

Draft Order laid before Parliament under section 114(3) of the Crime and Disorder Act 1998, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2008 No.

CRIMINAL LAW, ENGLAND AND WALES

**The Youth Justice Board for England
and Wales (Amendment) Order 2008**

Made - - - -

Coming into force in accordance with article 1

The Secretary of State makes this Order in exercise of the powers conferred by section 41(6)(b) of the Crime and Disorder Act 1998(1).

In accordance with section 114(3)(2) of that Act, a draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. This Order may be cited as the Youth Justice Board for England and Wales (Amendment) Order 2008 and shall come into force on the day after the day on which it is made.

Amendment to the Youth Justice Board for England and Wales Order 2000

2.—(1) The Youth Justice Board for England and Wales Order 2000(3) is amended as follows.

(2) In article 2 after the interpretation of “the 1998 Act” insert —

““the 2000 Act” means the Powers of Criminal Courts (Sentencing) Act 2000(4);

“the 2003 Act” means the Criminal Justice Act 2003(5).”

(3) In article 4(2) —

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- (1) [1998 c.37](#). The power in section 41(6)(b) was extended by the insertion of subsection (6A)(power to exercise powers in particular cases and make consequential amendments) by section 32(1) and (3) of the Offender Management Act 2007 ([c.21](#)).
- (2) [1998 c.37](#). Section 114(3) has been amended by sections 142(3) and 144 of and paragraphs 1 and 5 in Part 1 of Schedule 10 to the [Serious Organised Crime and Police Act 2005\(c.15\)](#); by section 22 of, and paragraphs 1 and 6(1) and (3) of Schedule 9 to the [Police and Justice Act 2006 \(c.48\)](#); by section 48 of, and paragraphs 1 and 4(1) and (4) of Schedule 9 to the [Criminal Justice and Immigration Act 2008 \(c.4\)](#).
- (3) [S.I. 2000/1160](#)
- (4) [2000 c.6](#)
- (5) [2003 c.44](#)

- (a) in sub-paragraph (a) for “section 53 of the 1933 Act” substitute “section 90(6) or 91(7) of the 2000 Act”;
- (b) in sub-paragraph (e) for “section 16(1) and (4) of the 1982 Act” substitute “section 221(1) and (3) of the 2003 Act”;
- (c) for sub-paragraphs (m) to (o) substitute the following —
- “(m) the functions conferred on the Secretary of State by —
- (i) section 102(1) of the 2000 Act(8), of determining in which youth detention accommodation a person is to serve the period of detention and training under a detention and training order;
- (ii) section 92(1) of the 2000 Act, in so far as it relates to persons aged under 18, of directing, or arranging with other persons, the place in which and conditions under which persons sentenced to be detained under section 90 or 91 of that Act shall be detained;
- (n) the functions conferred on the Secretary of State by —
- (i) section 103(3) of the 2000 Act (detention and training orders: category of person to supervise offender);
- (ii) section 103(6) of that Act (detention and training orders: supervision orders);
- (iii) section 104(3)(a) of that Act (detention and training orders: detention on breach of supervision notice);
- (iv) section 105(2) of that Act (detention and training orders: detention on conviction of offence during term of order);
- (o) the functions conferred on the Secretary of State by —
- (i) rule 6(1) of the Secure Training Centre Rules 1998(9) (approval of system of privileges, incentives and sanctions);
- (ii) rule 18(2) of those Rules (approval of room to be used as sleeping accommodation in secure training centre);
- (iii) rule 21 of those Rules (directions as to trainees’ library books);
- (iv) rule 42(1) and (2) of those Rules (authorisation of persons to view secure training centres, take photographs, make sketches, and communicate with trainees);
- (v) rule 45 of those Rules (giving leave to governor(10) of secure training centre to delegate powers and duties to another officer);
- (p) the function conferred on the Secretary of State by section 43(1)(aa) of the 1952 Act(11) (provision of young offender institutions), for persons aged under 18;

(6) 2000 c.6. Section 90 was amended by section 60(2) and (3) of the Criminal Justice and Court Services Act 2000 (c.43).

(7) 2000 c.6. Section 91 was amended by section 139 of, and paragraph 43(1) and (2) of Schedule 6 to, the Sexual Offences Act 2003 (c.42); by sections 289 and 304 of, and Part 1, paragraphs 90 and 110 of Schedule 32 to, the Criminal Justice Act 2003 (c.42) and section 332 of, and Part 7 of Schedule 37 to, that Act; by section 49 of, and paragraph 7(1) and (2) of Schedule 1 to, the Violent Crime Reduction Act 2006 (c.38); and by section 6(2) of, and Part 1, paragraphs 51 and 56 of Schedule 4 to, the Criminal Justice and Immigration Act 2008 (c.4).

(8) 2000 c.6. Section 102(1) was amended by section 34(2) of the Offender Management Act 2007 (c.21).

(9) S.I.1998/472, to which there are amendments not relevant to this Order.

(10) S.I. 1998/472, rule 46(2) provides that in a contracted out secure training centre, for any reference to the governor there should be substituted a reference to the director.

(11) Prison Act 1952 (c.52). Section 43(1)(aa) was inserted by section 170 of, and paragraph 11 of Schedule 15 to, the Criminal Justice Act 1988 (c.33). It was amended by section 18(3) of the Criminal Justice and Public Order Act 1994 (c.33) and by section 148(1) of, and paragraph 3 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c.4).

- (q) the functions conferred on the Secretary of State by sections 84 and 88A of the 1991 Act⁽¹²⁾ of entering into contracts for the provision or running, or both, of young offender institutions for persons aged under 18, or the performance of functions at directly managed young offender institutions for persons aged under 18, and any function exercisable by the Secretary of State in relation to such contracts, including the procurement of, and making of payments under, such contracts;
- (r) the functions conferred on the Secretary of State, in respect of a young offender institution for persons aged under 18, by —
 - (i) section 85(1)(b) and (4) of the 1991 Act⁽¹³⁾;
 - (ii) section 91(1) of that Act⁽¹⁴⁾;
- (s) where a contract has been entered into for the running of a young offenders institution for persons aged under 18, by virtue of article 4(2)(q) above, then in respect of that establishment, the functions conferred on the Secretary of State by —
 - (i) rule 6(1) of the Young Offender Institution Rules 2000⁽¹⁵⁾ (privileges appropriate to age, character and circumstances);
 - (ii) rule 20(1) of those Rules (no food other than ordinarily provided unless authorised);
 - (iii) rule 21(2) of those Rules (no smoking or tobacco except in accordance with directions);
 - (iv) rule 22 of those Rules (approval of room or cell to be used as sleeping accommodation in young offender institution);
 - (v) rule 25 of those Rules (permission, subject to conditions, for a female inmate to have her baby with her);
 - (vi) rule 26 of those Rules (inmates to be allowed to have and exchange library books, subject to directions);
 - (vii) rule 39(1) of those Rules (directions as to the training of inmates by means of training courses);
 - (viii) rule 51(2) of those Rules (cell or room for temporary confinement to be certified as suitable for that purpose, to be adequate for health and allow the inmate to communicate at any time with an officer);
 - (ix) rule 76 of those Rules (authorisation of persons to view young offender institutions, take photographs, make sketches and communicate with an inmate);
 - (x) rule 85 of those Rules (giving leave to governor or controller of a young offender institution to delegate powers and duties to another officer);
 - (xi) rule 86(1)(b) of those Rules (modifications to the Rules where a contract entered into for the running of a young offender institution);
 - (xii) rule 86(1A) (giving leave to the director of young offender institution to delegate powers and duties to another officer);

⁽¹²⁾ Criminal Justice Act 1991 (c.53). Section 84 as substituted by section 96 of the Criminal Justice and Public Order Act 1994 (c.33). Section 88A as inserted by section 99 of the Criminal Justice and Public Order Act 1994 (c.33) and amended by section 17(2) of the Offender Management Act 2007(c.21).

⁽¹³⁾ 1991 c.53. Section 85(1) and (4) were amended by section 97(1) and (2) of the Criminal Justice and Public Order Act 1994 (c.33) and section 18(3) of the Offender Management Act 2007 (c.21) amended section 85(1).

⁽¹⁴⁾ 1991 c.53. Section 91(1) was amended by section 101(6) of the Criminal Justice and Public Order Act 1994 (c.33)

⁽¹⁵⁾ S.I. 2000/3371; relevant amending instruments are S.I. 2007/2953 and S.I. 2007/3220.

- (t) the functions conferred on the Secretary of State by section 23(7A) and (7B) of the 1969 Act⁽¹⁶⁾ (remand or committal to local authority accommodation: consent for a person to be detained in a secure training centre).”

Amendment to the Young Offender Institution Rules 2000

3. For rule 13 of the Young Offender Institution Rules 2000 (disclosure by governor to non-specified persons of certain information) substitute—

“(1) Except in accordance with paragraph (2), the governor may not disclose to any person who is not

- (a) an officer of a young offender institution;
- (b) an officer of the Secretary of State;
- (c) an officer of the Youth Justice Board for England and Wales, where the Board has entered into a contract for the provision or running, or both, of the young offender institution; or
- (d) an employee of the young offender institution authorised by the governor for the purpose of this rule,

any intercepted material, information retained pursuant to rule 12 or material obtained by means of an overt closed circuit television system used during a visit.

(2) The governor may disclose the material and information identified in paragraph (1) to persons, other than those mentioned in that paragraph, if:

- (a) he considers that such disclosure is—
 - (i) necessary on the grounds specified in rule 11(4); and
 - (ii) proportionate to what is sought to be achieved by the disclosure;
- (b) in the case of intercepted material or material obtained by means of an overt closed circuit television system used during a visit, all parties to the communication or visit consent to the disclosure; or
- (c) in the case of information retained pursuant to rule 12, the inmate to whose communication the information relates, consents to the disclosure.”

Signed by authority of the Secretary of State

Minister of State
Ministry of Justice

⁽¹⁶⁾ Children and Young Persons Act 1969 (c.54). Section 23(7A) and (7B) were inserted by section 133(1) of the Criminal Justice and Police Act 2001 (c.16).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Youth Justice Board for England and Wales Order 2000 ([SI 2000/1160](#)) (“the 2000 Order”) which conferred new functions on the Youth Justice Board for England and Wales (“the Board”) by, among other things, providing that certain functions in relation to the youth justice system should be exercisable by the Board concurrently with the Secretary of State.

The Order updates legislative references in the 2000 Order on sentencing to those currently in force (article 2(2) and 2(3)(a) and (b)) and adds, in article 2(3)(c), to the functions which the Board may exercise concurrently with the Secretary of State —

the placement of persons aged under 18 who have been sentenced to be detained at Her Majesty’s Pleasure or for a period of long term detention;

additional powers under the Secure Training Centre Rules 1998;

the power to enter into contracts for the provision and running of Young Offender Institutions and related powers connected with the running of such establishments, including, where such a contract has been entered into, under the Young Offender Institution Rules 2000; and

the power, where a person under 17 is remanded or committed to local authority accommodation and a security requirement is imposed, to consent to the person being detained in a secure training centre.

Article 3 of this Order makes a consequential change to the Young Offender Institution Rules 2000. It would allow, where the Board have entered into a contract for the provision or running or both of a young offender institution for persons under 18, for the director of that establishment to make a disclosure of certain information to an officer of the Board.