

## The courts and drug laws

### Procedure where Community Orders are breached

If the offender has failed to comply with the requirements of the CO then a warning will be issued. A warning does not have to be given if:

- The offender has received a warning in the past 12 months for failing to comply with present order, or
- The failure to comply is put before the Court.

A warning must:

- Describe the circumstances of the failure;
- State the failure is unacceptable; and
- Advise the offender that if another warning is given within the next 12 months he may be brought before the Court for breach of the CO.

If the offender has already received a warning and commits a further breach, without reasonable excuse, information about the breach must be presented to the Court.

Where the Court is satisfied that the offender has breached the CO, the Court may:

- Amend the CO to make the order more onerous, or
- Deal with the offender in the manner that the Court would have originally done so had the order not been imposed, or
- If the original offence was one which would not have attracted a custodial order and the offender has wilfully and persistently failed to comply with the order, the Court may impose a custodial sentence of up to 51 weeks.

In some cases a CO may be revoked if the Court thinks it is appropriate to do so in the interests of justice and the offender can be dealt with in some other way. Circumstances that may result in an order being revoked include the offender making good progress. The Court should take into account how well the offender has complied with the order.

#### What is the difference between a DTTO and a DRR?

DRRs have replaced DTTOs. A DTTO is a stand alone community sentence whereas a DRR can be part of a number of requirements which make up a CO. DRRs have a wider application as they can be applied to offences ranging from low seriousness to high seriousness. DTTOs are still available for offences committed before 4 April and for 16 and 17 year olds in any event.

#### Intervention Orders

An Intervention Order is a civil order. It allows the Court to impose an order for drug treatment and testing

alongside an anti-social behaviour order ('ASBO'). Intervention orders came into force on 1 October 2006 and were introduced under s20 Drugs Act 2005 which amended the Crime and Disorder Act 1998.

An intervention order may only be imposed where the defendant is at least 18 years old. The order can only be imposed if the Court is satisfied that:

- The intervention order is desirable in order to prevent repetition of the behaviour that has led to the ASBO; and
- Appropriate activities which relate to the defendant's drug misuse (i.e. treatment) are available; and
- The defendant is not subject to another intervention order or treatment order.

The Court must explain the following to the defendant before imposing an Intervention Order:

- The effect of the order and the requirements;
- The consequences of failing to comply with the order;
- That the Court can review the order on application either by the defendant or by the relevant authority who brought the proceedings.

An Intervention Order cannot be imposed for more than six months. Failure to comply with the terms of the order is an offence leading to a fine of up to £2500.

#### Proceeds of Crime Act 2002

The Proceeds of Crime Act 2002 ('POCA') created powers for the courts to recover the proceeds of crime. This is known as asset recovery. POCA allows for the recovery of assets in both criminal and civil cases.

The recovery of assets in criminal cases is achieved using Confiscation Orders. The Crown Court has the power to make a Confiscation Order where a defendant has been convicted of an offence in that Court or in relation to cases which have been referred to the Crown Court for sentencing. A Confiscation Order can only be made if it has been established that the defendant has a criminal lifestyle and has benefited from that lifestyle.

Asset recovery is possible even if there has been no criminal conviction or charge. This is referred to as civil recovery. Part 5 of POCA introduced the civil seizure of property related to unlawful conduct. POCA established the Assets Recovery Agency ('ARA'), which is responsible for the exercise of these new powers.

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