



## ST. CHRISTOPHER AND NEVIS

### CHAPTER 3.20

## ALTERNATIVE SENTENCING POWERS ACT

### Revised Edition

showing the law as at 31 December 2009

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## **CHAPTER 3.20**

### **ALTERNATIVE SENTENCING POWERS ACT**

AN ACT TO MAKE PROVISIONS FOR COURTS TO HAVE SENTENCING POWERS ENABLING THEM TO PASS NON - CUSTODIAL SENTENCES SUCH AS DISCHARGES, SUSPENDED SENTENCES, PROBATION ORDERS, COMMUNITY SERVICE ORDERS, AMONG OTHERS; TO ENABLE CERTAIN OFFENCES TO BE DEALT WITH BY MEDIATION INSTEAD OF CRIMINAL PROSECUTION; AND TO PROVIDE FOR RELATED OR INCIDENTAL MATTERS.

#### **PART I**

##### **PRELIMINARY**

###### **Short title.**

1. This Act may be cited as the Alternative sentencing Powers Act.

###### **Interpretation.**

2. In this Act, except where the context otherwise requires—

“Attendance Centre” and “attendance centre order” have the meanings given by sections 17 and 18, respectively;

“combination order” has the meaning given by section 31(2);

“community order” means any of the following orders, namely—

- (a) an attendance centre order;
- (b) a combination order;
- (c) a community service order;
- (d) a curfew order; or
- (e) a probation order;

“community sentence” means a sentence which consists of or includes one or more community orders;

“community service order” has the meaning given by section 22(1);

“curfew order” has the meaning given by section 27(1);

“custodial sentence” means a sentence of imprisonment;

“Minister” means the Minister responsible for Penal Administration;

“Probation Officer” and “probation order” have the meanings assigned to them in the Probation of Offenders Act, Cap. 4.27;

“responsible officer” means—

- (a) in relation to an offender who is subject to a probation order, the Probation Officer responsible for that offender’s supervision;
- (b) in relation to an offender who is subject to a community service order, the Probation Officer mentioned in section 25;

- (c) in relation to an offender who is subject to a curfew order, the probation officer who is required by section 28 to be responsible for monitoring the offender's whereabouts during the curfew periods specified in the curfew order;

“sentence of imprisonment” does not include a committal or attachment for contempt of court.

(2) For the purpose of this Act, an offence, hereafter referred to as the associated offence, is associated with another offence hereafter referred to as the primary offence, if—

- (a) the offender is convicted of the associated offence in the proceedings in which the offender is convicted of the primary offence or, although convicted of the associated offence in earlier proceedings, is sentenced for the associated offence at the same time as the offender is sentenced for the primary offence; or
- (b) the offender admits the commission of the associated offence in the proceedings in which the offender is sentenced for the primary offence and requests the court to take the associated offence into consideration in passing sentence for the primary offence.

## PART II

### NON-CUSTODIAL SENTENCES

#### Division I

##### *Discharge*

#### **Absolute and conditional discharge.**

3. (1) Where a court by which a person is convicted of an offence (not being an offence the sentence for which is fixed by laws) is of the opinion, having regard to the circumstances, including the nature of the offence and the character of the offender, that—

- (a) it is not inexpedient to inflict punishment; and
- (b) a probation order is not appropriate,

the court may make an order discharging the offender.

(2) An order made under subsection (1) may discharge the offender absolutely or, if the court thinks fit, may discharge the offender subject to the condition that the offender does not commit an offence during such period, not exceeding 3 years from the date of the order, as may be specified in the order.

(3) An order made pursuant to subsection (2) shall be referred to as an order for conditional discharge and the period specified in an order for conditional discharge shall be referred to as the period of conditional discharge.

(4) Before making an order for conditional discharge the court shall explain to the offender in ordinary language that, if the offender commits another offence during the period of conditional discharge, the offender shall be liable to be sentenced for the original offence.

(5) Where, under the provisions of this Part, a person conditionally discharged under this section is sentenced for the offence in respect of which the order for conditional discharge was made, the order for conditional discharge shall cease to have effect.

(6) The Minister may, by Order, amend subsection (2) by substituting for the maximum period specified in that subsection such period as may be specified in the order.

#### **Commission of further offence by person conditionally discharged.**

4. (1) If it appears to a Judge or a Magistrate that a person in whose case an order for conditional discharge has been made has been convicted in the Federation of Saint Christopher and Nevis of an offence committed during the period of conditional discharge, and has been dealt with in respect of that offence, then, subject to subsection (2), the Judge or Magistrate may issue a summons requiring that person to appear at the time and place specified in the summons or may issue a warrant for that person's arrest.

(2) While acting under subsection (1), a Magistrate shall not issue a summons or a warrant except on information given in writing and on oath.

(3) A summons or warrant issued under subsection (1) shall direct that the person to whom it relates appears or be brought before the court that made the order for conditional discharge.

(4) If a person in whose case an order for conditional discharge has been made by the High Court is convicted in a Magistrate's Court of an offence committed during the period of conditional discharge, the Magistrate may commit the offender to custody, or may release the offender on bail, until such a time as the offender can be brought before the High Court.

(5) Where the Magistrate acts under subsection (4), the Magistrate shall send to the High Court a copy of the record of the conviction entered in the register of the Magistrate's Court and signed by the clerk of that court.

(6) Where it is proved to the satisfaction of the court that made an order for conditional discharge that the offender in whose case the order was made has been convicted of an offence committed during the period of conditional discharge, the court may deal with the offender, for the offence for which the order was made, as if the offender had just been convicted before that court of that offence.

(7) If a person in whose case an order for a conditional discharge has been made by a Magistrate's Court—

- (a) is convicted before the High Court of an offence committed during the period of conditional discharge; or
- (b) is dealt with by the High Court for any such offence in respect of which the offender was committed for sentence to the High court,

then the High Court may deal with the offender, for the offence for which the order was made, in any manner in which the Magistrate's Court could have dealt with the offender if it had just convicted the offender of that offence.

#### **Juvenile offenders.**

5. (1) Nothing in section 3 or 4—

- (a) confers any powers on any court in respect of a child or young person; or

(b) modifies or otherwise affects any powers conferred on any court by the Juvenile Act in respect of a child or a young person.

(2) The expressions “child” and “young person” in subsection (1) have the meanings given to them by the Juvenile Act, Cap. 4.15.

## Division II

### *Suspended Sentences*

#### **Suspended Sentences.**

6. (1) A court which passes a sentence of imprisonment on an offender for a term of not exceeding three years for an offence may suspend the sentence by ordering that the sentence shall not take effect unless—

- (a) during a period specified in the order, being of not less than 12 months and not more than 3 years from the date of the order, in this Act referred to as the operational period, the offender commits in the Federation another offence punishable with imprisonment for a period exceeding 6 months hereafter referred to as a “subsequent offence”; and
- (b) thereafter a court having power to do so order pursuant to section 7 that the original sentence shall take effect.

(2) A Magistrate or a Judge shall not give a suspended sentence under subsection (1) if the offence involved the use, or the illegal possession of, a firearm or imitation firearm.

(3) A court shall not give a suspended sentence unless the case appears to the court to be one in respect of which a sentence of imprisonment would have been appropriate in the absence of power to suspend such a sentence by an order under subsection (1).

#### **Court note to make a probation Order with a suspended sentence.**

7. (1) A court which passes a suspended sentence on an offender for an offence shall not make a probation order in the offender’s case in respect of another offence of which the offender is convicted by that court.

(2) Where a court passes a suspended sentence on an offender in respect of an offence and also a term of imprisonment in respect of another offence, the court shall direct that the suspended sentence be concurrent with the term of imprisonment.

#### **Court to explain to offender of liability.**

8. On passing a suspended sentence, the court shall explain to the offender in ordinary language, the offender’s liability under section 7 if the offender should commit a subsequent offence during the Operational Period.

#### **Subsequent offence during operational period.**

9. (1) Subject to subsection (3), where an offender is convicted of a subsequent offence committed during the operational period of a suspended sentence, the court by which the offender is convicted of the subsequent offence may order that the suspended sentence shall take effect with the original term unaltered, or the court may substitute a lesser term of imprisonment for the original term.

(2) Where a court deals with an offender in respect of a suspected sentence passed by another court, the former court shall notify the latter court of the manner in which the offender was dealt with.

(3) Where a Magistrate's court convicts an offender of an offence and that offender is under a suspended sentence passed by the High Court, the Magistrate's Court shall forward to the Registrar of the High Court a certificate signed by the Magistrate and under seal of the Magistrate's Court certifying that the offender has been convicted of a subsequent offence, together with such other particulars of the case as the Magistrate may consider desirable; where-upon a judge of the High Court before whom the offender is brought may, without prejudice to the order of the Magistrate with respect to the subsequent offence, order that the suspended sentence shall take effect either with the original term unaltered or with the substitution of a lesser term for the original term.

#### **Discovery of further offence.**

**10.** (1) Where a person has been convicted by or before a court of a subsequent offence committed during the operational period of a suspended sentence and that court was not at the time aware of the suspended sentence or of some feature affecting the operation of that sentence, any court may, on receipt of information relating to that suspended sentence or that feature and the conviction of the subsequent offence, issue a summons requiring that person to appear at the place and time specified in the summons or may issue a warrant for that person's arrest.

(2) A summons or warrant issued under subsection (1) shall direct that the person appear or be brought before the court by which the person was convicted in respect of the subsequent offence and, upon that person so appearing or being so brought, the court shall proceed to exercise its powers under section 9 in respect of the suspended sentence.

#### **Partly suspended sentences.**

**11.** (1) A court by which a person is convicted and sentenced for a period not less than three months and not more than 2 years may order that the offender be released after partly serving the sentence subject to the restoration of the balance of the sentence on his or her being convicted in the Federation of St. Kitts and Nevis of another offence during the period of the suspended part of the sentence hereafter to be referred to as the whole period.

(2) A court shall not while exercising the power conferred in subsection (1) order a period of imprisonment of less than 28 days or suspend a part of the sentence for a period of more than a quarter of the whole period.

(3) The period of imprisonment mentioned in subsection (2) shall be the period actually ordered by the court, reduced (where applicable) by remission and time spent on remand.

#### **Restoration of partly suspended sentence.**

**12.** (1) If at any time after making the order in sub-section (1) of section 11 the offender is convicted of an offence in the Federation of Saint Christopher and Nevis not punishable by a term of imprisonment fixed by law, during the whole period of the original offence, then the competent court may restore the part of the suspended sentence and order the offender to serve it.

(2) For the avoidance of doubt, the competent court mentioned in subsection (1) shall not have the power to remit any part of the suspended part of the sentence on giving an order to restore the sentence.

### Division III

#### *Deferred Sentences*

##### **Deferment of sentence order.**

**13.** (1) Subject to the provisions of this section, a court may make a deferment of sentence order by deferring passing sentence on an offender for the purpose of enabling the court or any other court dealing with the offender to take into consideration—

- (a) the conduct of the offender after conviction (including where appropriate, the making of any reparations for his or her offence); or
- (b) any change of the offender's circumstances.

(2) A court making a deferment of sentence order shall specify in the order the date to which the sentence is deferred but, in all cases, it shall not be more than six months from the date the court first made the order.

##### **Court explanation to offender.**

**14.** A court shall, before it makes a deferment of sentence order—

- (a) explain to the offender in plain language the effect of deferment, with emphasis on the difference between deferment and adjournment; and
- (b) obtain the consent of the offender to the deferment of the sentence.

##### **Court not to defer sentence more than once.**

**15.** (1) A court shall not defer the sentence passed on an offender more than once, except that—

- (a) a court may adjourn the case when the offender appears before the court at the conclusion of the deferment period; and
- (b) if it were a Magistrate's Court that deferred the sentence, it may, at the conclusion of the deferment period, commit the offender to the High Court which may defer the sentence again.

(2) Where a court defers the sentence on an offender—

- (a) the offender shall not be sentenced for that offence during the period of deferment except where he or she is convicted of another offence in Saint Christopher and Nevis; and
- (b) the court shall not at the time the deferment of sentence order is made, make any other order in respect of that offence except for a restitution order.

##### **Court not to defer sentence more than once.**

**16.** (1) At the conclusion of the deferment period, the court before whom the offender appears, shall inquire into the conduct of the offender during the deferment period, with particular reference to the purpose of the order.

(2) Where the court concludes that the offender has made reasonable effort to comply with the expectations of the court which deferred the sentence, the court may not proceed to impose a custodial sentence on the offender and where it does, it shall put its reasons in writing.

#### **Division IV**

##### *Attendance Centre Orders*

#### **Provision, regulation and management of attendance centers.**

17. (1) The Minister may provide Attendance Centres.

(2) An Attendance Centre shall be a place at which offenders under 21 years of age may be required to attend and be given, under supervision, appropriate training, occupation or instruction, in pursuance of orders made by the High Court or a Magistrate's Court under section 18 or any other enactment.

(3) The Minister may make rules for the regulation and management of Attendance Centres.

#### **Attendance center order.**

18. (1) Subject to this section, where a court—

- (a) would have power, but for section 13 of the Juvenile Act, to pass a sentence of imprisonment on a person who is under 21 years of age, or to commit such a person to prison in default of payment of a sum of money or for failing to do or abstain from doing anything required to be done or left undone; or
- (b) has power to deal with such a person under the Probation of Offenders Act for failure to comply with any of the requirements of a probation order,

the court may, if it has been notified by the Minister that an Attendance Centre is available for the reception of persons of that person's description, give an attendance centre order directing that person to attend at such a centre, as may be specified in the order, for such number of hours as may be so specified.

(2) An attendance centre order shall not be made in the case of an offender who has been previously sentenced to imprisonment unless it appears to the court that there are special circumstances (whether relating to the offence or to the offender) which warrant the making of such an order in that offender's case.

(3) The First Schedule shall have effect with respect to attendance centre orders and the powers of courts in relation to such orders.

#### **Discharge of an attendance centre order.**

19. (1) An attendance centre order may be discharged on an application made by the offender or the officer in charge of the relevant Attendance Centre.

(2) An application under subsection (1) shall be made to a Judge or a Magistrate and, subject to subsection (3), the discharge of such an order shall be by order of the court.

(3) Where the court that made the order is the High Court and that court included in the order a direction reserving to itself the power to discharge the order, then the power shall only be exercised by the High Court.

**Variation of an attendance centre order.**

**20.** (1) An attendance centre order may be varied by a Magistrate's Court on the application of the offender or the officer in charge of the relevant Attendance Centre.

(2) The court while exercising its powers under subsection (1) may—

- (a) vary the day or hour specified in the order for the first attendance at the relevant Attendance Centre; or
- (b) if the court is satisfied that the offender proposes to change or has changed his or her residence, substitute for the relevant Attendance Centre, an Attendance Centre which the court is satisfied is reasonably accessible to the offender, having regard to the offender's age, the means of access available to the offender and any other circumstances.

(3) Where an application is made under this section by the officer in charge of an Attendance Centre, the court may deal with the application without summoning the offender.

**Breach of attendance centre or rules.**

**21.** (1) Where an attendance centre order has been made and it appears on information to a Magistrate that the offender—

- (a) has failed to attend in accordance with the order; or
- (b) while attending has committed a breach of the rules made under section 17, (3) which cannot be adequately dealt with under those rules,

the Magistrate may issue a summons requiring the offender to appear at the place and time specified in the summons before a Magistrate's Court or, if the information is in writing and on oath, may issue a warrant for the offender's arrest requiring the offender to be brought before the court.

(2) If it is proved to the satisfaction of the Magistrate's Court before which an offender appears or is brought under this section, that the offender has failed, without reasonable excuse, to attend as mentioned in paragraph (a) of subsection (1), or has committed such a breach of rules as is mentioned in paragraph (b) of that subsection, the court—

- (a) if the attendance centre order was made by a Magistrate's Court, may revoke the order and deal with the offender, for the offence in respect of which the order was made, in any manner in which the offender could have been dealt with for that offence by the court which made the order if the order had not been made; or
- (b) if the order was made by the High Court, may commit the offender in custody or release the offender on bail until the offender can appear before the High Court.

(3) A Magistrate's Court which deals with an offender's case under subsection (2)(b) shall send to the High Court a certificate signed by the Magistrate giving particulars of the offender's—

- (a) failure to attend; or
- (b) breach of any rules,

together with such particulars of the case as may be desirable and a certificate purporting to be so signed by the Magistrate shall be admissible as evidence of the failure or breach before the High Court.

(4) Where it is proved to the satisfaction of the High Court that an offender who has been brought or appeared before that Court by virtue of subsection (2)(b) has failed to attend as mentioned in paragraph (a) of subsection (1) or has committed such a breach of rules as is mentioned in paragraph (b) of that subsection, the High Court may revoke the attendance centre order and deal with the offender, for the offence in respect of which the order was made, in any manner in which that Court could have dealt with the offender if it had not made the order.

(5) A person sentenced under the provisions of subsection (2)(a) for an offence may appeal to the Court of Appeal against the sentence.

(6) In proceedings before the High Court under this section, any question whether there has been a failure to attend or a breach of the rules shall be determined by the Court and not by the verdict of a jury.

#### **Division IV**

##### *Community Service Orders*

#### **Community service orders.**

**22.** (1) Where a person of 16 years of age or over is convicted of an offence punishable with imprisonment, the court by or before which that person is convicted may, subject to subsection (2), make an order hereafter referred to as a community service order, requiring the offender to perform unpaid work in accordance with this section and section 23.

(2) The reference in subsection (1) to an offence punishable with imprisonment shall be construed without regard to any prohibition or restriction imposed by or under any enactment on the imprisonment of young offenders.

#### **Conditions for making a community service order.**

**23.** (1) A court shall not make a community service order in respect of an offender except where—

- (a) after considering a written report by a Probation Officer in respect of the offender and the offender's circumstances; and after hearing a Probation Officer, the court is satisfied that the offender is a suitable person to perform work under the order;
- (b) the court is satisfied that arrangements can be made in the area in which the offender lives, or will live, for the offender to perform work under the order and for that work to be properly supervised; and
- (c) the court has first explained to the offender the matters specified in subsection (2) and the offender has consented to the making of the order.

(2) The matters referred to in subsection (1)(c) are namely—

- (a) the purpose and effect of the order, and in particular, the requirements specified in section 23(1);

- (b) the consequences that may follow under the provisions of the Second Schedule if the offender fails to comply with any of those requirements; and
- (c) that the order may be reviewed by the court under the provisions of the Second Schedule.

**Maximum and Minimum hours of work.**

**24.** (1) The number of hours that a person may be required to work under a Community service order shall be specified in the order and shall not in the aggregate—

- (a) be less than 80 hours; or
- (b) be more than—
  - (i) 140 hours, in the case of an offender aged 16 and below 16; and
  - (ii) 240 hours, in any other case.

(2) Where a court makes community service orders in respect of two or more offences of which the offender has been convicted by the court, the court may direct that the hours of work specified in any of those orders shall be concurrent or cumulative; but the total number of hours which are not concurrent shall not exceed the maximum specified in paragraph (b) of subsection (1).

(3) The Minister may, by Order, amend the maximum number of hours for the time being specified in paragraph (b) of subsection (1).

**Community service order to specify place where offender lives.**

**25.** A community service order shall specify the area in which the offender lives or will live, and the court shall cause copies of the order to be sent to the Chief Probation Officer for delivery to the Probation Officer assigned to that area.

**Obligations of person under community service order.**

**26.** (1) An offender in respect of whom a community service order is in force shall—

- (a) keep in touch with the Probation Officer in accordance with such instructions as the offender may from time to time be given by that officer, and notify that officer of any change of address; and
- (b) perform for the number of hours specified in the order such work at such times as the offender may be instructed by that officer.

(2) The work required to be performed under a community service order shall be performed during the period of 12 months beginning with the date of the order; but, unless revoked, the order shall remain in force until the offender has worked under the order for the number of hours specified in the order.

(3) The instructions given by the Probation Officer under this section shall, so far as practicable, be such as to avoid any conflict with the offender's religious beliefs, or with the requirements of any other community order to which the offender may be subject, and any interference with the times, if any, at which the offender normally work or attends a school or other educational establishment.

## **Division VI**

### *Curfew and Combination Orders*

#### **When curfew order may be made.**

**27.** (1) Where a person of 16 years of age or over is convicted of an offence (not being an offence for which the sentence is fixed by law), the court by which the offender is convicted may make a curfew order which shall require the offender to remain, for periods specified in the order, at a place so specified.

(2) Before making a curfew order, the court shall obtain and consider information about the place proposed to be specified in the order hereafter referred to as the curfew premises, including information as to the attitude of persons likely to be affected by the enforced presence of the offender the curfew premises.

(3) A curfew order may specify different places or different periods for different days, but shall not specify—

- (a) periods which fall outside the period of 6 months beginning with the day on which the order is made; or
- (b) periods which amount to less than 2 hours or more than 12 hours in any one day.

(4) The requirements in a curfew order shall, as far as practicable, avoid creating—

- (a) conflict with the offender's religious beliefs, or with the requirements of any other community order to which the offender may be subject; and
- (b) interference with the times, if any, at which the offender normally works or attends a school or other educational establishment.

(5) The Minister may, by Order—

- (a) amend subsection (3) by substituting, for any period specified in that subsection, such period as may be specified in the order;
- (b) direct that subsection (4) shall have effect with such additional restrictions as may be specified in the order.

#### **Probation Officer to monitor offender on a curfew order.**

**28.** A curfew order shall include provision for making a Probation Officer responsible for monitoring the offender's whereabouts during the curfew periods specified in the order.

#### **Court to explain to offender consequences etc. of curfew order.**

**29.** A court shall not make a curfew order in respect of an offender unless—

- (a) it has first explained to the offender in ordinary language the following matters—
  - (i) the purpose and effect of the order (including any additional requirements proposed to be included in the order in accordance with section 27;

- (ii) the consequences which may follow under the Second Schedule if the offender fails to comply with any of the requirements of the order;
  - (iii) that the order may be reviewed by the court under that Schedule; and
- (b) the offender has consented to the of making of the order.

**Electronic monitoring of curfew orders.**

**30.** (1) Subject to subsection (2), a curfew order may, in addition, include requirements for securing the electronic monitoring of the offender's whereabouts during the curfew periods.

(2) A court shall not make a curfew order which includes electronic monitoring requirements unless the court—

- (a) has been notified by the Minister that arrangements for electronic monitoring are available at the curfew premises; and
- (b) is satisfied that the necessary provision can be made under those arrangements.

(3) Electronic arrangements may include arrangements whereby the monitoring of a person's whereabouts is done by persons acting under contract.

**Orders combining probation with community service, or probation with curfew.**

**31.** (1) Where a court by which a person of 16 years of age or over is convicted of an offence punishable with imprisonment (not being an offence for which the sentence is fixed by law) is of the opinion that the making of a combination order is desirable in the interests of—

- (a) securing the rehabilitation of the offender;
- (b) protecting the public from harm from the offender; or
- (c) preventing the commission of further offences by the offender,

the court may make that order.

(2) A combination order shall require an offender—

- (a) to—
  - (i) be under the supervision of a probation officer for a period specified in the order, being not less than 12 months but not exceeding 3 years; and
  - (ii) perform unpaid work for a number of hours so specified, being in the aggregate not less than 80 hours and not exceeding the maximum hours specified in section 24; or
- (b) both—
  - (i) to be under the supervision of a probation officer for a period specified in the order, being not less than 12 months nor more than 3 years; and
  - (ii) to remain at a specified place or specified places for specified periods within the limits set out in section 22(3).

**Application of relevant law to constituent parts of a combination order.**

**32.** (1) The Probation of Offenders Act shall, subject to section 43, apply to applications in relation to a combination order, in so far as the order imposes a requirement such as is mentioned in paragraphs (a) and (b) of section 43(2), as if the order were a probation order.

(2) Subject to section 43, this Act shall apply in relation to a combination order, in so far as the order imposes a requirement such as is mentioned in subparagraph (ii) of paragraph (a) of section 43(2), as if the order were a community service order.

(3) Subject to section 43, this Act shall apply in relation to a combination order in so far as the order imposes a requirement such as is mentioned in section 43(2)(b)(ii) as if the order were a curfew order.

**Division VIII***Compensation and Restitution Orders***Compensation order.**

**33.** (1) A court by which a person of 16 years of age or above is convicted of an offence punishable with imprisonment (not being an offence for which the sentence is fixed by law), may make a compensation order against the offender for the benefit of the victim, who has suffered—

- (a) injury;
- (b) financial loss;
- (c) loss of property; or
- (d) any other damage,

as a result of the offence and any other offences taken into consideration.

(2) Where any of the circumstances under paragraphs (a)(b)(c) and (d) of subsection (1) are existent, and the court does not make a compensation order, the court shall give its reason in writing for not making the order.

**Restitution orders.**

**34.** (1) A court before which a person is charged and convicted of or admits an offence involving—

- (a) stealing;
- (b) taking;
- (c) obtaining;
- (d) extorting;
- (e) converting;
- (f) disposing of; or
- (g) knowingly receiving,

any property may make a restitution order restoring the property to the owner or his or her legal representative.

(2) Where the circumstances in subsection (1) exist and the court fails to give a restitution order, the court shall give its reasons in writing for not making the order.

**Chief Justice to make guidelines.**

35. The Chief Justice shall make guide lines to guide the courts on quantification of compensation; and determination of deserving cases.

PART III  
MEDIATION

**Interpretation.**

36. (1) In this Part, except where the context requires—

“complainant” means a person who, acting otherwise than in the course of official duty, lays an information, or causes an information to be laid, alleging the commission by the defendant of a scheduled offence;

“court” means, subject to section 48, a Magistrate’s court;

“mediation” has the meaning assigned to it by section 37; and

“scheduled offence” means an offence specified in a list made by the Minister, by Order.

**Elements of mediation.**

37. (1) For the purpose of this Part, mediation shall be, subject to subsection (2), the statement, by a third person called a “Mediator”, of a dispute of difference between one party and another by the employment of methods which consist of or include the discharge by one party of one or more of the following obligations—

- (a) doing unpaid work for the benefit of the other;
- (b) paying compensation to the other; or
- (c) participating in an education or rehabilitation program.

(2) Where mediation is carried out under this Part, the obligation of a person under subsection (2) shall not conflict with that person’s religious beliefs or interfere with the times, if any, at which that person normally works or attends a school or other educational establishment.

**Minister to approve mediators.**

38. Where the Minister is satisfied that a person has adequate knowledge of mediation, the Minister may, by notice published in the *Gazette*, approve that person as a mediator and a person so approved shall be referred to as Approved Mediator.

**Eligibility for Mediation.**

39. (1) The Minister shall make a list of scheduled offences by Order, which offences shall be eligible for mediation.

(2) A person who is charged for the first time with a scheduled offence is eligible for mediation if—

(a) that person is not more than 21 years of age and has not previously been charged with, or convicted of, any offence; and

(b) the charge is one that has been laid by or on behalf of a complainant.

(3) The Minister may amend the list mentioned in subsection (1) by Order.

#### **Eligible defendant to be offered mediation.**

**40.** A court which is about to try a scheduled offence alleged to have been committed by a defendant who is eligible for mediation shall, before the trial commences, invite the defendant to apply for mediation.

#### **Adjustment of pending application.**

**41.** (1) Where a defendant in response to an invitation under section 40 indicates to the court that he or she wishes to apply for mediation, the court shall adjourn the trial of the offence to such a day as will allow the defendant sufficient time to make the application.

(2) Where—

(a) a defendant fails to make the application before the day appointed under subsection (1), or before such later day as the court may at its discretion appoint; or

(b) the application is rejected by the court,

the court shall proceed to trial of the offence.

(3) An inference of guilt shall not be drawn from the fact that a defendant applied, or indicated his or her wish to apply for mediation.

#### **Application for mediation.**

**42.** (1) An application for mediation shall be made in duplicate in a form acceptable to the court.

(2) On receiving the application, the clerk of the court—

(a) shall mark on the copy—

(i) the court's acknowledgment of receipt of the application; and

(ii) the date on which the defendant is required to appear before the court for the resumption of the proceedings; and

(b) shall return the copy so marked to the defendant.

#### **Restrictions on making mediation order.**

**43.** (1) A court shall only approve an application for mediation where—

(a) after—

(i) considering a report in writing by a Probation Officer on the defendant and the defendant's circumstances; and

(ii) hearing the Probation Officer, if the court thinks it necessary, and the court is satisfied that the charge is one that may appropriately be dealt with by mediation;

- (b) the complainant has agreed that the charge should be so dealt with; and
- (c) the defendant and the complainant have agreed on an approved mediator who has agreed to act.

(2) The Director of Public Prosecutions shall be entitled to be heard by the court before the court determines to make any mediation order.

#### **Making of mediation orders.**

**44.** (1) Where a court approves an application for mediation, it shall, subject to section 45, make an order hereinafter referred to as a mediation order.

(2) A mediation order shall make provision for—

- (a) suspending the trial of the offence, subject to sections 46(b) and 47;
- (b) appointing the person referred to in section 43(1)(c) to be the mediator; and
- (c) referring the subject matter of the charge to that person for mediation.

(3) A mediation order shall—

- (a) subject to sections 46 and 47, have effect for a period not exceeding 12 months beginning with the date of the order as may be specified in the order;
- (b) require the defendant to submit during that period to the supervision of a Probation Officer;
- (c) contain such conditions as the court thinks necessary for securing the supervision of the defendant; and
- (d) contain such other conditions as to residence or other matters as the court, having regard to the circumstances of the case, considers necessary or expedient for the success of the proposed mediation.

(4) Where the complainant and the defendant both agree, a mediation order may require the defendant to assume an obligation described in section 38(2) or any other obligation the court thinks fit.

(5) A court which has made a mediation order shall furnish four copies to the Probation Officer, one for retention by the Probation Officer and the other 3 for distribution to the approved mediator, the complainant and the defendant.

#### **Explanation to the defendant.**

**45.** Before making a mediation order, the court shall explain to the defendant—

- (a) the effect and purpose of the order;
- (b) the court's power to review the order under section 40;
- (c) the consequences which may follow under section 46 if the defendant fails to comply with any requirements of the order; and
- (d) the benefit which may follow under section 49 if the mediation is successful.

**Review of mediation order.**

46. Where a mediation order is in force in respect of a defendant and, on the application of the defendant or the complainant or the approved mediator or the Probation Officer, it appears to the court to be in the interests of justice to do so having regard to circumstances which have arisen since the order was made, the court may—

- (a) with the consent of the defendant and the complainant, extend the duration of the order; or
- (b) revoke the order and proceed to the trial which was suspended by the order by virtue of section 43(2)(a).

**Breach of mediation order.**

47. (1) If at any time while a mediation order is in force in respect of a defendant it appears to a Magistrate on information that the defendant has failed to comply with any of the requirements of the order, the Magistrate may issue a summons requiring the defendant to appear before a Magistrate's Court at the place and time specified in the summons; and if a defendant fails to comply with such a summons, the court may issue a warrant for the defendant's arrest that the defendant be brought before the court.

(2) Where it is proved to the satisfaction of a court before which a defendant appears or is brought under subsection (1) that the defendant has failed without reasonable excuse to comply with any of the requirements of the mediation order, the court may revoke the order and proceed to the trial which was suspended by the order by virtue of section 44(2)(a).

**Protection against self-incrimination.**

48. (1) An incriminating statement made during, and as part of, mediation under this Part shall not be admissible in any court against the person making the incriminating statement.

(2) In this section, "court" includes a court other than a Magistrate's Court.

**Action of court after end or mediation.**

49. (1) Subject to this section, if a court is satisfied that the purpose of a mediation order has been fulfilled, the court shall dismiss the charge of the Scheduled Offence in respect of which the order was made.

(2) Before the court exercises its powers under subsection (1), the court shall obtain and consider—

- (a) a report in writing by the approved mediator appointed by the order;
- (b) a report in writing by the Probation Officer; and
- (c) any evidence, whether oral or in writing, being evidence relevant to the question whether the court should exercise its powers under subsection (1), which the mediator or the probation officer or the complainant or the defendant may wish to proffer to the court.

(3) A court shall not exercise its powers under subsection (1) if in any report or evidence made or proffered to the court under subsection (2) the person making the report or proffering the evidence states that the purpose of the mediation order has in that person's opinion not been fulfilled.

(4) Where subsection (3) applies, the court, unless it is open to the court to extend the duration of the mediation order under section 46(a) and the court is satisfied that the powers conferred by that paragraph should be exercised, shall proceed to the trial which was suspended by the order by virtue of section 44(2)(a).

### **Regulations for Mediation.**

**50.** (1) The Minister may make regulations under this section for carrying out the objects of this Part.

(2) Without prejudice to the generality of subsection (1), regulations may be made under this section prescribing—

- (a) the practice and procedure to be followed in relation to the conduct of any proceedings under this Part;
- (b) the fees, charges and costs in relation to any such proceedings; and
- (c) subject to the consent of the Minister responsible for Finance, the remuneration of mediators at the public expense.

(3) Regulations made under this section shall be subject to an affirmative resolution of the National Assembly.

## PART IV

### MISCELLANEOUS PROVISIONS

#### **Enforcement etc. of certain community orders. Second Schedule.**

**51.** The Second Schedule shall have effect in the following circumstances—

- (a) dealing with failures to comply with the requirements of certain community orders;
- (b) amending certain community orders;
- (c) revoking certain community orders with or without the substitution of other sentences.

#### **Regulations.**

**52.** The Minister may generally make regulations for the better carrying into effect the provisions of this Act.

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**FIRST SCHEDULE***(Section 23)***ATTENDANCE CENTRE ORDERS**

1. An attendance centre order shall not be made unless the court is satisfied that the attendance centre to be specified in the order is reasonably accessible to the person concerned, having regard to the offender, the means of access available to the offender and any other circumstances.
2. The times at which an offender is required to attend at an attendance centre shall, so far as practicable, be such as to avoid any conflict with the offender's religious beliefs and any interference with the times, if any, at which the offender normally works or attends a school or other educational establishment.
3. The first such time shall be a time at which the centre is available for the attendance of the offender in accordance with the notification of the Minister, and shall be specified in the order.
4. The subsequent times shall be fixed by the officer in charge of the centre, having regard to the offender's circumstances.
5. The aggregate number of hours for which an attendance centre order may require an offender to attend at an attendance centre shall not be less than 24, except where the offender is less than 14 years of age and the court is of opinion that 24 hours would be excessive having regard to the offender's age or any other circumstances.
6. The aggregate number of hours shall not exceed 24, except where the court is of opinion, having regard to all the circumstances, that 24 hours would be inadequate, and in that case shall not exceed 36 where the offender is under 17 years of age, or 48 hours where the offender is under 21 but not less than 17 years of age.
7. An offender shall not be required to attend at an attendance centre on more than one occasion on any day, or for more than 3 hours on any occasion.
8. A court may make an attendance centre order in respect of an offender before a previous attendance centre order in respect of that offender has ceased to have effect, and may determine the number of hours to be specified in the order without regard—
  - (a) to the number specified in the previous order; or
  - (b) to the fact that that order is still in effect.
9. Where a court makes an attendance centre order, the clerk of the court shall deliver or send a copy of the order to the officer in charge of the attendance centre specified in the order, and also deliver a copy to the offender or send a copy by registered post to the offender's last or usual place of abode.
10. Where an offender has been ordered to attend at an attendance centre in default of the payment of a sum of money, then—
  - (a) on payment of the whole sum to any person authorised to receive that sum, the attendance centre order shall cease to have effect;
  - (b) on payment of a part of the sum to any such person, the total number of hours for which the offender is required to attend at the centre shall be reduced proportionately, that is to say, by such number of complete

hours as bears to the total number the proportion most nearly approximating to, without exceeding, the proportion that the part bears to that sum.

## SECOND SCHEDULE

*(Section 23(2)(b))*

### ENFORCEMENT ETC. OF CERTAIN COMMUNITY ORDERS

#### PART I

##### PRELIMINARY

1. (1) In this Schedule “relevant order” means any of the following orders, namely, a probation order, a community service order and a curfew order.
- (2) This Schedule applies in relation to combination orders—
  - (a) in so far as they impose such a requirement as is mentioned in paragraph (a) or (b) of subsection (2) of section 23 of this Act, as if they were probation orders;
  - (b) in so far as they impose such a requirement as is mentioned in paragraph (a)(ii) of section 31 (1), as if they were community service orders; and
  - (c) in so far as they impose such a requirement as is mentioned in paragraph (b)(ii) of section 31 (2), as if they were curfew orders.

#### PART II

##### BREACH OF REQUIREMENT OF ORDER

##### *Issue of summons or warrant*

2. (1) If at any time while a relevant order is in force in respect of an offender it appears on information to a Magistrate that the offender had failed to comply with any of the requirements of the order, the Magistrate may—
  - (a) issue a summons requiring the offender to appear at the place and time specified in the summons; or
  - (b) if the information is in writing and on oath, issue a warrant for the offender’s arrest.
- (2) Any summons or warrant issued under this paragraph shall direct that the offender appear or be brought before a Magistrate’s Court.
3. (1) If it is proved to the satisfaction of the Magistrate’s Court before which an offender appears or is brought under paragraph 2 that the offender has failed without reasonable excuse to comply with any of the requirements of the relevant order, the

court may deal with the offender in respect of the failure in any one of the following ways, namely—

- (a) it may impose on the offender a fine not exceeding \$2,500;
- (b) subject to paragraph 6(2) and (3), it may make a community service order in respect of the offender;
- (c) where the relevant order is a probation order and the case is one to which section 10 of this Act applies, it may make an order under that section requiring the offender to attend at an attendance centre;
- (d) where the relevant order was made by a Magistrate's Court, it may revoke the order and deal with the offender, for the offence in respect of which the order was made, in any manner in which it could deal with the offender if the offender had just been convicted by the court of the offence.

(2) In dealing with an offender under sub-paragraph (1)(b) a Magistrate's Court—

- (a) shall take into account the extent to which the offender has complied with the requirements of the relevant order; and
- (b) may assume, in the case of an offender who has wilfully and persistently failed to comply with those requirements, that the offender has refused to consent to a community sentence which has been proposed by the court and requires that consent.

(3) Where a relevant order was made by the High Court and a Magistrate Court has power to deal with the offender under sub-paragraph (1)(a), (b) or (c), the latter court may instead commit the offender to custody or release the offender on bail until the offender can be brought or appear before the High Court.

(4) A Magistrate's Court which deals with an offender's case under sub-paragraph (3) shall send to the High Court—

- (a) a certificate signed by the Magistrate certifying that the offender has failed to comply with the requirements of the relevant order in the respect specified in the certificate; and
- (b) such other particulars of the case as may be desirable,

and a certificate purporting to be so signed shall be admissible as evidence of the failure before the High Court.

(5) A person sentenced under sub-paragraph (1)(b) for an offence may appeal to the Court of Appeal against the sentence.

#### *Powers of High Court*

4. (1) Where by virtue of paragraph 3(3) an offender is brought or appears before the High Court and it is proved to the satisfaction of the Court that the offender has failed to comply with any of the requirements of the relevant order, that Court may deal with the offender in respect of the failure in any one of the following ways, namely—

- (a) it may impose on the offender a fine not exceeding \$3,500;
- (b) subject to paragraph 6(2) and (3), it may make a community service order in respect of the offender;

- (c) where the relevant order is a probation order and the case is one to which section 10 of this Act applies, it may make an order under that section requiring the offender to attend at an attendance centre;
  - (d) it may revoke the order and deal with the offender, for the offence in respect of which the order was made, in any manner in which it could deal with the offender if the offender had just been convicted by or before the court of the offence.
- (2) In dealing with an offender under sub-paragraph (1)(d), the High Court—
- (a) shall take into account the extent to which the offender has complied with the requirements of the relevant order; and
  - (b) may assume, in the case of an offender who has wilfully and persistently failed to comply with those requirements, that the offender has refused to consent to a community sentence which has been proposed by the court and requires that consent.
- (3) In proceedings before the High Court under this paragraph any question whether the offender has failed to comply with the requirements of the relevant order shall be determined by the Court and not by the verdict of a jury.

#### *Exclusions*

5. (1) Without prejudice to paragraphs 7 and 8, an offender who is convicted of a further offence while a relevant order is in force in respect of the offender shall not on that account be liable to be dealt with under paragraphs 3 and 4 in respect of a failure to comply with any requirement of the order.
- (2) An offender who is required by a probation order to submit to treatment for the offender's mental condition, or the offender's dependency on drugs or alcohol, shall not be treated for the purposes of paragraph 3 or 4 as having failed to comply with that requirement on the ground only that the offender has refused to undergo any surgical, electrical or other treatment if, in the opinion of the court, the offender's refusal was reasonable having regard to all the circumstances.

#### *Supplemental*

6. (1) Any exercise by a court of its powers under paragraph 3(1)(a), (b) or (c) or 4(1)(a) or (b) is without prejudice to the continuance of the relevant order.
- (2) The number of hours which an offender may be required to work under a community service order made under paragraph 3(1)(b) or 4(1)(b)—
- (a) shall be specified in the order and shall not exceed 80 in the aggregate; and
  - (b) where the relevant order is a community service order, shall not be such that the total number of hours under both orders exceeds the maximum specified in section 24 of this Act.
- (3) Sections 18 and 19 of this Act and, so far as applicable, the provisions of this Schedule so far as relating to community service orders, have effect in relation to a community service order under paragraph 3(1)(b) or 4(1)(b) as they have effect in relation to a community service order in respect of an offender.

(4) Where the provisions of this Schedule have effect as mentioned in sub-paragraph (3), the powers conferred by those provisions to deal with the offender for the offence in respect of which the community service order was made shall be construed as powers to deal with the offender for the failure to comply with the requirements of the relevant order in respect of which the community service order was made.

### PART III

#### REVOCATION OF ORDER

##### *Revocation of order with or without re-sentencing*

7. (1) This paragraph applies where a relevant order is in force in respect of an offender and, on the application of the offender or the responsible officer, it appears to a Magistrate's Court that, having regard to circumstances which have arisen since the order was made, it would be in the interest of justice—

- (a) that the order should be revoked; or
- (b) that the offender should be dealt with in some other manner for the offence in respect of which the order was made.

(2) The court may—

(a) if the order was made by a Magistrate's Court—

- (i) revoke the order; or
- (ii) revoke the order and deal with the offender, for the offence in respect of which the order was made, in any manner in which it could deal with the offender if the offender had just been convicted by the court of the offence; or

(b) if the order was made by the High Court, commit the offender to custody or release the offender on bail until the offender can be brought or appear before the High Court.

(3) The circumstances in which a probation order may be revoked under sub-paragraph (2)(a)(i) include the offender's making good progress or responding satisfactorily to supervision.

(4) In dealing with an offender under sub-paragraph (2)(a)(ii), a Magistrate's Court shall take into account the extent to which the offender has complied with the requirements of the relevant order.

(5) An offender sentenced under sub-paragraph (2)(a)(ii) may appeal to the Court of Appeal against the sentence.

(6) Where the court deals with an offender's case under sub-paragraph (2)(b) it shall send to the High Court such particulars of the case as may be desirable.

(7) Where a Magistrate's Court proposes to exercise its powers under this paragraph, otherwise than on the application of the offender, it shall summon the offender to appear before the court and, if the offender does not appear in answer to the summons, may issue a warrant for the offender's arrest.

(8) An application may not be made by the offender under sub-paragraph (1) while an appeal against the relevant order is pending.

8. (1) This paragraph applies where an offender in respect of whom a relevant order is in force—

- (a) is convicted of an offence before the High Court; or
- (b) is committed by a Magistrate's Court to the High Court for sentence and is brought or appears before the High Court; or
- (c) is brought or appears before the High Court by virtue of paragraph 7(2)(b).

(2) If it appears to the High Court to be in the interest of justice to do so, having regard to circumstances which have arisen since the order was made, the High Court may—

- (a) revoke the order; or
- (b) revoke the order and deal with the offender, for the offence in respect of which the order was made, in any manner in which it could deal with the offender if the offender had just been convicted by or before the Court of the offence.

(3) The circumstances in which a probation order may be revoked under sub-paragraph (2)(a) include the offender's making good progress or responding satisfactorily to supervision.

(4) In dealing with an offender under sub-paragraph (2)(b), the High Court shall take into account the extent to which the offender has complied with the requirements of the relevant order.

#### *Supplemental*

9. (1) On the making under this Part of this Schedule of an order revoking a relevant order, the clerk to the court shall forthwith give copies of the revoking order to the responsible officer.

(2) A responsible officer to whom in accordance with sub-paragraph (1) copies of a revoking order are given shall give a copy to the offender and to the person in charge of any institution in which the offender was required by the order to reside.

### PART IV

#### AMENDMENT OF ORDER

##### *Amendment of requirements of probation or curfew order*

10. (1) Subject to sub-paragraph (2), a Magistrate's Court may, on the application of the offender or the responsible officer, by order amend a probation or curfew order—

- (a) by cancelling any of the requirements of the order; or
- (b) by inserting in the order (either in addition to or in substitution for any such requirement) any requirement which the court could include if it were then making the order.

(2) The power of a Magistrate's Court under sub-paragraph (1) is subject to the following restrictions, namely—

- (a) the court shall not amend a probation order—
  - (i) by reducing the probation period, or by extending that period beyond the end of 3 years from the date of the original order; or
  - (ii) by inserting in the order a requirement that the offender shall submit to treatment for the offender's mental condition, or the offender's dependency on drugs or alcohol, unless the amending order is made within 3 months after the date of the original order;
- (b) the court shall not amend a curfew order by extending the curfew periods beyond the end of 6 months from the date of the original order.

(3) In this paragraph and paragraph 11, references to the offender's dependency on drugs or alcohol include references to his propensity towards the misuse of drugs or alcohol.

11. (1) Where a medical practitioner or other person by whom or under whose direction an offender is being treated for the offender's mental condition, or the offender's dependency on drugs or alcohol, in pursuance of any requirement of a probation order—

- (a) is of the opinion mentioned in sub-paragraph (2); or
- (b) is for any reason unwilling to continue to treat or direct the treatment of the offender,

that medical practitioner or other person shall make a report in writing to that effect to the responsible officer and that officer shall apply under paragraph 10 to a magistrate's court for the variation or cancellation of the requirement.

(2) The opinion referred to in sub-paragraph (1) is—

- (a) that the treatment of the offender should be continued beyond the period specified in that behalf in the order;
- (b) that the offender needs different treatment, being treatment of a kind to which the offender could be required to submit in pursuance of a probation order;
- (c) that the offender is not susceptible to treatment; or
- (d) that the offender does not require further treatment.

#### *Supplemental*

12. An application may not be made under paragraph 10 or 12 while an appeal against the relevant order is pending.

13. (1) Subject to sub-paragraph (2), where a court proposes to exercise its powers under this Part of this Schedule otherwise than on the application of the offender, the court—

- (a) shall summon the offender to appear before the court; and
- (b) if the offender does not appear in answer to the summons, may issue a warrant for the offender's rest,

and the court shall not amend a relevant order under this Part of this Schedule unless the offender expresses willingness to comply with the requirements of the order as amended.

(2) This paragraph does not apply to an order cancelling a requirement of a relevant order or reducing the period of any requirement or substituting a new place for the one specified in a relevant order.

14. (1) On a court making under this Part of this Schedule an order amending a relevant order, the clerk to the court shall forthwith—

- (a) if the order amends the relevant order otherwise than by substituting a new place for the one specified in the relevant order, give copies of the amending order to the responsible officer;
- (b) if the order amends the relevant order in the manner excepted by paragraph (a), send to the clerk to the magistrate's court for the district in which the new place is situated—
  - (i) copies of the amending order; and
  - (ii) such documents and information relating to the case as the clerk considers likely to be of assistance to a court acting for that district in exercising its functions in relation to the order,

and in a case falling within paragraph (b) the clerk to the magistrate's court for that district shall give copies of the amending order to the responsible officer.

(2) A responsible officer to whom copies of an order are given in accordance with sub-paragraph (1) shall give a copy to the offender and to the person in charge of any institution in which the offender is or was required by the order to reside.

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