

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

(*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.

Section 2 and Schedule 2: Breach, revocation or amendment of youth rehabilitation orders.

144. This section introduces Schedule 2 which sets out procedures relating to the enforcement, revocation or amendment of YROs.
145. *Paragraph 1(2)* of Schedule 2 provides that a breach of attendance centre rules counts as a breach of a YRO which imposes an attendance centre requirement. Part 2 of Schedule 2 deals with breaches of the requirements of a YRO. Under *paragraph 3(1)* of Schedule 2, if an offender's responsible officer is of the opinion that the offender has failed to comply with a YRO without reasonable excuse, he or she must give the offender a warning or start enforcement proceedings. Paragraph 3(2) sets out the contents of this warning, i.e. a description of the failure and that it is unacceptable, and that two further breaches during the "warned period" of 12 months from the date of the warning will make the offender liable to enforcement proceedings. Paragraph 3(4) defines the "warned period" as a period of 12 months beginning with the date on which the warning was given.
146. *Paragraph 4(1)* of Schedule 2 requires the responsible officer to start court enforcement proceedings if the offender has failed to comply with the requirements of the order and has been given two previous warnings during a 12 month period. However, paragraph 4(2) states that the responsible officer may stay breach proceedings in exceptional

circumstances even where two previous warnings have already been given. *Paragraph 4(3)* states that the responsible officer may start court enforcement proceedings without having previously issued warnings to the offender if, for example, the breach is particularly serious.

147. *Paragraph 5* of Schedule 2 sets out the procedure for a justice of the peace to issue a summons requiring the attendance of the offender at court (or a warrant for his arrest) if it appears that he has failed to comply with any of the requirements of a YRO. Failure to answer a summons can lead to the issue of a warrant for the offender's arrest (paragraph 5(7)).
148. *Paragraph 6* of Schedule 2 sets out the ways in which a youth court or other magistrates' court may deal with a breach when satisfied that the offender has failed to comply with the YRO. It may deal with him or her in one of those ways if the order is still in force. It can order him to pay a fine not exceeding £250 for offenders under the age of 14, or £1,000 in any other case. It can amend the order by adding or substituting requirements subject to the limitations set out in sub-paragraphs (6) to (9). It can deal with the offender in respect of the offence for which the order was made, in any way in which the court could have originally dealt with the offender. The court must take into account the extent to which the offender has complied with the order. The court may not, if it amends the YRO (rather than re-sentences the offender) impose an order with intensive supervision and surveillance or with fostering if the order did not already impose such a requirement.
149. If the court decides to re-sentence, it must revoke the original order if it is still in force. If the court is re-sentencing and the offender has wilfully and persistently failed to comply with a YRO, the court may under sub-paragraphs (13) to (15) be able to impose a YRO with intensive supervision and surveillance or a custodial sentence, even if it could not have done so for the original offence. An offender can appeal where the court re-sentences for the original offence.
150. *Paragraph 7* of Schedule 2 sets out magistrates' court powers to refer offenders in breach of a YRO to the Crown Court. If the YRO was made by a Crown Court, the magistrates' court may refer the offender to a Crown Court. The offender can be remanded in custody until brought before the Crown Court. In these cases the magistrates' court must send the Crown Court details of the failure to comply with the order.
151. *Paragraph 8* of Schedule 2 sets out the Crown Court's powers to deal with failure to comply with a relevant YRO, whether dealt with directly or on committal from a magistrates' court under paragraph 7.
152. *Paragraph 9* of Schedule 2 provides that reasonable refusal to undergo surgical, electrical or other treatment as part of mental health or drug treatment requirement or an intoxicating substance treatment is not to be treated as a breach of the order.
153. *Paragraph 10* of Schedule 2 confers on the Secretary of State order-making powers to amend the maximum limit of fines specified in paragraphs 6 and 8 for breach of an order to take account of inflation. An order made under this paragraph is subject to the negative resolution procedure.
154. *Part 3* of Schedule 2 deals with the revocation of a YRO. Under *paragraph 11* either the offender or the responsible officer may apply to a youth court or other magistrates' court to have the order revoked, due to circumstances that have arisen since the order was made. An example might be if the offender has become very ill and is unable to complete the requirements. The court can revoke the order or revoke it and re-sentence the offender as if he has just been convicted. If the court re-sentences it must take into account the extent to which the offender complied with the original order and the offender can appeal.

155. *Paragraph 12* of Schedule 2 gives similar powers to the Crown Court in the case of orders it has made which do not contain a direction that further proceedings are to be in the magistrates' court.
156. *Part 4* of Schedule 2 deals with the amendment of YROs. *Paragraph 13* enables YROs to be amended by youth courts and other magistrates' courts. A change of residence may necessitate amendment of the order to refer to an alternative local justice area. The change may be made on application by either the offender or his responsible officer. The appropriate court may generally amend or cancel any requirements of the order and where the offender moves, must do so for requirements that are not available in the area to which he or she is to move. The appropriate court will be the youth court in the local justice area specified in the YRO or if the offender is over 18 at the time a magistrates court in that area.
157. *Paragraph 14* of Schedule 2 gives similar powers to the Crown Court in the case of orders it has made which do not contain a direction that further proceedings are to be in the magistrates' court.
158. *Paragraph 15* of Schedule 2 limits the court's power to amend the requirements of a YRO on change of the offender's address, to ensure that any new requirements can be complied with in the offender's new area of residence.
159. *Paragraph 16* of Schedule 2 deals with the possible effects of amendments to requirements on other parts of the order. If the court substitutes a new fostering requirement, the new requirement can last for 18 months from the date of the original fostering requirement instead of 12. The court may not amend the YRO by imposing a mental health treatment requirement, drug testing or drug treatment requirement without the offender's expression of willingness to comply with the requirement. If the offender fails to express his willingness to comply with any of the above three requirements, the court may either revoke the order or re-sentence – in either case the court must take into account the extent to which the offender has complied with the requirements of the order.
160. Under *paragraph 17* of Schedule 2 the court may, on application by the offender or responsible officer, extend the maximum 12 month period in which any unpaid work has to be performed if it appears to be in the interests of justice to do so having regard to changes in circumstances.
161. *Part 5* of Schedule 2 deals with the powers of courts in relation to a YRO where the offender is subsequently convicted for another offence. *Paragraph 18* sets out what a youth court or magistrates' court convicting for the subsequent offence can do in this situation. It may, if it appears to the court to be in the interests of justice, revoke the order and re-sentence the offender for the original offence as if he had just been convicted of it. If it re-sentences him, the court must take into account the extent to which the offender complied with the order. The offender has a right of appeal if the court re-sentences. If the youth court or magistrates' court convicting for the subsequent offence is dealing with the new offence but the YRO was made in the Crown Court, it can refer the offender to the Crown Court.
162. *Paragraph 19* makes similar provision in relation to the powers of a Crown Court following conviction of a subsequent offence.
163. *Part 6* of Schedule 2 contains supplementary provisions about the court's powers and duties under Parts 2-5 of that Schedule including bringing the offender before the court; powers to remand and adjourn; and the provision of copies
164. *Paragraph 25* of Schedule 2 gives the Secretary of State power to amend the maximum length of a fostering requirement. An order under this paragraph is subject to the affirmative resolution procedure.

Section 3 and Schedule 3: transfer of youth rehabilitation orders to Northern Ireland.

165. **Section 3** introduces Schedule 3, which sets out the procedure for transferring YROs to Northern Ireland.
166. **Part 1** of Schedule 3 concerns the making or amendment of a YRO where an offender resides or will reside in Northern Ireland.
167. **Paragraphs 1 and 2** of Schedule 3 define the circumstances in which a court may make or amend a YRO where the offender resides or proposes to reside in Northern Ireland. The court must be satisfied that the requirements of the YRO do not exceed the requirements that may be imposed in a corresponding order made by a court in Northern Ireland. The court must also be satisfied that suitable arrangements for the offender's supervision can be made in Northern Ireland and, where appropriate, that provision can be made for the offender to comply with the requirements of the YRO in the locality in Northern Ireland where he proposes to live. The court may not require a local authority residence requirement or a fostering requirement to be complied with in Northern Ireland.
168. Under **paragraph 3** of Schedule 3 when an order is made or amended where the offender resides or proposes to reside in Northern Ireland, the order must specify the petty sessions district in Northern Ireland in which the offender resides or will be residing when the order or amendment is made.
169. A YRO made or amended under Part 1 of Schedule 3 will have effect as if it were a corresponding order made by a court in Northern Ireland (see paragraph 9). The YRO must specify the corresponding Northern Ireland order and, before making the YRO, the court must explain to the offender the requirements of Northern Ireland law relating to the corresponding order and the relevant powers of the courts.
170. **Paragraph 5** of Schedule 3 modifies the provisions in Part 1 of the Act so that they are relevant to Northern Ireland. In particular, it provides that references to the responsible officer have effect as references to the person who is to be responsible for the offender's supervision under the order, ie. for the performance of supervisory, enforcement or other related functions under the relevant Northern Ireland legislation (see **paragraph 6**)
171. **Part 2** of Schedule 3 applies where an order has been made or amended under Part 1. **Paragraph 9** sets out the effect of a YRO in Northern Ireland and **paragraph 10** has the effect that the offender must keep in touch with the person responsible for his or her supervision in Northern Ireland.
172. **Paragraph 11** of Schedule 3 provides the Crown Court in Northern Ireland with the power to direct that proceedings in Northern Ireland be before the appropriate court of summary jurisdiction in Northern Ireland where the YRO has been made or amended by the Crown Court.
173. **Paragraph 12** provides that, where a YRO has been transferred to Northern Ireland, the court in Northern Ireland (the "home court") may, subject to a number of exceptions, exercise any power which it could exercise in relation to a corresponding order in Northern Ireland. **Paragraph 13** gives the home court the power to require an offender to appear before the relevant court in England or Wales. The power may be exercised if it appears to the home court that the offender has failed to comply with one or more of the requirements of the order, in which case the home court must send a certificate specifying the failure, together with other details of the case, to the court in England and Wales (see **paragraph 14**). The power may also be exercised if the home court considers that it would be in the interests of justice for the court in England and Wales to exercise its powers under Schedule 2 to revoke or amend the order.
174. **Paragraph 15** of Schedule 3 sets out the powers available to a court in England or Wales where an offender is required to appear before it by virtue of paragraph 13. The court

may issue a warrant for the offender's arrest and it may exercise any power which it could exercise under the YRO if the offender resided in England or Wales. *Paragraph 16* provides that the court in England and Wales cannot amend the YRO unless provision can be made for the offender to comply with the amended provisions in Northern Ireland and that arrangements for supervision can be made.

175. *Paragraph 17* of Schedule 3 provides that, if the law in Northern Ireland changes to make further types of orders available to courts in Northern Ireland dealing with offenders aged under 18 at the time of conviction, the Secretary of State may by order (subject to the negative resolution procedure) make appropriate amendments to Schedule 3

Section 4: Meaning of “the responsible officer”

176. This section defines who the responsible officer is in relation to a YRO. Under *subsection (1)*, where the order only imposes a curfew requirement or exclusion requirement together with an electronic monitoring requirement, the responsible officer will be the person responsible for the electronic monitoring. In a case where the only requirement is an attendance centre requirement the responsible officer will be the officer in charge of the attendance centre. In any other case the responsible officer will be a member of a youth offending team or an officer of a local probation board or an officer of a provider of probation services. *Subsection (3)* gives the Secretary of State order-making powers (subject to the affirmative resolution procedure) to amend subsections (1) and (2) and, where necessary or expedient, make any consequential changes as a result to other provisions of Part 1 of this Act or Chapter 1 of Part 12 of the 2003 Act (general provisions about sentencing). *Subsection (4)* provides that such an order may provide for the court to decide in individual cases which description of “responsible officer” is to apply. Any such order is subject to the affirmative resolution procedure

Section 5: Responsible officer and offender: duties in relation to the other

177. *Section 5* establishes the statutory duties of the responsible officer and offender in relation to each other. Under *subsection (1)* the responsible officer must make any necessary arrangements for the offender to fulfil the requirements of the order, promote the offender's compliance with the requirements, and take enforcement action in the case of non-compliance. *Subsection (2)* makes an exception for responsible officers who are electronic monitoring providers. *Subsection (3)* provides that in giving instructions in relation to the YRO the responsible officer must ensure, as far as practicable, that any instruction avoids any conflict with an offender's religious beliefs, with his attendance at school or at any other educational establishment or with the requirements of any other YRO to which he is subject. *Subsection (4)* provides the Secretary of State with an order-making power (subject to the negative resolution procedure) to add to the restrictions in subsection (3). Under *subsection (5)* an offender must keep in touch with his responsible officer, in accordance with any instructions in that regard from the responsible officer. The offender must also notify the responsible officer of any change of residence. Under *subsection (6)*, if the offender does not keep in touch as required, or if he changes his residence without notifying the responsible officer, he or she is liable to breach proceedings.

Section 6 and Schedule 4: Abolition of certain youth orders and related amendments

178. *Section 6* abolishes five existing community sentences for young offenders namely, curfew orders, attendance centre orders, exclusion orders, supervision orders and action plan orders, which will be replaced by the YRO. The section also introduces Schedule 4, which makes consequential amendments to other legislation. *Paragraph 80* of Schedule 4 amends section 174 of the 2003 Act imposing an additional requirement on the courts when passing a custodial sentence on an offender aged under 18. The court

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is already required, when imposing a discretionary custodial sentence, to explain why it is of the opinion that the matter is so serious that neither a fine alone nor a community sentence can be justified for the offence. This additional requirement means that when passing a discretionary custodial sentence on an offender under the age of 18, the court must also include a statement that it is of the opinion that the imposition of a youth rehabilitation order with intensive supervision and surveillance or fostering cannot be justified, and why it is of that opinion.

Section 7: Youth rehabilitation orders: interpretation

179. This section defines various terms for the purposes of Part 1.

Section 8: Isles of Scilly

180. This section provides for Part 1 to have effect in the Isles of Scilly with such exceptions, adaptations and modifications as the Secretary of State may specify by order (subject to the negative resolution procedure).