

CRIMINAL JUSTICE AND IMMIGRATION ACT 2008

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 1: Youth rehabilitation orders

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.