- (7) If, at the time when a court makes an order under this section--
- (a) a person who is required by the order to attend meetings of a youth offender panel is not present in court, or
 - (b) a local authority whose representative is so required to attend such meetings is not represented in court,
- the court must send him or (as the case may be) the authority a copy of the order forthwith.

Youth offender panels

21 Establishment of panels

- (1) Where a referral order has been made in respect of an offender (or two or more associated referral orders have been so made), it is the duty of the youth offending team specified in the order (or orders)--
- (a) to establish a youth offender panel for the offender;
 - (b) to arrange for the first meeting of the panel to be held for the purposes of section 23 below; and
 - (c) subsequently to arrange for the holding of any further meetings of the panel required by virtue of section 25 below (in addition to those required by virtue of any other provision of this Part).
- (2) A youth offender panel shall--
- (a) be constituted,
 - (b) conduct its proceedings, and
 - (c) discharge its functions under this Part (and in particular those arising under section 23 below),
- in accordance with guidance given from time to time by the Secretary of State.
- (3) At each of its meetings a panel shall, however, consist of at least--
- (a) one member appointed by the youth offending team from among its members; and
 - (b) two members so appointed who are not members of the team.

- (4) The Secretary of State may by regulations make provision requiring persons appointed as members of a youth offender panel to have such qualifications, or satisfy such other criteria, as are specified in the regulations.
- (5) Where it appears to the court which made a referral order that, by reason of either a change or a prospective change in the offender's place or intended place of residence, the youth offending team for the time being specified in the order ("the current team") either does not or will not have the function of implementing referral orders in the area in which the offender resides or will reside, the court may amend the order so that it instead specifies the team which has the function of implementing such orders in that area ("the new team").
- (6) Where a court so amends a referral order--
- (a) subsection (1)(a) above shall apply to the new team in any event;
 - (b) subsection (1)(b) above shall apply to the new team if no youth offender contract has (or has under paragraph (c) below been treated as having) taken effect under section 23 below between the offender and a youth offender panel established by the current team;
 - (c) if such a contract has (or has previously under this paragraph been treated as having) so taken effect, it shall (after the amendment) be treated as if it were a contract which had taken effect under section 23 below between the offender and the panel being established for the offender by the new team.
- (7) References in this Part to the meetings of a youth offender panel (or any such meeting) are to the following meetings of the panel (or any of them)--
- (a) the first meeting held in pursuance of subsection (1)(b) above;
 - (b) any further meetings held in pursuance of section 25 below;
 - (c) any progress meeting held under section 26 below; and
 - (d) the final meeting held under section 27 below.

22 Attendance at panel meetings

- (1) The specified team shall, in the case of each meeting of the panel established for the offender, notify--
- (a) the offender, and
 - (b) any person to whom an order under section 20 above applies,
- of the time and place at which he is required to attend that meeting.
- (2) If the offender fails to attend any part of such a meeting the panel may--
- (a) adjourn the meeting to such time and place as it may specify; or
 - (b) end the meeting and refer the offender back to the appropriate court;
- and subsection (1) above shall apply in relation to any such adjourned meeting.
- (2A) If--
- (a) a parent or guardian of the offender fails to comply with an order under section 20 above (requirement to attend the meetings of the panel), and
 - (b) the offender is aged under 18 at the time of the failure,

the panel may refer that parent or guardian to a youth court acting in the local justice area in which it appears to the panel that the offender resides or will reside.

(3) One person aged 18 or over chosen by the offender, with the agreement of the panel, shall be entitled to accompany the offender to any meeting of the panel (and it need not be the same person who accompanies him to every meeting).

(4) The panel may allow to attend any such meeting--

(a) any person who appears to the panel to be a victim of, or otherwise affected by, the offence, or any of the offences, in respect of which the offender was referred to the panel;

(b) any person who appears to the panel to be someone capable of having a good influence on the offender.

(5) Where the panel allows any such person as is mentioned in subsection (4)(a) above ("the victim") to attend a meeting of the panel, the panel may allow the victim to be accompanied to the meeting by one person chosen by the victim with the agreement of the panel.

Youth offender contracts

23 First meeting: agreement of contract with offender

- (1) At the first meeting of the youth offender panel established for an offender the panel shall seek to reach agreement with the offender on a programme of behaviour the aim (or principal aim) of which is the prevention of re-offending by the offender.
- (2) The terms of the programme may, in particular, include provision for any of the following--
 - (a) the offender to make financial or other reparation to any person who appears to the panel to be a victim of, or otherwise affected by, the offence, or any of the offences, for which the offender was referred to the panel;
 - (b) the offender to attend mediation sessions with any such victim or other person;
 - (c) the offender to carry out unpaid work or service in or for the community;
 - (d) the offender to be at home at times specified in or determined under the programme;
 - (e) attendance by the offender at a school or other educational establishment or at a place of work;
 - (f) the offender to participate in specified activities (such as those designed to address offending behaviour, those offering education or training or those assisting with the rehabilitation of persons dependent on, or having a propensity to misuse, alcohol or drugs);
 - (g) the offender to present himself to specified persons at times and places specified in or determined under the programme;
 - (h) the offender to stay away from specified places or persons (or both);
 - (i) enabling the offender's compliance with the programme to be supervised and recorded.
- (3) The programme may not, however, provide--
 - (a) for the electronic monitoring of the offender's whereabouts; or
 - (b) for the offender to have imposed on him any physical restriction on his movements.
- (4) No term which provides for anything to be done to or with any such victim or other affected person as is mentioned in subsection (2)(a) above may be included in the programme without the consent of that person.
- (5) Where a programme is agreed between the offender and the panel, the panel shall cause a written record of the programme to be produced forthwith--
 - (a) in language capable of being readily understood by, or explained to, the offender; and
 - (b) for signature by him.
- (6) Once the record has been signed--
 - (a) by the offender, and
 - (b) by a member of the panel on behalf of the panel,

the terms of the programme, as set out in the record, take effect as the terms of a "youth offender contract" between the offender and the panel; and the panel shall cause a copy of the record to be given or sent to the offender.

24 First meeting: duration of contract

- (1) This section applies where a youth offender contract has taken effect under section 23 above between an offender and a youth offender panel.
- (2) The day on which the contract so takes effect shall be the first day of the period for which it has effect.
- (3) Where the panel was established in pursuance of a single referral order, the length of the period for which the contract has effect shall be that of the period specified under section 18(1)(c) above in the referral order.
- (4) Where the panel was established in pursuance of two or more associated referral orders, the length of the period for which the contract has effect shall be that resulting from the court's directions under section 18(6) above.
- (5) Subsections (3) and (4) above have effect subject to--
 - (a) any order under paragraph 9ZD, 11 or 12 of Schedule 1 to this Act extending the length of the period for which the contract has effect; and
 - (b) subsection (6) below.
- (6) If the referral order, or each of the associated referral orders, is revoked (whether under paragraph 5(2) of Schedule 1 to this Act or by virtue of paragraph 14(2) of that Schedule), the period for which the contract has effect expires at the time when the order or orders is or are revoked unless it has already expired.

25 First meeting: failure to agree contract

- (1) Where it appears to a youth offender panel to be appropriate to do so, the panel may--
 - (a) end the first meeting (or any further meeting held in pursuance of paragraph (b) below) without having reached agreement with the offender on a programme of behaviour of the kind mentioned in section 23(1) above; and
 - (b) resume consideration of the offender's case at a further meeting of the panel.
- (2) If, however, it appears to the panel at the first meeting or any such further meeting that there is no prospect of agreement being reached with the offender within a reasonable period after the making of the referral order (or orders)--
 - (a) subsection (1)(b) above shall not apply; and
 - (b) instead the panel shall refer the offender back to the appropriate court.
- (3) If at a meeting of the panel--
 - (a) agreement is reached with the offender but he does not sign the record produced in pursuance of section 23(5) above, and

(b) his failure to do so appears to the panel to be unreasonable,
the panel shall end the meeting and refer the offender back to the appropriate court.

26 Progress meetings

- (1) At any time--
- (a) after a youth offender contract has taken effect under section 23 above, but
 - (b) before the end of the period for which the contract has effect,
- the specified team shall, if so requested by the panel, arrange for the holding of a meeting of the panel under this section ("a progress meeting").
- (2) The panel may make a request under subsection (1) above if it appears to the panel to be expedient to review--
- (a) the offender's progress in implementing the programme of behaviour contained in the contract; or
 - (b) any other matter arising in connection with the contract.
- (3) The panel shall make such a request if--
- (a) the offender has notified the panel that--
 - (i) he wishes to seek the panel's agreement to a variation in the terms of the contract; or
 - (ii) he wishes the panel to refer him back to the appropriate court with a view to the referral order (or orders) being revoked on account of a significant change in his circumstances (such as his being taken to live abroad) making compliance with any youth offender contract impractical; or
 - (b) it appears to the panel that the offender is in breach of any of the terms of the contract.
- (4) At a progress meeting the panel shall do such one or more of the following things as it considers appropriate in the circumstances, namely--
- (a) review the offender's progress or any such other matter as is mentioned in subsection (2) above;
 - (b) discuss with the offender any breach of the terms of the contract which it appears to the panel that he has committed;
 - (c) consider any variation in the terms of the contract sought by the offender or which it appears to the panel to be expedient to make in the light of any such review or discussion;
 - (d) consider whether to accede to any request by the offender that he be referred back to the appropriate court.
- (5) Where the panel has discussed with the offender such a breach as is mentioned in subsection (4)(b) above--
- (a) the panel and the offender may agree that the offender is to continue to be required to comply with the contract (either in its original form or with any agreed variation in its terms) without being referred back to the appropriate court; or
 - (b) the panel may decide to end the meeting and refer the offender back to that court.

- (6) Where a variation in the terms of the contract is agreed between the offender and the panel, the panel shall cause a written record of the variation to be produced forthwith--
- (a) in language capable of being readily understood by, or explained to, the offender; and
 - (b) for signature by him.
- (7) Any such variation shall take effect once the record has been signed--
- (a) by the offender; and
 - (b) by a member of the panel on behalf of the panel;
- and the panel shall cause a copy of the record to be given or sent to the offender.
- (8) If at a progress meeting--
- (a) any such variation is agreed but the offender does not sign the record produced in pursuance of subsection (6) above, and
 - (b) his failure to do so appears to the panel to be unreasonable,
- the panel may end the meeting and refer the offender back to the appropriate court.
- (9) Section 23(2) to (4) above shall apply in connection with what may be provided for by the terms of the contract as varied under this section as they apply in connection with what may be provided for by the terms of a programme of behaviour of the kind mentioned in section 23(1).
- (10) Where the panel has discussed with the offender such a request as is mentioned in subsection (4)(d) above, the panel may, if it is satisfied that there is (or is soon to be) such a change in circumstances as is mentioned in subsection (3)(a)(ii) above, decide to end the meeting and refer the offender back to the appropriate court.

27 Final meeting

- (1) Where the compliance period in the case of a youth offender contract is due to expire, the specified team shall arrange for the holding, before the end of that period, of a meeting of the panel under this section ("the final meeting").
- (2) At the final meeting the panel shall--
- (a) review the extent of the offender's compliance to date with the terms of the contract; and
 - (b) decide, in the light of that review, whether his compliance with those terms has been such as to justify the conclusion that, by the time the compliance period expires, he will have satisfactorily completed the contract;
- and the panel shall give the offender written confirmation of its decision.
- (3) Where the panel decides that the offender's compliance with the terms of the contract has been such as to justify that conclusion, the panel's decision shall have the effect of discharging the referral order (or orders) as from the end of the compliance period.
- (4) Otherwise the panel shall refer the offender back to the appropriate court.

- (5) Nothing in section 22(2) above prevents the panel from making the decision mentioned in subsection (3) above in the offender's absence if it appears to the panel to be appropriate to do that instead of exercising either of its powers under section 22(2).
- (6) Section 22(2)(a) above does not permit the final meeting to be adjourned (or re-adjourned) to a time falling after the end of the compliance period.
- (7) In this section "the compliance period", in relation to a youth offender contract, means the period for which the contract has effect in accordance with section 24 above.

Referrals back to court in the interests of justice

27A Revocation of referral order where offender making good progress etc

- (1) This section applies where, having regard to circumstances which have arisen since a youth offender contract took effect under section 23 above, it appears to the youth offender panel to be in the interests of justice for the referral order (or each of the referral orders) to be revoked.
- (2) The panel may refer the offender back to the appropriate court requesting it--
 - (a) to exercise only the power conferred by sub-paragraph (2) of paragraph 5 of Schedule 1 to this Act to revoke the order (or each of the orders); or
 - (b) to exercise both--
 - (i) the power conferred by that sub-paragraph to revoke the order (or each of the orders); and
 - (ii) the power conferred by sub-paragraph (4) of that paragraph to deal with the offender for the offence in respect of which the revoked order was made.
- (3) The circumstances in which the panel may make a referral under subsection (2) above include the offender's making good progress under the contract.
- (4) Where--
 - (a) the panel makes a referral under subsection (2) above in relation to any offender and any youth offender contract, and
 - (b) the appropriate court decides not to exercise the power conferred by paragraph 5(2) of Schedule 1 to this Act in consequence of that referral,the panel may not make a further referral under that subsection in relation to that offender and contract during the relevant period except with the consent of the appropriate court.
- (5) In subsection (4) above "the relevant period" means the period of 3 months beginning with the date on which the appropriate court made the decision mentioned in paragraph (b) of that subsection.

27B Extension of period for which young offender contract has effect

- (1) This section applies where at any time--
 - (a) a youth offender contract has taken effect under section 23 above for a period which is less than twelve months;
 - (b) that period has not ended; and
 - (c) having regard to circumstances which have arisen since the contract took effect, it appears to the youth offender panel to be in the interests of justice for the length of that period to be extended.
- (2) The panel may refer the offender back to the appropriate court requesting it to extend the length of that period.
- (3) The requested period of extension must not exceed three months.

*Further court proceedings***28 Offender or parent referred back to court: offender convicted while subject to referral order**

Schedule 1 to this Act, which--

- (a) in Parts 1 and 1ZA makes provision for what is to happen when a youth offender panel refers an offender back to the appropriate court, and
 - (aa) in Part 1A makes provision for what is to happen when a youth offender panel refers a parent or guardian to the court under section 22(2A) above, and
 - (b) in Part II makes provision for what is to happen when an offender is convicted of further offences while for the time being subject to a referral order,
- shall have effect.

*Supplementary***29 Functions of youth offending teams**

- (1) The functions of a youth offending team responsible for implementing a referral order include, in particular, arranging for the provision of such administrative staff, accommodation or other facilities as are required by the youth offender panel established in pursuance of the order.
- (2) During the period for which a youth offender contract between a youth offender panel and an offender has effect--
 - (a) the specified team shall make arrangements for supervising the offender's compliance with the terms of the contract; and
 - (b) the person who is the member of the panel referred to in section 21(3)(a) above shall ensure that records are kept of the offender's compliance (or non-compliance) with those terms.
- (3) In implementing referral orders a youth offending team shall have regard to any guidance given from time to time by the Secretary of State.

30 Regulations under Part III

(1) Any power of the Secretary of State to make regulations under section 17(3) or 21(4) above or paragraph 13(8) of Schedule 1 to this Act shall be exercisable by statutory instrument.

(2) A statutory instrument containing any regulations under section 21(4) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) No regulations shall be made under--

- (a) section 17(3), or
- (b) paragraph 13(8) of Schedule 1,

unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.

(4) Any regulations made by the Secretary of State under section 17(3) or 21(4) or paragraph 13(8) of Schedule 1 may make different provision for different cases, circumstances or areas and may contain such incidental, supplemental, saving or transitional provisions as the Secretary of State thinks fit.

31 Rules of court

(1) Criminal Procedure Rules may make such provision as appears to the Criminal Procedure Rule Committee to be necessary or expedient for the purposes of this Part (and nothing in this section shall be taken to affect the generality of any enactment conferring power to make such rules).

32 Definitions for purposes of Part III

In this Part--

"the appropriate court" shall be construed in accordance with paragraph 1(2) of Schedule 1 to this Act;

"associated", in relation to referral orders, shall be construed in accordance with section 18(7) above;

"connected", in relation to offences, shall be construed in accordance with section 16(4) above;

"meeting", in relation to a youth offender panel, shall be construed in accordance with section 21(7) above;

"the specified team", in relation to an offender to whom a referral order applies (or two or more associated referral orders apply), means the youth offending team for the time being specified in the order (or orders).

SCHEDULE 1

YOUTH OFFENDER PANELS: FURTHER COURT PROCEEDINGS

Section 28

Part I

Referral Back to Appropriate Court: Revocation of Referral Order

Introductory

1

- (1) This Part of this Schedule applies where a youth offender panel refers an offender back to the appropriate court under section 22(2), 25(2) or (3), 26(5), (8) or (10), 27(4) or 27A(2) of this Act.
- (2) For the purposes of this Part of this Schedule and the provisions mentioned in sub-paragraph (1) above the appropriate court is--
- (a) in the case of an offender aged under 18 at the time when (in pursuance of the referral back) he first appears before the court, a youth court acting in the local justice area in which it appears to the youth offender panel that the offender resides or will reside; and
 - (b) otherwise, a magistrates' court (other than a youth court) acting in that area.

Mode of referral back to court

2

The panel shall make the referral by sending a report to the appropriate court explaining why the offender is being referred back to it.

Bringing the offender before the court

3

- (1) Where the appropriate court receives such a report, the court shall cause the offender to appear before it.
- (2) For the purpose of securing the attendance of the offender before the court, a justice acting in the local justice area in which the court acts may--
- (a) issue a summons requiring the offender to appear at the place and time specified in it; or
 - (b) if the report is substantiated on oath, issue a warrant for the offender's arrest.
- (3) Any summons or warrant issued under sub-paragraph (2) above shall direct the offender to appear or be brought before the appropriate court.

Detention and remand of arrested offender

4

- (1) Where the offender is arrested in pursuance of a warrant under paragraph 3(2) above and cannot be brought immediately before the appropriate court--
 - (a) the person in whose custody he is may make arrangements for his detention in a place of safety (within the meaning given by section 107(1) of the Children and Young Persons Act 1933) for a period of not more than 72 hours from the time of the arrest (and it shall be lawful for him to be detained in pursuance of the arrangements); and
 - (b) that person shall within that period bring him before a court which--
 - (i) if he is under the age of 18 when he is brought before the court, shall be a youth court; and
 - (ii) if he has then attained that age, shall be a magistrate's court other than a youth court.
- (2) Sub-paragraphs (3) to (5) below apply where the court before which the offender is brought under sub-paragraph (1)(b) above ("the alternative court") is not the appropriate court.
- (3) The alternative court may direct that he is to be released forthwith or remand him.
- (4) Section 128 of the Magistrates' Courts Act 1980 (remand in custody or on bail) shall have effect where the alternative court has power under sub-paragraph (3) above to remand the offender as if the court referred to in subsections (1)(a), (3), (4)(a) and (5) were the appropriate court.
- (5) That section shall have effect where the alternative court has power so to remand him, or the appropriate court has (by virtue of sub-paragraph (4) above) power to further remand him, as if in subsection (1) there were inserted after paragraph (c)
"or
(d) if he is aged under 18, remand him to accommodation provided by or on behalf of a local authority (within the meaning of the Children Act 1989) and, if it does so, shall designate as the authority who are to receive him the local authority for the area in which it appears to the court that he resides or will reside;"

Power of court where it upholds panel's decision

5

- (1) If it is proved to the satisfaction of the appropriate court as regards any decision of the panel which resulted in the offender being referred back to the court--
 - (a) that, so far as the decision relied on any finding of fact by the panel, the panel was entitled to make that finding in the circumstances, and
 - (b) that, so far as the decision involved any exercise of discretion by the panel, the panel reasonably exercised that discretion in the circumstances,the court may exercise the power conferred by sub-paragraph (2) below.
- (2) That power is a power to revoke the referral order (or each of the referral orders).
- (3) The revocation under sub-paragraph (2) above of a referral order has the effect of revoking any related order under paragraph 9ZD or 10 below.

- (4) Where any order is revoked under sub-paragraph (2) above or by virtue of sub-paragraph (3) above, the appropriate court may deal with the offender in accordance with sub-paragraph (5) below for the offence in respect of which the revoked order was made.
- (5) In so dealing with the offender for such an offence, the appropriate court--
- (a) may deal with him in any way in which (assuming section 16 of this Act had not applied) he could have been dealt with for that offence by the court which made the order; and
 - (b) shall have regard to--
 - (i) the circumstances of his referral back to the court; and
 - (ii) where a contract has taken effect under section 23 of this Act between the offender and the panel, the extent of his compliance with the terms of the contract.
- (6) The appropriate court may not exercise the powers conferred by sub-paragraph (2) or (4) above unless the offender is present before it; but those powers are exercisable even if, in a case where a contract has taken effect under section 23, the period for which the contract has effect has expired (whether before or after the referral of the offender back to the court).

Appeal

6

Where the court in exercise of the power conferred by paragraph 5(4) above deals with the offender for an offence, the offender may appeal to the Crown Court against the sentence.

Power of court to impose fine or extend period for which contract has effect

- 6A (1) This paragraph applies where—
- (a) an offender has been referred back to the appropriate court under section 22(2), 26(5) or 27(4), and
 - (b) it is proved to the satisfaction of the court that the offender has failed, without reasonable excuse, to comply with the terms of a contract under section 23.
- (2) If the court does not revoke the order under paragraph 5 it may—
- (a) order the offender to pay a fine of an amount not exceeding £2,500, or
 - (b) make an order extending the length of the period for which the contract under section 23 has effect.
- (3) The court may not extend the length of the period for which the contract has effect so that it becomes longer than 12 months.
- (4) If the period for which the contract has effect has expired (whether before or after the referral of the offender back to court) the court—
- (a) may make an order under sub-paragraph (2)(a), but
 - (b) may not make an order under sub-paragraph (2)(b).
- (5) The court may not exercise a power under sub-paragraph (2) unless the offender is present before it.

- (6) A fine imposed under sub-paragraph (2)(a) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.
- (7) The Secretary of State may by order amend any sum for the time being specified in sub-paragraph (2)(a).

Consequences of Court not revoking referral order or orders

7

(1) This paragraph applies--

- (a) where the appropriate court decides that the matters mentioned in paragraphs (a) and (b) of paragraph 5(1) above have not been proved to its satisfaction; or
- (b) where, although by virtue of paragraph 5(1) above the appropriate court--
 - (i) is able to exercise the power conferred by paragraph 5(2) above, or
 - (ii) would be able to do so if the offender were present before it,

the court (for any reason) decides not to exercise that power.

(2) If either--

- (a) no contract has taken effect under section 23 of this Act between the offender and the panel, or
- (b) a contract has taken effect under that section but the period for which it has effect has not expired,

the offender shall continue to remain subject to the referral order (or orders) in all respects as if he had not been referred back to the court.

- (3) If--
- (a) a contract had taken effect under section 23 of this Act, but
 - (b) the period for which it has effect has expired (otherwise than by virtue of section 24(6)),
- the court shall make an order declaring that the referral order (or each of the referral orders) is discharged (subject to any order under paragraph 6A(2)(b)).

Exception where court satisfied as to completion of contract

8

If, in a case where the offender is referred back to the court under section 27(4) of this Act, the court decides (contrary to the decision of the panel) that the offender's compliance with the terms of the contract has, or will have, been such as to justify the conclusion that he has satisfactorily completed the contract, the court shall make an order declaring that the referral order (or each of the referral orders) is discharged.

Discharge of extension orders

9

The discharge under paragraph 7(3) or 8 above of a referral order has the effect of discharging any related order under paragraph 9ZD, 11 or 12 below.

Power to adjourn hearing and remand offender

9ZA

- (1) This paragraph applies to any hearing relating to an offender held by a youth court or other magistrates' court in proceedings under this Part of this Schedule.
- (2) The court may adjourn the hearing, and, where it does so, may--
 - (a) direct that the offender be released forthwith, or
 - (b) remand the offender.
- (3) Where the court remands the offender under sub-paragraph (2)--
 - (a) it must fix the time and place at which the hearing is to be resumed, and
 - (b) that time and place must be the time and place at which the offender is required to appear or be brought before the court by virtue of the remand.
- (4) Where the court adjourns the hearing under sub-paragraph (2) but does not remand the offender--
 - (a) it may fix the time and place at which the hearing is to be resumed, but
 - (b) if it does not do so, it must not resume the hearing unless it is satisfied that the persons mentioned in sub-paragraph (5) have had adequate notice of the time and place for the resumed hearing.

- (5) The persons referred to in sub-paragraph (4)(b) are--
- (a) the offender,
 - (b) if the offender is aged under 14, a parent or guardian of the offender, and
 - (c) a member of the youth offending team specified under section 18(1)(a) as responsible for implementing the order.
- (6) If a local authority has parental responsibility for an offender who is in its care or provided with accommodation by it in the exercise of any social services functions, the reference in sub-paragraph (5)(b) to a parent or guardian of the offender is to be read as a reference to that authority.
- (7) In sub-paragraph (6)--
- "local authority" has the same meaning as it has in Part 1 of the Criminal Justice and Immigration Act 2008 by virtue of section 7 of that Act,
 - "parental responsibility" has the same meaning as it has in the Children Act 1989 by virtue of section 3 of that Act, and
 - "social services functions" has the same meaning as it has in the Local Authority Social Services Act 1970 by virtue of section 1A of that Act.
- (8) The powers of a magistrates' court under this paragraph may be exercised by a single justice of the peace, notwithstanding anything in the Magistrates' Courts Act 1980.
- (9) This paragraph--
- (a) applies to any hearing in proceedings under this Part of this Schedule in place of section 10 of the Magistrates' Courts Act 1980 (adjournment of trial) where that section would otherwise apply, but
 - (b) is not to be taken to affect the application of that section to hearings of any other description.

Part 1ZAReferral Back to Appropriate Court: Extension of Period for which Contract has Effect

Introductory

9ZB

- (1) This Part of this Schedule applies where a youth offender panel refers an offender back to the appropriate court under section 27B of this Act with a view to the court extending the period for which the offender's youth offender contract has effect.
- (2) For the purposes of this Part of this Schedule and that section the appropriate court is--
- (a) in the case of an offender aged under 18 at the time when (in pursuance of the referral back) the offender first appears before the court, a youth court acting in the local justice area in which it appears to the youth offender panel that the offender resides or will reside; and
 - (b) otherwise, a magistrates' court (other than a youth court) acting in that area.

*Mode of referral back to court***9ZC**

The panel shall make the referral by sending a report to the appropriate court explaining why the offender is being referred back to it.

*Power of court***9ZD**

- (1) If it appears to the appropriate court that it would be in the interests of justice to do so having regard to circumstances which have arisen since the contract took effect, the court may make an order extending the length of the period for which the contract has effect.
- (2) An order under sub-paragraph (1) above--
 - (a) must not extend that period by more than three months; and
 - (b) must not so extend that period as to cause it to exceed twelve months.
- (3) In deciding whether to make an order under sub-paragraph (1) above, the court shall have regard to the extent of the offender's compliance with the terms of the contract.
- (4) The court may not make an order under sub-paragraph (1) above unless--
 - (a) the offender is present before it; and
 - (b) the contract has effect at the time of the order.

Supplementary**9ZE**

The following paragraphs of Part 1 of this Schedule apply for the purposes of this Part of this Schedule as they apply for the purposes of that Part--

- (a) paragraph 3 (bringing the offender before the court);
- (b) paragraph 4 (detention and remand of arrested offender); and
- (c) paragraph 9ZA (power to adjourn hearing and remand offender).

Part 1A

Referral of Parent or Guardian for Breach of Section 20 Order

Introductory

9A

- (1) This Part of this Schedule applies where, under section 22(2A) of this Act, a youth offender panel refers an offender's parent or guardian to a youth court.
- (2) In this Part of this Schedule--
 - (a) "the offender" means the offender whose parent or guardian is referred under section 22(2A);
 - (b) "the parent" means the parent or guardian so referred; and
 - (c) "the youth court" means a youth court as mentioned in section 22(2A).

Mode of referral to court

9B

The panel shall make the referral by sending a report to the youth court explaining why the parent is being referred to it.

Bringing the parent before the court

9C

- (1) Where the youth court receives such a report it shall cause the parent to appear before it.
- (2) For the purpose of securing the attendance of the parent before the court, a justice acting in the local justice area in which the court acts may--
 - (a) issue a summons requiring the parent to appear at the place and time specified in it; or
 - (b) if the report is substantiated on oath, issue a warrant for the parent's arrest.
- (3) Any summons or warrant issued under sub-paragraph (2) above shall direct the parent to appear or be brought before the youth court.

Power of court to make parenting order: application of supplemental provisions

9D

- (1) Where the parent appears or is brought before the youth court under paragraph 9C above, the court may make a parenting order in respect of the parent if--
 - (a) it is proved to the satisfaction of the court that the parent has failed without reasonable excuse to comply with the order under section 20 of this Act; and
 - (b) the court is satisfied that the parenting order would be desirable in the interests of preventing the commission of any further offence by the offender.

- (2) A parenting order is an order which requires the parent--
- (a) to comply, for a period not exceeding twelve months, with such requirements as are specified in the order, and
 - (b) subject to sub-paragraph (4) below, to attend, for a concurrent period not exceeding three months, such counselling or guidance programme as may be specified in directions given by the responsible officer.
- (3) The requirements that may be specified under sub-paragraph (2)(a) above are those which the court considers desirable in the interests of preventing the commission of any further offence by the offender.
- (4) A parenting order under this paragraph may, but need not, include a requirement mentioned in subsection (2)(b) above in any case where a parenting order under this paragraph or any other enactment has been made in respect of the parent on a previous occasion.
- (5) A counselling or guidance programme which a parent is required to attend by virtue of subsection (2)(b) above may be or include a residential course but only if the court is satisfied--
- (a) that the attendance of the parent at a residential course is likely to be more effective than his attendance at a non-residential course in preventing the commission of any further offence by the offender, and
 - (b) that any interference with family life which is likely to result from the attendance of the parent at a residential course is proportionate in all the circumstances.
- (6) Before making a parenting order under this paragraph where the offender is aged under 16, the court shall obtain and consider information about his family circumstances and the likely effect of the order on those circumstances.
- (7) Sections 8(3) and (8), 9(3) to (7) and 18(3) and (4) of the Crime and Disorder Act 1998 apply in relation to a parenting order made under this paragraph as they apply in relation to any other parenting order.

Appeal

9E

- (1) An appeal shall lie to the Crown Court against the making of a parenting order under paragraph 9D above.
- (2) Subsections (2) and (3) of section 10 of the Crime and Disorder Act 1998 (appeals against parenting orders) apply in relation to an appeal under this paragraph as they apply in relation to an appeal under subsection (1)(b) of that section.

Effect on section 20 order

9F

- (1) The making of a parenting order under paragraph 9D above is without prejudice to the continuance of the order under section 20 of this Act.

- (2) Section 63(1) to (4) of the Magistrates' Courts Act 1980 (power of magistrates' court to deal with person for breach of order, etc) apply (as well as section 22(2A) of this Act and this Part of this Schedule) in relation to an order under section 20 of this Act.

Part II

Further Convictions During Referral

Extension of referral for further offences

10

- (1) This paragraph applies where—
 - (a) an offender aged under 18 is subject to referral, and
 - (b) a relevant court is dealing with the offender for an offence in relation to which paragraphs (a) to (c) of section 16(1) apply.

- (2) The relevant court may sentence the offender for the offence by making an order extending any compliance period.

- (3) The relevant court may not extend the length of a compliance period so that it becomes longer than 12 months.

- (4) In this paragraph and paragraph 13 “relevant court” means a youth court or other magistrates’ court.”

Provisions supplementary to paragraphs 10

13

- (2) Sub-paragraphs (3) to (5) below apply where the relevant court makes an order under paragraph 10 in respect of an offence; but sub-paragraphs (3) to (5) do not affect the exercise of any power to deal with the offender conferred by paragraph 5 or 14 of this Schedule.

- (3) The relevant court may not deal with the offender for that offence in any of the prohibited ways specified in section 19(4) of this Act.

- (4) The relevant court--
 - (a) shall, in respect of any connected offence, either--
 - (i) sentence the offender by making an order under the same paragraph; or
 - (ii) make an order discharging him absolutely; and
 - (b) may not deal with the offender for any connected offence in any of those prohibited ways.

(5) The relevant court may not, in connection with the conviction of the offender for the offence or any connected offence, make any such order as is mentioned in section 19(5) of this Act.

(8) The Secretary of State may by regulations make such amendments of paragraph 10 above and this paragraph as he considers appropriate for altering in any way the descriptions of offenders in the case of which an order extending the compliance period may be made; and subsection (4) of section 17 of this Act shall apply in relation to regulations under this sub-paragraph as it applies in relation to regulations under subsection (3) of that section.

Further convictions: Power to revoke referral orders

14

- (1) This paragraph applies where, at a time when an offender is subject to referral, a court in England and Wales deals with him for an offence (whether committed before or after he was referred to the panel) by making an order other than--
- (a) an order under paragraph 10 above; or
 - (b) an order discharging him, whether absolutely or conditionally.
- (2) The court may revoke the referral order (or any one or more of the referral orders) if it appears to the court to be in the interests of justice to do so.
- (2A) The revocation of a referral order under sub-paragraph (2) has the effect of revoking any related order under paragraph 9ZD or 10.
- (3) Where any order is revoked by virtue of sub-paragraph (2) above, the court may, if it appears to the court that it would be in the interests of justice to do so, deal with the offender for the offence in respect of which the revoked order was made in any way in which (assuming section 16 of this Act had not applied) he could have been dealt with for that offence by the court which made the order.
- (4) When dealing with the offender under sub-paragraph (3) above the court shall, where a contract has taken effect between the offender and the panel under section 23 of this Act, have regard to the extent of his compliance with the terms of the contract.

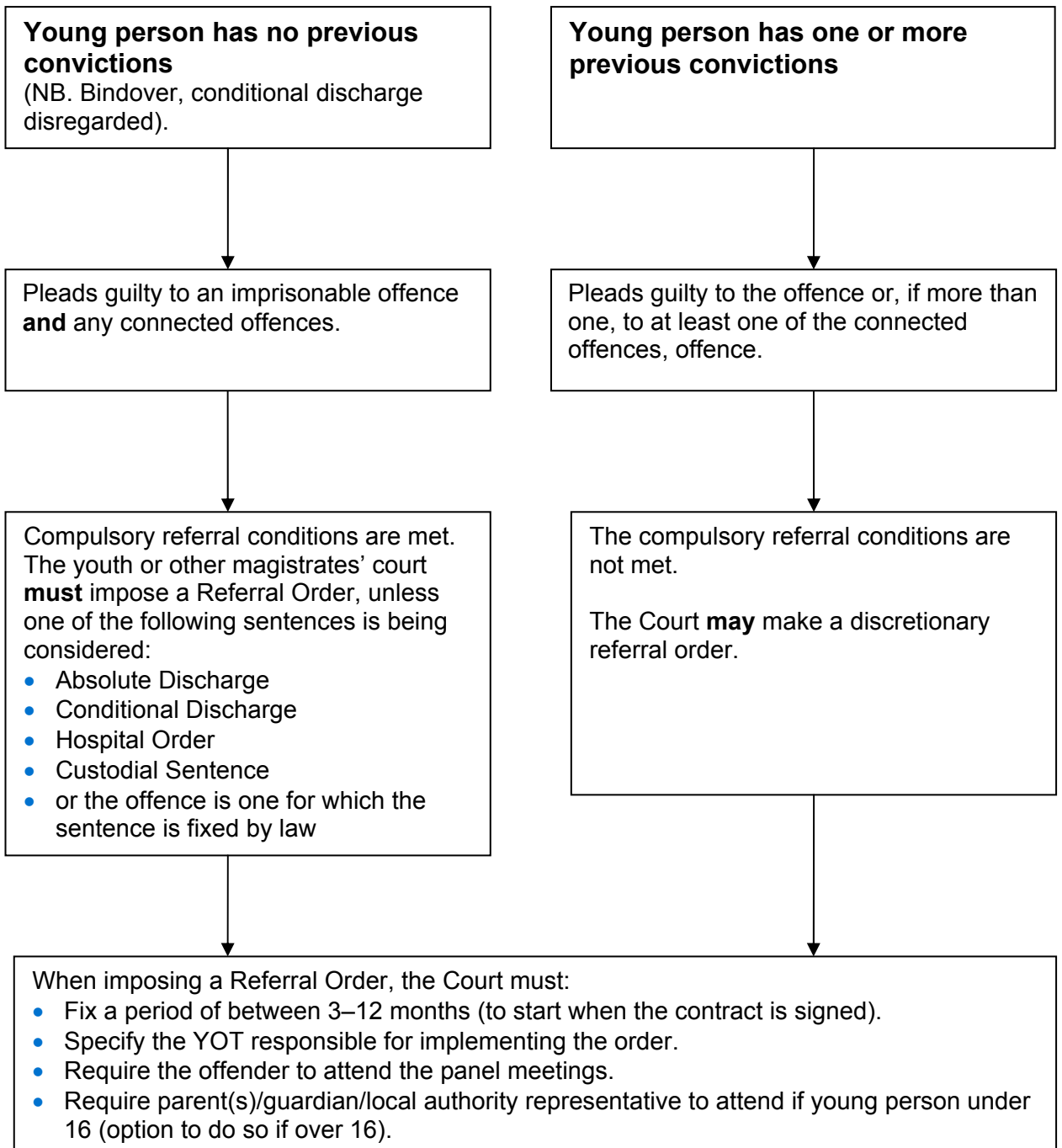
Interpretation

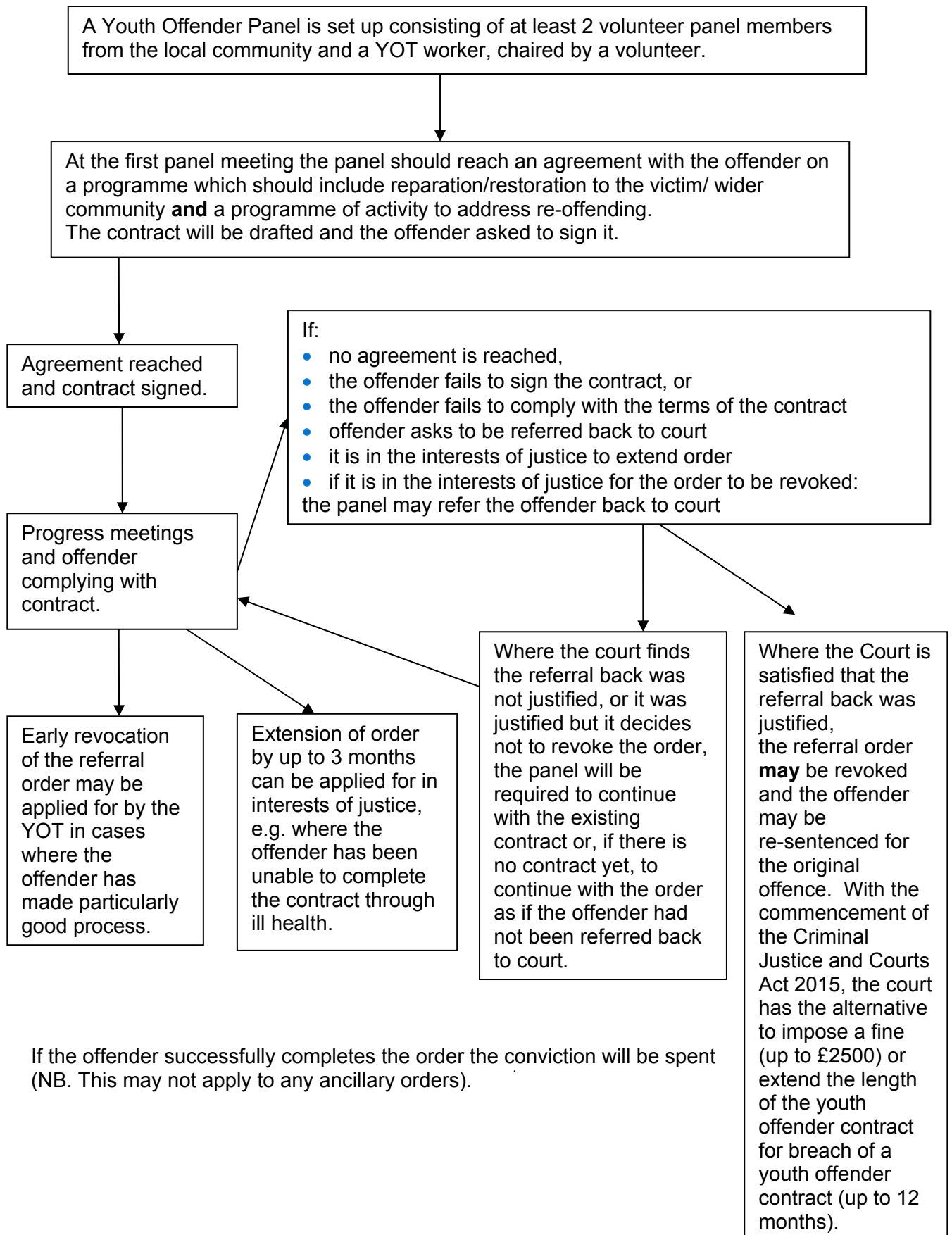
15

- (1) For the purposes of this Part of this Schedule an offender, is for the time being subject to referral if--
- (a) a referral order has been made in respect of him and that order has not, or
 - (b) two or more referral orders have been made in respect of him and any of those orders has not,
- been discharged (whether by virtue of section 27(3) of this Act or under paragraph 7(3) or 8 above) or revoked (whether under paragraph 5(2) above or by virtue of paragraph 14(2) above).
- (2) In this Part of this Schedule "compliance period", in relation to an offender who is for the time being subject to referral, means the period for which (in accordance with section 24 of this Act) any youth offender contract taking effect in his case under section 23 of this Act has (or would have) effect.

Annex B

Referral Order Flowchart





Annex C

Referral Order Pro Forma

YOUTH/MAGISTRATES' COURT SITTING AT

Name :

Address :

Date of birth :

Age:

It is ordered that :

the above-named young person, having pleaded guilty to [and having been found guilty of] the offence(s) disclosed on the schedule attached, is hereby referred, in accordance with the provisions of section 16 of the Powers of Criminal Courts (Sentencing) Act 2000, to the Youth Offender Panel established by the Youth Offending Team having responsibility forin which area s/he resides;

the above-named young person is required to attend such meetings of the Youth Offender Panel, as directed;

the contract between the young person and the Youth Offender Panel shall be for a period of

the following persons shall accompany the young person to each of the appointed meetings of the Youth Offender Panel :

[name of persons and relation to offender]

.....

.....

The Court certified the following facts :

The Court made the following remarks :

You may be referred back to court if :

- (i) you fail to attend any future Panel meetings; or**
- (ii) agreement between you and the Panel is not reached;**
or
- (iii) you fail unreasonably to sign the agreement or any variation ; or**
- (iv) there is a significant change in your circumstances; or**
- (v) you fail to comply with the terms of the agreement.**

Date

By Order of the Court

Clerk to the Justices

SCHEDULE OF OFFENCES REFERRED

Date of offence	Particulars of offence	Date and plea of guilty or conviction after trial	Ancillary orders	Comments by magistrates

Annex D

Extract from Victims Code of Practice

9. Youth Offending Teams

9.1 Youth Offending Teams (YOTs) are required to take account of victims' needs and have the following obligations in respect of victims of youth crime referred to youth offending teams.

9.2 On receipt of a victim's details from the police, the YOT must decide if it would be appropriate to invite the victim to become involved in a restorative justice intervention relating to relevant criminal conduct, and record the reasons for this decision.

9.3 The YOT must keep victims' personal details securely and separate from details kept on offenders. Information on victims should be destroyed when the restorative justice intervention in a case is at an end, apart from information that would be relevant for future research and evaluation.

9.4 If it decides to make contact with victims, the YOT must explain its role and allow victims to make informed choices about whether they want any involvement and if so, the nature of that involvement. The involvement of victims must always be voluntary. Victims must not be asked to do anything which is primarily for the benefit of the offender.

9.5 YOTs must ensure that all staff working with victims have had appropriate training.

9.6 If the victim agrees to be involved, either directly or indirectly in a restorative justice intervention in respect of relevant criminal conduct, the YOT must, if the victim requests this, keep the victim informed about the progress of the case and notify the victim when the intervention has concluded.

9.7 The YOT must give victims who ask for additional support before, during or after a restorative justice intervention in respect of relevant criminal conduct access to information about appropriate services.

Annex E

Victim Contact Form

Victim Contact in respect of	
First Name	Surname

Yot Worker:

Date form completed.

Date and Details of Offence(s)

Referral Order made on:
Length of Order:
Date Victim contact requested via police:
Date Request Granted:

Victim Availability:
Victim Attending: Yes/No

Victim Details

Male Female

Age Range

Under 16 16 – 25 25 – 45 Over 45

Type of Victim

Corporate Multiple Individual

Family Member No Victim

Name
Address
Postcode
Contact Tel Number
Home
Work
Mobile

Give details of victim's thoughts, feelings regarding

The Offence

The Offender

What are the victim's views regarding

Direct Reparation

Indirect Reparation

Have any concerns been raised by the victim regarding repercussions/repeat victimisation?

Yes No

Does the victim want answers to questions from the offender?

Yes No

What are the main issues for the victim in the case?

Conclusion about suitability for inclusion in referral order panel process (including safety assessment and willingness)

Does the victim wish to receive a letter of apology? (please circle)

Yes No

Does the victim require help from supporting agencies?

Victim Support Yes No

Other Yes No

Additional relevant Information

Annex F

EXAMPLE APPLICATION FORM FOR VOLUNTEER YOUTH OFFENDER PANEL MEMBERS

PRIVATE AND CONFIDENTIAL

Please complete in black ink or typescript

1. PERSONAL DETAILS

Surname	Forename(s)
Any other names by which you have been known	Title (Mr, Mrs, Miss, Ms, etc.)
Permanent Address	Daytime telephone number
Lived there since.....	Evening telephone number
Previous addresses (for last 5 years)	Date of birth (panel members must be 18 or over)

Please indicate your ethnic origin

White

Mixed

Asian or Asian British

Black or Black British

Chinese or Other Ethnic Origin

2. EMPLOYMENT

Current occupation (paid or unpaid) and all previous occupations over the past ten years.	
Occupation	Dates

3. ADDITIONAL INFORMATION

Why are you interested in becoming a panel member?

Give details of any experience of working with children or young people (including those in your own family) or young offenders.

Do you have any other relevant skills or experience?

State how you think your own skills and experience would be of help to you as a panel member.

4. CRIMINAL CONVICTIONS

N.B. A criminal conviction will not automatically disqualify you; it depends on the seriousness and the circumstances.

Please give details of any criminal convictions or cautions/ reprimands/ warnings which you have had and any appearance pending (this is an excepted question under the Rehabilitation of Offenders Act 1974 and you must therefore give details of all convictions whether spent or unspent under that Act).

Offence	Penalty or order of the court	Court	Date of conviction

<p>It is a condition of appointment as a panel member that a full criminal record check (which will include any spent convictions) is carried out prior to appointment. Please sign and date below if you agree to this check being carried out.</p>	
<p>Signature</p>	<p>Date</p>

5. COMMITMENT AND AVAILABILITY

**Panel members must undergo training, both initial and continuing, as well as attend panel meetings and supervision meetings.
State whether you are available to attend:**

Day time

Evenings

Weekends

If selected as a panel member could you commit to serve for at least one year?

6. REFEREES

Give details of two people who know you well personally and who may be asked about your ability to act as a panel member. Your referees must not be relatives, and you must have known them for at least two years.

Title	Title
Name	Name
Address	Address
Telephone number	Telephone number
Occupation	Occupation

If you have made a previous application to become a panel member, please give details.

To assist in future recruitment please state where you learnt about this volunteering opportunity.

7. DECLARATION

Please check that you have answered all questions fully before signing the declaration below.

I certify that the information given is true and complete to the best of my knowledge and belief.

Signature..... Date.....

Please complete and return this form to the address below no later than

Annex G

EXAMPLE COMMUNITY PANEL MEMBER AGREEMENT

This Community Panel Member Agreement describes the arrangement between [*name of community panel member*] and [*name of youth offending team*].

The community panel member agrees to:

1. sit as one of at least three members of a youth offender panel
2. help meet the responsibilities of the youth offender panel as follows:
3. operate on restorative justice principles, enabling young offenders to take responsibility, make reparation and achieve reintegration into the law-abiding community
4. provide a constructive forum in which to take account of the views of the victims of crime
5. draw up a contract with the offender and their family/ supporter(s) to deliver the intervention needed to tackle their offending and the factors associated with it
6. Meet time commitments agreed with the youth offending team, and ensure that reasonable notice is given of inability to attend panel meetings so that other arrangements can be made
7. Follow the procedures and standards expected of community panel members as explained by the youth offending team
8. Maintain the confidentiality of information received in the course of his or her work as a panel member and ensure that information relating to offenders, victims and others involved is not disclosed to a third party in any circumstances
9. Treat all individuals appearing before panels fairly and not discriminate on the basis of age, ethnic or racial origin, gender, sexual orientation, social background, religion, disability or any other irrelevant factor
10. Attend supervision, training and support provided by the youth offending team
11. Notify the youth offending team manager of any relevant change of circumstances (e.g. if arrested by the police for a criminal offence).

The youth offending team agrees to:

1. Provide thorough induction on the work of youth offender panels, the role of the community panel member and the training needed to meet the responsibilities of this role

2. Explain the standards and procedures expected of community panel members and provide encouragement and support to achieve and maintain them
3. Nominate a supervising member of the youth offending team who will hold regular appraisal reviews and suggest retraining and/ or additional training as required
4. Reimburse expenses incurred by community panel members following standard procedures. Expenses must be authorised in advance by the youth offending team and all claims must be supported by receipts. The following expenses will be reimbursed:
 - travel between home and panel meetings at official rates
 - reasonable cost of crèche, childminding fees or other arrangements for dependants incurred in order to attend panel meetings
5. Provide adequate training in support of the youth offending team's health and safety policy
6. Provide adequate insurance cover for volunteers while undertaking work approved and authorised by the youth offending team
7. Treat all volunteers in accordance with the youth offending team's equal opportunities policy
8. Address any problems, complaints and difficulties raised by community panel members
9. Inform community panel members of the agreed local termination and complaints procedures.

Signatures of parties to agreement

We agree to the above:

Signature:

Signature:

Name:

Name:

Community panel member **Manager, [name of youth offending team]**

Date:

Date:

This agreement is binding in honour only. It is not intended to be a legally binding contract between us and may be terminated at any time at the discretion of either party. Neither of us intends any employment relationship to be created either now or at any time in the future.

Annex H

Example complaints procedure for volunteer panel members

Although the youth offending team (Yot) aims to give the best possible service and support to the youth offender panel volunteers, occasionally things do go wrong. Complaints will be dealt with on a 'fast-track' basis.

Stage 1

Where possible, try to resolve difficulties with those directly involved at the earliest opportunity.

Stage 2

If the problem has not been resolved, the first point of contact with complaints should be the supervising member of the Youth Offending Team, who will acknowledge receipt of the complaint within 5 working days.

The complaint will be investigated by the Yot and we will endeavour to send a full reply within 15 working days. If this cannot be achieved, then a reply outlining when a full response may be expected will be sent.

Stage 3

If you think that this has not been dealt with in a satisfactory manner, then you may write to the Yot Manager who will decide on the next course of action. At all stages, you will be kept informed and all staff dealing with the complaint will treat you with courtesy and respect.

Stage 4

Finally, there is a right of appeal against the Yot manager's decision. The Yot management committee will determine arrangements for any such appeal.

Annex I

Pro Forma For Referral Order Contracts

At the meeting between:

Name [of offender]

Date of birth

Address

And the [name of youth offending team] Youth Offender Panel, the following agreement was reached:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

You [name of offender] will attend meetings with the Panel on the following dates:

Initial meeting

First progress meeting

Second progress meeting

Third progress meeting

Final Meeting

You may be referred back to court if:

- 1) you fail to attend any future Panel meetings; or
- 2) agreement between you and the Panel is not reached; or
- 3) you fail unreasonably to sign the agreement or any variation; or
- 4) there is significant change in your circumstances; or
- 5) you fail to comply with the terms of the agreement.

Signed:

..... Young person

.....Parent(s) [if present]

..... Panel Leader (on behalf of the [name of youth offending team]
Youth Offender Panel)

Present at the meeting:

Panel Leader:

Panel Member(s):

Youth Offending Team member:

Young Person:

Parent/Carer:

Parent/Carer:

Victim:

Victim Supporter:

Other:

Any voluntary contact or activities which the panel wish to note:

- 1.
- 2.
- 3.

Any other comments the panel may wish to record:

Annex J

FINAL PANEL MEETING REPORT PRO FORMA

At the Final Panel meeting between:

Name DOB

Address

And the Youth Offender Panel

The Panel agreed that

[name]

Had complied/not complied with the Panel contract of [date of contract]

In accordance with the Referral Order made on [date]

By Youth Court for a period of [length of order]

The Panel's decision is that [delete the following as appropriate]

Either: As from [date] the Referral Order will be discharged

/ Or the case is referred back to Court for the following reasons: -

Panel leader Date:

Second volunteer Panel member Date:

YOT Panel Member Date:

Annex K

FINAL PANEL – EXAMPLE OF A YOT LETTER (to be used where a Referral Order was the only sentence imposed)

Dear

Further to the recent Youth Offender Panel meeting, I am writing to confirm that you have now successfully completed the contract you agreed with the Panel.

The period of your Referral Order has finished and the Order is discharged [from]

Under the terms of the Rehabilitation of Offenders Act 1974, your court conviction is now 'spent'. This means that the police retain a record, but for most purposes, unless you are applying for a job which is 'excepted' under the Act, you need not tell anyone about it and most people will not have any right to know about it. However, if you were also required to register under Part 2 of the Sexual Offences Act 2003, this requirement is not affected by the conviction becoming spent

Yours sincerely,

YOT manager

Annex L

Referral Orders: Frequently Asked Questions

Must breach of an order be dealt with within the currency of the order?

The Act refers mainly to breach in the context of the contract rather than the order. Once a contract has been signed, the offender needs, wherever possible, to be referred back to court, for non-compliance with the referral order contract, within the compliance period. The Panel's decision to refer the offender back to court must be taken at a panel meeting before the expiration of the compliance period of the contract. The last opportunity to do this is at the final meeting.

However, once a contract has taken effect and the Panel has referred the offender back to court for breach, if the offender is present before the court, then the courts powers - to revoke the referral order and re-sentence for the original offence - are exercisable even if the period for which the contract has effect has expired (whether before or after the referral of the offender back to the court), Paragraph 5(6), Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000 refers.

However, the Act also refers to breach in terms of the young offender failing to attend the first meeting and to agreeing a contract at the first meeting. In either situation the young person should be referred back to the court within the currency of the order.

NB. All references below are to the Powers of Criminal Courts (Sentencing) Act 2000, as amended, unless specified otherwise.

Can the YOT refer the offender back to court if he does not co-operate in the assessment process?

No. The YOT has no power to refer the case back to court if the offender is not co-operating with the pre-panel ASSET assessment. Only the panel may refer the offender back to court and referral back to court must come under one or other of the specific provisions in the legislation, namely:

- Section 22(2) – fail to attend meeting
- Section 25(2) – no prospect of agreement at first meeting
- Section 25(3) – unreasonable failure to sign
- Section 26(5) – breach of a term of the contract
- Section 26 (8) – unreasonable failure to sign up to record on agreed variation
- Section 26 (10) – panel agrees to refer back on change of circumstances

- Section 27(4) – final meeting review and panel decides that the offender has not satisfactorily completed contract
- Section 27A(2) – in the interests of justice for the referral order to be revoked
- Section 27 A (3) – making good progress under the contract.

If the YOT cannot secure the young person's co-operation in the assessment process the YOT will need to convene the initial panel in the usual way, notifying the young person so that they are aware of the requirement to attend. The youth offending team panel member should report to the panel on the offender's failure to attend the initial panel meeting with an explanation of the attempts made to secure attendance. The YOT must ensure that a record is kept of all attempts to contact the young offender and their parents/carers. The panel should then decide whether the case should be referred back to court or whether to adjourn to another meeting date. Where the reason appears to be unacceptable, or no reason is provided, the panel should refer the young offender back to the court to consider resentencing, stating the reasons in writing. The youth offending team case worker must report to the court on the referral back within ten working days.

For referral back to court, the panel should refer back to a youth court which acts for the area in which it appears to the panel that the young person resides or will be residing for an under 18 year old; or an adult magistrates court acting for that area if the young person is over 18 years (Schedule 1, Part 1, paragraph 1(2)).

What issues should be considered by the courts when re-sentencing during the currency of the referral order?

If the panel has referred the offender back to court and the court revokes the referral order under paragraph 5 of Schedule 1 then the court, when re-sentencing, shall have regard to:

- (i) the circumstances of his referral back to the court; and
- (ii) where a contract has taken effect under section 23 of the Act, the extent of his compliance with the terms of the contract (paragraph 5(5)(b) of Schedule 1).

What is the effect of a not guilty plea or a change of plea?

Not guilty plea

If the offender is convicted following a trial he may not be given a Referral Order if he pleaded not guilty to all the charges. There must be at least one plea of guilty to either the offence (an offence punishable with imprisonment) or to a "connected offence" and the offender must never been convicted by or before a court in the United Kingdom of any offence other than the offence and any connected offence to satisfy the compulsory referral conditions. To satisfy the discretionary referral conditions the offender must have pleaded guilty to the offence or if the offender is being dealt with by the court for the offence and any connected offences, to at least one of these offences, before the court can make a Referral Order (see guidance and sections 16 and 17).

Change of Plea

If a young person, who has initially pleaded not guilty to an offence changes his plea to guilty (even during the course of a trial) and that plea of guilty is accepted by the court, the offender will be treated for the purposes of section 17 of the PCC(S)A (the referral conditions) as if he had pleaded guilty from the outset.

What is the procedure following a guilty plea by post, when the young person is eligible for a referral order?

Where a young person (note that under 16s cannot plead guilty by post) pleads guilty to an offence by post, under the procedure in section 12 of the Magistrates' Courts Act 1980, the written plea satisfies the referral order legislation exactly as if the offender had appeared and pleaded in person.

However, the law requires that the referral order should be explained to the offender in ordinary language – section 18(3) of the Powers of Criminal Courts (Sentencing) Act 2000. The courts have interpreted this as requiring an oral explanation to the defendant in person. In cases involving young people where a referral order is a likely disposal, the court will be unable to fulfil its obligations under section 18(3) unless the young person is present in court and will not therefore be able to impose the order until the young person attends court.

What if the young person is remanded to secure accommodation or detained under the Mental Health Act?

If a young person subject to a referral order is remanded to secure accommodation or detained under the Mental Health Act 1983 and further action on the order is impracticable, a full record should be made of the circumstances, the court should be informed of the situation and action resumed on the order as soon as possible, as appropriate, at the direction of the court.

What if the young person moves to – or has previous convictions in – Scotland and Northern Ireland?

Referral Orders are only available in England and Wales and there is no provision for them to continue if the young person moves to Scotland or Northern Ireland. The practical solution is for the Panel to hold a progress meeting with a view to referring the offender back to court to revoke the order. This may require “prompting” the offender to make a request under section 26(3)(a)(ii) of the PCC(S)A.

What happens if a young person who otherwise satisfies the referral order criteria becomes 18 during the course of the court proceedings?

If a young person attains the age of 18 during the course of court proceedings, section 29 of the Children and Young Persons Act 1963 allows the court a discretion to deal with the offender as if he/she were still 17 years old.

Where the court chooses to exercise its discretion under s 29 and the compulsory referral conditions are met, it must pass a Referral Order.

It is not open to the court to pass an alternative youth order. If the court chooses not to exercise its discretion under s 29 in these circumstances it must sentence the offender as an adult.

If, on the other hand, only the discretionary referral conditions are met, it is open to the court to exercise the discretion under s 29 and pass either a Referral Order or any other appropriate youth sentence.

It should be noted that s 29 will only have effect where the young person attains the age of 18 during the proceedings. Where the young person turns 18 between the commission of the offence and the commencement of proceedings begin they must be tried and sentenced as an adult and may not receive a Referral Order.

Can a referral order be discharged early for good progress?

Yes. Section 27A provides the power for a youth offender panel to refer the offender back to the appropriate court, where they consider it is in the interests of justice for the referral order to be revoked. The interests of justice can include where the offender makes good progress (section 27A(3)).

If the Court gives an absolute discharge to a young person for committing a further offence whilst on a referral order, will the absolute discharge be given only for this offence and does this mean that the Referral Order is also discharged?

The absolute discharge is only for the new offence and not for the existing referral order. The referral order would continue.

Can a young person who is on a referral order go on holiday during their order?

There is no legal bar to the young person going on holiday. The legislation allows for variation of the contract under s 26 of PCC (S) Act 2000, which is what the YOT may need to do in these circumstances, depending on the terms of the contract. The YOT may want to consider applying to extend the order so that the young person completes all the requirements in their contract (s 27B of PCC (S) Act 2000). The young person will still be required to comply with the terms of the contract and arrangements should be made for any requirements that are due to be undertaken during the course of the holiday to be completed on their return instead.

What is the rehabilitation period for a compensation order made with a referral order?

Where the court makes a compensation order in conjunction with a referral order, the conviction will be spent when both the compensation order has been paid and the referral order (or contract) has been concluded (s5(8), s6(2) ROA 1974). If the compensation is paid before completion of the referral order then both will become spent on the date on which the referral order (or contract) ends. However, if when the referral order is completed the compensation has not yet been paid, then the rehabilitation period for the referral order will not end until payment is completed.

If a young person receives a Bindover whilst subject to a referral order, will it revoke the referral order?

If a young person receives a bindover while on a referral order, then the referral order will be revoked. Schedule 1, PCC(S) Act 2000 paragraph 14–15.

If a Referral Order is returned to Court and the Court allows the Order to continue, are the warnings ‘reset’, or does the Order continue with all warnings used meaning that one further failure to comply results in an immediate return to Court?

The clock is reset. This means that the young person will start with a clean slate once breach action has concluded. This is the case for a Referral Order returned to Court for non compliance and allowed to continue by the Court or a Referral Order returned to Court for non compliance and subsequently extended. The only scenario where the clock would not be reset would be where the breach was not proven.

Can panel members refer cases back to court where the breach is being denied by the young person based upon information brought to their attention by a victim?

The panel will have to be satisfied that there is sufficient evidence of a breach having been committed before deciding to refer the matter back to the court, and this might include relying on information brought to their attention by a victim. It is of course up to the court to decide if a breach has taken place and to decide whether to revoke the order (Schedule 1, paragraph 5).

Can a curfew with electronic monitoring be part of a Referral Order?

Section 23 (3) of PCC(S) Act 2000 prohibits the use of electronic monitoring in a Referral Order contract.

Is a Referral Order spent immediately if it is revoked early?

Yes, assuming there is no other order in force e.g. a compensation order, a referral order which is revoked on the basis of the offender’s good progress will be “spent” from the time it is revoked.

If a Referral Order is made in England and Wales, is it enforceable if the young person resides in Scotland or absconds there?

A Referral Order which is made in England and Wales can be enforced if the young person absconds north of the border or is in breach and happens to live in Scotland. Section 136(7A) of the Criminal Justice and Public Order Act 1994 allows a either a Scottish, English or Welsh constable, or indeed any other person specified in the warrant, to arrest a young person in respect of whom a court in England/Wales has issued an arrest warrant following a suspected breach of a YRO or RO. A summons may also be issued in either case and should be addressed to their place of residence, whether that be in Scotland or England/Wales.

Are three panel members needed to sit on a youth offender panel?

Yes. Three panel members are required. One YOT member and two who are not YOT members.

Is it true that there is nothing laid out in the 2000 Act which specifies the maximum period of an extension for a breach of a referral order for the commission of further offences?

Yes. However, any period of extension must not exceed beyond the total 12 month limit for a referral order (Schedule 1, Paragraph 13 (1)).

What options are available to the Court when dealing with a breach of a youth offender contract?

The court has the discretion to revoke the referral order and re-sentence the offender for the original offence. The resulting sentence could include a youth rehabilitation order or a Detention and Training Order. Where the court finds that the referral back to the court from the youth offender panel was not justified, or where there has been non-compliance but it decides not to revoke the contract, the court can order the existing contract to continue. Additionally, the court has the power to fine a young person up to a maximum of £2500 and to extend the referral order for up to 12 months for particular circumstances.

Does the court have the power to extend the youth offender contract for breach of the contract, when the referral order contract has already expired?

No. However, the court has the power to fine the young person up to a maximum of £2500. (Schedule 1, Paragraph 6A (4), 2000 Act)

Is the power to extend a referral order only available on the initial order?

No. The court now has the power also to extend a second or subsequent referral order where a young person has been convicted of additional or further offences in the same way as a first referral order can be extended. (Schedule 1, Paragraph 10-12, 2000 Act)

Is there still a requirement for the Panel to write a report to the Court to extend a referral order if the young person has committed a further offence after the referral order offence?

No. The exceptional circumstances requirement has been removed. Referral Orders are extended in the same way for offences before and after the referral order offence (Schedule 1, Paragraph 10, 2000 Act)

Can you explain how the new discretionary revocation power provided to the court to give concurrent and consecutive referral order sentences for further offences will work in respect of a young person who is already on an existing referral order?

There is already a power to allow for referral orders to run concurrently. The amendments to the 2000 Act provide an additional power to the court to allow for consecutive referral orders. This will allow the court to determine whether

the new referral order should start immediately, overlap concurrently with an existing referral order/s or whether it should start at the expiry of the existing referral order or orders, consecutive with the existing referral order/s.

Does a youth offender panel have the power to extend a referral order?

No. A youth offender panel doesn't have the power to extend a referral order. That has to be done by a court (as the independent and impartial tribunal for Article 6 purposes). Section 27B(1)(c) of the 2000 Act says that the youth offender panel must consider the interests of justice before referring the young person back to the court to request the court to extend the length of the period (section 27B(2), 2000 Act).

Can a young person receive a referral order after receiving a conditional discharge for their first offence?

Yes. This is because a conditional discharge under section 14 (1) of PCC(S) A 2000 is not deemed to be treated as a conviction unless the young person breaches the conditional discharge and is resentenced. One of the compulsory referral order conditions under section 17 (1) of PCC(S) A 2000 is that the young person must not be convicted before, then as long as the young person pleads guilty, they meet the section 17 (1) compulsory referral conditions. Therefore the court will have to impose a referral order, if it is not considering custody, a hospital order, conditional discharge, absolute discharge, as referral orders are imposed for conviction of offences where the sentence is not fixed by law (section 16(1) of PCC(S) A 2000).