



National Offender Management Service

- The adult community sentence in England and Wales is the community order, introduced by the Criminal Justice Act 2003. The order has thirteen requirements, three of which are treatment requirements:
 - the alcohol treatment requirement;
 - the drug rehabilitation requirement, and
 - the mental health treatment requirement.
- The offender's consent is required before a court can impose a treatment requirement. If an offender does not give that consent the court can impose custody even if the offence is not otherwise serious enough to justify it. However, this is a process carried out at sentencing. The community order, with agreement to treatment it not an incentive plea bargain offered pre conviction.
- If the offender does consent, but then fails to comply with the requirement without a reasonable the case may go back to court for breach action. The court may penalise the breach if it is proved. However, the court may not breach an offender who has failed to comply with the treatment requirement on the ground only that he had refused to undergo any surgical, electrical or other treatment if, in the opinion of the court, his refusal was reasonable having regard to all the circumstances. Also, a court may not amend a treatment requirement unless the offender expresses his willingness to comply with the requirement as amended.
- The treatment requirements may therefore constitute what the Secretariat paper refers to as "quasi-compulsory measures
- The Criminal Justice Act 2003 does not provide generally for alternatives to custody. It creates two sentencing "thresholds". A court may not impose custody unless a community sentence cannot be justified. So, if the custody threshold is passed a community sentence cannot generally be passed, although there are exceptions where there are mitigating factors or where the offender is "mentally disordered".
- However we are supporting the Department of Health to develop and pilot forms of 'treatment based alternatives to custody' for drug dependent and mentally ill offenders. Proposals are due to be submitted to Ministers by March 2013.

Drug offenders

Quasi-compulsory or coerced treatment

Research shows that mandatory treatment is not effective and suggests that coercion into treatment, such as referral from the criminal justice system, is generally as effective as treatment which is entered into voluntarily.

All examples of coercion from Criminal Justice System are based on the widely recognised substantial evidence base that involvement in treatment is beneficial to health and well-being and also in reducing offending/re-offending.

Criminal Justice System interventions are also effectively a win or no-lose option for the arrestee/offender - as they involve a positive coerced choice - involving the opportunity to take a reduction of their intended CJS penalty in return for their admission of guilt and involvement in treatment.

There is no possibility to mandate treatment in the NHS except under the Mental Health Act (and even then only on a case by case basis for severe conditions meeting certain criteria i.e. not just for a schizophrenia diagnosis - but only for severe episodes of the schizophrenia when risk is particularly high and the illness is likely to represent a danger to the individual or other members of society).

The proposed removal of the pre-existing exception for dependence in the Mental Health Act of the Act's definition of mental disorders - the conditions that would be liable to enforced treatment - was strongly resisted by a wide mental health coalition when this change was proposed in the early 2000s. And this intended change to legislation was removed before the current legislation was passed.

Treatment as an alternative to criminal charge

Conditional Cautions

Conditional cautions are a statutory disposal introduced by the Criminal Justice Act 2003. They can be offered when the public interest can best be served by an offender complying with suitable conditions (which could include treatment) rather than a prosecution. Failure to comply with the conditions can result in prosecution for the original offence.

A conditional caution can only be administered where:

- (i) the offender admits the offence;
- (ii) there is sufficient evidence to charge;

- (iii) it is in the public interest to offer a conditional caution; and
- (iv) the offender agrees to accept the conditions.

An offender must agree to accept the conditional caution and the conditions attached. Failure to comply with the conditions can result in prosecution for the original offence.

Currently conditional cautions are only available for summary (non-motoring) offences and a few either way offences such as theft, criminal damage and simple possession of drugs.

The conditions that can be attached to a conditional caution can be rehabilitative, reparative or punitive, and can include attendance at a treatment course. Conditions must always be appropriate, proportionate and achievable.

Recent legislation (Legal Aid, Sentencing and Punishment of Offenders Act) will remove the requirement to refer to CPS in conditional cautions. Currently, the decision to offer a conditional caution is always taken by the Crown Prosecution Service (CPS). This will enable police officers to make the decision to offer a conditional caution, set and vary conditions, without reference to the CPS.

Rehabilitation and treatment through community sentencing

The type, intensity and duration of a drug rehabilitation requirement (DRR) or an alcohol treatment requirement (ATR) of a community order (CO) or suspended sentence order (SSO) should primarily be determined by assessed need provided the overall restriction on liberty imposed by the CO or SSO in its totality is commensurate with the seriousness of the offence(s). Other more punitive requirements can be added to a CO or SSO, where necessary, to reflect offence seriousness.

Offenders can have their orders revoked for non-compliance following breach proceedings, on conviction of a further offence(s) or on application of the responsible officer in light of circumstances which have arisen since the order was made e.g. offender complying with the requirements but making unsatisfactory progress.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 has removed restrictions on the minimum duration of drug rehabilitation and alcohol treatment requirements so as to make these a more flexible option for use by the courts.

Drug Rehabilitation Requirement (DRR)

The Drug Rehabilitation Requirement (DRR) is the primary means for sentenced offenders who are dependent on or have a propensity to misuse drugs to address their drug problem as part of a community order or suspended sentence order. DRRs offer courts an intensive and effective alternative to custody for tackling the drug misuse and offending of many of the most serious and persistent drug misusing offenders. DRRs involve referral into treatment, regular testing, court reviews of progress and are subject to rigorous enforcement.

The proportion of offenders successfully completing DRRs rose from 47% in 2008/9 to 56% (7360 completions) in 2011/12¹. This is encouraging because we know from research relating to the drug treatment and testing order (DTTO), which was replaced by the DRR, that offenders who complete orders have significantly lower reconviction rates (53%) than those that don't (91%)², although it is not possible to attribute this difference entirely to the programme.

Alcohol Treatment Requirement (ATR)

The alcohol treatment requirement (ATR) of a community order or suspended sentence order is available to courts for offenders who are dependent on alcohol and whose dependency requires and is susceptible to treatment.

For those offenders who are not dependent but have associated problems, the courts can make use of supervision, programme and activity requirements to signpost them into support and advice services to help tackle their need.

72% of offenders (5453) successfully completed ATRs in 2011/12³.

¹ Ministry of Justice (2012) National Offender Management Service Annual Report 2011/12: Management Information Addendum. London: Ministry of Justice.

² Hough, M., Clancy, A., McSweeney, T. and Turnbull, P.J. (2003) The Impact of Drug Treatment and Testing Orders on offending: two year reconviction results. Home Office Research Findings No. 184. London: Home Office.

³ Ministry of Justice (2012) National Offender Management Service Annual Report 2011/12: Management Information Addendum. London: Ministry of Justice.