

These notes refer to the Criminal Justice and Immigration Act 2008 (c.4) which received Royal Assent on 8 May 2008

CRIMINAL JUSTICE AND IMMIGRATION ACT 2008

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 1: Youth rehabilitation orders

Section 1 and Schedule 1: Youth rehabilitation orders

107. [Section 1](#) and Schedule 1 provide for YROs. This is the new community sentence for offenders aged under 18. It combines several existing community sentences into one new generic community sentence. When imposing a YRO, the court will be able to choose from a “menu” of different requirements that the offender must comply with.
108. *Subsection (1)* provides that a YRO may impose on the offender one or more of the following requirements:
- an activity requirement;
 - a supervision requirement;
 - if the offender is aged 16 or 17, an unpaid work requirement;
 - a programme requirement;
 - an attendance centre requirement;
 - a prohibited activity requirement;
 - a curfew requirement;
 - an exclusion requirement;
 - a residence requirement;
 - a local authority residence requirement;
 - a mental health treatment requirement;
 - a drug treatment requirement;
 - a drug testing requirement;
 - an intoxicating substance treatment requirement;
 - an education requirement.
109. *Subsection (2)* provides that a YRO may also impose an electronic monitoring requirement as described in paragraph 26 of Schedule 1. An electronic monitoring requirement must be imposed where a YRO imposes a curfew or exclusion requirement

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(*paragraph 2* of Schedule 1) unless in the particular circumstances of the case, the court is satisfied it would be inappropriate to do so or it is not practicable for the reasons set out in *paragraph 26(3)* or *(6)*.

110. *Subsections (3) and (4)* and *paragraphs 3 and 4* of Schedule 1 provide for a YRO with intensive supervision and surveillance and a YRO with fostering.
111. Subsection *(4)* provides that a court may not impose a YRO with intensive supervision and surveillance or a YRO with fostering unless the offence is punishable with imprisonment and the court is satisfied that the offence (on its own or with others) is so serious that, but for the availability of these orders, a custodial sentence would be appropriate (or where the offender is under 12, would be appropriate if the offender had been 12). For offenders under the age of 15, the court must be satisfied that they are persistent offenders.
112. *Paragraph 3* of Schedule 1 provides that if the conditions in subsection *(4)* are met the order may impose an “extended activity requirement” (for a number of days between 90 and 180). An order containing such a requirement is “a YRO with intensive supervision and surveillance”. Such an order must also impose a supervision requirement, a curfew requirement and an electronic monitoring requirement (unless inappropriate or impracticable) and may also impose other requirements.
113. *Paragraph 4* of Schedule 1 sets out additional conditions to those in subsection *(4)* of section 1 which must be met before a court can impose a YRO with fostering. The court has to be satisfied that the behaviour which constituted the offence was due to a significant extent to the circumstances in which the offender was living and that the imposition of such a requirement would assist in the offender’s rehabilitation. The court must also consult the local authority and (where practicable) the parents or guardians of the offender prior to imposing this requirement. A YRO with fostering must also impose a supervision requirement. The offender must be given the opportunity of legal representation (*paragraph 19*).
114. *Subsection (6)* of section 1 applies the restrictions which apply to other community sentences under sections 148 and 150 of the 2003 Act to the YRO. The effect is that a YRO must not be imposed on an offender unless the court considers the offence or offences serious enough to warrant it; that the requirements forming part of the YRO must be the most suitable for the offender and the restrictions on liberty imposed by the order must be commensurate with the seriousness of the offence. A YRO will not be available in a case where the penalty is fixed by law, such as murder, or where there is a mandatory custodial sentence.
115. *Paragraph 5* of Schedule 1 provides that a YRO with intensive supervision and surveillance may not impose a fostering requirement. *Paragraph 5* also provides that if the offender fails to comply with a pre-sentence drug testing order the court may impose a YRO with intensive supervision and surveillance. There is already existing provision in section 152(3)(b) of the 2003 Act which provides that if a juvenile or adult offender fails to comply with a pre-sentence drug testing order under section 161(2) of that Act, the court may pass a custodial sentence.
116. *Part 2* of Schedule 1 makes detailed provision about the requirements which may be imposed in a YRO. They are largely self explanatory and not all details are repeated here. *Paragraphs 6 to 8* deal with the activity requirement. An offender may be required to participate in specified activities including residential exercises. Other than where intensive supervision and surveillance is imposed, an activity requirement cannot be for more than a total of 90 days.
117. *Paragraph 8(3)* provides that the court may not include an activity requirement unless it has consulted a member of the youth offending team, or an officer of a local probation board or an officer of a provider of probation services and it is satisfied that it is feasible to secure compliance with the requirement. *Paragraph 8(4)* states that an

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activity requirement, which requires co-operation with anybody other than the offender and the responsible officer (defined in section 6 below) may only be included with that other person's consent.

118. *Paragraph 9* of Schedule 1 provides for a supervision requirement and reflects, with modifications, paragraph 2 of Schedule 6 to the Powers of Criminal Courts (Sentencing) Act 2000 (the 2000 Act). The offender may be required to attend appointments arranged by the responsible officer.
119. *Paragraph 10* of Schedule 1 provides for an unpaid work requirement and is modelled on section 199 of the 2003 Act. An unpaid work requirement may be for between 40 and 240 hours and could include, for example, graffiti cleaning, community artwork or work to repair or improve community facilities. Unpaid work is currently available, for 16 and 17 year olds, as part of the community punishment order.
120. *Paragraph 11* of Schedule 1 provides for a programme requirement. A programme requirement is a new requirement for juveniles and is designed to allow juvenile offenders to engage in programmes that will address their offending behaviour, teach life skills or other positive interventions. It is modelled on section 202 of the 2003 Act. *Paragraph 11(1)* defines a "programme requirement" as a requirement that the offender participates in a specified systematic set of activities, which may include a residential programme.
121. *Paragraph 12* provides for an attendance centre requirement which enables the court to require an offender to attend an attendance centre for up to 12 hours for an offender aged under 14, and for between 12 and 24 hours for an offender aged 14 or 15 and for between 12 and 36 hours for an offender aged 16 or over.
122. *Paragraph 13* provides for a prohibited activity requirement. It is modelled on section 203 of the 2003 Act. It allows the court to require an offender to refrain from participating in certain activities at specified times. *Paragraph 13(3)* makes it clear that the court can make a prohibited activity requirement which prohibits a defendant from possessing, using or carrying a firearm.
123. *Paragraph 14* provides for a curfew requirement. This paragraph re-enacts, with some modification, section 37 of the 2000 Act. A curfew requirement may require the offender to remain at a place specified by the court for between two hours and twelve hours in any given day. The order might, for example, require the offender to stay at home during the evening and night hours. *Paragraph 14(3)* limits the curfew period to a maximum of six months. Under *paragraph 14(4)* the court must obtain and consider information about the place specified in the order and the attitude of persons likely to be affected by the presence of the offender.
124. *Paragraph 15* of Schedule 1 provides for an exclusion requirement. This paragraph re-enacts, with modification, section 40A of the 2000 Act. An exclusion requirement may prohibit the offender from entering a place or area for up to 3 months. *Paragraph 15(3)* makes it clear that the order may stipulate that the prohibition may operate only for certain periods of time and may specify different places for different periods.
125. *Paragraph 16* of Schedule 1 provides for a residence requirement. A residence requirement may require that an offender live with a specified individual (who must consent to the requirement by virtue of *paragraph 16(2)*) or, if the offender is 16 or over, at a specified place and is modelled on current powers available as part of the supervision order. Under *paragraph 16(6)*, before making a residence requirement specifying a place, the court must consider the home surroundings of the offender. *Paragraph 16(7)* provides that the court must only specify a hostel or other institution as a place of residence on the recommendation of a member of a youth offending team, an officer of a local probation board, an officer of a provider of probation services, or a local authority social worker.

126. *Paragraph 17* of Schedule 1 provides for a local authority residence requirement and is modelled on paragraph 5 of Schedule 6 to the 2000 Act. The order may require the offender to live in accommodation provided by or on behalf of a specified local authority for up to 6 months and may also stipulate that the offender may not live with a specified person. The court may not impose a local authority residence requirement unless it is satisfied that the behaviour leading to the offence was due to a significant extent to the offender's living circumstances and that the requirement will assist in his rehabilitation. The court must consult the offender's parent or guardian (if practicable) and the local authority which is to receive the offender.
127. *Paragraph 18* of Schedule 1 provides for a fostering requirement and is modelled on current powers that are available as part of supervision order in paragraph 5A of Schedule 6 to the 2000 Act. An offender may be required to live with a local authority foster parent for a specified period, generally subject to a maximum of 12 months. *Paragraph 18(6)* makes it clear that this paragraph does not affect the power of a local authority to place an offender subject to a local authority residence requirement with a local authority foster parent.
128. *Paragraph 19* of Schedule 1 makes it a precondition for imposing a local authority residence requirement or fostering requirement that the offender has had the opportunity to be legally represented
129. *Paragraphs 20 and 21* of Schedule 1 provide for a mental health treatment requirement. Mental health treatment is currently available as part of the supervision order and is provided for in paragraph 6 of schedule 6 to the 2000 Act. The court may direct the offender to submit to mental health treatment under the treatment of a registered medical practitioner or chartered psychologist (or both). Treatment may be provided in a hospital or care home (but not a hospital where high security psychiatric services are provided), or as a non-resident patient. Under *paragraph 20(3)*, before including a mental health treatment requirement, the court must be satisfied that the offender's mental condition requires treatment and is treatable, but is not such that it warrants making a hospital or guardianship order under the Mental Health Act 1983. The offender must be willing to comply with treatment.
130. *Paragraph 21* of Schedule 1 deals with mental health treatment at a place other than that specified in the order. Paragraph 21(1) allows the medical practitioner or chartered psychologist to vary the arrangements in a mental health treatment. Paragraph 21(2) makes clear that the offender must have expressed a willingness to comply with the varied arrangements.
131. *Paragraph 22* of Schedule 1 provides for a drug treatment requirement and *paragraph 23* for a drug testing requirement. These are modelled upon those available to juveniles of all ages subject to an action plan order and supervision order in section 70 of and Schedule 6 to the 2000 Act. The offender may be required to undergo drug treatment by or under the direction of a specified person with the necessary qualifications or experience. The court must be satisfied that the offender is dependent on or has a propensity to misuse any drug and requires and may be susceptible to treatment. The treatment can be residential or non-residential, but the type of treatment cannot be specified. The offender must be willing to comply with the requirement.
132. Paragraph 23(1) of Schedule 1 provides for a drug testing requirement which may require the offender to provide samples in accordance with instructions given by his responsible officer for drug testing purposes. A drug testing requirement may only be imposed with a drug treatment requirement and only for an offender who is willing to comply with that requirement.
133. *Paragraph 24* of Schedule 1 provides for an intoxicating substance treatment requirement. This is a new requirement and is designed to enable treatment for alcohol and other intoxicating substances. The offender may be required to undergo treatment by or under the direction of a specified person with the necessary qualifications or

experience. The court must be satisfied that the offender is dependent on or has a propensity to misuse intoxicating substances. The treatment can be residential or non-residential, but otherwise the nature of the treatment cannot be specified. Paragraph 24(5) defines intoxicating substance as alcohol or any other substance (other than a drug) which is capable of being used for the purpose of causing intoxication. The offender must be willing to comply with the requirement.

134. *Paragraph 25* of Schedule 1 provides for an education requirement. An education requirement is currently available as part of a supervision order and action plan order under section 63 (read with paragraph 7 of Schedule 6) and section 70(1)(e) respectively of the 2000 Act. The order may require the offender to comply with approved education arrangements i.e. made by the offender's parent or guardian and approved by the local authority. The court must be satisfied that suitable arrangements exist for the offender's appropriate full-time education needs and that such a requirement is necessary for the offender's future good conduct or prevention of further offending.
135. *Paragraph 26* of Schedule 1 provides for the electronic monitoring requirement. Electronic monitoring is currently available as a requirement of youth community orders under section 36B of the 2000 Act. *Paragraph 26(3)* provides that where it is proposed to include an electronic monitoring requirement as part of a YRO, this may only be done with the consent of any person (other than the offender) whose compliance would be required. For example this person might be the offender's parent or guardian. Paragraph 26(4) provides that this requirement must include provision for making a person responsible for monitoring and *paragraph 26(5)* provides that the person must be of a description specified in an order made by the Secretary of State (such an order is not subject to any parliamentary procedure).
136. Under *paragraph 27* the Secretary of State may by order amend the maximum number of hours which may be specified in an unpaid work or curfew requirement. The Secretary of State may also by order amend the time periods specified in relation to the curfew requirement, exclusion requirement, local authority residence requirement and fostering requirement. An order made under this paragraph is subject to the affirmative resolution procedure.
137. *Part 3* of the Schedule makes further provision for the procedure for making YROs. Under *paragraph 28* prior to imposing a YRO, the court must obtain and consider information about the offender's family circumstances and the likely effect of such an order on those circumstances.
138. *Paragraph 29* of Schedule 1 requires a court to consider whether requirements are incompatible with each other. As far as practicable, the court must ensure that any requirement imposed is such as to avoid any conflict with the offender's religious beliefs and any interference with the times at which the offender works or attends school. The offender's responsible officer must also take steps to ensure that any instructions or directions given avoid any such conflict. Under *paragraph 29(4)* the Secretary of State has the power to add further restrictions by order (subject to the negative resolution procedure).
139. *Paragraph 30* of Schedule 1 provides for the operative date of YROs. Where a YRO is imposed on an offender who is already serving a detention and training order, the court may order that the YRO will commence either with the commencement of the period of supervision of the detention and training order, or on the expiry of the detention or training order or on the day after the order is made. In all other cases the YRO will commence the day after the day on which the order was made. A court may not make a YRO if the offender is already serving a similar order or a reparation order unless the existing order is revoked.
140. *Paragraph 31* of Schedule 1 makes provision for concurrent and consecutive orders. Where the court is dealing with an offender for two or more offences, it may impose more than one YRO but it may not impose YROs of different kinds (for example,

it may not impose a YRO with intensive supervision and surveillance and any other YRO). If the court imposes more than one YRO with intensive supervision and surveillance or with fostering, under paragraph 31(3) they must begin at the same time. Under paragraph 31(4) the court must direct whether similar requirements in different orders are to be served concurrently or consecutively. Where they are to be served consecutively, the aggregate of the periods imposed for requirements of a particular kind must not exceed the maximum period for a single such requirement (see paragraph 31(6)). Under paragraph 31(5) two or more fostering requirements cannot be served consecutively.

141. *Part 4* of Schedule 1 makes further general provision for where the court makes a YRO. *Paragraph 32* provides that the order must specify a date not more than 3 years after it is made by which the requirements must have been complied with. The order may also specify different dates for two or more requirements within the order. In relation to a YRO with intensive supervision and surveillance, the specified date must not be earlier than 6 months after the order takes effect.
142. *Paragraph 34* of Schedule 1 makes provision for copies of orders to be provided by the court to the offender and to other relevant persons depending on the circumstances. The court has to provide copies of the order it makes to certain people who are relevant to the carrying out of the order: to the offender, if the offender is under 14, to his parent or guardian (or, if the offender is in local authority care or accommodation, that authority), and to the youth offending team member, an officer of a local probation board assigned to the court or an officer of a provider of probation services. Under paragraph 34(3) if the order is made by any Crown Court or a magistrates' court outside the area in which the offender will be carrying out the order, the court must send a copy of the order, and any other documents and information relating to the case that the sentencing court thinks the second court would find of assistance, to the magistrates court and provide a copy of the order to the local probation board in that area or a provider of probation services operating in that area.
143. *Paragraph 35* of Schedule 1 enables the Secretary of State by order (subject to the affirmative resolution procedure) to make provision allowing or requiring YROs to be reviewed by the courts. It is intended that the decision to extend reviews to YROs would be based on consultation with the courts. An order under this paragraph may repeal or amend any provision of this Part 1 of the Act or Chapter 1 of Part 12 of the 2003 Act dealing with the general provisions about sentencing.