



Circular No. 2012/07

TITLE REFERRAL ORDERS; LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012 (PROVISIONS COMMENCING ON DECEMBER 3 2012)

From: Youth Justice and Women
Ministry of Justice

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This circular is for: Lord Chief Justice, Justices of the Supreme Court, President of the Queen's Bench Division, Deputy Head of Criminal Justice, Senior Presiding Judge for England and Wales, Lords Justices of Appeal, High Court Judges, Presiding Judges, Resident Judges, Crown Court Judges, District Judges (Magistrates' Courts), Chairmen of the Justices, Council of Circuit Judges, Director of Public Prosecutions, Chief Officers of Police in England and Wales, HM Prison Service Director-General, Chief Executive of HM Courts and Tribunals Service, Chief Crown Prosecutors, Chief Executive of the Youth Justice Board for England and Wales, Chief Probation Officers, Director of Crime, Delivery Directors, Heads of Crime, Cluster Managers, Regional Support Units, Court Managers Crown Courts, Court Managers Magistrates Courts, Clerks to the Justices, Judicial College, Magistrates' Association, National Bench Chairmen's Forum, Bar Council, Criminal Bar Association, Law Society, Justices' Clerks' Society, Victim Support, Association of Chief Police Officers, Association of Police Authorities, Prison Reform Trust.

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012: REFERRAL ORDERS; IMPLEMENTATION OF SECTION 79 (COMMENCEMENT ORDER NO. 4 AND SAVING PROVISIONS) ORDER

Summary

1. This circular provides details of the new referral order provisions. Section 79 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("the 2012 Act") came into force on 3 December and amends the Powers of Criminal Courts (Sentencing) Act 2000 ("the 2000 Act"). A copy of the Commencement Order is available at www.legislation.gov.uk/uksi/2012/2906

2. This document should not be regarded as providing legal advice. **Legal advice should be sought if there is any doubt as to the application or interpretation of the legislation.**

Referral Orders For Young Offenders: law prior to coming into force of section 79 of 2012 Act

3. Sections 16 and 17 of the 2000 Act set out the circumstances in which a magistrates' court must or may impose a referral order when sentencing a child or young person under the age of 18. When a child or young person is given a referral order, he or she is required to attend a youth offender panel, which is made up of two volunteers from the local community and a panel adviser from a youth offending team. The panel, with the young person, their parents/carers (if they are under 16) and the victim (where appropriate), aim to agree a contract lasting between three and 12 months. The aim of the contract is the prevention of reoffending by the offender.
4. Under section 16(1) of the 2000 Act, a referral order cannot be given at present to an offender where the sentence: is fixed by law; the court decides to impose a hospital order, is so serious that the court decides a custodial sentence is necessary; or the court proposes to give an absolute discharge.
5. Subject to those exceptions, under sections 16(2) and 17(1) of the 2000 Act a compulsory referral order must be given to a child or young person where the following conditions are met, namely:
- the offence is punishable with imprisonment,
 - the offender pleads guilty to the offence and any connected offence,
 - the offender has not previously been convicted of an offence.
6. Under sections 16(3) and 17(2)-(2D), a discretionary referral order may be given to a child or young person where the following conditions are met, namely:

- where the compulsory referral conditions are not met,
- the offender pleads guilty to the offence or if the offender is being dealt with by the court for the offence and any connected offence, pleads guilty to at least one of those offences, AND
- either the offender has no previous convictions other than the present offence and any connected offence OR has not been referred to a panel more than once before. The court must consider that there are exceptional circumstances before a referral order can be made in respect of an offender with more than one previous conviction or who has previously received a referral order, and there must be a recommendation from a YOT or probation officer.

Section 79(1): Referral Orders (Conditional Discharge)

7. Section 79(1) of the 2012 Act amends section 16(1)(c) of the 2000 Act to widen the powers of a youth or magistrates' court to deal with young offenders by way of a conditional discharge, where currently they may be required to impose a referral order. As a result, where the exceptions in 16(1)(a) and 16(1)(b) do not apply, where the Court decides that it is appropriate to discharge the young offender it will have the option to conditionally discharge the young offender in addition to the currently available option of absolutely discharging them.

Section 79(2) Removing the restriction on the repeated use of the referral order

8. Section 79(2) of the 2012 Act amends section 17 of the 2000 Act. It removes the existing conditions set out in section 17(2A) to (2C) of the 2000 Act and amends section 17(2) of the 2000 Act in order to widen the powers of a youth or magistrates' court to deal with a young offender who has pleaded guilty to an offence (or where the offender is before the court for more than one offence, to at least one of those offences) by way of a referral order. As a result, the court is no longer limited in its ability to impose a referral order on to a young offender who has previously received referral orders in the past. There is no limit to the number of Referral Orders a young offender can receive or on the number of previous convictions a young offender receiving a referral order can have. The young offender also does not need to be recommended as suitable for a second or subsequent referral order by an appropriate officer and the exceptional circumstances requirement for this is removed.
9. The statutory guidance on referral orders has been revised to take into account the new legislation and feedback from practitioners in the practical application of referral orders since April 2009. It is available electronically through the MOJ website www.justice.gov.uk/youth-justice/courts-and-orders/disposals/referral-order

Further Information

10. Copies of the Act and Explanatory Notes are available at
www.legislation.gov.uk/ukpga/2012/10/section/79/enacted

11. How the LASPO Act 2012 affects youth justice:

www.justice.gov.uk/youth-justice/courts-and-orders/legal-aid-sentencing-and-punishment-of-offenders-act-2012

Yours sincerely

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