

# **Criminal Justice and Courts Bill**

## **Referral orders**

### **Introduction**

1. A referral order is the community sentence most often used by the courts when dealing with 10 to 17 year olds, particularly for first time offenders who plead guilty. Referral orders require that an offender must agree a contract of rehabilitative and restorative elements to be completed within the sentence.
2. The Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPOA) removed restrictions on the repeated use of the referral order with the aim of promoting its use for the delivery of restorative justice conferencing. However, removing these restrictions now means that when the court deals with a breach of a referral order or a further offence, the original referral order is automatically revoked. The Government is concerned that this undermines the restorative justice process, as the important ongoing work under the contract is lost on revocation.

### **What is the current position?**

3. A referral order is an order available for young offenders who plead guilty to an offence whereby the young offender is referred to a panel of two trained community volunteers and a member of the youth offending team. It can be for a minimum of three months and a maximum of twelve months. The youth offender panel is headed by two volunteers from the local community and a member of the youth offending team. Referral orders can include reparation or restitution to the 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.
4. Following the introduction of the LASPOA, courts now have discretion to give a referral order where the young person pleads guilty regardless of whether the child has been subject to a referral order previously. There is no limit on the number of referral orders that a repeat offender can receive. However, minor technical issues have arisen as a result of this change. Where a referral order has been breached or further offences committed, the court must revoke the order, which results in important ongoing work under the contract being lost. This can act as an obstacle both to the effective use of restorative justice principles by youth offender panels and addressing offending behaviour by children.
5. Restorative Justice (RJ) through referral orders offers victims an opportunity to be heard and to have a say in the resolution of offences, including agreeing restorative or reparative activity for the young offender to undertake. It can provide a means of closure and enable the victim to move on. RJ also provides an opportunity for young offenders to face the consequences of their actions and the impact that they have had upon others. In this way, RJ has the potential to help rehabilitate offenders and prevent offending

## **What are the proposed changes?**

### 6. The provisions in the Criminal Justice and Courts Bill:

- Give the court a discretionary revocation power to be exercised in the interests of justice where a second referral order is imposed by the court in respect of further or additional offences;
- 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; and
- Introduce new sanctions available to the court for breach of a referral order. At present the court only has a power to revoke the order or ignore the breach. These changes allow the court to impose a fine of up to £2,500 or extend the referral order for up to 12 months.

## **How will it work?**

7. Clause 35 provides the court with discretion over whether to revoke an existing referral order for further or additional offences. The court may now impose a short single Youth Rehabilitation Order requirement, a fine or a new referral order for further offences without having to revoke the existing referral order. This enables the existing referral order contract and any restorative justice programme to be completed.
8. Clause 34 will now give the court the power to extend a second or subsequent referral order where the child has been convicted of additional or further offences in the same way as the first referral order can currently be extended in those circumstances. Now that the repeated use of the referral order is possible, it makes sense to remove this restriction and allow extension to any subsequent referral order to provide greater flexibility to the court and support the delivery of restorative justice within the referral order.
9. In the event of a breach, clause 33 gives the court greater flexibility where the court finds that the referral order has been breached (i.e. that the terms of the youth offender contract have not been complied with). Presently, when an offender is referred back to court and where the court agrees with the panel that the offender has breached the contract, the court has the power to revoke the referral order and resentence the offender. However, this can have a disruptive effect on the delivery of restorative justice.
10. Clause 33 also provides alternatives to the revocation of the referral order, such as imposing a fine (up to a maximum of £2,500) or extending any of the current referral orders up to a maximum of 12 months in circumstances where the offender has been referred to the court for breach.