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# The Youth Rehabilitation Order and other Youth Justice Provisions of the Criminal Justice and Immigration Act 2008

Practice guidance  
for youth offending teams

# Contents

<b>Introduction</b>	<b>5</b>
Context	5
Scope	5
Who should use this guidance?	5
How should this guidance be used?	6
How has this guidance been developed?	6
<b>Summary of key legislative changes</b>	<b>7</b>
<b>Youth Rehabilitation Order – Overview</b>	<b>8</b>
What is the YRO?	8
What are the benefits of the YRO?	9
How does it work?	10
When can a court sentence to a YRO?	10
What must the court consider before sentencing to a YRO?	10
YROs imposed in Crown Court and magistrates' courts	11
How many YROs can a young person have?	11
Multiple YROs	11
YROs and Detention and Training Orders	11
How long can a YRO last?	12
Who manages a YRO?	12
Breach of a YRO	13
Revocation of a YRO	15
Amendment of a YRO	15
Court ordered review of a YRO	16
Subsequent convictions	16
Appearance before the court	16
Spent convictions	16

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<b>Youth Rehabilitation Order – Requirements</b>	<b>17</b>		
<b>Activity Requirement</b>	<b>17</b>		
Legislative reference	17		
How does it work?	17		
When is it appropriate?	17		
Who manages this requirement?	18		
Practice implications	18		
<b>Supervision Requirement</b>	<b>19</b>		
Legislative reference	19		
How does it work?	19		
When is it appropriate?	19		
Who manages this requirement?	19		
Practice implications	19		
<b>Unpaid Work Requirement</b>	<b>20</b>		
Legislative reference	20		
How does it work?	20		
When is it appropriate?	21		
Who manages this requirement?	21		
Practice implications	21		
<b>Programme Requirement</b>	<b>22</b>		
Legislative reference	22		
How does it work?	22		
When is it appropriate?	22		
Who manages this requirement?	22		
Practice implications	23		
<b>Attendance Centre Requirement</b>	<b>24</b>		
Legislative reference	24		
How does it work?	24		
When is it appropriate?	25		
Who manages this requirement?	25		
Practice implications	25		
<b>Prohibited Activity Requirement</b>	<b>26</b>		
Legislative reference	26		
How does it work?	26		
When is it appropriate?	26		
Who manages this requirement?	26		
Practice implications	26		
<b>Curfew Requirement</b>	<b>27</b>		
Legislative reference	27		
How does it work?	27		
When is it appropriate?	27		
Who manages this requirement?	27		
Practice implications	27		
<b>Electronic Monitoring Requirement</b>	<b>28</b>		
Legislative reference	28		
How does it work?	28		
When is it appropriate?	28		
Who manages this requirement?	28		
Practice implications	28		
<b>Exclusion Requirement</b>	<b>29</b>		
Legislative reference	29		
How does it work?	29		
When is it appropriate?	29		
Who manages this requirement?	29		
Practice implications	29		
<b>Residence Requirement</b>	<b>30</b>		
Legislative reference	30		
How does it work?	30		
When is it appropriate?	30		
Who manages this requirement?	30		
Practice implications	31		
<b>Local Authority Residence Requirement</b>	<b>32</b>		
Legislative reference	32		
How does it work?	32		
When is it appropriate?	33		
Who manages this requirement?	33		
Practice implications	33		
<b>Mental Health Treatment Requirement</b>	<b>34</b>		
Legislative reference	34		
How does it work?	34		
When is it appropriate?	35		
Who manages this requirement?	35		
Practice implications	35		

<b>Drug Treatment Requirement</b>	<b>37</b>	<b>Youth Rehabilitation Order – Transitional arrangements</b>	<b>51</b>
Legislative reference	37		
How does it work?	37		
When is it appropriate?	37		
Who manages this requirement?	37		
Practice implications	38		
<b>Drug Testing Requirement</b>	<b>39</b>	<b>Changes for community provisions</b>	<b>52</b>
Legislative reference	39	Referral Orders	52
How does it work?	39	Youth Conditional Caution	53
When is it appropriate?	39	Youth Default Order	54
Who manages this requirement?	39	Overview	54
Practice implications	40	Unpaid Work Requirement	54
		Attendance Centre Requirement	55
		Curfew Requirement	55
		Enforcement	55
		Anti-social behaviour measures	56
		'Spent' Warnings, Reprimands and cautions	56
		Sexual Offences Prevention Orders	56
<b>Intoxicating Substance Treatment Requirement</b>	<b>41</b>	<b>Changes for custodial provisions</b>	<b>57</b>
Legislative reference	41	Assessment of dangerousness changes	57
How does it work?	41	Custody threshold	57
When is it appropriate?	41	Pre-sentence reports	57
Who manages this requirement?	41	Public protection sentence changes	58
Practice implications	42	Amendments to Section 226 (detention for public protection)	58
		Amendments to section 228 (extended sentence for certain violent or sexual offences)	58
		Custody credit for electronically curfewed bail	59
		Automatic 28-day release on recall	59
<b>Education Requirement</b>	<b>43</b>		
Legislative reference	43		
How does it work?	43		
When is it appropriate?	44		
Who manages this requirement?	44		
Practice implications	45		
<b>YRO – Intensive Supervision and Surveillance</b>	<b>46</b>		
Legislative reference	46		
How does it work?	46		
When is it appropriate?	47		
Who manages this requirement?	47		
Practice implications	47		
<b>YRO – Intensive Fostering</b>	<b>49</b>		
Legislative reference	49		
How does it work?	49		
When is it appropriate?	50		
Who manages this requirement?	50		
Practice implications	50		



## Context

The Criminal Justice and Immigration Act 2008 (CJ&I Act 2008) received Royal Assent in May 2008. The Act introduces the biggest legislative change for the youth justice system since the Crime and Disorder Act 1998.

The most significant youth justice provision of the CJ&I Act 2008 is the introduction of the Youth Rehabilitation Order (YRO) – a generic community sentence for young people under the age of 18 which mirrors the adult generic community sentence introduced by the Criminal Justice Act 2003.

The YRO came into effect across England and Wales on 30 November 2009 alongside the roll out of the Youth Justice Board for England and Wales' (YJB's) change programme – Youth Justice: The Scaled Approach.<sup>1</sup>

The Scaled Approach, developed by the YJB in partnership with four pilot youth offending teams (YOTs), aims to reduce the likelihood of reoffending by tailoring the intensity of the intervention to the young person's assessed risks and needs identified using the *Asset* assessment tool, and by ensuring more effective management of risk of serious harm to others. The Scaled Approach applies to young people who are subject to a YOT intervention through either a Referral Order, a YRO, or during the community element of a custodial sentence.

## Scope

This publication provides non-statutory guidance for the CJ&I Act 2008. It outlines the new YRO and other key youth justice related provisions of the CJ&I Act 2008 to enable YOT practitioners and managers to understand these legislative changes and to prepare for their implementation.

## Who should use this guidance?

The primary audience for this guidance is practitioners and managers in YOTs who will have case management responsibilities for young people subject to youth court sentences and supervision in the community. This guidance will also be a useful reference for practitioners and managers within secure establishments, youth justice volunteers (including youth offender panel members), YOT management boards and local partner agencies, and will contribute to their understanding of the key youth justice provisions of the CJ&I Act 2008.

<sup>1</sup> A PDF of *Youth Justice: The Scaled Approach – A framework for assessment and intervention* can be found in the Scaled Approach section of the YJB website ([www.yjb.gov.uk](http://www.yjb.gov.uk)).

## How should this guidance be used?

The guidance forms part of a suite of guidance developed by the YJB to prepare YOTs for the significant changes resulting from the commencement of the CJ&I Act 2008. It should, therefore, be used together with the:

- + new *Case Management Guidance*
- + revised *National Standards for Youth Justice Services*
- + revised *Key Elements of Effective Practice series*
- + *Youth Justice: The Scaled Approach – A framework for assessment and intervention*
- + revised *Referral Order Guidance*.

Reference to source documents and additional guidance will be clearly signposted. This guidance should be used together with the 'Scaled Approach and Frequently Asked Questions' page on the Scaled Approach section of the YJB website, as it addresses queries and issues that are raised throughout implementation and beyond.

## How has this guidance been developed?

This guidance has been developed through:

- + Consultation with an operational working group consisting of 30 YOT practitioners from across England and Wales.
- + Feedback from the regional events and workshops undertaken prior to the implementation of the YRO and Scaled Approach.
- + Referencing key sections of:
  - the CJ&I Act 2008
  - *Case Management Guidance*
  - *National Standards for Youth Justice Services*
  - *Key Elements of Effective Practice series*
  - *Overarching Principles – Sentencing Youths*
  - and any other relevant guidance.
- + Input from YJB policy leads and external specialist agencies.
- + Consultation with the Joint Youth Justice Unit, including legal review by the Ministry of Justice's legal team.

## Summary of key legislative changes

The CJ&I Act 2008 contains a number of youth justice related changes. The summary below outlines these changes and the timescales for their implementation.

Name	Act reference	Description	Timescale for implementation	Page reference
Youth Rehabilitation Order	S1–8 and Schedules 1–4	Single, generic community sentence for young people, replacing existing mix of youth community sentences and combining a wide range of requirements in a targeted and flexible community sentence.	30 November 2009	17–61
Referral Orders	S35–37	Extension of discretionary court powers to make referral orders and power to revoke early, e.g. for good progress, and to extend the compliance period.	27 April 2009	52
Youth Conditional Caution	S48 and Schedule 9	A higher-tariff pre-court disposal aimed at reducing the number of young people taken to court for a low level offence. To be piloted with 16 and 17-year-olds initially.	16 and 17-year-olds pilot scheduled start early 2010	53
Youth Default Order	S39 and Schedule 7	Will enable courts to impose an Unpaid Work Requirement (for 16 and 17-year-olds only), Curfew Requirement or Attendance Centre Requirement on a young offender in lieu of an unpaid fine.	Not known	54
'Spent' Warnings, Reprimands and cautions	S49 and Schedule 10	Warnings, Reprimands and conditional cautions are brought within the scope of the Rehabilitation of Offenders Act 1974; Reprimands and Warnings are spent at the time they are given, conditional cautions spent after three months.	19 December 2008	56
Anti-Social Behaviour Orders	S123–124	Amendments to Anti-Social Behaviour Orders and Individual Support Orders.	1 February 2009	56
Sexual Offences Prevention Orders	S141	Some young people will be eligible for Sexual Offences Prevention Order if convicted of an offence listed under Schedule 3 of the Sexual Offences Act 2003.	14 July 2008	56
Pre-sentence reports	S12	When custody is being considered by the court for a young person the pre-sentence report <i>must</i> be in writing.	14 July 2008	57
Sentences of detention for public protection	S14	S226 of the Criminal Justice Act 2003 has been amended to set a minimum detention of two years.	14 July 2008	58
Extended sentences for certain violent and sexual offences	S16	S228 of the Criminal Justice Act 2003 has been amended to set a minimum detention of four years.	14 July 2008	58
Automatic 28-day release on recall	S29	If a young person is recalled to custody, they will automatically be released 28 days after the day they are returned to custody, subject to meeting the eligibility criteria.	14 July 2008	59
Custody credit for electronically curfewed bail	S21	A young person subject to electronically monitored curfew while on bail may have time 'credited' to reduce the time spent in custody for a subsequent custodial sentence.	3 November 2008	59

## Youth Rehabilitation Order – Overview

Section 1 and Schedules 1 to 4 of the CJ&I Act 2008 provide for a YRO, a new generic community sentence for young people under the age of 18.<sup>2</sup>

### What is the YRO?

The YRO is the standard generic community sentence for young people who offend, providing a menu of interventions for tackling offending behaviour. For offences committed on or after 30 November 2009, the YRO replaces the nine existing community sentences listed below.<sup>3</sup>

+ Action Plan Order	+ Curfew Order
+ Attendance Centre Order <sup>4</sup>	+ Drug Treatment and Testing Order
+ Community Punishment and Rehabilitation Order	+ Exclusion Order
+ Community Punishment Order	+ Supervision Order
+ Community Rehabilitation Order	

Section 148 of the Criminal Justice Act 2003<sup>5</sup> provides that the YRO is available only if the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence. However, the court is **not obliged** to impose a YRO, even if the offence is sufficiently serious to warrant such a sentence.

In addition, under section 148, the requirements imposed by a YRO must be such that, in the opinion of the court, they are most suitable for the offender, and the restrictions on liberty imposed by the order must be commensurate with the seriousness of the offence/offences.

The range of requirements and flexibility of the YRO enables courts to take a more individualised and targeted approach to community sentencing, supported by YOTs' Scaled Approach assessment and information presented in YOT court reports.

There are no restrictions on the number of times a young person can be sentenced to a YRO. If a young person reoffends, courts are expected to use the YRO on multiple occasions, adapting the menu as appropriate to deal with repeat offending.<sup>6</sup>

<sup>2</sup> Note: The provisions from the Criminal Justice Act 2003 which would have extended the adult community order to 16 and 17-year-olds will not be brought into force (SI 2009 No. 616 (C.42)).

<sup>3</sup> All other current orders not specified remain in force.

<sup>4</sup> The Attendance Centre Order is retained as a means of dealing with a fine defaulter.

<sup>5</sup> S148 Criminal Justice Act 2003 as amended by S10 CJ&I Act 2008.

<sup>6</sup> Though an original YRO may need to be revoked and replaced by a new YRO with new requirements – see 'How many YROs can a young person have?' on page 11.

The following requirements can be attached to a YRO. They have been variously designed to provide for punishment, protection of the public, reducing reoffending, and reparation.

+ Activity Requirement	+ Local Authority Residence Requirement
+ Attendance Centre Requirement	+ Mental Health Treatment Requirement
+ Curfew Requirement	+ Programme Requirement
+ Drug Testing Requirement	+ Prohibited Activity Requirement
+ Drug Treatment Requirement	+ Residence Requirement
+ Education Requirement	+ Supervision Requirement
+ Electronic Monitoring Requirement	+ Unpaid Work Requirement
+ Exclusion Requirement	+ YRO with Intensive Fostering <sup>7</sup>
+ Intoxicating Substance Treatment Requirement	+ YRO with Intensive Supervision and Surveillance

## What are the benefits of the YRO?

The YRO simplifies the sentencing structure, building on learning from the most effective existing sentences and enables sentences to be tailored to the circumstances and risks of the individual young person. If a YRO is unsuccessful and the young person reoffends, courts are able to make a second and, if need be, further YROs using different combinations from the wide range of YRO requirements, as recommended by YOTs through their court reports, based on their assessment of the young person.

The range of YRO requirements offers a community sentence which can be a viable and robust alternative to custody. If used effectively, the YRO should not only help reduce reoffending, but should also contribute to a reduction in the number of young people in custody.

<sup>7</sup> The Act refers to this as 'fostering'; however, the YJB have termed this type of intensive intervention 'Intensive Fostering', so this is how it will be referred to throughout this document.

## How does it work?

### When can a court sentence to a YRO?

A YRO is not an available sentencing option where compulsory referral order conditions are found to exist, i.e. where a first time offender has pleaded guilty to an imprisonable offence and is facing sentence in a youth or magistrates' court.

To sentence a young person to a YRO, the court must consider the offence serious enough to warrant a community sentence and the restriction of liberty involved must be commensurate with the seriousness of the offence (S148 Criminal Justice Act 2003).

When sentencing, a court will attach one or more requirements to a YRO and will ensure the order is proportionate to the offence for which the young person is being sentenced. YOTs, in reporting to the court (ordinarily in the form of a pre-sentence report), will recommend packages of interventions which are likely to address the assessed likelihood of reoffending and risk of serious harm to others.

Although there is no limit to the number of requirements a court can attach to a YRO, it is expected that only requirements that are necessary to address risk of serious harm to others, reduce the likelihood of reoffending and are proportionate to the offence are included by the court. Furthermore, the provision of these requirements needs to be available at a local level and the necessary willingness to comply with the requirement needs to be established with either the young person or third parties who are implicated by the imposition of a particular requirement.

### What must the court consider before sentencing to a YRO?

Before making a YRO or custodial order, the court must consider a pre-sentence report prepared by the YOT that will be seeking to identify an appropriate balance between the seriousness of the offence, the risk of harm the young person might pose in the future and the needs of the young person.<sup>8</sup>

Further, before sentencing a young person to a YRO, the court must first obtain and consider information about the young person's family circumstances and the likely impact the YRO will have.<sup>9</sup>

The court must ensure that if there are two or more requirements attached to a YRO, that these are compatible with each other.

Additionally, the court must ensure that any requirement attached to a YRO does not:

- + conflict with the young person's religious beliefs
- + interfere with the times, if applicable, that the young person is in education or employment
- + conflict with the requirements of any other Youth Rehabilitation Order to which the young person may be subject<sup>10</sup> (see paragraph on multiple YROs on the following page).

<sup>8</sup> Section 156(3) of the Criminal Justice Act 2003, as amended. See also paragraph 10.11 in *Overarching Principles – Sentencing Youths*, Sentencing Guidelines Council (2009).

<sup>9</sup> Paragraph 28 of Schedule 1 CJ&I Act 2008.

<sup>10</sup> Schedule 1, paragraph 29(3) CJ&I Act 2008.

## YROs imposed in Crown Court and magistrates' courts

If an order is imposed in a youth or magistrates' court, any further proceedings (breach proceedings or any application for amendment or early revocation) will take place in the local youth court if the young person is under 18 years, or if over 18 (initially at least) in the local adult magistrates' court.<sup>11</sup> Further proceedings for a YRO imposed in a Crown Court will be dealt with by the Crown Court, unless at the time of sentencing the Crown Court directed that any further proceedings are to take place in a youth or magistrates' court.<sup>12</sup>

## How many YROs can a young person have?

As a general rule, a young person can only be subject to one YRO at any one time. If the young person reoffends while subject to a YRO or Reparation Order, the court cannot sentence to a new YRO, unless the existing order (including any existing Reparation Order or Referral Order) has been revoked.

## Multiple YROs

However, if a young person is being sentenced for two or more associated offences on the same sentencing occasion, the court can impose YROs for each of the offences but the YROs must be of the same 'type', i.e. the court cannot combine Intensive Supervision and Surveillance (ISS) and Intensive Fostering requirements nor combine any intensive activity requirement with other requirements.<sup>13</sup> So if, for example, the young person has committed two associated offences the court cannot impose a YRO for one and a YRO with ISS for the other. The court may impose two YROs with a different combination of ('non-intensive') requirements, indicating whether these are to run concurrently or consecutively. Where the same requirement is included in different YROs, the court will stipulate if the requirements of the different orders are to run consecutively or concurrently, and if consecutive, the cumulative number of hours/days must not exceed the maximum specified for that particular requirement. For example, if two unpaid work requirements are to run consecutively, the aggregate length of the requirement must not exceed 240 hours.

## YROs and Detention and Training Orders

If the young person is sentenced for another offence(s) during their Detention and Training Order (DTO), the court can impose a YRO to either run concurrently with the young person's licence period or for the YRO to commence at the end of supervision for the DTO. If the YRO runs concurrently to the DTO licence period, it does not have the effect of revoking the DTO but consideration will need to be given to ensure that the YRO and DTO supervision are complementary.<sup>14</sup>

<sup>11</sup> Initially, at least, a person over the age of 18 will be dealt with by an adult magistrates' court – as it is possible, the magistrates' court may decide they have the power to refer a person over 18 to the Crown Court for sentencing on breach.

<sup>12</sup> Schedule 1, paragraph 36 CJ&I Act 2008.

<sup>13</sup> Schedule 1, paragraph 31 CJ&I Act 2008.

<sup>14</sup> Schedule 1, paragraph 30(2) CJ&I Act 2008.

## How long can a YRO last?

A YRO will take effect on the day the order is made and can run for up to three years. However, individual requirements may have their own timescales which may be less than the overall YRO. The YRO will run the length of its longest (or latest finishing) requirement; if a Supervision Requirement is imposed, this will run the length of the order.

The court may specify in the order the date or dates by which particular requirements must be completed.

## Who manages a YRO?<sup>15</sup>

The officer responsible for managing the YRO has the following duties:

- + making the necessary arrangements in relation to the requirements imposed by the order
- + promoting the young person's compliance with those requirements
- + where appropriate, taking steps to enforce those requirements.

The responsible officer is generally a member of the YOT or local probation; however, the exception to this is detailed in the following scenarios:

- + where the only requirement imposed by the order is a Curfew Requirement with an Electronic Monitoring Requirement attached, the responsible officer will be the electronic monitoring provider (i.e. Serco or G4S)
- + where the only requirement imposed by the order is an Attendance Centre Requirement, the responsible officer is the officer in charge of the attendance centre in question.

The young person on a YRO must keep in touch with the responsible officer as directed and must notify the responsible officer of any change of address.<sup>16</sup> These are enforceable obligations (like the YRO requirements) and if not complied with, breach proceedings can be taken.<sup>17</sup>

<sup>15</sup> Sections 4 and 5 CJ&I Act 2008.

<sup>16</sup> Section 5(5)(a)&(b) CJ&I Act 2008.

<sup>17</sup> Section 5(6) CJ&I Act 2008.

## Breach of a YRO<sup>18</sup>

The key aim of supervising young people is to ensure engagement and compliance; as such, practitioners are encouraged to refer to the relevant sections of *Case Management Guidance* and *National Standards for Youth Justice Services* for more guidance on how this can be achieved.

Practitioners should also refer to *Key Elements of Effective Practice – Engaging Young People who Offend* for guidance on techniques to promote engagement and compliance.

A young person is in breach of their YRO if they have failed without reasonable excuse<sup>19</sup> to comply with any requirement in their order. Unless the responsible officer thinks the breach is so serious that they ought to cause an information to be laid, then they must give the young person a Warning.<sup>20</sup>

There is a presumption in favour of referring the matter back to court after a third failure to comply<sup>21</sup> in the 12-month warned period.<sup>22</sup> The responsible officer/YOT manager may also instigate breach proceedings at any point of the young person's order outside of the warned period,<sup>23</sup> if the young person's failure to comply is of the nature that requires such action. This should, however, only take place in very rare and exceptional circumstances as the ultimate aim should be to support and enable the young person to comply and successfully complete their order.

The legislation now sets out what information should be contained within the written warning where an unacceptable failure to comply has taken place. The written warning must:

- ✦ describe the circumstances of the failure to comply
- ✦ state that this failure is unacceptable
- ✦ inform the young person that they are liable to be returned to court for their failure to comply.<sup>24</sup>

A second warning must also be formalised with a letter and then at the point of the third failure to comply, before the matter is referred back to court, the responsible officer/YOT manager should consider whether there are any exceptional circumstances which justify not causing an information to be laid. In determining whether to exercise discretion to stay breach, YOT managers should also take into consideration the young person's welfare.

<sup>18</sup> Schedule 2, part 2 CJ&I Act 2008.

<sup>19</sup> In determining whether any reason given for non-attendance is reasonable, the responsible officer should take into account a young person's welfare and the provision of support to meet their welfare needs, their circumstances, overall compliance and whether they seem committed to completing the order.

<sup>20</sup> Schedule 2, para 3(1) CJ &I Act 2008.

<sup>21</sup> Schedule 2, para 4(1) CJ&I Act 2008.

<sup>22</sup> Schedule 2, para 4(3) CJ&I Act 2008.

<sup>23</sup> Schedule 2, para 4(2) CJ&I Act 2008.

<sup>24</sup> Schedule 2, para 3(2) CJ&I Act 2008.

Once a young person has failed to comply on three occasions within their 12-month warned period and the responsible officer/YOT manager has determined on the third failure there are no exceptional circumstances which justify not causing an information to be laid, they must lay an information seeking a summons or warrant for the arrest of the young person, who will normally be brought before the court in the local justice area in which s/he resides.<sup>25</sup> However, if the young person has turned 18 their breach will be heard in the local magistrates' court (other than a youth court).<sup>26</sup>

Where a young person appears before court for breach of their YRO, the court may deal with that failure to comply in one of the following ways:<sup>27</sup>

- ✦ No action – continue with the existing YRO as it stands.
- ✦ Order the young person to pay a fine of up to £250 if they are under 14 or up to £1000 if they are over 14, and continue with the existing YRO as it stands.
- ✦ Amend the terms of the YRO to add a requirement or substitute one requirement for another:
  - Any new requirement needs to have been available to the original sentencing court. Therefore, if the original offence was not eligible for a YRO with ISS or Intensive Fostering, neither is available following breach of YRO unless the young person has wilfully and persistently not complied.
  - Any addition/substitution of requirements must be capable of being complied with within the date originally specified by the court for completion of the YRO.
  - If the original YRO did not contain an Unpaid Work Requirement but the court adds this to the YRO following breach, the minimum number of hours to be completed will be 20 (rather than 40).
- ✦ Revoke the current YRO and resentence the young person to any sentence which was available to the original sentencing court; this may be a new YRO with different requirements.
- ✦ If the young person has wilfully and persistently failed to comply with a YRO,<sup>28</sup> the court can impose a YRO with ISS even if the original offence **did not** meet the ISS threshold, e.g. was non-imprisonable.
- ✦ In this latter scenario, if the young person fails to comply with a YRO ISS or Intensive Fostering imposed for wilful and persistent non-compliance with a standard YRO, the court may impose a custodial sentence for further wilful and persistent non-compliance, but this cannot be for longer than four months.
- ✦ If the existing sentence was a YRO with ISS or Intensive Fostering and the original offence was imprisonable, the court can sentence to custody.

During breach proceedings, the court must take into account the extent to which the young person has complied with the requirements of their YRO.

<sup>25</sup> The exception to this is where the sentence was imposed in a Crown Court and at the time of sentencing they direct under paragraph 36 of Schedule 1 of the Act that further proceedings are to take place in a youth or magistrates' court.

<sup>26</sup> Schedule 2, para 5(3) CJ&I Act 2008.

<sup>27</sup> Schedule 2, paras (6)&(8) CJ&I Act 2008.

<sup>28</sup> See section on persistent offenders in *Overarching Principles – Sentencing Youths*, Sentencing Guidelines Council (2009).

## Revocation of a YRO<sup>29</sup>

The young person or responsible officer can make an application to court to have an existing YRO revoked. This can include seeking revocation for good progress with the order or responding well to treatment.<sup>30</sup> If the application is dismissed, unless directed by the court, no further application can be made for three months.

## Amendment of a YRO<sup>31</sup>

The young person or the responsible officer can make an application to the court to amend an existing YRO in order to:

- ✦ Specify a new local justice area if the young person is living or is proposing to live in a different area.
- ✦ Cancel an existing requirement, for example if it is found to be unworkable because a young person moves area and there is no provision to deliver a particular requirement in the new area, or due to illness which effects the young person's ability to comply with the order.
- ✦ Replace a requirement with another requirement of the same kind available at the time of the original sentence. Any new requirement must be capable of being complied with before the date for completing the YRO specified by the original sentencing court.

<sup>29</sup> Schedule 2, part 3 of CJ&I Act 2008.

<sup>30</sup> Schedule 2, para 11 of CJ&I Act 2008. Responding well to treatment could be in relation to drug treatment, mental health treatment or intoxicating treatment requirements.

<sup>31</sup> Schedule 2, part 4 CJ&I Act 2008.

## **Court ordered review of a YRO**

The court has the power to include a court ordered review of the YRO that they are imposing. This is expected to be piloted in 2010 and will require further consultation before it is rolled out nationally.

## **Subsequent convictions<sup>32</sup>**

Where a YRO is in force in relation to a young person and they are convicted of a further offence by a youth or other magistrates' court, the court<sup>33</sup> may revoke the young person's existing YRO and resentence them for the new offence and for the offence for which the existing YRO was imposed. In these circumstances, the court must take into account the extent to which the young person has already complied with their existing YRO.

Alternatively, if the Crown Court imposed the YRO and did not direct that further proceedings should be in a youth or other magistrates' court, the case must be brought to Crown Court which is able to deal with the young person using any sentence available to the convicting court for the new offence.

## **Appearance before the court<sup>34</sup>**

Where a young person subject to a YRO is to have their order revoked or amended or they have been convicted of a further offence, they must, upon summons from the court, appear as directed at the court – failure to do so may result in their arrest. However certain proceedings can go ahead without the young person being present in court where, for example, the court plans to amend a YRO by removing or reducing the duration of a requirement of a YRO, or revoke a YRO early for good progress, on the application of the young person and their responsible officer, or where the court is substituting the local justice area specified in the order for a new one.

## **Spent convictions**

A YRO is spent one year from the date of conviction or when the order ceases to have effect, whichever is longer.<sup>35</sup>

<sup>32</sup> Schedule 2, part 5 CJ&I Act 2008.

<sup>33</sup> Where the existing YRO was imposed in a Crown Court but direction was given at the point of sentencing under paragraph 36 of schedule 1 for subsequent proceedings to take place in a magistrates' or youth court, the 'convicting court' for the new offence can be a magistrates' or youth court.

<sup>34</sup> Schedule 2, part 6 CJ&I Act 2008.

<sup>35</sup> Section 5(5)(da) of the Rehabilitation of Offenders Act 1974 as amended by Schedule 4, paras 20–22 of the CJ&I Act 2008.

## Activity Requirement

### Legislative reference

Section 1(1)(a) and paragraphs 6 to 8 of Schedule 1 of the CJ&I Act 2008 provides for an Activity Requirement as part of a YRO.

### How does it work?

A YRO with an Activity Requirement requires a young person to comply with any or all of the following:

- ✦ Participate on the number of days (no more than an aggregate of 90 days) which may be specified in activities at a place or places specified.
- ✦ Participate in an activity or activities specified on the number of days (no more than an aggregate of 90 days) which may be specified.
- ✦ Participate in one or more residential exercises for a continuous period or periods comprising the number of days (no more than an aggregate of 90 days) as may be specified.
- ✦ Engage in activities as directed by the responsible officer on the number of days which may be specified (if this includes residential activity this must be for no longer than seven days and be specified in the order).

A court may not attach an Activity Requirement to a YRO unless:

- ✦ It has consulted with the YOT or local probation services.
- ✦ It is satisfied that it is feasible to secure compliance with the requirement.
- ✦ It is satisfied that there are adequate provisions in the local area for the young person to participate in the proposed activities.
- ✦ The third party consents to the Activity Requirement being imposed, if compliance with the requirement depends on the cooperation of a third party.
- ✦ The parent or guardian consents to instructions from the responsible officer, where the order is to engage in activities in accordance with instructions from the responsible officer requiring the young person to participate in residential activities.

The Activity Requirements can include an activity whose purpose is reparation, which may include contact between the young person and the person or persons affected by the offence.

### When is it appropriate?

An Activity Requirement may be appropriate for the majority of young people to prevent further offending and to address all levels of likelihood of reoffending as described in the Scaled Approach model.

## Who manages this requirement?

YOT or local probation practitioners will be the responsible officer/case manager for the Activity Requirement and will be responsible for monitoring compliance with this requirement and, where necessary, instigating breach proceedings.

## Practice implications

YOTs may use external agencies to deliver planned activities. In such situations, YOTs should ensure they have adequate information-sharing procedures to allow them to effectively monitor the young person's compliance.

If YOTs have reparation activity delivered in hours rather than days, they will need to make a judgement on how many days this activity translates into when proposing this requirement to the court. This judgement should take into account the type of activity, the young person's circumstances (where they are in full-time education, for example) and the young person's ability to comply.

Where residential activity forms part of the requirement, YOTs should ensure that appropriate accommodation is available as part of the residential activity and the young person and their parents/carers (if appropriate) are made aware of arrangements.

The YOT should ensure that for any activity or residential activity a health and safety check is undertaken.

YOTs should manage this requirement in line with the CJ&I Act 2008 and the relevant sections of *National Standards for Youth Justice Services* and, where necessary, undertake Warnings and breach proceedings as directed.

## Supervision Requirement

### Legislative reference

Section 1(1)(b) and paragraph 9 of Schedule 1 of the CJ&I Act 2008 provides for a Supervision Requirement as part of a YRO.

The Supervision Requirement replaces the Supervision Order.

### How does it work?

A YRO with a Supervision Requirement requires the young person to meet with the responsible officer, or another person nominated by the responsible officer, as agreed.

When included in a YRO, the Supervision Requirement will remain in force for the duration of the order.

### When is it appropriate?

A Supervision Requirement may be appropriate for the majority of young people to prevent further offending and to address all levels of likelihood of reoffending as described in the Scaled Approach model. It can be used as the vehicle for addressing the young person's offending behaviour (where a specific Programme Requirement may not be appropriate) and to address any risk or needs the young person demonstrates.

### Who manages this requirement?

YOT or local probation practitioners will be the responsible officer/case manager for a Supervision Requirement. Where external agencies are delivering interventions on the YOT's behalf, the YOT will continue to be responsible for monitoring and enforcing this requirement.

### Practice implications

YOTs should manage this requirement in line with the Scaled Approach framework and determine statutory contacts<sup>36</sup> with the young person as per their assessed intervention level.

A YOT may designate an external service provider to deliver some of the young person's statutory contacts. In such situations, YOTs should ensure they have adequate information-sharing procedures to allow them to effectively monitor the young person's compliance.

For more information on the Scaled Approach, YOTs should refer to *Youth Justice: The Scaled Approach – A framework for assessment and intervention*, available on the YJB website.

YOTs should manage this requirement in line with the CJ&I Act 2008 and the relevant sections of *National Standards for Youth Justice Services* and, where necessary, undertake Warnings and breach proceedings as directed.

<sup>36</sup> A 'contact' is a face-to-face planned meeting between the child/young person, the YOT case manager, another member of the YOT or a member of another agency, or a volunteer approved to work with the young person in respect of the supervision of his or her court order.

## Unpaid Work Requirement

### Legislative reference

Section 1(1)(c) and paragraph 10 of Schedule 1 of the CJ&I Act 2008 provides for an Unpaid Work Requirement as part of a YRO.

The Unpaid Work Requirement replaces the Community Punishment Order for 16 and 17-year-olds.

### How does it work?

An Unpaid Work Requirement is only available for young people aged 16 and 17 years at the time of their conviction. When a YRO with an Unpaid Work Requirement is made, the number of hours which the young person is required to work must be specified in the order.

The hours of unpaid work ordered must be, in aggregate:

- + not less than 40 hours
- + not more than 240 hours.

A court may not impose an Unpaid Work Requirement unless it is satisfied that:

- + the young person is suitable to perform work as part of the requirement as notified by the YOT or local probation service
- + provision for the offender to work under the requirement is available in the local area.

The young person must undertake work specified by the responsible officer for the number of hours specified in the order.

Specified work for the number of hours specified in the order must be undertaken within 12 months from the day the order came into effect. However, on application to the court, the period to complete an Unpaid Work Requirement can be extended where the court is of the view that this would be in the interests of justice (see paragraph 17 of Schedule 2 of the Act).

Unless revoked, a YRO with an Unpaid Work Requirement remains in force until the young person has completed the number of hours specified in the order.

## When is it appropriate?

An Unpaid Work Requirement is a vehicle for repairing harm to the young person's community in a constructive and demanding way. It is viewed first and foremost as a punishment, with the rehabilitation of the young person a secondary, although important consideration. Work undertaken could include, for example, work to improve community facilities or graffiti cleaning. Local probation areas/trusts/unpaid work providers are required to consult with YOTs concerning unpaid work placements for young people, and section 11 of the Children Act 2004 places probation areas/trusts/unpaid work providers under a duty to safeguard and promote the welfare of children. However, YOTs should carefully consider the circumstances of the young person concerned before proposing an Unpaid Work Requirement, and in general this requirement will only be suitable for young people with reasonable levels of maturity.

## Who manages this requirement?

The local probation area/trust/unpaid work provider will be responsible for case managing YROs where there is only a stand-alone Unpaid Work Requirement. However, the YOT is responsible for prosecuting the breach on behalf of the local probation area/trust/unpaid work provider and in cases of stand-alone Unpaid Work Requirements the YOT may be required to accept referral back from the local probation service/trust/unpaid work provider where welfare problems are impeding the successful completion of the order (see below). In such cases, YOTs should keep the young person's case open until it has been confirmed that this requirement has been successfully completed.

## Practice implications

In line with *National Standards for Youth Justice Services*, local protocols should be in place between the YOT and the local probation area/trust/unpaid work provider concerning the operation of YROs with Unpaid Work Requirements. The local probation service/trust/unpaid work provider must ensure that post-sentence assessment and project commencement take place within five working days of sentence. The YOT is responsible for prosecuting breaches of YROs with Unpaid Work Requirements in line with *National Standards for Youth Justice Services*. Where a local probation area/trust/unpaid work provider identifies additional needs that cannot be met through a YRO with Unpaid Work Requirement, they should liaise with the YOT who should respond to the needs of the young person or direct them to other services.

For a YRO with Supervision and Unpaid Work Requirements, the YOT is responsible for the case management of the Supervision Requirement of the order and is also responsible for breaching the Unpaid Work Requirement.

YOTs should manage this requirement in line with the CJ&I Act 2008 and the relevant sections of *National Standards for Youth Justice Services* and, where necessary, undertake Warnings and breach proceedings as directed.

*Case Management Guidance* should be referred to for more detail on the practice implications and management of this requirement.

## Programme Requirement

### Legislative reference

Section 1(1)(d) and paragraph 11 of Schedule 1 of the CJ&I Act 2008 provides for a Programme Requirement as part of a YRO.

### How does it work?

A Programme Requirement is designed to allow young people who have offended to engage in a systematic set of activities (a programme) at a specified place on a specified number of days. It may require the young person to reside for specified days at a named place. Examples of programmes include anger management and Knife Crime Prevention Programme (KCPP).

When attached to a YRO, the young person in question must participate in the programme specified in the order for the number of days specified at the place or places specified. A young person may also be required to reside in any place specified in the order, if it is necessary for the young person to reside at that place in order to participate in the programme.<sup>37</sup>

When imposed, the young person must comply with the instructions given by or under the authority of the person in charge of the programme.

A court may not include a Programme Requirement as part of the YRO unless:

- ✦ the programme which the court proposes to include in the order has been recommended by the YOT or local probation service
- ✦ the court is satisfied that the programme is available at the place(s) to be specified
- ✦ the consent of a third party has been obtained, where compliance with the Programme Requirement by the young person involves a third party.

### When is it appropriate?

A Programme Requirement should be considered where a young person's assessment shows them to be suitable for the specified programme and capable of managing systematic attendance and participation.

### Who manages this requirement?

YOT or local probation practitioners will be the responsible officer/case manager for a Programme Requirement. Where external agencies are delivering interventions on the YOT's behalf, the YOT will continue to be responsible for monitoring and enforcing this requirement.

<sup>37</sup> Note: Residence in relation to a Programme Requirement has no specific maximum time limit.

## Practice implications

The YOT case manager should ensure that young people subject to a YRO with a Programme Requirement are provided with details of the programme including joining instructions. Throughout the duration of the programme the case manager should meet regularly with the young person to discuss progress and monitor compliance with the programme.

Case managers should be familiar with the content of programmes to enable them to ensure congruence with other interventions/requirements as part of the YRO.

Where the Programme Requirement is not provided directly by case managers they should ensure regular liaison with the provider to monitor progress and compliance.

Where a Programme Requirement is imposed alongside a Supervision Requirement, the YOT case manager may choose to assign a number of the Supervision Requirement contacts to the Programme Requirement. This should be decided on a case by case basis.

YOTs should refer to *Key Elements of Effective Practice – Offending Behaviour Programmes* to inform their management of this requirement.

YOTs should manage this requirement in line with the CJ&I Act 2008 and the relevant sections of *National Standards for Youth Justice Services* and, where necessary, undertake Warnings and breach proceedings as directed.

## Attendance Centre Requirement

### Legislative reference

Section 1(1)(e) and paragraph 12 of Schedule 1 of the CJ&I Act 2008 provides for an Attendance Centre Requirement as part of a YRO.

The Attendance Centre Requirement replaces the Attendance Centre Order.

### How does it work?

An Attendance Centre Requirement requires the young person to attend the attendance centre specified in their order for the number of hours specified.

If the young person is aged 16 or over at the time of conviction, the number of hours for which that young person must attend must be, on aggregate:

- + no less than 12 hours
- + no more than 36 hours.

If the young person is aged over 14 but under 16 at the time of their conviction, the aggregate number of required hours must be:

- + no less than 12 hours
- + no more than 24 hours.

If the young person is aged under 14 at the time of their conviction they must not be required to attend more than 12 hours on aggregate.

A court may not include an Attendance Centre Requirement in a YRO unless:

- + they have been notified by the Secretary of State that:
  - an attendance centre is available for persons of the young person's description within the local area
  - provision can be made at that attendance centre for that young person
- + the court is satisfied that the proposed attendance centre is reasonably accessible for the young person.

The responsible officer will notify the young person of the first time they are required to attend the attendance centre and subsequent hours are fixed by the officer in charge of the attendance centre in accordance with arrangements made by the responsible officer and after due regard to the young person's circumstances.

A young person cannot be required to attend at an attendance centre:

- + for more than one session on any one day
- + for more than three hours at any one session.

## When is it appropriate?

An Attendance Centre Requirement may be appropriate for the majority of young people to prevent further offending and to address all levels of likelihood of reoffending as outlined in the Scaled Approach model. For those young people who are assessed as enhanced or intensive in the Scaled Approach framework, YOTs should consider proposing additional requirements to address their risk of serious harm to others and offending behaviour.

## Who manages this requirement?

The case manager for an Attendance Centre only Requirement will be the officer in charge of the attendance centre. However, YOTs will have the responsibility to breach for failure to comply on behalf of the attendance centre and therefore in such circumstances should keep the young person's case open until it has been confirmed that this requirement has been completed.

## Practice implications

YOTs should ensure local protocols are in place with attendance centres to reflect their respective roles and responsibilities in relation to the monitoring and enforcement of this requirement.<sup>38</sup>

Officers in charge of attendance centres are responsible for the case management of YROs with Attendance Centre Requirements, although YOT staff are responsible for breaching them. Local protocols should be in place regarding the arrangements between YOTs and attendance centres. Where children/young people are sentenced to a YRO with Attendance Centre Requirement and are of medium/high or very high likelihood of reoffending, case management forums should be notified of their progress.

YOTs should manage this requirement in line with the CJ&I Act 2008 and the relevant sections of *National Standards for Youth Justice Services* and, where necessary, undertake Warnings and breach proceedings as directed.

<sup>38</sup> See *Attendance Centre Protocol* on the YJB website at this location:  
<http://www.yjb.gov.uk/NR/rdonlyres/B711C140-13DF-4E4D-A5E3-9BFA5757D14A/0/AttendanceCentreProtocol.doc>

## Prohibited Activity Requirement

### Legislative reference

Section 1(1)(f) and paragraph 13 of Schedule 1 of the CJ&I Act 2008 provides for a Prohibited Activity Requirement as part of a YRO.

### How does it work?

Attaching a Prohibited Activity Requirement to a YRO means that the young person must not participate in activities as specified in their order on the day or days specified or during a specified period of time.

A court may not attach a Prohibited Activity Requirement to a YRO unless it has consulted with the YOT or local probation service.

### When is it appropriate?

This requirement should be considered where a young person's offending is linked to a particular activity and prohibiting this activity would be an effective way to prevent further offending. Prohibited activities may include contacting certain people.

### Who manages this requirement?

The YOT manages this requirement but will need to put in place agreements with local partners to ensure it is able to effectively monitor and enforce it. For example, a young person who forms part of the local area's Deter Group may be monitored through arrangements available by that group and as such the enforcement of this requirement could be supported by such activity.

### Practice implications

Where a young person is subject to a YRO with a Prohibited Activity Requirement, the YOT case manager should ensure that the young person (and parents/carers as appropriate) is aware of the nature of the prohibited activity and the consequences of breach.

YOTs may consider it good practice to have arrangements in place with their local police force to assist in monitoring this requirement and to report any non-compliance to the YOT so the YOT can instigate breach proceedings where necessary.

YOTs should manage this requirement in line with the CJ&I Act 2008 and the relevant sections of *National Standards for Youth Justice Services* and, where necessary, undertake Warnings and breach proceedings as directed.

## Curfew Requirement

### Legislative reference

Section 1(1)(g) and paragraph 14 of Schedule 1 of the CJ&I Act 2008 provides for a Curfew Requirement as part of a YRO.

The Curfew Requirement replaces the current Curfew Order.

### How does it work?

The addition of a Curfew Requirement to a YRO means that the young person must remain in a specified place for the period specified in the order. The order can also specify different periods of curfew on different days.

The curfew period cannot be for less than two hours or for more than 12 hours in any day.

A Curfew Requirement is only available for six months starting from the day on which the requirement first takes effect. If the only requirement is a Curfew Requirement, the maximum duration of the YRO will be six months.

Before attaching a Curfew Requirement to a YRO, the court must first obtain and consider information about the place to be specified in the order, including the attitude of those likely to be affected by the enforced presence of the young person.

### When is it appropriate?

A Curfew Requirement should be considered where there is a clear identified time-based pattern of offending behaviour by the young person and a curfew during that period of time would contribute to preventing further offending.

### Who manages this requirement?

If the Curfew Requirement is imposed alongside one or more other YRO requirements (for which the YOT would ordinarily have case management responsibility) or the Curfew Requirement is stand alone (i.e. the Electronic Monitoring Requirement is not attached), the case manager will be the YOT and they will be responsible for monitoring and breach.

### Practice implications

Where a young person is subject to a YRO with stand-alone Curfew Requirement (no Electronic Monitoring Requirement attached), the YOT case manager should ensure that the young person (and parents/carers as appropriate) is aware of the details of the curfew and the consequences of breach (taking into account any mental health, learning disabilities, speech, language and communication issues).

YOTs may consider it good practice to have arrangements in place with their local police force to assist in monitoring this requirement and to report any non-compliance to the YOT so the YOT can instigate breach proceedings where necessary.

YOTs should manage this requirement in line with the CJ&I Act 2008 and the relevant sections of *National Standards for Youth Justice Services* and, where necessary, undertake Warnings and breach proceedings as directed.

## Electronic Monitoring Requirement

### Legislative reference

Section 1(2) and paragraphs 2 and 26 of Schedule 1 of the CJ&I Act 2008 provides for an Electronic Monitoring Requirement as part of a YRO.

### How does it work?

An Electronic Monitoring Requirement may be attached to a YRO with a Curfew Requirement and an Exclusion Requirement. Please note, however, that at the time of publication electronic monitoring was not available for the Exclusion Requirement.

When imposing a Curfew Requirement as part of a YRO, the court must attach an Electronic Monitoring Requirement unless the court considers it inappropriate to do so because of the particular circumstances of the case, or is prevented from doing so by virtue of the following:

- ✦ a person other than the young person in question is required to cooperate with the requirement and that person does not consent
- ✦ the court has not been notified by the Secretary of State that the necessary provision is currently available in the local justice area for electronic monitoring to take place.

The order must include provision for making a person responsible for monitoring this requirement and this person must be of the description outlined by the Secretary of State.

### When is it appropriate?

An Electronic Monitoring Requirement must be imposed as part of a YRO (unless inappropriate to do so) where it is considered that the imposition of this requirement will encourage and enable young people to comply with other requirements (curfew) of their YRO.

### Who manages this requirement?

Where the YRO only contains a Curfew Requirement with electronic monitoring, the electronic monitoring provider will be responsible for monitoring and breach. Where other requirements are attached (e.g. a Supervision Requirement), the YOT will have responsibility for monitoring and enforcement on advice and evidence provided by the electronic monitoring provider.

### Practice implications

In line with *National Standards for Youth Justice Services*, local protocols should be in place in relation to the operation of YROs with Electronic Monitoring Requirements.

YOTs should manage this requirement in line with the CJ&I Act 2008 and the relevant sections of *National Standards for Youth Justice Services* and, where necessary, undertake Warnings and breach proceedings as directed.

*Case Management Guidance* should be referred to for more detail on the practice implications and management of this requirement.

## Exclusion Requirement

### Legislative reference

Section 1(1)(h) and paragraph 15 of Schedule 1 of the CJ&I Act 2008 provides for an Exclusion Requirement as part of a YRO.

The Exclusion Requirement replaces the current Exclusion Order.

### How does it work?

The addition of an Exclusion Requirement to a YRO means that the young person is prohibited from entering a place specified in the order for a specified period.

The specified period must not be longer than three months. The order may specify exclusion from a particular place or area for different periods over different days.

### When is it appropriate?

An Exclusion Requirement should be considered where there is an identifiable geographical/physical pattern of offending by the young person and excluding them from an area or premises will help to prevent further offending.

### Who manages this requirement?

The YOT manages this requirement but is reliant on information from local partners, such as the police, to effectively monitor and enforce it.

### Practice implications

Where a young person is subject to a YRO with an Exclusion Requirement, the YOT case manager should ensure that the young person (and parents/carers as appropriate) is aware of the nature of the Exclusion Requirement and the consequences of non-compliance (taking into account any mental health, learning disabilities, speech, language and communication issues).

YOTs may consider it good practice to have arrangements in place with their local police force to assist in monitoring this requirement and to report any non-compliance to the YOT so the YOT can instigate breach proceedings where necessary.

YOTs should manage this requirement in line with the CJ&I Act 2008 and the relevant sections of *National Standards for Youth Justice Services* and, where necessary, undertake Warnings and breach proceedings as directed.

## Residence Requirement

### Legislative reference

Section 1(1)(i) and paragraph 16 of Schedule 1 of the CJ&I Act 2008 provides for a Residence Requirement as part of a YRO.

### How does it work?

A Residence Requirement attached to a YRO requires the young person to reside with a specified person, e.g. a grandparent (that person's consent must be obtained), or at a specified place (known as a 'place of Residence Requirement') for the specified period. A place of Residence Requirement may only be included in a YRO if the young person is 16 or over at the time of conviction. The legal parental responsibility for that young person would not change.

As with any YRO requirement, before imposing this requirement, the court must obtain and consider information about the young person's family circumstances and the likely effect of such an order on those circumstances. For this requirement it will normally be appropriate to consult both the parents of the young person and children's services.

Before making a YRO with a place of Residence Requirement the court must also consider the young person's home surroundings.

The residence specified in the place of Residence Requirement must be based on the recommendation of the YOT, local probation board, probation officer or local authority social worker who should ensure the appropriateness of any accommodation recommended to the court. The requirement will ordinarily be used to accommodate the young person with someone known to them. However, there may be occasions where a hostel or other institution (i.e. an out-of-family placement) is appropriate and specified in the requirement. If provided for in the order, the young person can reside in a place other than that specified in the order with the prior approval of the responsible officer.

### When is it appropriate?

A Residence Requirement should be considered where a young person's current living arrangements are contributing to their offending behaviour. YOTs may wish to consider this requirement where, for example, there were previous failures to comply with requirements of previous orders and the failure to comply was because of the young person's living arrangements.

### Who manages this requirement?

The YOT in the original home local authority is responsible for monitoring and enforcing this requirement. The specified person with whom the young person is residing will be expected to inform the YOT of progress so that the YOT can effectively monitor this requirement.

## Practice implications

YOTs will need to work strategically and pro-actively with key partners such as housing, children's services, commissioners and providers of accommodation and support to ensure that there is suitable provision in place in their area and that it is accessible to young people with a YRO. It will also normally be appropriate to consult both the young person and the parents before recommending a Residence Requirement.

Where a young person is subject to a YRO with a Residence Requirement the YOT case manager/accommodation officer should work to ensure the residence specified in the order is appropriate for the young person and that the young person (and parents/carers as appropriate) is aware of the nature of the Residence Requirement and the consequences of breach. The YOT will define the agreed compliance criteria within the young person's sentence plan once the order is made but will aim to support the young person in completing the order before applying breach proceedings.

The YOT case manager should review and approve, where appropriate, requests from the young person for a change in residence to a place other than that specified in the order, subject to any limits in the court order. In making this decision YOT case managers should update *Asset* and other assessments, including *Risk of Serious Harm* and vulnerability assessments where concerns exist. Changes to residence should be provided in writing to the young person and relevant partner agencies should be updated as appropriate.

Should a placement break down outside of young person's request for alternative accommodation, the YOT should ensure there is a multi-agency approach in place to secure alternative suitable accommodation for the young person so that they can comply with their Residence Requirement, and that the young person is given a reasonable chance to reside with the existing residence before a new place is found.

Where a placement breaks down during the course of the requirement and a suitable alternative cannot be found, the YOT should return to court to have the YRO amended.

YOTs should ensure that an information-sharing protocol or agreement is in place with the service provider or the individual(s) the young person is staying with to ensure they can effectively monitor the young person's compliance with this requirement. Where required, the YOT caseworker can arrange for updates through visits or telephone updates.

YOTs should refer to *Key Elements of Effective Practice – Accommodation* to inform their management of this requirement.

YOTs should manage this requirement in line with the CJ&I Act 2008 and the relevant sections of *National Standards for Youth Justice Services* and, where necessary, undertake Warnings and breach proceedings as directed.

## Local Authority Residence Requirement

### Legislative reference

Section 1(1)(j) and paragraphs 17 and 19 of Schedule 1 of the CJ&I Act 2008 provides for a Local Authority Residence Requirement as part of a YRO.

### How does it work?

If a Local Authority Residence Requirement is attached to a YRO, the young person must reside in suitable accommodation provided by or on behalf of the local authority specified in the order. The order may also stipulate that the young person is not to reside with a person specified in the order. The accommodation specified in the order may include foster care provided by a registered fostering service or in supported housing that is not regulated under the Care Standards Act 2000, provided by local authority children's services or by a housing agency.

A court may not attach a Local Authority Residence Requirement to a YRO unless it is satisfied that:

- ✦ the behaviour which led to the offence was, to a significant extent, due to the living conditions of the young person
- ✦ the addition of a Local Authority Residence Requirement will assist the rehabilitation of the young person.

They may also not attach a Local Authority Residence Requirement unless it has consulted with:

- ✦ a parent/guardian of the young person, unless it is impracticable to do so
- ✦ the local authority in which the young person is to reside and which will be specified in the order, as well as the local authority responsible for accommodating the child and planning their care if the young person is already looked after by a local authority; or if the local authority responsible for the Residence Requirement of the YRO identifies a placement outside of their own area.

The period for which the young person must reside in suitable accommodation provided by or on behalf of the local authority specified in the order cannot:

- ✦ exceed six months
- ✦ include any period after the young person has reached the age of 18.

Finally, a court may not make a Local Authority Residence Requirement unless the young person was legally represented at the relevant time (i.e. when the court was considering whether to attach such an order) or if they were not represented, they must have been offered such representation and subsequently refused or failed to apply for it.

Young people accommodated under this provision are subject to the general provisions of section 23 of the Children Act 1989,<sup>39</sup> placing a duty on the local authority to assess the child's needs, plan and review the child's care and accommodate the child for the duration of the order.

<sup>39</sup> To be replaced with section 22 A-F inserted by the Children and Young Persons Act 2008.

## When is it appropriate?

A Local Authority Residence Requirement is appropriate where it is considered that the young person's living arrangements have contributed to their offending behaviour.

## Who manages this requirement?

The YOT is responsible for monitoring and enforcing this requirement. Where a Local Authority Residence Requirement is in place, the responsible local authority will have to consult the relevant YOT and ensure that YOT staff are engaged in the assessment of the young person's needs and in planning and reviewing their care, so that YOTs can effectively monitor this requirement. YOTs should ensure that arrangements are in place with the authority responsible for the child's accommodation to share information from *Asset* care plans and other assessments to ensure they can effectively monitor the young person's compliance with this requirement.

## Practice implications

When a Local Authority Residence Requirement is imposed by the court, the YOT should work closely with the local authority to ensure suitable accommodation for the duration of this requirement.

The YOT should ensure that the young person (and their parent/carers if appropriate) is aware of the nature of the requirement and the consequences of breach. The YOT will set out any agreed compliance criteria in the young person's sentence plan once the order is made, but will aim to support the young person in completing the order before applying breach proceedings.

Where a placement breaks down during the course of the requirement, the YOT should work with the local authority to re-establish the child in a suitable alternative local authority placement to ensure continuing compliance with this requirement.

Where a placement breaks down during the course of the requirement and a suitable alternative cannot be found, the YOT should consider returning to court to have the YRO amended.

YOTs should ensure that an information-sharing protocol is in place with the local authority so that they can effectively monitor the young person's compliance with this requirement.

YOTs should refer to *Key Elements of Effective Practice – Accommodation* to inform their management of this requirement.

YOTs should manage this requirement in line with the CJ&I Act 2008 and the relevant sections of *National Standards for Youth Justice Services* and, where necessary, undertake Warnings and breach proceedings as directed.

## Mental Health Treatment Requirement

### Legislative reference

Section 1(1)(k) and paragraph 20 and 21 of Schedule 1 of the CJ&I Act 2008 provides for a Mental Health Treatment Requirement as part of a YRO.

### How does it work?

A YRO with a Mental Health Treatment Requirement requires a young person to submit, during the periods specified in the order, to treatment by or under the direction of a registered medical practitioner or a registered psychologist (a person registered in the part of the register maintained under the Health Professions Order 2001 which relates to practitioner psychologists) with a view to improving their mental condition.

This treatment specified in the order must be one of the following:

- ✦ Treatment as a resident patient in an independent hospital or care home within the meaning of the Care Standards Act 2000 or a hospital within the meaning of the Mental Health Act 1983, but not in a hospital where high security psychiatric services within the meaning of that Act are provided.
- ✦ Treatment as a non-resident patient at the institution or place specified in the order.
- ✦ Treatment by or under the supervision of a registered medical practitioner and/or a chartered psychologist as specified in the order.
- ✦ The order must not go further to specify the nature of the treatment.

A court may not attach a Mental Health Treatment Requirement to a YRO unless:

- ✦ The court is satisfied, on the evidence of a registered medical practitioner approved under section 12 of the Mental Health Act 1983, that the mental condition of the young person is such that it requires and may be susceptible to treatment, but is not such as to warrant the making of a hospital order or guardianship order under that Act.
- ✦ The court is also satisfied that arrangements have been or can be made for the treatment that they intend to specify in the order, this includes where the young person is required to submit to the treatment as a resident patient, and arrangements for the reception of the young person.
- ✦ The court is satisfied that the young person has expressed willingness to comply with the requirement.

While the young person is under treatment as a resident patient, the YOT as responsible officer should only supervise to the extent necessary for the purpose of the revocation or amendment of the order.

Where the specified registered medical practitioner or registered psychologist is of the opinion that part of the treatment can be more conveniently given at a place not specified in the order, they may make arrangements for the young person to be treated accordingly. For this to happen, the young person subject to the order must express their willingness and the registered medical practitioner or chartered psychiatrist must give written notice to the YOT as responsible officer, alerting them to the change in place where the treatment will be carried out.

## When is it appropriate?

Where the young person's mental health issues have been identified as a substantive factor in their offending behaviour and this requirement is necessary to address these issues. YOTs should consider all other available options to deal with these issues outside of a formal requirement.

## Who manages this requirement?

The YOT is responsible for monitoring and enforcing this requirement. External service providers (e.g. Child and Adolescent Mental Health Services (CAMHS) or Early Intervention In Psychosis services) will be expected to inform the YOT of progress so that YOTs can effectively monitor this requirement.

## Practice implications

Where a YRO with a Mental Health Treatment Requirement is made, the YOT case manager should maintain regular liaison with the mental health treatment provider. It is unlikely that a Mental Health Treatment Requirement will be made without the court also making a Supervision Requirement. The existence of a Supervision Requirement alongside a Mental Health Treatment Requirement will require close liaison between the treatment provider and the YOT case manager. At a minimum the YOT case manager should:

- ✦ Undertake sufficient contacts (in line with assessed intervention level) with the young person to adequately discharge their responsibility as case manager.
- ✦ Carry out supervision contact to such an extent only as is necessary for the purposes of the revocation or amendment of the order (CJ&I Act 2008, Schedule 1, paragraph 20(4)) for a young person receiving treatment as a resident patient.
- ✦ Ensure that there is a minimum monthly contact between the YOT case manager and treatment provider regarding the progress of the order.
- ✦ Ensure that formal three-monthly reviews are undertaken of the progress of the order as outlined in *National Standards for Youth Justice Services*.

Compliance with a Mental Health Treatment Requirement needs to be very carefully explained to the young person. The young person will need to be told the nature of the requirement, its duration and the consequences of non-compliance. Particular care should be taken to ensure the requirement is carefully explained, using appropriate expertise where the child/young person and/or parents/carers have learning difficulties or speech, language and communication requirements.

For a YRO with a Mental Health Treatment Requirement to be made, the young person must have expressed a willingness to comply with it. It is important to note that 'willingness to comply with the requirement' and 'consent to treatment' are two separate issues.

Where a young person withdraws his/her willingness to comply with the requirement, the YOT case manager should return the case to court for revocation/amendment as the requirement is unworkable. The court may consider, depending on the circumstances, that the unwillingness by the young person constitutes a breach of the requirement.

It is important to note that the child or young person is not admitted under the Mental Health Act 1983 and therefore cannot be compulsorily treated in accordance with the provisions of that Act. Whether the child or young person is resident in hospital or not, they can only be treated if they consent. Having made the YRO with the Mental Health Treatment Requirement, the child or young person must expressly consent to any treatment. The Code of Practice for the Mental Health Act 1983 at paragraph 23.31 states:

“Consent is the voluntary and continuing permission of a patient to be given... treatment, based on a sufficient knowledge of the purpose, nature, likely effects and risks of that treatment, including the likelihood of its success and any alternatives to it. Permission given under any unfair or undue pressure is not consent.”

Not only must all this be clearly explained to the child or young person, but the child or young person must be able to understand all this when s/he expresses willingness.

A lack of consent to a particular form of treatment being provided by the medical practitioner once the requirement is in place does not itself constitute an unwillingness to comply with the requirement and is not therefore a potential breach. The medical practitioner will approach the matter of consent to treatment with their patient in the legally accepted way.

YOTs should refer to *Key Elements of Effective Practice – Mental Health* to inform their management of this requirement.

YOTs should manage this requirement in line with the CJ&I Act 2008 and the relevant sections of *National Standards for Youth Justice Services* and, where necessary, undertake Warnings and breach proceedings as directed.

*Case Management Guidance* should be referred to for more detail on the practice implications and management of this requirement.

## Drug Treatment Requirement<sup>40</sup>

### Legislative reference

Section 1(1)(l) and paragraph 22 of Schedule 1 of the CJ&I Act 2008 provides for a Drug Treatment Requirement as part of a YRO.

### How does it work?

When attached to a YRO, a Drug Treatment Requirement means that the young person must submit to treatment during the period specified in the order with a view to the reduction or elimination of the young person's dependency on, or propensity to misuse, drugs.

The treatment required and specified as part of the order must be either residential or non-residential treatment, but the court cannot further specify the nature of the treatment.

A court may not include this requirement unless it is satisfied that:

- ✦ The young person is dependent on, or has the propensity to misuse, drugs and that their dependency or propensity is such that it requires and may be susceptible to treatment.
- ✦ Arrangements for implementing the requirement are in force in the local justice area in which the young person resides or is to reside as notified by the Secretary of State.
- ✦ Arrangements have or can be made for any treatment they intend to specify in the order (the treatment provider must have met the young person beforehand and agreed that they will provide treatment prior to the order being given).
- ✦ The requirement has been recommended by the YOT or local probation service as suitable for the young person in question.
- ✦ The young person has expressed a willingness to comply.

### When is it appropriate?

A Drug Treatment Requirement should only be attached to a YRO when the young person's drug use has been identified as a substantive factor in their offending behaviour and this requirement is necessary to address these issues. YOTs should consider all other available options to deal with these issues outside of a formal requirement.

### Who manages this requirement?

The YOT is responsible for monitoring and enforcing this requirement. External service providers will be expected to inform the YOT of progress so that YOTs can effectively monitor this requirement.

<sup>40</sup> 'Drug' in this context means a controlled drug as defined by section 2 of the Misuse of Drugs Act 1971.

## Practice implications

Where a YRO with a Drug Treatment Requirement is made, the YOT case manager should maintain regular liaison with the treatment provider. The existence of a Supervision Requirement alongside a Drug Treatment Requirement will require close liaison between the treatment provider and the YOT case manager. At a minimum, the YOT case manager should:

- ✦ undertake sufficient contacts (in line with the assessed intervention level) with the young person to adequately discharge their responsibility as case manager
- ✦ ensure that there is at a minimum monthly contact between the YOT case manager and treatment provider regarding the progress of the order
- ✦ ensure that formal three-monthly reviews are undertaken of the progress of the order as outlined in *National Standards for Youth Justice Services*.

Compliance with a Drug Treatment Requirement needs to be very carefully explained to the young person. They will need to be told the nature of the requirement, its duration and the consequences of non-compliance. Particular care should be taken to ensure that the requirement is carefully explained using appropriate expertise where the child/young person and/or parents/carers have learning difficulties or speech, language and communication requirements.

For a YRO with a Drug Treatment Requirement to be made, the young person must have expressed a willingness to comply with it. 'Willingness to comply with the requirement' and 'consent to treatment' are two separate issues.

Where a young person withdraws his/her willingness to comply with the requirement, the YOT case manager should return the case to court for revocation/amendment as the requirement is unworkable. The court may consider, depending on the circumstances, that the unwillingness by the young person constitutes a breach of the requirement.

A lack of consent to a particular form of drug treatment being provided once the requirement is in place does not itself constitute an unwillingness to comply with the requirement and is not, therefore, a potential breach. The matter of consent to drug treatment with the patient will be dealt with in the legally accepted way.

YOTs should refer to *Key Elements of Effective Practice – Substance Misuse* to inform their management of this requirement.

YOTs should manage this requirement in line with the CJ&I Act 2008 and the relevant sections of *National Standards for Youth Justice Services* and, where necessary, undertake Warnings and breach proceedings as directed.

*Case Management Guidance* should be referred to for more detail on the practice implications and management of this requirement.

## Drug Testing Requirement

### Legislative reference

Section 1(1)(m) and paragraph 23 of Schedule 1 of the CJ&I Act 2008 provides for a Drug Testing Requirement as part of a YRO.

### How does it work?

A Drug Testing Requirement can only be attached to a YRO when a Drug Treatment Requirement has also been attached.

A YRO with a Drug Testing Requirement requires that the young person must provide samples as instructed by their responsible officer or treatment provider in order to ascertain whether there are any drugs in their body during the treatment period.

A court may not attach a Drug Testing Requirement unless:

- + there are arrangement for implementing this requirement in the local justice area in which the young person resides, as notified by the Secretary of State
- + the order also imposes a Drug Treatment Requirement
- + the young person has expressed willingness to comply with the requirement.

A YRO which imposes a Drug Testing Requirement must specify for each month of the requirement the minimum number of occasions on which samples are to be provided by the young person and may specify times at which and circumstances in which the responsible officer or treatment provider may require samples to be provided and descriptions of the samples which may be required.

### When is it appropriate?

Where a Drug Treatment Requirement has been imposed, a Drug Testing Requirement may also be imposed where it is considered drug testing would assist the young person in remaining drug free.

### Who manages this requirement?

The YOT is responsible for monitoring and enforcing this requirement. External service providers will be expected to inform the YOT of progress so that YOTs can effectively monitor this requirement.

## Practice implications

Drug testing requirement arrangements should be outlined in local protocols between the YOT and young people's substance misuse services and should be managed by specialist substance misuse staff. The test results are used to inform the treatment agency and YOT of the progress the young person is making through drug treatment. The test may not always be used with the purpose of requiring abstinence as it is accepted that time is needed to effectively change the drug use of a young person, supported by treatment. Therefore, judgements in relation to expectations of abstinence by the young person need to be made in this context.

If a young person fails to take the test itself, this could result in breach action being taken but this will need to be considered by the YOT responsible officer together with the specialist substance misuse treatment provider and taking into account other issues regarding compliance. This could include consideration of the young person's general behaviour and compliance with the rest of the order. Failing this test – that is the test showing positive for drugs – is not a breach.

YOTs should manage this requirement in line with the CJ&I Act 2008 and the relevant sections of *National Standards for Youth Justice Services* and, where necessary, undertake Warnings and breach proceedings as directed.

## Intoxicating Substance Treatment Requirement<sup>41</sup>

### Legislative reference

Section 1(1)(n) and paragraph 24 of Schedule 1 of the CJ&I Act 2008 provides for an Intoxicating Substance Treatment Requirement as part of a YRO.

### How does it work?

An Intoxicating Substance Treatment Requirement attached to a YRO means that the young person must submit to treatment during the period specified in the order with a view to the reduction or elimination of the young person's dependency on, or propensity to misuse, intoxicating substances.

A court may not include this requirement unless it is satisfied that:

- ✦ The young person is dependent on, or has the propensity to misuse, intoxicating substances and that their dependency or propensity is such that it requires and may be susceptible to treatment.
- ✦ Arrangements have or can be made for any treatment they intend to specify in the order (the treatment provider must have met young person beforehand and agreed that they will provide treatment prior to the order being given).
- ✦ The requirement has been recommended by the YOT or local probation service as suitable for the young person in question.
- ✦ The young person has expressed a willingness to comply.

The treatment required and specified as part of the order must be either residential or non-residential treatment, but the court cannot further specify the nature of the treatment.

### When is it appropriate?

An Intoxicating Substance Treatment Requirement is appropriate where the young person is formally assessed as requiring treatment for misuse of intoxicating substances, is susceptible to treatment and where the substance misuse issues have been identified as a substantive factor in their offending behaviour and this requirement is necessary to address these issues. YOTs should consider all other available options to deal with these issues outside of a formal requirement.

### Who manages this requirement?

The YOT is responsible for monitoring and enforcing this requirement. External service providers will be expected to inform the YOT of progress so that YOTs can effectively monitor this requirement.

<sup>41</sup> Note: In this context, intoxicating substance means alcohol or any other substance or products (excluding drugs) which are capable of being inhaled or otherwise used for the purposes of intoxication.

## Practice implications

Where a YRO with an Intoxicating Substance Treatment Requirement is made, the YOT case manager should maintain regular liaison with the treatment provider. It is unlikely that this requirement will be made without the court also making a Supervision Requirement. The existence of a Supervision Requirement alongside an Intoxicating Substance Treatment Requirement will require close liaison between the treatment provider and the YOT case manager. At a minimum, the YOT case manager should:

- ✦ undertake sufficient contacts (in line with the assessed intervention level) with the young person to adequately discharge their responsibility as case manager
- ✦ ensure that there is at a minimum monthly contact between the YOT case manager and treatment provider regarding the progress of the order
- ✦ ensure that formal three-monthly reviews are undertaken of the progress of the order as outlined in *National Standards for Youth Justice Services*.

Compliance with an Intoxicating Substance Treatment Requirement needs to be very carefully explained to the young person. They will need to be told the nature of the requirement, its duration and the consequences of non-compliance. Particular care should be taken to ensure the requirement is carefully explained using appropriate expertise where the child/young person and/or parents/carers have learning difficulties or speech, language and communication requirements.

For a YRO with an Intoxicating Substance Treatment Requirement to be made, the young person must have expressed a willingness to comply with it. 'Willingness to comply with the requirement' and 'consent to treatment' are two separate issues.

Where a young person withdraws his/her willingness to comply with the requirement, the YOT case manager should return the case to court for revocation/amendment as the requirement is unworkable. The court may consider, depending on the circumstances, that the unwillingness by the young person constitutes a breach of the requirement.

A lack of consent to a particular form of treatment being provided once the requirement is in place, does not itself constitute an unwillingness to comply with the requirement and is not, therefore, a potential breach. The matter of consent to treatment will be treated in the legally accepted way.

YOTs should refer to *Key Elements of Effective Practice – Substance Misuse* to inform their management of this requirement.

YOTs should manage this requirement in line with the CJ&I Act 2008 and the relevant sections of *National Standards for Youth Justice Services* and, where necessary, undertake Warnings and breach proceedings as directed.

*Case Management Guidance* should be referred to for more detail on the practice implications and management of this requirement.

## Education Requirement

### Legislative reference

Section 1(1)(o) and paragraph 25 of Schedule 1 of the CJ&I Act 2008 provides for an Education Requirement as part of a YRO.

### How does it work?

The Education Requirement of a YRO requires a young person of compulsory school age to comply with approved education arrangements.

Approved education arrangement for this purpose means arrangements for the young person made by their parent or guardian and approved by the local education authority of the area in which the young person lives.

A court may not include an Education Requirement as part of a YRO unless:

- + it has consulted with the local authority (and school or education provider if necessary) regarding the proposal to be included in the requirement as specified in the order
- + it is satisfied that:
  - in the view of the local authority, arrangements exist for the young person to receive efficient full-time education suitable to the young person's age, ability, aptitude and special educational need (if any)<sup>42</sup>
  - the inclusion of an Education Requirement as part of a YRO is necessary for securing the good conduct of the young person or for preventing reoffending.

Approved education arrangements can include:

- + mainstream or specialist school
- + Pupil Referral Unit
- + college/further education provider
- + alternative education provider
- + home-based education, provided it is approved or work-based learning.

Additionally, this may include some mentoring activity consistent with the level of identified need, provided by the YOT or other approved body to support a place at school or other educational establishment.

An Education Requirement cannot be ordered for any period after the young person has ceased to be of compulsory school age.<sup>43</sup>

It is anticipated that the inclusion of an Education Requirement will address the links between a young person's offending behaviour and their education and will promote better collaboration between youth justice services and education agencies to ensure that appropriate provision is urgently found and that attendance is rigorously enforced and monitored.

<sup>42</sup> Each local authority already has wide ranging powers and duties in relation to ensuring the provision of education, strengthened by the Education and Inspections Act 2006.

<sup>43</sup> Following the government's proposal to increase the age of compulsory participation in education to 18 by 2013 (in England only), any person issued with YRO could be required to comply with an educational requirement from the date of the enactment of any such new measures.

## **When is it appropriate?**

An Education Requirement may be appropriate for young people whose non-attendance in education has been a significant factor in contributing to offending behaviour.

## **Who manages this requirement?**

The YOT is responsible for monitoring and enforcing this requirement. External service providers will be expected to inform the YOT of progress so that YOTs can effectively monitor this requirement.

## Practice implications

In recommending an Education Requirement to the court, the YOT worker as responsible officer must have had prior consultation with the local authority and, if necessary, the school or education provider to secure the young person's place in a suitable educational establishment.

The YOT worker will be responsible for case managing an Education Requirement and ensuring the young person complies with the order. The education provider has a duty to share information regarding the child or young person's attendance with the YOT case manager to enable effective monitoring of the young person's compliance. Specific reporting arrangements (e.g. weekly or in some cases daily reports) should be set up between the YOT case manager and the school or education provider approved by the local authority to ensure the YOT case manager is satisfied that attendance requirements are being complied with. Where they are not being complied with, the provider should report this to the YOT case manager, who may consider issuing a formal warning for unacceptable non-compliance.

The YOT case manager must ensure the child or young person fully understands what is required of them and the consequences of non-compliance (taking into account any mental health, learning disabilities, speech, language and communication issues). At the point of suspected non-compliance, the YOT case manager should take into consideration all the factors and ensure that there is effective communication between the YOT, service provider and child/young person in order to apply a balanced judgement to any breach considerations.

Where the educational placement breaks down, for example where a child or young person is temporarily or permanently excluded from school, the local authority has a duty in the case of a permanent exclusion to make alternative provision from the sixth day of the exclusion.<sup>44</sup> The school retains the duty in the case of fixed-term exclusions.

Parents also have a duty to ensure their child is not present in a public place during normal school hours without reasonable justification during the first five days of the exclusion. Failure to comply with this is an offence and could result in the parents receiving a penalty notice. Fixed-term or permanent exclusion may be considered grounds for breach, but the YOT case manager should consider the child/young person's willingness and ability to resume a placement and comply with the conditions of their requirement. The YOT case manager should also consider the extent to which the incidents which led to their exclusion are reflective of their overall compliance with their requirement.

YOTs should refer to *Key Elements of Effective Practice – Education, Training and Employment* to inform their management of this requirement.

YOTs should manage this requirement in line with the CJ&I Act 2008 and the relevant sections of *National Standards for Youth Justice Services* and, where necessary, undertake Warnings and breach proceedings as directed.

<sup>44</sup> Education and Inspections Act 2006.

## YRO – Intensive Supervision and Surveillance

### Legislative reference

Section 1(3)(a) and (4) and paragraphs 3 and 5 of Schedule 1 of the CJ&I Act 2008 provides for a YRO with Intensive Supervision and Surveillance (ISS) as a community alternative to custody.

This requirement has the effect of placing the existing Intensive Supervision and Surveillance Programme (ISSP) on a statutory footing.

### How does it work?

A court can only sentence a young person to a YRO with ISS:

- ✦ when the court is dealing with the young person for an offence which is punishable with imprisonment
- ✦ when the court is of the opinion that the offence, or combination of offences, was so serious that but for an ISS (or Intensive Fostering Requirement), a custodial sentence would be appropriate
- ✦ if the young person was aged under 15 at the time of conviction, the court must be of the opinion that they are a persistent offender<sup>45</sup>
- ✦ if the offence is non-imprisonable, ISS is only available where there has been 'wilful and persistent non-compliance'.

Once the court is satisfied that the criteria outlined above have been met, they may sentence a young person to a YRO with ISS. Where a court does not impose a YRO with ISS in these circumstances and instead sentences the young person to custody, they must state their reasons why.<sup>46</sup>

A YRO with ISS includes an extended Activity Requirement for which the court may specify the number of days in the order, which will be for more than 90 days but not more than 180 days.

A YRO with ISS must also include:

- ✦ a Supervision Requirement
- ✦ a Curfew Requirement
- ✦ an Electronic Monitoring Requirement (unless the court considers it inappropriate to do so).

Other requirements may also be added to a YRO with ISS (the order will continue to be referred to as a YRO with ISS), but it cannot be combined with an Intensive Fostering Requirement. The addition of other requirements must be proportionate to the offence<sup>47</sup> and the court must ensure these additional requirements are not so onerous that they make the likelihood of breach inevitable.

<sup>45</sup> See section 7 in *Overarching Principles – Sentencing Youths*, Sentencing Guidelines Council (2009).

<sup>46</sup> As set out in section 174, Criminal Justice Act 2003 (as amended by paragraph 80, Schedule 4, CJ&I Act 2008). This provision also applies to a YRO with Intensive Fostering Requirement.

<sup>47</sup> Section 148, Criminal Justice Act 2003.

## When is it appropriate?

A YRO with ISS should be considered where the young person has met the custody threshold (an offence punishable by imprisonment and for those under the age of 15, also persistent) and where a less intensive YRO would not be appropriate. It is expected that YOTs will consider whether it is possible to propose that the case is dealt with by any standard YRO, supported by tailored local packages of intervention, before proposing a YRO with ISS.

## Who manages this requirement?

The YOT will have overall case management responsibility for a YRO with ISS. Some components of the order may be delivered by external agencies. Where this is the case, the YOT must ensure they have sufficient information-sharing arrangements in place in order for them to effectively monitor and, if necessary, enforce the order.

## Practice implications

When proposing this option to court, the YOT must indicate which level of ISS outlined below is recommended for the young person based on their assessment.<sup>48</sup>

ISS type	Contacts per week		
<b>Extended ISS (180 days)</b>	1–4 months	5–6 months	7–12 months
	25 hours	15 hours	5 hours
<b>Band 1 ISS (91 days)</b>	1–3 months		4–6 months
	25 hours		5 hours
<b>Band 2 ISS (91 days)</b>	1–2 months	month 3	4–6 months
	20 hours	10 hours	5 hours

Young people given a YRO with ISS should be seen on the day of court and the requirements of the order explained to them in plain and simple language. A signed and agreed programme plan must be finalised by all parties within five working days of the order being made.

In line with *National Standards for Youth Justice Services*, all versions of ISS must cover the following core elements:

- ✦ education, training (especially basic literacy and numeracy) and employment
- ✦ interventions to tackle offending behaviour

<sup>48</sup> See *Case Management Guidance* and *National Standards for Youth Justice Services* for further information on YRO/ISS bandings.

- + reparation to victims or the community in accordance with National Standard 8
- + assistance in developing interpersonal skills
- + family support.

In addition, programmes should include access to support for individual problems; for example, homelessness, drug misuse or mental health problems. ISS also includes a curfew, supported by electronic monitoring plus two surveillance checks a day. The existence of a tag may count as one of these contacts.

Guidance on the operation of Intensive Supervision and Surveillance is available in *YRO with ISS – Operational Guidance*.<sup>49</sup>

YOTs should manage this requirement in line with the CJ&I Act 2008 and the relevant sections of *National Standards for Youth Justice Services* and, where necessary, undertake Warnings and breach proceedings as directed.

*Case Management Guidance* should be referred to for more detail on the practice implications and management of this requirement.

<sup>49</sup> *YRO with ISS – Operational Guidance* can be found at this location on the YJB website:  
<http://www.yjb.gov.uk/NR/rdonlyres/7D8F9D9E-D3C3-44CD-B7F7-280DA9078EE8/0/YROwithISSOperationalGuidance.pdf>

## YRO – Intensive Fostering

### Legislative reference

Section 1(3)(b) and (4) and paragraphs 4, 5, 18 and 19 of Schedule 1 of the CJ&I Act 2008 provides for a YRO with Intensive Fostering as a community alternative to custody.

### How does it work?

A court can only sentence a young person to a YRO with Intensive Fostering:

- ✦ when the court is dealing with the young person for an offence which is punishable with imprisonment
- ✦ when the court is of the opinion that the offence, or combination of offences, was so serious that but for a YRO with Intensive Fostering, a custodial sentence would be appropriate
- ✦ if the young person was aged under 15 at the time of conviction, the court must be of the opinion that they are a persistent offender.<sup>50</sup>

Further, the court must be satisfied that the behaviour which constituted the offence was due to a significant extent to the living arrangements of the young person and that the imposition of a fostering requirement would assist in that young person's rehabilitation.

Before making a YRO with Intensive Fostering, the court must consult with the young person's parent/guardian (unless it is impracticable to do so) and consult with the local authority which is to place the young person with a local authority foster parent. A court may not impose a YRO with Intensive Fostering if the local authority does not have provision to deliver the requirement.

A YRO with Intensive Fostering must end no later than 12 months from when the requirement first has effect and must not include any period after the young person has turned 18.

Finally, a court may not order a YRO with Intensive Fostering unless the young person was legally represented at the relevant time (i.e. when the court was considering whether to attach such an order) or if they were not represented, they must have been offered such representation and subsequently refused or failed to apply for it.

A YRO with Intensive Fostering must also impose a Supervision Requirement. Other requirements may be added but the order will continue to be referred to as a YRO with Intensive Fostering. The addition of other requirements must be proportionate to the offence and the court must ensure these additional requirements are not so onerous that they make the likelihood of breach inevitable.

<sup>50</sup> See section 7 in *Overarching Principles – Sentencing Youths*, Sentencing Guidelines Council (2009).

## When is it appropriate?

A YRO with Intensive Fostering should be considered where the young person has met the custody threshold (an offence punishable by imprisonment and for those under the age of 15, also persistent) and where a less intensive YRO would not be sufficient. Further, it should only be considered where the young person's living arrangements have contributed to their offending behaviour and the local authority has agreed to provide specialist Intensive Fostering support and, finally, where a YRO with Intensive Fostering is thought likely to prevent further offending.

## Who manages this requirement?

The Intensive Fostering provider will carry out all the interventions with the young person and their family and supervise the foster placement while the young person is subject to the fostering requirement. The YOT will continue to be the case manager and be responsible for monitoring and enforcement.

## Practice implications

The YOT caseholder should receive weekly written updates about the young person's progress from the Intensive Fostering team. The YOT should be involved in the planning process, attend looked-after children reviews and any other review of the young person's progress, and be part of the exit plan. The Intensive Fostering clinical team will invite YOT caseworkers to attend a clinical meeting twice a month.

The YOT remains responsible for breach procedures but it is the responsibility of the Intensive Fostering team to inform the YOT caseholder if the programme supervisor deems that the young person is not complying satisfactorily with the programme – for example, absconding from their place of residence.

YOTs should manage this requirement in line with the CJ&I Act 2008 and the relevant sections of *National Standards for Youth Justice Services* and, where necessary, undertake Warnings and breach proceedings as directed.

*Case Management Guidance* should be referred to for more detail on the practice implications and management of this requirement.

## Youth Rehabilitation Order – Transitional arrangements

Following the implementation of the YRO as part of the CJ&I Act 2008, there will be a period of time where the old and new sentencing frameworks will need to be managed concurrently. The following principles will apply during this transitional period:

- ✦ For offences committed and sentences passed before the implementation of the YRO, a young person will be sentenced to orders made under the Powers of Criminal Courts Act 2000 (e.g. Supervision Order). Their order will be managed according to 2004 National Standards for Youth Justice Services. The Scaled Approach will not apply in these cases.
- ✦ For offences committed before the implementation of the YRO but sentenced post-implementation, a young person will be sentenced to orders made under the Powers of Criminal Courts Act 2000 (e.g. Supervision Order). The new National Standards for Youth Justice Services apply from 30 November 2009. The Scaled Approach may be used to determine the level of supervision, but YOTs will have to ensure that the restrictions on an offender's liberty for a person sentenced to an old order, post 30 November 2009, are no more than would have been the case prior to that date, bearing in mind that the 2004 National Standards set minimum contact requirements.
- ✦ The exception to this is for curfews subject to electronic monitoring. The enforcement of curfews has been brought in line with the new National Standards for all requirements of the YRO. Therefore, two warnings for less serious violations should now normally be given prior to breach action being commenced in the courts. Young people can still be breached immediately following a more serious violation, e.g. strap cutting or being out for a full curfew. The new standards will apply to any curfew given for offences committed prior to 30 November 2009 and sentenced under old legislation.

Further information can be found on the YJB website in the sections on the Scaled Approach and the YRO. There is a useful Frequently Asked Questions page on the Scaled Approach.

### Referral Orders

Section 35 and 36 of the CJ&I Act 2008 make changes to the Powers of Criminal Courts (Sentencing) Act 2000 in relation to Referral Orders.

The CJ&I Act 2008 extends the circumstances in which a court can make a Referral Order. In addition to the existing provisions, where the Referral Order criteria are otherwise satisfied, the court will be able to make a Referral Order where:

- ✦ the young person has had one previous conviction (including a custodial sentence) but has not previously received a Referral Order
- ✦ the young person has previously been bound over to keep the peace
- ✦ the young person has previously received a conditional discharge.

In addition the court will have the power to:

- ✦ Make a second Referral Order in exceptional circumstances following recommendation from the YOT.<sup>51</sup>
- ✦ Revoke a Referral Order early (no more than three months before the end) for good behaviour. If the application for revocation is rejected by the court, a further application cannot be made for three months.
- ✦ Extend the term of a Referral Order (both first and second) for up to three months following recommendation from the youth offender panel (for example where non-compliance occurs through circumstances beyond the control of the young person, e.g. illness). The extension cannot result in the total period of the Referral Order exceeding 12 months.

Further detailed information on the changes to Referral Orders brought about by the CJ&I Act 2008 can be found in the revised *Referral Order Guidance*.

<sup>51</sup> Note: The Act stipulates that a second referral order **must** be on the recommendation of the YOT. The court **cannot** impose a second Referral Order if this recommendation is not made.

## Youth Conditional Caution

Section 48 and Schedule 9 of the CJ&I Act 2008 provides for a Youth Conditional Caution available for 10 to 17-year-olds, although the Government will initially pilot it for 16 and 17-year-olds only. These pilots are expected to begin in early 2010. A Youth Conditional Caution can be imposed on a young person who has not previously been convicted of an offence and who meets the following five pre-determined criteria:

- ✦ the police must have evidence that the young person has committed an offence
- ✦ the Crown Prosecution Service must be of the opinion there is sufficient evidence to charge the young person with the offence and that the Youth Conditional Caution should be imposed on them in respect of that offence
- ✦ the young person must admit that they have committed the offence
- ✦ the police must explain the effect of the Youth Conditional Caution to the young person including that failure to comply with conditions attached to the Youth Conditional Caution will result in the young person being prosecuted for the offence for which the Youth Conditional Caution was imposed. If the young person is under 16, this explanation must be given in the presence of an appropriate adult
- ✦ the young person must sign a document which contains details of the offence, their admission of committing the offence, their consent to being given a Youth Conditional Caution, and the conditions to be attached to this caution.

When imposed, a Youth Conditional Caution will have conditions attached to it with which the young person must comply. These conditions will achieve one or all of the following:

- ✦ facilitating the rehabilitation of the young person
- ✦ ensuring that the young person makes reparation for the offence
- ✦ punishing the young person.

Conditions can include a fine (which cannot exceed £100) and/or an Attendance Requirement, which might include completion of a specified activity, but cannot exceed 20 hours.

Once a Youth Conditional Caution has been imposed, if the young person goes on to commit another offence within two years, they are not eligible for a conditional discharge under section 12 of the Powers of Criminal Courts (Sentencing) Act 2000 unless it is of the opinion that exceptional circumstances exist.

*Youth Conditional Caution Code of Practice* provides more detail on this provision.

## Youth Default Order

Please note, at the time of publication the Youth Default Order had not been enacted.

### Overview

Section 39 and Schedule 7 of the CJ&I Act 2008 provides for the imposition of a Youth Default Order for young people where a fine, etc., remains unpaid.

In these situations, the court may impose on the young person the following:

- + in the case of 16 and 17-year olds, an Unpaid Work Requirement
- + an Attendance Centre Requirement
- + a Curfew Requirement, which will include electronic monitoring unless not appropriate to do so.

The length of the Youth Default Order corresponds to the value of the unpaid fine. Where a Youth Default Order has been made and the young person subsequently pays their entire fine, the Youth Default Order will cease to exist. Where part of the fine is subsequently paid, the Youth Default Order is reduced in time by a proportion corresponding to that which has been paid in relation to the whole sum.

### Unpaid Work Requirement

In relation to an Unpaid Work Requirement imposed as part of a Youth Default Order, the minimum number of hours of unpaid work the young person will be required to undertake is 20 (rather than 40 hours had this requirement been attached to a YRO).

The table below indicates the number of hours to be imposed commensurate with the value of the outstanding fine.

Amount	Number of hours
An amount not exceeding £200	40
An amount exceeding £200 but not exceeding £500	60
An amount exceeding £500	100

## Attendance Centre Requirement

In relation to an Attendance Centre Requirement imposed as part of a Youth Default Order, if the young person is above the age of 14, the table below indicates the number of hours to be imposed commensurate with the value of the outstanding fine.

Amount	Number of hours
An amount not exceeding £200	8
An amount exceeding £200 but not exceeding £500	14
An amount exceeding £500	24

If the young person is under the age of 14, the table below indicates the number of hours to be imposed commensurate with the value of the outstanding fine.

Amount	Number of hours
An amount not exceeding £200	8
An amount exceeding £200 but not exceeding £500	10
An amount exceeding £500	12

## Curfew Requirement

In relation to a Curfew Requirement imposed as part of a Youth Default Order, the table below indicates the number of days to be imposed commensurate with the value of the outstanding fine.

Amount	Number of days
An amount not exceeding £200	20
An amount exceeding £200 but not exceeding £500	30
An amount exceeding £500 but not exceeding £1000	60
An amount exceeding £1000 but not exceeding £2000	90
An amount exceeding £2000	180

## Enforcement

Non-compliance with a Youth Default Order may result in a young person being returned to court and having their Youth Default Order revoked or amended.

## Anti-social behaviour measures

Section 123 and 124 of the CJ&I Act 2008 amends the Crime and Disorder Act 1998 in relation to Anti-Social Behaviour Orders (ASBOs) and Individual Support Orders (ISOs).

One-year reviews for ASBOs are now mandatory for those issued to persons under 17 and are applicable to any ASBO (stand-alone or on conviction) that has been granted or varied nine months prior to commencement of this provision (1 February 2009).

ISOs must be issued with every ASBO (stand-alone or on conviction) where a magistrates' court considers it would help to prevent further anti-social behaviour. Magistrates must justify their decision making if an ISO is not granted. An ISO can be applied for at any time during the ASBO (even if it was not applied for at the initial hearing) as long as:

- + an ASBO has been applied for in the first instance
- + the application is from the original applicant
- + the subject is still considered a young person
- + the ASBO is still in force.

An ISO can be applied more than once and subsequent to the initial hearing with no limit as to the number of applications made. There is a six month maximum limit for each application as long as the ISO does not exceed the length of the ASBO.

## 'Spent' Warnings, Reprimands and cautions

Section 49 and Schedule 10 of the CJ&I Act 2008 amends the Rehabilitation of Offenders Act 1974 to bring Warnings, Reprimands, simple cautions and conditional cautions within the scope of that Act.

Reprimands and Warnings are spent at the time they are given; youth conditional cautions are 'spent' three months after the date on which the caution was given. Once such Warnings and cautions become 'spent', an ex-offender is generally not obliged to declare them when applying for a job, but the disposals are recorded on the Police National Computer and will continue to be disclosed where required for Criminal Records Bureau enhanced and standard checks.

Note that these provisions apply retrospectively to all Reprimands and Warnings given prior to December 2008.

## Sexual Offences Prevention Orders

Section 141 amends the Sexual Offences Act 2003 with the effect of amending the criteria necessary for a sexual offences order to be made. As a result, some young people convicted of offences listed in Schedule 3 of the Act will become eligible for a Sexual Offences Prevention Order. This is expected to affect only a small number of young people; for example, those convicted of a Section 3 sexual assault.

### Assessment of dangerousness changes

Section 17 of the CJ&I Act 2008 amends section 229 of the Criminal Justice Act 2003 (the assessment of dangerousness) to have the effect that the court may take into account information about the nature and circumstances of **any other** offences the young person has been convicted of by a court anywhere in the world – not just the offence for which they are in court.

See additional detailed information in the YJB's guidance *Public Protection Sentences and Dangerousness*.

### Custody threshold

As provided for in Section 100 of the Powers of Criminal Courts (Sentencing) Act 2000, custody is an option for young people under the age of 18 if their offence is punishable with imprisonment. For children under the age of 15 there must also be evidence that they are persistent.<sup>52</sup>

The CJ&I Act 2008 provides for alternatives to custody in the form of a YRO with Intensive Supervision and Surveillance or Intensive Fostering. Where a young person meets the custody threshold (including evidence of persistence<sup>53</sup> for those under the age of 15) and the court chooses not to impose these alternatives to custody they must, in line with paragraph 80(3) Schedule 4 of the Act, state that a YRO with Intensive Supervision and Surveillance or Intensive Fostering is not appropriate and the reasons why.

Custody is also an option for breach of YRO if the original offence is imprisonable or in the case of a non-imprisonable offence if, following wilful and persistent non-compliance, a YRO with Intensive Supervision and Surveillance or Intensive Fostering is made and that further YRO is then also subject to non-compliance.

### Pre-sentence reports

Section 12 of the CJ&I Act 2008 amends section 158 of the Criminal Justice Act 2003 in relation to pre-sentence reports.

The effect of this amendment is that any pre-sentence report for a young person under the age of 18, who is facing a possible custodial sentence, must be in writing.

<sup>52</sup> Note: The persistence criteria does not have to be met in situations where the Crown Court is planning to impose long-term detention or detention for life for young people under the age of 15.

<sup>53</sup> See Section F in *Overarching Principles – Sentencing Youths*, Sentencing Guidelines Council (2009).

## Public protection sentence changes

Section 14, 16 and 25 of the CJ&I Act 2008 amend sections 226 and 228 of the Criminal Justice Act 2003.

### **Amendments to section 226 (detention for public protection)**

Section 14 of the CJ&I Act 2008 gives courts the power rather than a duty to impose a sentence of detention for public protection for specified offences which would attract a notional minimum term of two years.

Once the seriousness threshold has been met and the court has made an assessment of dangerousness, for cases not falling within subsection 2 of the Criminal Justice Act 2003 (detention for life), the court can impose a minimum custodial sentence of at least two years before any reduction for time spent on remand and before the Parole Board can consider release on licence.

### **Amendments to section 228 (extended sentence for certain violent or sexual offences)**

Section 16 of the CJ&I Act 2008 gives courts the power rather than a duty to impose an extended sentence for certain violent or sexual offences which would attract a notional minimum term of four years.

Once the seriousness threshold has been met and the court has made an assessment of dangerousness, if the court decides to impose an extended sentence (rather than any other lawful sentence) the sentence should be for at least four years with at least two years spent in custody.

There will be automatic release in these cases at the half way point (section 25 of the CJ&I Act 2008) for those young people who received their sentence on or after 14 July 2008. The extension period begins at the end of the whole custodial period, not at the point of release – if the young person receives a four-year sentence they are automatically released at two years, their extension period will begin at the four year point.

For specified violent offences the extended licence must not exceed five years. For specified sexual offences this extended licence must not exceed eight years. The entire sentence (custody and extension period) must not exceed the maximum penalty available for that offence.

Judicial discretion as to what sentence to impose will be wider as a result of the provisions of the CJ&I Act 2008. Where a finding of dangerousness has been made, and the seriousness threshold met, the court has the discretion to impose a sentence of detention for public protection, an extended sentence or any other lawful sentence; or, where the offence carries a maximum penalty of less than 10 years, an extended sentence or any other lawful sentence.

See the YJB's guidance *Public Protection Sentences and Dangerousness* and the Ministry of Justice Circular 2008/01 (paragraphs 8–12) for more information.

## Custody credit for electronically curfewed bail

Section 21 of the CJ&I Act 2008 provides for a young person's custodial sentence<sup>54</sup> to be 'credited' with time already spent on electronically curfewed bail.<sup>55</sup> This does not affect the minimum length of a custodial sentence, i.e. a DTO can not be for a period of time shorter than four months.

The credit period is half the number of days (at least nine hours per day) that the young person was subject to these bail conditions (excluding the last day of these conditions) rounded to the nearest whole number.

The court has the discretion not to credit a young person's custodial sentence and in certain circumstances may decide not to count all or any of the available days. Their decision not to credit any or all of the qualifying amount of time must be justified in open court. In exercising their discretion, courts must take into account the extent to which the young person complied while on electronically curfewed bail.

Schedule 11 extends the availability of electronically curfewed bail from 12 to 16 years to include 17-year-olds.

See the Ministry of Justice Circular 2008/05 (paragraphs 2–8 and 13–16) for more information.

## Automatic 28-day release on recall

Section 29 of the CJ&I Act 2008 provides<sup>56</sup> for young people serving a determinate sentence for offences which are neither violent or sexual in nature,<sup>57</sup> who are recalled on fixed-term recall (not standard or emergency recall) to be released again after a fixed period of 28 days.

See the Ministry of Justice Circular 2008/01 (paragraph 21) and the YJB's guidance *Release and Recall* for more information.

<sup>54</sup> For offences committed after 4 April 2005.

<sup>55</sup> The young person must have been bailed in accordance with Section 3(6ZAA) of the Bail Act 1976 (as amended by Schedule 11 of the CJ&I Act 2008).

<sup>56</sup> Subject to certain criteria and provided the Secretary of State is satisfied regarding risk of serious harm to others.

<sup>57</sup> As set out in Schedule 15 of the Criminal Justice Act 2003.

