

# ENFORCEMENT OF PUNISHMENT, MEASURES AND SANCTIONS IN THE UNITED KINGDOM – ENGLAND AND WALES

Cosmin Iulian CREȚU\*

## Abstract

*As early as the 1970s, alternative measures to imprisonment began to be considered at EU level. This article analyzes the types of sentences and their enforcement in the United Kingdom – England and Wales, with emphasis on the particularities of the enforcement of the prison sentence and on alternatives to the prison sentence, as provided for in the relevant legislation of these states.*

**Keywords:** *alternative measures to imprisonment, types of sentences, enforcement in the United Kingdom, enforcement of the prison sentence, alternatives to the prison sentence.*

## 1. Introduction

The issue of penitentiaries as institutions that produce crime by their very existence has been discussed at large in doctrine, in congresses of criminal law and criminology, constantly in the working groups of the Council of Europe for the elaboration of Recommendations in the European criminal and criminal enforcement field<sup>1</sup>.

Thus, since the 1970s, alternative measures to imprisonment began to be considered at the level of the European Union, the first normative act in which these ideas materialized being a resolution adopted by the Council of Europe in 1965, namely the Resolution (65) 1 on suspended sentences, probation and other alternatives to imprisonment, followed by a resolution adopted by the Council in 1976, namely Resolution (76) 10 on certain alternative measures to imprisonment.

The first piece of legislation that provided a complete set of rules on the application and implementation of community sanctions was Recommendation R (92) 16 to Member States on the European Regulation on community sanctions and measures, adopted by the Committee of Ministers under Article 15 b of the Statute of the Council of Europe on 19 October 1992, on the occasion of the 482<sup>nd</sup> meeting of the Delegations of Ministers.

Through this paper we set out to investigate the types of sentences and their manner of enforcement in the legal system in the UK – England and Wales, focusing on the particularities of the manner of enforcing the prison sentence and on the alternatives to imprisonment, as provided for in the relevant legislation of these States.

## 2. Penalties, measures and sanctions applicable to individuals

All criminal law systems have a common commitment to acquitting the innocent and punishing the guilty. This common commitment gives them a single unifying goal that focuses on the institution of punishment. Without punishment and the institution meant to establish and execute the punishment, there is no criminal law<sup>2</sup>.

In the United Kingdom, pursuant to the provisions of Criminal Justice Act 2003, the Magistrates' Court and the Crown Court can pass a range of sentences which we list in decreasing order of severity<sup>3</sup>:

- a) custody – immediate/suspended;
- b) community sentence;
- c) fine/compensation order;
- d) conditional or absolute discharge.

In order to determine an appropriate punishment for an individual over the age of 18, according to Section 142 of the Criminal Justice Act 2003, the court must take into account the purposes of sentencing, respectively:

- a) The punishment of offenders;
- b) The reduction of crime (including its reduction by deterrence);
- c) The reform and rehabilitation of offenders;
- d) The protection of the public; and
- e) The making of reparation by offenders to persons affected by their offences.

Furthermore, in order to determine the appropriate punishment, the court must take into account the principle pursuant to which the punishment should not be harsher than what is necessary in relation to the seriousness of the crime committed. Thus, pursuant to Section 143 par. (1) of the Criminal Justice

\* PhD Candidate, Faculty of Law, "Nicolae Titulescu" University of Bucharest (e-mail: avccretu@gmail.com).

<sup>1</sup> Ioan Chiș, Alexandru Bogdan Chiș, *Executarea sancțiunilor penale*, Universul Juridic Publisher, Bucharest, 2015, page 189.

<sup>2</sup> George P. Fletcher, *Basic Concepts of Criminal Law*, Oxford University Press Publisher, New York, 1998, page 25.

<sup>3</sup> Martin Hannibal, Lisa Mountford, *Criminal litigation 2019-2020*, Oxford University Press Publisher, Oxford, 2019, page 394.

Act 2003, the court shall determine the seriousness of the offence in relation to two essential aspects, respectively (i) the offender's culpability in committing the offence and (ii) any harm which the offence caused, was intended to cause or might foreseeably have caused.

Sections 143-146 of the Criminal Justice Act 2003 comprise a number of aggravating factors that the court must take into account when determining the appropriate punishment. Thus, the court will hold an aggravating factor in case of previous convictions of the defendant that it considers relevant in relation to the nature of the crimes committed and the time elapsed from the date of their commission until present day. The commission of the crime during the period when the offender was released on bail, as well as the commission of the crime on grounds of race, religion, sexual orientation or disability are also aggravating factors that must be considered by the court when establishing the punishment.

Moreover, Section 144 par. (1) of the Criminal Justice Act 2003 provides a special case of reducing the punishment limits in case of concluding a guilty plea agreement with the offender.

In this respect, in order to determine the punishment to be applied to the offender who pleaded guilty, the court must take into account (i) the status of the proceedings in case of the offence in respect of which the offender has indicated his intention to plead guilty; and (ii) the circumstances in which this intention was manifested.

In case of a guilty plea agreement concluded with the offender, the punishment limits for the offence committed by the offender shall be reduced by one third. This reduction of the punishment limits is not expressly provided in the Criminal Justice Act 2003, but it is found in the Sentencing Council for England and Wales's Guideline on the "Reduction in Sentence for a Guilty Plea".

The sentencing guidelines issued by the Sentencing Council for England and Wales, the Crown Court and the Magistrates' Court are binding on the courts and include guidance on the aspects that must be considered by the court and which may influence the punishment following to be applied. These guidelines provide different levels of punishment established depending on the damage caused to the injured party and the levels of guilt of the offender. The purpose of these guides is to ensure a consistent practice in England and Wales<sup>4</sup>.

#### *Discharge*

A discharge may be ordered in case of minor offences, when the court finds that, in relation to the circumstances of the case, including the type of offence committed and the person of the offender, no punishment is required. If the court finds that the offender's experience of appearing before the court

during the trial is sufficient to correct him, the court may order an absolute discharge. Thus, in this case no punishment is applied to the offender, but his deed remains recorded in his criminal record.

However, if the court finds that, although the offence is of a lesser serious nature, the offender's experience of appearing before the court during the trial is not sufficient to correct him, the court may order a conditional discharge, which entails discharge under the condition that the offender does not commit another offence for a period not exceeding three years as of the date of the ruling.

In case of perpetrating a new offence within the period for which the conditional discharge was ordered, the court may revoke this measure and try the offender both for the offence that was the subject of the conditional discharge and for the new offence committed within the said period.

#### *Fine*

In the legal system of England and Wales, the fine is the most common type of punishment in court decisions, being incidental to minor offences such as road traffic offences or theft. The amount of the fine is determined by the court depending on the seriousness of the offence.

Thus, pursuant to Section 164 par. (1) of the Criminal Justice Act 2003, before determining the amount of the fine to be imposed on the offender who is an individual, the court must inquire into his financial circumstances. The amount of the fine fixed by the court must reflect the seriousness of the offence [Section 164 par. (2) of the Criminal Justice Act 2003].

When fixing the amount of the fine to be imposed on the offender (whether an individual or legal entity), the court must take into account the circumstances of the case including, among others, the financial circumstances of the offender so far as they are known to the court [Section 164 par. (3) of the Criminal Justice Act 2003].

In this respect, before sentencing the offender to pay a fine, the court may issue a financial circumstance order in respect of him, which entails the obligation of the offender to make available to the court, within a certain period, a statement of his financial status.

A fine must not exceed the limit provided by law for the crime committed, limit that is established on levels. The maximum value is:

- Level 1 (£250)
- Level 2 (£ 500)
- Level 3 (£ 1,000)
- Level 4 (£ 2,500)

### **3. Custodial sentence**

The custodial sentence is the harshest punishment under the law system from England and Wales and applies if the offence is "so serious that neither a fine

<sup>4</sup> See <https://www.sentencingcouncil.org.uk/about-sentencing/about-guidelines/>.

alone nor a community sentence can be justified for the offence" (Section 152 par. (2) of the Criminal Justice Act 2003). However, the court may order a custodial sentence if (i) the offender fails to express his willingness to comply with a requirement which is proposed by the court to be included in a community order and which requires an expression of such willingness (ii) the offender fails to comply with a pre-sentence drug testing order (Section 152 par. (3) of the Criminal Justice Act 2003).

In respect of the length of the custodial sentence, the court must opt for the shortest term in relation to the seriousness of the offence or offences committed (Section 153 par. (2) of the Criminal Justice Act).

However, this obligation shall not apply to sentences fixed by law or to indefinite sentences or to extended sentences provided by Sections 224- 229 of the Criminal Justice Act 2003.

#### *Enforcement of the custodial sentence*

Enforcement of the custodial sentence differs depending on the period for which it was ordered, the relevant provisions on this matter being found in Sections 237-268 of the Criminal Justice Act 2003.

Thus, in case of custodial sentences for a period of less than 12 months, half of this period is served in custody, while for the other half the offender is on unconditional license in the community.

On the other hand, in case of custodial sentences for a period of 12 months or more, except for dangerous offenders and those sentenced to an extended sentence, the offender shall serve half of that period in custody, and for the other half the offender is served on license in the community, subject to obligations recommended by the court. The probation service is not bound by the obligations recommended by the court through the sentence, and may establish other obligations or obligations in addition to those recommended by the court.

Breach of the obligations imposed by the probation service during the conditional licence will lead to the revocation of the conditional licence and to serving the remaining difference in custody. Revocation may also occur when the offender commits a new offence during the period of unconditional or conditional licence in the community. In this situation as well, the offender is to serve the difference in custody.

#### *Supervision of offenders subject to custodial sentences for less than 2 years*

Pursuant to Section 256AA of the Criminal Justice Act 2003, in case of custodial sentences for a period between one day and 2 years, offenders shall be subject to a period of post-sentence supervision. This period shall run from the time when the offender has served his sentence and shall end on the expiry of the period of 12 months as of the moment of his unconditional or conditional license in the community.

Thus, the offender will serve half of the sentence in custody and the other half in the community, and will

be under supervision from the time the sentence is completed within the community as a result of his unconditional or conditional license and until the expiry of the term of 12 months from the moment of his license within the community. For example, in case of a 10 months custodial sentence, the offender will serve 5 months in custody, 5 months in the community and will be in post-sentence supervision for a period of 7 months.

Pursuant to Section 256AB of the Criminal Justice Act 2003, the offender may be subject to the following obligations during the period of post-sentence supervision:

- to be of good behaviour and not to behave in a way which undermines the purpose of the supervision period;
- not to commit any offence;
- to keep in touch with the supervisor in accordance with instructions given by the latter;
- to receive visits from the supervisor in accordance with instructions given by the latter;
- to reside permanently at an address approved by the supervisor and to obtain the prior permission of the supervisor for any stay of one or more nights at a different address;
- not to undertake work, or a particular type of work, unless it is approved by the supervisor and to notify the supervisor in advance of any proposal to undertake work or a particular type of work;
- not to travel outside the British Islands, except with the prior permission of the supervisor or in order to comply with a legal obligation (whether or not arising under the law of any part of the British Islands);
- to participate in activities in accordance with any instructions given by the supervisor;
- to take a drug test;
- to take a drug appointment.

If the offender fails to comply with the obligations imposed during the period of post-sentence supervision, the court may issue a summons or even a bench warrant for the offender. If the court finds that the offender has breached the obligations imposed in bad faith, it may order the offender (i) to serve a maximum of 14 days in custody, (ii) to pay a fine which may not exceed level 3 from the standard grid; or (iii) to an unpaid work requirement or to a curfew requirement.

#### *Suspended sentence*

Regimes for enforcing the suspended sentence around the world vary widely, but they can be broadly divided into two categories depending on the obligations that accompany the orders. Some versions only require people to refrain from committing new crimes and therefore have the same effect on all those convicted for the same period of time. Others allow courts to impose a number of obligations tailor-made for the specific risks and needs of the offender. The

current order in respect of the suspended sentence in England falls into the second category<sup>5</sup>.

The relevant provisions regarding the suspended sentence can be found in Sections 181-195 of the Criminal Justice Act 2003. Thus, the court may opt for this type of punishment when sentencing a defendant to a prison sentence for a period between 14 days and 2 years, in case of deeds falling within the jurisdiction of the Crown Court, respectively between 14 days and 6 months, in case of deeds falling within the jurisdiction of the Magistrates' Court. The enforcement of the prison sentence can be suspended for a maximum of 2 years, a period that constitutes a supervision period for the convicted person. During the supervision period, the court may impose one or more of the following obligations on the convicted person:

- an unpaid work requirement;
- a rehabilitation activity requirement;
- a programme requirement;
- a prohibited activity requirement;
- a curfew requirement;
- an exclusion requirement;
- a residence requirement;
- a foreign travel prohibition requirement;
- a mental health treatment requirement;
- a drug rehabilitation requirement;
- an alcohol treatment requirement;
- an alcohol abstinence and monitoring requirement;
- attendance centre requirement.

If, during the supervision period, the convicted person fails to comply with the obligations imposed by the court or commits a new offence, regardless of whether for this crime the court follows to apply a prison sentence or not, pursuant to the provisions of Schedule 12 paragraph 8 of the Criminal Justice Act 2003, the court may revoke the suspension and (i) order that the suspended sentence is to take effect with its original term, (ii) order that the sentence is to take effect for a shorter term, (iii) order the offender to pay a fine of an amount not exceeding £2,500, (iv) amend the content of the community obligations initially established or the period for which they were imposed, (v) extend the period of supervision initially ordered.

#### 4. Alternatives to imprisonment – community sentences

The use of probation in the United Kingdom can be traced back to 1840 when a Birmingham judge, Matthew Davenport Hill, drew up a register of

probation counselors suitable for reforming juvenile offenders<sup>6</sup>. In 1841 Hill, a judge in Birmingham, in view of his experience in the courts of Warwickshire, began releasing minors into the care of persons who had undertaken to act as tutors. The practice of releasing people to prove their good intentions seems to form the center of the emerging idea of probation in both America and Britain between 1820 and the end of the nineteenth century<sup>7</sup>.

The hopes of the Home Office for an independent probation body were met by the creation of the National Association of Probation Officers (NAPO) in 1912, at the suggestion of Sydney Edridge (deceased in 1934), Croydon Police officer and president of the association. The purpose of this association was to make progress in probation work, to facilitate contact between probation counselors and to stimulate thinking about the reintegration of offenders<sup>8</sup>.

As the name suggests, a community sentence is served in the community. Courts are encouraged to use community-based sentences as alternatives to custody<sup>9</sup>. A community sentence combines some form of punishment with activities carried out in the community. It may include one or more of the 13 obligations for the offender. This could consist of up to 300 hours of unpaid work, for example removing graffiti or cleaning overcrowded areas<sup>10</sup>.

Pursuant to Section 148 of the Criminal Justice Act 2003, a court must not pass a community sentence on an offender unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence. It cannot be ordered in case of an offence not punishable by imprisonment [Section 150A of the Criminal Justice Act].

##### 4.1. Obligations that may be imposed on the offender in the event of applying of a community sentence

Section 177 of the Criminal Justice Act 2003 provides that, when the court sentences a person over the age of 18, it may issue a community order imposing one or more obligations on the offender. The community order may be issued for a maximum period of 3 years and must provide an end date up until when the offender must observe all the obligations imposed. The following obligations may be imposed by the community order issued by the court:

- an unpaid work requirement;
- a rehabilitation activity requirement;
- a programme requirement;
- a prohibited activity requirement;

<sup>5</sup> Keir Irwin-Rogers, Julian V Roberts, *Swimming against the Tide: The Suspended Sentence Order in England and Wales, 2000-2017*, Law and Contemporary Problems Journal, volume 82, 2019, page 137.

<sup>6</sup> Phil Fennell, Christopher Harding, *Criminal Justice in Europe: A Comparative Study*, Clarendon Press Publisher, Oxford, page 24.

<sup>7</sup> Peter Raynor, Maurice Vanstone, *Understanding Community Penalties: Probation, Policy, and Social Change*, Open University Press Publisher, Philadelphia, 2002, page 13.

<sup>8</sup> Loraine Gelsthorpe, Rod Morgan, *Handbook of Probation*, Routledge Publisher, London, 2007, page 31.

<sup>9</sup> Martin Hannibal, Lisa Mountford, *Criminal litigation 2019-2020*, Oxford University Press Publisher, Oxford, 2019, page 419.

<sup>10</sup> Sentencing Council for England and Wales, "Community sentences", Sentencing Council for England and Wales for 2020, available at <https://www.sentencingcouncil.org.uk/about-sentencing/types-of-sentence/community-sentences/>.

- a curfew requirement;
- an exclusion requirement;
- a residence requirement;
- a foreign travel prohibition requirement;
- a mental health treatment requirement;
- a drug rehabilitation requirement;
- an alcohol treatment requirement;
- an alcohol abstinence and monitoring requirement;
- an attendance centre requirement.

Moreover, in case of a curfew requirement and an exclusion requirement, the court must also impose an electronic monitoring requirement. In the following, we will make a brief presentation of the content of each of the obligations that may be imposed through the community order issued by the court.

#### 4.2. An unpaid work requirement

This obligation is provided by Section 199 of the Criminal Justice Act 2003 and involves performance of 40 to 300 hours of unpaid work, under the supervision of a probation officer. The court can only impose this obligation if it considers that the offender is a suitable person to perform this type of work. Work is usually done in 8-hour shifts on weekends, but if the person is not employed, the work is done during normal working hours. The type of work varies depending on the locality and the probation service that deals with the program. Regular projects include cleaning public spaces, painting buildings or cleaning graffiti<sup>11</sup>.

#### 4.3. A rehabilitation activity requirement

This obligation is provided by Section 200A of the Criminal Justice Act 2003. The court must specify in the community order the maximum number of days on which the probation officer may order the offender to take part in various activities for his rehabilitation. The probation officer may order the offender to take part in specific activities or travel to a specific location and to follow the instructions given by the person leading that location. Activities may include restorative justice activities, (i) in which the offender and one or more injured parties may participate, (ii) aimed at making the offender aware of the impact that his criminal activity has had on the injured party; or (iii) which enable injured parties to discuss about the offence and the impact it has caused.

#### 4.4. A programme requirement

This obligation is provided by Section 202 of the Criminal Justice Act 2003 and involves the offender's participation in an activity programme accredited by

the Secretary of State. Programmes fall into four categories: general offending, violence, sexual offending and domestic violence. These must be recommended by a probation officer at the point of sentence<sup>12</sup>. The aims of these programmes are to:

- make offenders accept responsibility for their offences;
- avoid further offending;
- attempt to resolve any difficulties linked to offending behaviour, for example homelessness, marital or relationship breakdown, unemployment, illiteracy, addiction<sup>13</sup>.

#### 4.5. A prohibited activity requirement

This obligation is provided by Section 203 of the Criminal Justice Act 2003. The court may prohibit the offender, by order, from taking part in certain prohibited activities on the days mentioned therein. The purpose of this obligation is to prevent the commission of other offences such as those committed by the offender. Possibilities include prohibiting the defendant from visiting a particular place, for example nightclubs, or undertaking a particular activity such as driving, drinking alcohol or attending football matches<sup>14</sup>.

#### 4.6. A curfew requirement

This obligation is provided by Section 204 of the Criminal Justice Act 2003. The person to whom this obligation applies must not leave a particular location or locations, specified in the court order, for a certain period of time or periods of time between 2 and 16 hours a day. The maximum period for which the curfew requirement can be imposed is 12 months. The order can be enforced with electronic tagging. Tags can only be issued if there is a monitoring system for curfew in their area<sup>15</sup>. A tag is attached to the offender's wrist or ankle and is linked to a monitoring machine installed in the place where the offender is living. The machine is linked via a telephone line to a monitoring centre. Monitoring centre staff are made immediately aware if the curfew is broken<sup>16</sup>.

#### 4.7. An exclusion requirement

This obligation is provided by Section 205 of the Criminal Justice Act 2003. The person is prohibited from entering a certain location and for a certain period of time, mentioned in the order issued by the court. This obligation may be imposed for a maximum period of 2 years. The order may provide for the prohibition to operate in connection with the location and for the period specified therein, or it may provide that the

<sup>11</sup> Catherine Heard, *Community sentences since 2000: How they work – and why they have not cut prisoner numbers*, Centre for Crime and Justice Studies, London, 2015, page 13.

<sup>12</sup> Catherine Heard, *Community sentences since 2000: How they work – and why they have not cut prisoner numbers*, Centre for Crime and Justice Studies, London, 2015, page 14.

<sup>13</sup> Martin Hannibal, Lisa Mountford, *Criminal litigation 2019-2020*, Oxford University Press Publisher, Oxford, 2019, page 422.

<sup>14</sup> Martin Hannibal, Lisa Mountford, *Criminal litigation 2019-2020*, Oxford University Press Publisher, Oxford, 2019, page 422.

<sup>15</sup> Catherine Heard, *Community sentences since 2000: How they work – and why they have not cut prisoner numbers*, Centre for Crime and Justice Studies, London, 2015, page 14.

<sup>16</sup> Martin Hannibal, Lisa Mountford, *Criminal litigation 2019-2020*, Oxford University Press Publisher, Oxford, 2019, page 422.

prohibition shall operate in connection with the locations and for different periods.

#### **4.8. A residence requirement**

Through this obligation provided by Section 206 of the Criminal Justice Act 2003, the offender is required to reside in a certain location and for a certain period of time specified in the court order. Before issuing the community order imposing this obligation, the court must take into account the surroundings of the place where the offender is to live. On the recommendation of a probation officer, one may establish that the offender will reside in a hotel or other institution.

#### **4.9. A foreign travel prohibition requirement**

Through this obligation provided by Section 206A of the Criminal Justice Act 2003, the offender may be prohibited from traveling (i) to any other country or territory outside the British Islands mentioned in the court order, (ii) to any other country or territory outside the British Islands, except for a country or territory specified in the court order, or (iii) in any other country or territory outside the British Islands. This ban may be imposed for a maximum period of 12 months.

#### **4.10. A mental health treatment requirement**

This obligation is provided by Section 207 of the Criminal Justice Act 2003 and requires that the offender be treated by a doctor or psychologist in order to improve his or her health. It can only be imposed if the court is convinced that the offender is suffering from a mental illness and that he needs treatment, and the offender agrees to take part in such treatment.

#### **4.11. A drug rehabilitation requirement**

This obligation is provided by Section 209 of the Criminal Justice Act 2003. The offender will participate in a detox program to reduce or eliminate his or her drug addiction. The order will involve frequent drug testing and a high level of contact and supervision coupled with a regular monthly review by the courts<sup>17</sup>.

This obligation can only be imposed if (i) the court is satisfied that the offender is addicted to drugs and needs treatment, (ii) has been recommended by a probation officer and (iii) the offender has given his or her consent to take part in such a detox program.

#### **4.12. An alcohol treatment requirement**

This obligation is provided by Section 212 of the Criminal Justice Act 2003. The offender will receive

treatment to reduce or eliminate his alcohol dependence. The treatment period cannot exceed six months

The period of treatment must last at least six months<sup>18</sup>.

This obligation can only be imposed if the court is convinced that the offender is addicted to alcohol and that he needs treatment, and the offender agrees to follow such treatment.

#### **4.13. An alcohol abstinence and monitoring requirement**

The alcohol abstinence and monitoring obligation provided by Section 212A of the Criminal Justice Act 2003 may be imposed for a maximum period of 120 days. The court may require the offender to either (i) refrain from consuming alcoholic beverages or (ii) not to consume alcohol so that at any time he does not have a higher blood alcohol value than that established by the order issued by the court.

This obligation may be imposed only if (i) the offender's consumption of alcohol is a constituent element of the offence committed by him or the court is satisfied that such alcohol consumption was a contributing factor to the offence, (ii) the court is satisfied that the offender is not addicted to alcohol, (iii) the court does not impose an obligation on the offender to undergo treatment for alcohol addiction, and (iv) the court has been informed by the Secretary of State that the elements necessary to monitor the offender are available in the area where this obligation is to be fulfilled.

#### **4.14. An attendance centre requirement**

This type of obligation provided by Section 214 of the Criminal Justice Act 2003 can only be imposed on offenders under the age of 25. At an attendance centre, practical activities, including sport, can be run to occupy offenders for a certain number of hours to keep them out of trouble. This is often on Saturdays as attendance centres were originally set up for football-related offenders<sup>19</sup>. The centres must include social education and life-skills training to: increase employability; maintain physical and mental health (including being aware of the effects of alcohol and drugs); have successful relationships (including respect for parents/partners; parenting skills and social skills); and deal effectively with high risk situations (including first aid, risks of carrying weapons and "gang culture")<sup>20</sup>.

The court may oblige the offender to take part in activities in a training centre for a number of hours between 12 and 36. However, the offender may not be obliged to take part in activities in a training centre for

<sup>17</sup> Martin Hannibal, Lisa Mountford, *Criminal litigation 2019-2020*, Oxford University Press Publisher, Oxford, 2019, page 423.

<sup>18</sup> Explanatory Note to Section 212 of the Criminal Justice Act 2003.

<sup>19</sup> Explanatory Note to Section 214 of the Criminal Justice Act 2003.

<sup>20</sup> Catherine Heard, *Community sentences since 2000: How they work – and why they have not cut prisoner numbers*, Centre for Crime and Justice Studies, London, 2015, page 14.

more than once a day or more than three hours on the same day.

The obligation to take part in activities within a training centre can only be imposed if there is a training centre easily accessible to the offender. The first appointment for participation in activities within the training centre will be made by the probation officer and will be communicated to the offender by the latter, and subsequent appointments will be made by the responsible person within the centre.

#### **4.15. Breach of the community order and its consequences**

Part II of Schedule 8 to the Criminal Justice Act 2003 provides the situation when the community order issued by the court is breached.

Thus, a breach of the community order occurs when, without a reasonable excuse, the offender fails to comply with the obligations imposed. In the event of a breach of the community order, the responsible officer is required to issue a warning to the offender. However, the warning may not be applied if the offender has received a warning for a breach of the community order within the previous twelve months or the responsible officer refers the matter to an enforcement officer. In these two situations, the enforcement procedure against the offender will begin, being referred to the court in this regard.

The warning must contain a description of the circumstances of the breach of the community order and inform the offender that the breach is unacceptable and that a further breach of the community order within the next 12 months will bring him before the court. According to the Explanatory Note to Schedule 8 to the Criminal Justice Act 2003, if the offender fails again to comply, within a 12 month period and without reasonable excuse, the responsible officer must start enforcement proceedings. The responsible officer institutes proceedings by laying an information before a magistrates' court or the Crown Court, depending on the order.

If the court is satisfied that the defendant breached, without reasonable excuse, any of the obligations contained in the community order under paragraph 9 of Schedule 8 to the Criminal Justice Act 2003, the court may:

- amend the terms of the community order by imposing more onerous requirements;
- order the offender to pay a fine of an amount not exceeding £ 2,500;
- revoke the community order and retry the case;
- if the crime is not punishable by imprisonment, but the offender knowingly and persistently breached the community order, the court may revoke the community order and impose a sentence of imprisonment up to 51 weeks.

#### **4.16. Revocation of the community order**

Part III of Schedule 8 to the Criminal Justice Act 2003 provides the situation of revocation of the community order issued by the court.

Thus, the offender or the responsible officer may request the revocation of the community order, taking into account the circumstances that have occurred since its issuance. According to paragraph 13 par. (3) of Schedule 8 to the Criminal Justice Act 2003, the circumstances in which a community order may be revoked include the case where the offender has made progress or has satisfactorily responded to supervision or treatment.

If the court finds that the request is grounded, it may (i) revoke the community order or (ii) replace the obligations under the community order with other less onerous obligations. The latter option involves the revocation of the community order and the issuance of a new community order in which the newly established obligations of the court will be found.

An example for the situation when the court opts only for the revocation of the community order would be when the offender has become very ill and is unable to complete the requirements<sup>21</sup>. On the other hand, the amendment of obligations comprised in the community order may occur, for example, if the offender or his responsible officer wanted to apply for a community order with different requirements, for example due to the good progress of the offender<sup>22</sup>.

#### **4.17. Amendment of obligations comprised in the community order**

Part IV of Schedule 8 to the Criminal Justice Act 2003 provides the situations when the amendment of the content of the obligations comprised in the community order issued by the court may occur.

Paragraph 16 provides the situation when the content of the obligations comprised in the community order is amended on the grounds that the offender has changed residence. Thus, the court may amend the community order by replacing the jurisdiction relating to the original order with the jurisdiction relating to the change of the offender's residence. The amendment of the community order becomes mandatory for the court if the request for a change of the offender's residence is made by the responsible officer.

The court will not be able to amend a community order containing obligations that can only be complied with if the offender continues to reside in the original jurisdiction. For example, the court will not be able to amend a community order containing an obligation to participate in an accredited program unless the accredited program is also available in the jurisdiction relating to the change of the offender's residence.

However, the court may cancel those obligations which cannot be complied with by the offender or may replace them with other obligations which may be

<sup>21</sup> Explanatory Note to Schedule 8 to the Criminal Justice Act 2003.

<sup>22</sup> Explanatory Note to Schedule 8 to the Criminal Justice Act 2003.

complied with in the event that the offender no longer resides in the original jurisdiction.

Pursuant to the provisions of paragraph 17, the offender or the responsible officer may request the court to amend the obligations contained in a community order not only when the offender changes residence.

Thus, the court may order the cancellation of any obligation contained in the Community order or may replace an obligation contained in the community order with another obligation of the same type. The court may not however add a new obligation or replace an obligation contained in the community order with a different obligation. The competent court may cancel or adjust an obligation, for example to change the hours when the offender must not leave a particular location or may replace one activity with another. It can also impose electronic monitoring onto any requirement of the order<sup>23</sup>.

However, without the offender's consent, the court may not amend an order imposing an obligation (i) a mental health treatment requirement, (ii) a drug rehabilitation requirement or (iii) an alcohol treatment requirement.

If the offender fails to give his consent, the court may revoke the community order and retry his case. If the court proceeds to retrial, it must take into account the extent to which the offender has complied with the obligations imposed by the community order, and may also sentence the offender to imprisonment, if necessary.

Paragraphs 18-20 of Schedule 8 to the Criminal Justice Act 2003 provide the possibility for the court to amend the community order under the following conditions:

- in case of a community order imposing a mental health treatment requirement, a drug rehabilitation requirement or an alcohol treatment requirement, when the medical practitioner considers that (i) the treatment of the offender should be extended beyond the period specified in the community order, (ii) the offender needs different treatment, (iii) the offender is not susceptible to treatment, or (iv) the offender does not require further treatment;
- in case of a community order imposing a drug rehabilitation requirement, with periodic review, the responsible officer may request the court that subsequent reviews be made without a hearing instead of at a review hearing, or vice versa;
- the competent court may, upon the request of the offender or a probation officer, amend a Community order by extending the period for which it was issued by a maximum of six months – this possibility does not exist in the case of a community order whose term has been extended;

- in case of a community order imposing an unpaid work requirement, upon the request of the offender or the responsible officer, the court may extend the period for which the order was issued beyond the 12-month limit provided by Section 200 of the Criminal Justice Act 2003, if, in relation to the circumstances that have occurred since its issuance, the court is of the opinion that this measure is in the interest of justice.

According to a report published in the British Journal of Community Justice<sup>24</sup>, part of the obligations that may be ordered by the courts are very rarely used; the alcohol treatment requirement, mental health treatment requirement, the residence requirement, the exclusion requirement, the prohibited activity requirement and the attendance centre requirement are all in this situation. The unpaid work requirement and the curfew requirement began to be used more often, and the supervision and the programme requirement have decreased since 2005.

The probation officers interviewed during this study expressed confidence in the two community orders. They would have embraced the opportunity to use the programmed alcohol treatment requirement, mental health treatment requirement, but these options were often not available. With regard to the enforcement of community orders, certain probation officers were of the opinion that committing a new offence while subject to a suspended sentence should always lead to the application of a custodial sentence. Others expressed the wish to be able to punish breaches of obligations imposed by applying fines. The probation officers interviewed expressed concern about permanent organizational and legislative changes.

## 5. Conclusions

Recommendation R (92) 16 to Member States on the European Regulation on Community sanctions and measures was the first piece of legislation that provided a complete set of rules on the application and implementation of community sanctions, although alternative measures to imprisonment began to be considered at EU level as early as the 1970s.

The law system in the United Kingdom provides community sentences as alternatives to imprisonment and the courts in the United Kingdom are encouraged to use community-based sentences as alternatives to custody, the use of probation in the United Kingdom being traced back to 1840.

Although the community sentence may include one or more of 13 obligations for the offender, part of these obligations are very rarely used in practice, while others have shown a decrease in usage.

<sup>23</sup> Explanatory Note to Schedule 8 to the Criminal Justice Act 2003.

<sup>24</sup> Jane Dominey, Community Order and the Suspended Sentence Order-Three Years On, British Journal of Community Justice, volume 7, 2009, page 87.

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