

# **Criminal Justice Act 2003, 'Dangerousness' and the New Sentences for Public Protection**

Guidance for youth offending teams

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# Contents

<b>Introduction</b>	<b>3</b>
<b>Dangerousness and the custodial sentences for public protection</b>	<b>5</b>
<b>Youth community orders and the Adult Community Order</b>	<b>17</b>
<b>Changes in orders, new requirements and other changes</b>	<b>20</b>
<b>Appendix 1: Schedule 15 offences</b>	<b>27</b>
<b>Appendix 2: Home Detention Curfew – presumption of unsuitability</b>	<b>34</b>
<b>Appendix 3: NOMS Release and Recall Section</b>	<b>36</b>
<b>Appendix 4: NOMS Lifer Review and Recall Section</b>	<b>39</b>
<b>Appendix 5: Adult Community Order</b>	<b>40</b>
<b>References</b>	<b>42</b>

# Introduction<sup>1</sup>

On 4 April 2005, key aspects of the Criminal Justice Act 2003 (the Act)<sup>2</sup> came into effect. The majority of these apply to adult offenders only. However, the Act introduces two major changes that will have an impact on youth offending teams:

- a category of court assessment for specified sexual and violent offences, known as “dangerousness”
- two new custodial sentences: Detention for Public Protection (an indeterminate sentence) and the Extended Sentence for Public Protection.

The Act also includes:

- introduction of the term “youth community order” for all existing youth community sentences (former adult community sentences, while no longer available for adults, will remain available for 16 to 17-year-olds until at least April 2007).<sup>3</sup>
- a new community sentencing framework that removes the current range of adult community sentences, and replaces them with one generic Adult Community Order<sup>4</sup> (which does not apply to 16 to 17-year-olds)
- changes to existing adult custodial and suspended sentences
- the introduction of the general admissibility of evidence of “Bad Character”.
- introduction of Drug Treatment and Testing Requirements attached to Supervision Orders and Action Plan Orders (in participating authorities only)
- Parenting Orders now able to be made with Referral Orders
- introduction of Parenting Order Residential Requirements
- introduction of Individual Support Orders (ISOs) for young people on Anti-Social Behaviour Orders (ASBOs)
- automatic conditional release at mid-point of sentence for section 91 offenders serving determinate sentences.
- outline of the obligations of what the Act refers to as the “Responsible Authorities”, and the “duty to co-operate” under Multi-Agency Public Protection Arrangements (MAPPA)

<sup>1</sup> This guidance has been updated to address the issues raised at the Youth Justice Board Criminal Justice Act 2003 training delivered to youth offending teams in May 2005.

<sup>2</sup> A copy of the Act can be found at [www.legislation.hmsso.gov.uk/acts/acts2003/20030044.htm](http://www.legislation.hmsso.gov.uk/acts/acts2003/20030044.htm).

<sup>3</sup> These should not be referred to as youth community orders.

<sup>4</sup> For more information on the Adult Community Order and its implications for young offenders, visit [www.probation.homeoffice.gov.uk](http://www.probation.homeoffice.gov.uk). See also Appendix 5 of this guidance.

- introduction of a minimum sentence for 16 to 17-year-olds who commit certain firearms offences.

This guidance covers the implications of the Act for youth offending teams (YOTs) and young people who offend.<sup>5</sup>

<sup>5</sup> Note that, with some exceptions, the Act applies only to those offences committed on or after 4 April 2005. Exceptions are: “Bad Character” (see below), introduced in December 2004; Individual Support Orders, introduced in May 2004; and Drug Treatment and Testing Requirements, introduced in pilot areas in December 2004. Recall provisions for determinate sentences are retrospective. So a young offender who is released on licence, and subsequently recalled on or after 4 April 2005, will be recalled under the provisions of the Act – regardless of the date of the offence or sentence.

# Dangerousness and the custodial sentences for public protection

## **Dangerousness**

The Criminal Justice Act 2003 (chapter 5, sections 224–236) introduces significant changes with regard to “dangerousness”. These apply to all offenders, including 10 to 17-year-olds convicted of specified sexual and violent offences.<sup>6</sup>

Key issues for YOTs include:

- definition of “specified” and “serious specified” offences
- a new assessment of “dangerousness” to be undertaken by the court
- the importance of rigorous risk assessment (via *Asset – Core Profile* and *Asset – Risk of Serious Harm*) to contribute to a court’s assessment of dangerousness
- the introduction of two new custodial sentences – the (indeterminate) Detention for Public Protection, and the (determinate) Extended Sentence for Public Protection.

This guidance<sup>7</sup> is designed to help practitioners:

- identify the children and young people who fall within the new provisions
- become familiar with the terms “significant risk” and “serious harm”, as they are used in chapter 5 of the Criminal Justice Act 2003
- understand the type of information the court can take into account in coming to a judgement about dangerousness
- produce an assessment of risk, in terms of likelihood and impact of reoffending, to help the court reach a judgement on whether a young person presents “a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences”
- produce pre-sentence reports (PSRs) appropriate to the needs of courts.
- understand what should be done post-sentence, if a young person receives one of the two new public protection custodial sentences.

<sup>6</sup> These provisions of the Criminal Justice Act 2003 apply only to offences committed after 4 April 2005.

<sup>7</sup> This guidance does not say at which exact point in the process assessments of dangerousness should be made, i.e. which decisions should be made by youth courts, and the circumstances in which cases should be remitted to the Crown Court. The Youth Justice Board for England and Wales (YJB), the Home Office, the Department of Constitutional Affairs, the Crown Prosecution Service (CPS) and the Justices Clerks’ Society are discussing this issue. The YJB will issue further guidance on the matter as soon as it is resolved.

## **Dangerous offenders**

The Act defines a “dangerous offender” as one who fulfils the following criteria:

- convicted of an offence specified in schedule 15 of the Criminal Justice Act 2003 (see Appendix 1), all of which are sexual or violent offences carrying a penalty of two years or more, including life
- assessed by the court as posing a significant risk to members of the public of serious harm by the commission of further specified offences.

The Youth Justice Board for England and Wales (YJB) advises that the term “dangerous offender” should only be used in relation to cases where a court has made an assessment of dangerousness in accordance with the definitions given in the Act. It should not, for example, be used to refer to young people who may be assessed by a YOT as presenting a risk of serious harm to others but who have not committed specified offences listed in schedule 15 of this Act, or to those who have committed such offences but a court has determined that they do not meet the second of the criteria outlined above, in that they do not reach the threshold of posing a significant risk to members of the public.

## **Offence criteria**

As we have already noted, the new sentencing framework of the Criminal Justice Act 2003 applies only to offences committed after 4 April 2005.<sup>8</sup>

The second criterion for eligibility for the new provisions is that the offence committed is one listed in schedule 15 of the Act.<sup>9</sup> This covers two offence categories: “specified” and “serious specified” offences of sex or violence

- **specified offence**

A specified offence is one of the 153 sexual or violent offences listed under schedule 15 of the Act. The majority are grave crimes (those liable, if committed by an adult, to a maximum sentence of 14 years or more), but some are less serious, such as actual bodily harm, affray, exposure and so on.

- **serious specified offence<sup>10</sup>**

A serious specified offence is a specified sexual or violent offence that carries a maximum penalty of life or imprisonment for 10 years or more if committed by an adult (serious specified offences are marked in Appendix 1 with an asterisk).

When a person has been convicted of a specified offence, the court must assess them for dangerousness, i.e. whether he or she poses a significant risk of serious harm to members of the public through the commission of further specified offences.

<sup>8</sup> For offences committed before this period, previous provisions will continue to apply.

<sup>9</sup> Schedules 16 and 17 list specified offences for Scotland and Northern Ireland respectively.

<sup>10</sup> Existing ‘short cut’ criteria for fast-tracking entry into the Intensive Supervision and Surveillance Programme (ISSP), which currently cover offences that, for an adult, carry a sentence of 14 years or more (termed grave offences), will be extended to include those carrying a sentence of 10 years or more for an adult, i.e. those violent and sexual offences designated as “serious specified offences” in the Criminal Justice Act 2003. This change is covered in the YJB’s *ISSP Management Guidance* (YJB, 2005a).

It is important to note that, for young people under the age of 18, the court cannot presume dangerousness, even if there have been previous specified offences. A new assessment of available evidence has to be made each time a young person is convicted of a specified offence.

### **The ‘significant risk’ test**

Sentencing decisions on those who fit the offence criteria will turn on the ‘significant risk’ test. That is, the court has to decide whether there is a “significant risk to members of the public of serious harm occasioned by the commission by him of further such offences.”<sup>11</sup>

In sentencing a young person convicted of a specified or serious specified offence in schedule 15, the selection of a public protection sentence (or alternative sentence outside chapter 5) will therefore be based on the court’s judgement of how likely it is that the individual will commit another specified offence having an impact of serious harm on others.

It is important to remember that the ‘significant risk’ relates to the commission of further specified violent or sexual offences, and not further serious specified violent or sexual offences. There must, however, be a ‘significant risk’ of serious harm.

#### *Significant risk*

Significant risk is not defined in the legislation, and it will be for the court to assess in each case. In an attempt to provide some additional clarification, the Court of Appeal has recently stated that: “the risk identified must be significant. This is a higher threshold than mere possibility of occurrence, and in our view can be taken to mean (as in the Oxford Dictionary) “noteworthy, of considerable amount or importance””.<sup>12</sup>

#### *Members of the public*

In the legislation, the term, “members of the public” is not defined, but the risk of serious harm assessment will include an assessment of those who are most at risk of committing any further offences.

#### *Serious harm*

Serious harm is defined, however, and “means death or serious personal injury whether that is physical or psychological”.<sup>13</sup> This is very similar to *Asset*, where risk of serious harm is defined as: “death or injury (either physical or psychological) which is life threatening and/or traumatic and from which recovery is expected to be difficult, incomplete or impossible”.<sup>14</sup>

<sup>11</sup> Criminal Justice Act 2003, section 229 (1)(b)

<sup>12</sup> R v Lang & Ors [2005] EWCA Crim 2864

<sup>13</sup> Criminal Justice Act 2003, section 224 (3)

<sup>14</sup> *Effective Practice Reader: Managing Risk in the Community*, p.4 (YJB, 2005b)

It is important to distinguish between the seriousness of an offence, and the possible risk of serious harm. "For example, robbery is a serious offence. But it can be committed in ways that do not pose a significant risk of serious harm."<sup>15</sup> It should not be assumed that there is a significant risk of serious harm just because the anticipated specified offence is serious.

### **Information that can be used by the court**

As explained above, for young people under the age of 18, the court cannot presume dangerousness – even if there have been previous specified offences. An assessment of available evidence has to be made each time a young person is convicted of a specified offence.

In making an assessment of dangerousness in relation to a young person, the court:

- must take into account all available information about the nature and the circumstances of the offence
- may take into account information it has regarding any pattern of behaviour of which the offence forms part<sup>16</sup>
- may take into account any other information it has about the offender.<sup>17</sup>

This will clearly include information provided by the YOT, but the court will also consider information from a range of sources (e.g. CPS, defence, victim, mental health services) so the decision about dangerousness will not depend solely on input from the YOT.

### ***In practice***

The YOT has a significant role to play in contributing to the assessment of dangerousness by providing the court with detailed information and assessment regarding the young person and their level of risk of harm to others. This should be based on a comprehensive assessment made using *Asset*. However, it is important to remember that the final decision about dangerousness rests with the court and not with the YOT.

### **Using Asset**

Completion of *Asset* should be the basis for all assessments of potential risk. In particular, this should include:

- *Asset– Core Profile*
- *What do YOU think? form*
- *Asset – Risk of Serious Harm.*

<sup>15</sup> R v Lang & Ors [2005] EWCA Crim 2864

<sup>16</sup> "Pattern of behaviour" is not defined in the Act, and will be for the court to assess in each case. It could include: acquittals, complaints not prosecuted and, in certain cases, police intelligence. Where PSR authors are uncertain about how any information could be used, they should contact the CPS caseworker, and discuss the issue with the reviewing lawyer or sentencing prosecutor. All assessments must be based on information that can be evidenced.

<sup>17</sup> Criminal Justice Act 2003, section 229 (2).



A key part of this process will be using the evidence boxes in both the *Asset – Core Profile* and *Asset – Risk of Serious Harm* to explain the significance of the risk and protective factors identified.

#### *Asset – Risk of Serious Harm*

Effective use of *Asset – Risk of Serious Harm* will be essential in making assessments of risk and dangerousness. *Asset – Risk of Serious Harm* should draw together information from all relevant sources, and should lead to a more detailed analysis of the possible risks of serious harm to others than is possible within *Asset – Core Profile*.

In light of the Criminal Justice Act 2003, the “indicators of serious harm” section of the *Asset – Core Profile* is being revised to specify that *Asset – Risk of Serious Harm* should normally be completed where:

- a young person has been convicted of a serious specified offence
- a young person is being sentenced in the Crown Court for a specified offence
- a youth court specifically requests that the risk assessment in a PSR should contribute to its assessment of dangerousness in order to determine whether to remit the case to the Crown Court for sentencing.

For other cases, the current system will continue i.e. *Asset – Risk of Serious Harm* should be completed where one or more of the indicators of serious harm is identified.

#### *Risk factors*

Section 1 of *Asset – Risk of Serious Harm* asks for evidence of previous “harm-related behaviour”. This includes behaviour that has actually resulted in serious harm to others, but also behaviour that might very likely have led to serious harm. With an adult offender, there may be a long record of violent or sexual offending, which gives a strong indication of the possibility of further harmful behaviour. A young person is less likely to have such an extensive record, however; and a risk assessment that only focused on his or her previous convictions would be very limited. This element of the assessment, therefore, also needs to consider any evidence regarding violence or sexual aggression within the home, school or peer group that may not have resulted in a conviction.

Section 2 of *Asset – Risk of Serious Harm* looks at a young person’s current circumstances. This enables the practitioner to do one of the following:

- highlight factors about a current situation that might increase the risk of a young person causing serious harm to others
- discuss factors which suggest that, although a young person may previously have committed a violent or sexual offence, his or her circumstances have now changed such that the likelihood of further such behaviour is reduced.

#### *Protective factors*

In addition to identifying factors that indicate a risk of serious harm to others, an assessment also needs to consider the positive or protective factors that show how the risk can be reduced. These can include internal motivating factors (such as the desire to maintain a relationship) or external factors (such as the increased setting of boundaries by parents/carers).

It is important to be as specific as possible when identifying protective factors, e.g. explaining how support from a family member will affect the young person's behaviour, or specifying why a young person is motivated to avoid further offending.

#### *Future behaviour*

Knowledge of past behaviour will be critical in making assessments about the likelihood of future behaviour, but it is important to remember that young people can change. This is particularly relevant for young people who may be experiencing a complex process of development. This has been highlighted in a recent judgment of the Court of Appeal stating that: "It is still necessary, when sentencing young offenders, to bear in mind that, within a shorter time than adults, they may change and develop. This and their level of maturity may be highly pertinent when assessing what their future conduct may be and whether it may give rise to significant risk of serious harm".<sup>18</sup>

When thinking about future behaviour, the key points to bear in mind are impact and likelihood. When describing a risk of serious harm therefore, the following questions need to be considered:

1. What is the nature of the behaviour causing concern?
2. What is its impact?
  - Who is likely to be the victim?
  - What would be the impact on the victim or victims?
3. What is the likelihood of the behaviour occurring:
  - In what circumstances is the behaviour likely to happen?
  - How likely is it that the young person will find himself or herself in these circumstances?
  - What are the protective factors that would reduce the likelihood of this behaviour occurring?

#### *'Risk of serious harm' categories*

More detailed information on the four serious harm categories (low, medium, high and very high) can be found in the guidance section of *Asset*, and *Managing Risk in the Community* (YJB, 2005b).

The key principles which should determine the categorisation are:

- that the behaviour being considered fits the *Asset* definition of serious harm
- the likelihood of the behaviour occurring
- the impact of such behaviour.

It is anticipated that courts would normally only consider assessing a young person "dangerous" if s/he were regarded as being in the "very high risk" of serious harm *Asset* category. There might also be a small number of other cases where – owing to specific or unusual circumstances – young people in the "high risk" category are regarded by the court as "dangerous".

<sup>18</sup> R v Lang & Ors [2005] EWCA Crim 2864

However, it is important to remember that there is no automatic link between the results of a YOT assessment and the final decision of the court. Some young people assessed as “high” or “very high risk” of serious harm using *Asset* may not be regarded by the courts as presenting a “significant risk” to the public. The YOT’s responsibility in each individual case is to present all relevant information to the court which will then make a determination of dangerousness.

### **Pre-sentence reports**

The PSR assessment, based on information from *Asset – Core Profile*, *Asset – Risk of Serious Harm* and any other significant agency assessment (e.g. psychiatric reports), should provide detailed information to courts on the levels of risk and dangerousness to the public posed by the young person. All PSRs should be written in accordance with *National Standards for Youth Justice Services 2004*,<sup>19</sup> i.e. using the following format:

- front sheet
- sources of information
- offence analysis
- assessment of young person
- assessment of risk to the community
- conclusion, including proposals for sentence.

The ‘offence analysis’ section needs to contain a detailed analysis (i.e. more than just a description) of the specified offence for which the young person is being sentenced. This should include details of any victim, and the impact of the offence on them. It should also indicate whether the offence is part of a pattern of offending that is evident in the facts about any previous convictions.

As explained above, the court cannot make a presumption of dangerousness with regard to a young person on the basis of previous specified offences. However, PSR authors will need to analyse patterns of previous offending behaviour, as this will provide important information for assessing whether the young person still presents a risk of serious harm to members of the public.

The ‘Assessment of young person’ section should cover his or her attitude to the offence and the victim together with an analysis of his or her circumstances, motivation to change, and so on. As young people’s lives can change quite quickly, it is appropriate to draw the court’s attention to any differences in situation or attitudes from when the offence was committed. Note that these changes could indicate either an increase or a reduction in the risk of serious harm to others.

The ‘assessment of risk to the community’ section of the PSR should be used to draw together and highlight the key issues that the court will need to consider when making an assessment of dangerousness. In cases where it is clear that the court is making such an assessment, this section of the PSR should be renamed ‘assessment of risk and dangerousness’.

Suggested wording for the opening of this PSR section would be:

<sup>19</sup> YJB (2004). Available at [www.yjb.gov.uk/publications](http://www.yjb.gov.uk/publications).

*This offence is a specified offence under schedule 15 of the Criminal Justice Act 2003 [if also a serious offence, add: “The offence is also considered to be a serious offence as defined by section 224 of the Act”]. In making an assessment of dangerousness, the court may wish to consider the following information...*

The PSR should then indicate the key risk and protective factors identified through *Asset* (and any other specialist assessments undertaken) to explain the nature, impact and likelihood of any behaviour that would cause serious harm to other people. It is important to avoid vague phrases about risk or harm to the community – instead, the PSR needs to be specific in identifying the level of risk of serious harm to others.<sup>20</sup>

Where the PSR author believes that a robust and appropriate risk management plan could be put in place to control and reduce the level of risk to others that a young person presents, this should be outlined in the report. Any such proposal should specifically explain how the suggested plan will reduce risk and enhance protective factors. For example, this can include specifying the proposed frequency of contact, nature of intervention and procedures for reviewing any changes in risk levels over time. This information can inform the court’s assessment of the likelihood of a young person causing serious harm to others through the commission of further specified offences.

### **New custodial sentences**

The Criminal Justice Act 2003 (chapter 5, sections 226–228) introduces two new custodial sentences for those judged by the courts to be “dangerous offenders”:

- Extended Sentence for Public Protection (determinate)
- Detention for Public Protection (indeterminate).

These new sentences (which can only be passed in the Crown Court) are available for adults and young people, although the criteria are slightly different for those under 18 years of age. The consequence of these new sentencing provisions is that, if a young person is both convicted of a specified offence and assessed by the court as dangerous, a public protection custodial sentence is the only possible outcome.

#### **Extended Sentence for Public Protection**

The Extended Sentence is determinate, and comprises two parts. The court must specify:

- a custodial period (that must be at least 12 months)
- an extended licence period.

<sup>20</sup> As highlighted by the Court of Appeal, *R v D* [2005] EWCA Crim 2292

The extended licence period for a specified violent offence may not exceed five years, while the extended licence period for a specified sexual offence may not exceed eight years. The court decides how long this extended licence period should be for the purpose of public protection (and the whole sentence must not exceed the maximum penalty available for the offence).

From the halfway point of the custodial period, the young person may be released if the Parole Board deems it is safe to do so; but release will not be automatic until the end of the custodial period. There is a clear requirement to consult the Parole Board regarding possible licence conditions. Final decisions should be taken on advice from a range of agencies, including YOTs. After release, the young person remains on licence for the unexpired term of the custodial part of the sentence (if any), and for the extended period designated by the court when imposing sentence.

### **Detention for Public Protection**

This sentence is indeterminate. The court will set a minimum term, which will be served before the Parole Board considers whether it is safe to release the young person.<sup>21</sup> The Parole Board will not recommend the release of a young person until a full risk assessment indicates that they no longer pose a significant risk to the public. Home Detention Curfew is not available in these circumstances.<sup>22</sup>

Once released, the young person may remain on licence indefinitely but, in contrast to life licensees, he or she can apply to have the licence reviewed at the ten-year point by the Parole Board, and yearly thereafter. The licence will be terminated if the Parole Board considers it safe to do so on the grounds of public protection.

### **Sentencing criteria**

If a young person is convicted of a specified offence (but not a serious specified offence) and is assessed by the court to be dangerous, then he or she will receive an Extended Sentence.

If a young person is convicted of a serious specified offence and is assessed by the court to be dangerous, there are several sentencing options.

- If the offence is one for which the young person would be liable for a sentence of Detention for Life (section 91, Powers of Criminal Courts (Sentencing) Act 2000) and the court considers that the seriousness of the offence (or of the offence and one or more offences associated with it) is such as to justify detention for life, the court must impose a sentence of Detention for Life under section 91.
- If the offence is not serious enough to justify a sentence of detention for life, the court may impose either an Extended Sentence (if this would be adequate for the purpose of protecting the public from serious harm caused by the young person committing further specified offences) or a sentence of Detention for Public Protection (if it is felt that an Extended Sentence would not be adequate for the purpose of protecting the public from serious harm).

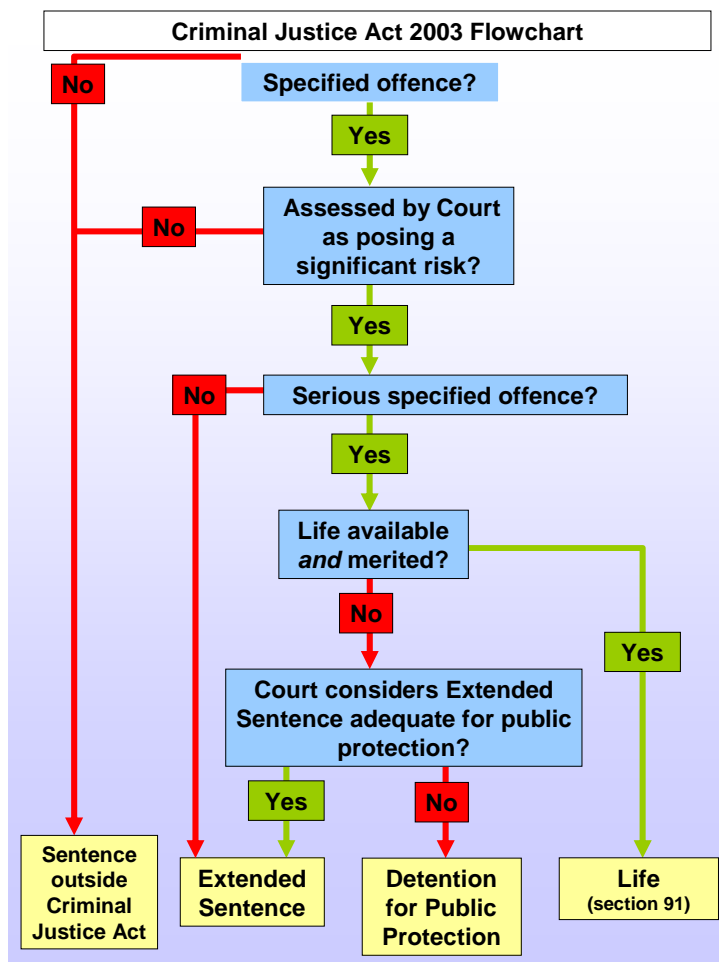
<sup>21</sup> Following existing practice, the minimum term should be the period that would have been served in custody, had a determinate sentence been imposed according to the seriousness of the offence (as with life sentences, the minimum term is not designed to reflect risk).

<sup>22</sup> See Appendix 2.

It should be noted that the Court of Appeal has recently stated: “in relation to a particularly young offender, an indeterminate sentence may be inappropriate even where a serious offence has been committed and there is a significant risk of serious harm from further offences”.<sup>23</sup> This suggests that the Extended Sentence is likely to be more appropriate in cases of particularly young offenders who meet the “dangerousness” criteria.

Any young person receiving one of these public protection sentences would be eligible for referral under MAPPA. Note that if a young person convicted of a specified offence is not assessed as dangerous (and so does not receive a sentence of Detention for Public Protection or an Extended Sentence) but receives a custodial sentence (e.g. a Detention and Training Order) of 12 months or more, he or she would also be eligible for referral under MAPPA. Further details are given in the YJB’s *Multi-Agency Public Protection Arrangements: Guidance for Youth Offending Teams*.<sup>24</sup>

These sentencing criteria set out in chapter 5 of the Criminal Justice Act 2003 are illustrated below.



<sup>23</sup> R v D [2005] EWCA Crim 2292

<sup>24</sup> Available at [www.youth-justice-board.gov.uk/publications](http://www.youth-justice-board.gov.uk/publications).

### ***In practice***

The number of young people receiving either an Extended Sentence or Detention for Public Protection is expected to be relatively small. However, when a young person does receive such a sentence, it is essential for YOTs to ensure that:

- there is continuous assessment of risk, in line with *National Standards*, using both *Asset – Core Profile* and *Asset – Risk of Serious Harm*
- risk assessment information is passed to the Parole Board to help them determine whether it is safe to release the young person into the community, or to terminate their licence
- all risk assessments have been completed in full in preparation for release, referrals to MAPPAs have been made, suitable resources are identified in the community, and a robust risk management plan is in place.

Where a young person is returning to a different YOT, it is the responsibility of the originating YOT to submit all paperwork before the young person returns to the community.

#### *Extended Sentence for Public Protection*

Parole Board reviews of Extended Sentence cases will be managed by the parole clerk at the young offender institution, or by the section 90/91 unit, for those young people held in secure children's homes and secure training centres.

Young people released on the Extended Sentence will be on an extended licence period, which may be quite long. YOTs will need to ensure that rigorous risk assessment takes place throughout, and that arrangements are in place with the probation service to transfer the case when the young person reaches the age of 18 years. Home Detention Curfew is not available as an early release option under the Extended Sentence.

The recall of Extended Sentence cases will be managed by the National Offender Management Service (NOMS) Release and Recall Section, which is now based in regional teams, with each probation area having named Release and Recall Section contacts.

YJB is working with the Release and Recall Section to clarify the process of executive recall for young people known to YOTs subject to section 90/91 sentences, as well as Extended Sentences under the Criminal Justice Act 2003. However, it has been clarified that YOT managers can and should endorse recall requests for all young people recalled. All recall decisions will be reviewed by the Parole Board within 14 days of recall.

More information on the Release and Recall Section can be found in *Probation Circular 16/2005*.<sup>25</sup>

<sup>25</sup> Home Office (2005). *Probation Circular 91/2005: Case Transfer Protocol between Youth Offending Teams (YOTs) and Probation Areas* sets out the relevant procedures for transferring cases (available at [www.probation.homeoffice.gov.uk](http://www.probation.homeoffice.gov.uk)).

A list of regional NOMS Release and Recall Section contacts can be found in Appendix 3. YOTs should contact their regional team for all issues to do with recall.

*Detention for Public Protection*

As in the case of all mandatory and discretionary life sentences, the supervising officer must ensure that all relevant paperwork, risk assessment and *Asset – Core Profile* are completed and sent to the NOMS Lifer Review and Recall Section (contact details are listed in Appendix 4).

Young people released on a sentence of Detention for Public Protection will be on an indefinite period of licence, which is likely to last a considerable time. YOTs will need to ensure that effective case management and risk management procedures are in place throughout the licence period until the licence is terminated by the Parole Board, or the young person reaches the age of 18 years, and becomes the responsibility of the probation service.



## Youth community orders and the Adult Community Order

The Criminal Justice Act 2003 introduces a new term for youth "community sentences", i.e. the Curfew Order, Exclusion Order, Attendance Centre Order, Action Plan Order and Supervision Order. These existing youth justice orders should now be referred to as "youth community orders" (see chapter 1, section 147 of the Act).

Youth community orders will continue to be available to all young offenders, including 16 to 17-year-olds. The orders will remain community sentencing options for all young people who offend.

In addition, for 16 to 17-year-olds, the former adult community sentences (the Community Punishment Order, the Community Rehabilitation Order, the Community Punishment and Rehabilitation Order, and the Drug Treatment and Testing Order)<sup>26</sup> will remain available until at least April 2007.<sup>27</sup>

This is important, as it ensures that children and young people who offend will not be drawn into the new adult sentencing framework with its now more stringent enforcement conditions. Crucially, it also means that key youth justice programmes, such as the ISSP,<sup>28</sup> which consists of a Supervision Order and a Curfew Order, will continue to be available for 16 to 17-year-olds.

YOTs should be aware of the components of the Adult Community Order. This is particularly important for young people subject to Detention and Training Orders who reach the age of 18 years, as the YOT is often still responsible for writing their PSRs, should a new offence be committed. In such cases, YOTs should ensure they liaise closely with probation regarding the content of the PSR.

### *In practice*

#### **Pre-sentence reports<sup>29</sup>**

Before imposing a custodial sentence or youth community order, the court must take into account all information available to it, including that relating to the offence and the offender. In addition, courts are now obliged to request and consider a PSR – which can include a specific sentence report (SSR) or stand-down report.

However, when an existing and recent PSR is already available, the court can consider this, and need not ask for a new one to be prepared.

<sup>26</sup> Under the Act, these will be replaced for adults by the single Adult Community Order.

<sup>27</sup> Or until such time (expected to be April 2007) as new legislation introduces an equivalent generic juvenile community sentence (the Youth Rehabilitation Order), alongside a proposed Intensive Supervision and Surveillance Order.

<sup>28</sup> See the YJB's *ISSP Management Guidance* (2005a).

<sup>29</sup> PSRs are covered under chapter 5, section 156 of the Act.

Most youth court magistrates already request a report (PSR or SSR) on a young person when they are considering a youth community order. The Act merely puts this on a statutory footing. Local court protocols, as required by the *National Standards for Youth Justice Services 2004*,<sup>30</sup> should already address this issue.

### **Youth community orders**

When proposing a specific community disposal from a range of youth community sentencing options, PSR authors should use the term “youth community order”.

For example:

*I have assessed X’s suitability for a range of youth community orders, and am proposing an Action Plan Order.*

For 16 to 17-year-olds, in line with current practice, PSR authors should continue to assess for and consider – as appropriate to risk, need and seriousness of offence – all existing youth community orders, as well as the former adult community sentences.

### **Community Punishment Orders**

Community Punishment Orders will continue to be supervised and enforced by the probation service, in line with current practice. YOTs should ensure that local arrangements to do this are in place with probation.

It should be noted that, while the Adult Community Order raises the maximum number of hours of unpaid work to 300 hours, the Community Punishment Order, which remains available for 16 to 17-year-olds, retains 240 as its maximum number of hours.

### **Community Rehabilitation Orders and Community Punishment and Rehabilitation Orders**

Community Rehabilitation Orders and Community Punishment and Rehabilitation Orders will continue to be supervised and enforced by YOTs, in line with current practice.

### **Drug Treatment and Testing Orders**

Drug Treatment and Testing Orders will continue to be assessed, supervised and enforced by the probation service, in line with current practice and local arrangements. YOTs should ensure that local arrangements with probation remain in place to allow this to continue.

<sup>30</sup> YJB (2004). Available at [www.yjb.gov.uk/publications](http://www.yjb.gov.uk/publications).

### **Transfer of cases to probation for 18-year-olds**

The YJB and the National Probation Directorate have recently agreed a national protocol on case transfer. *Probation Circular 91/2005*<sup>31</sup> sets out the relevant procedures.

### **Breach of former adult orders**

Breach arrangements for former adult orders will continue to be managed in line with local YOT/probation protocols.

If a young person is in breach of a former adult order and has turned 18, the court can only resentence the young person to the sentencing provisions under the existing legislation for the original offence, i.e. the Powers of Criminal Courts (Sentencing) Act 2000. This means that the court will not be able to make an Adult Community Order. However, if the young person is in breach of a former adult community sentence, and has committed a further offence, an Adult Community Order will become available.

### **National Standards for former adult orders**

YOTs will continue to supervise young people on former adult community sentences (the Community Rehabilitation Order and the supervision element of the Community Punishment and Rehabilitation Order) in line with former adult national standards for 2000, as set out in the YJB's *National Standards for Youth Justice Services 2004*.

However, should a young person on a former adult community sentence still be subject to that order when they reach the age of 18, and responsibility for their supervision transfers to the probation service, they will be supervised in line with the new adult national standards for 2005: these are contained in *Probation Circular 15/2005: National Standards*.<sup>32</sup>

<sup>31</sup> Home Office (2005). *Probation Circular 91/2005: Case Transfer Protocol between Youth Offending Teams (YOTs) and Probation Areas* (available at [www.probation.homeoffice.gov.uk](http://www.probation.homeoffice.gov.uk)).

<sup>32</sup> Available at [www.probation.homeoffice.gov.uk/files/pdf/PC15%202005.pdf](http://www.probation.homeoffice.gov.uk/files/pdf/PC15%202005.pdf).

## Changes in orders, new requirements and other changes

### ***Evidence of bad character***

The Act allows for evidence of bad character to be heard in court. This reverses the previous rule whereby this evidence was inadmissible in criminal proceedings (unless its value outweighed its prejudicial effect).

The Act defines bad character as evidence of, or a disposition towards, “Misconduct”. Misconduct is defined as the commission of an offence or other reprehensible behaviour. This means that, in addition to previous convictions, bad character may include evidence relating to, for example, concurrent charges or Cautions. It may also include relevant evidence of activity not amounting to criminal behaviour.

Bad character provisions apply to all criminal proceedings (described in the Act as “proceedings where the strict rules of evidence apply”). This includes Newton hearings, ‘special reasons’ hearings, retrials and appeals, as well as trials).

In criminal proceedings, evidence of the defendant’s bad character may only be admissible if any of the following applies.

- All parties to the proceedings agree to the evidence being admissible.
- The evidence is introduced by the defendant himself, or is given in answer to a question asked by him in cross-examination.
- It is relevant to an important matter at issue between the defendant and the prosecution.
- It has substantial probative value in relation to an important matter at issue between the defendant and co-defendant.
- It is evidence supplied to correct a false impression given by the defendant.
- The defendant has made an attack on another person’s character.

### **In practice**

Supervising officers and PSR authors should be aware that the concept of bad character can be applied to young people appearing in court. Spent convictions will now also be admissible in court – although the court will have to consider the amount of time that has elapsed.

There are concerns that the introduction of bad character could lead to delays in the trial process, which could have an impact on the Government’s persistent young offender pledge.<sup>33</sup> It will be some time before we know whether this will be the case. YOTs should continue to work with the court, police and Crown Prosecution Service (CPS) through local persistent young offender case-tracker meetings to ensure that the pledge is achieved.

<sup>33</sup> For details of the pledge, visit [www.yjb.gov.uk](http://www.yjb.gov.uk).

## **Drug Treatment and Testing Requirements**

These are covered in chapter 8, section 279 of the Act. The Act allows drug treatment and, where appropriate, drug testing to be available for those under 18 years of age as requirements of a Supervision Order and Action Plan Order. However, the drug testing requirement can only be imposed on young people aged 14 and over. The commencement order for the Drug Testing and Treatment Requirement came into force on 1 December 2004 in the following areas (the participating authorities): Middlesbrough, Newham, Calderdale, Manchester and Bradford. The pilot runs until March 2006, and is being independently evaluated.

The Drug Testing and Treatment Requirement is aimed at young offenders who have developed, or are at risk of developing, drug problems, and who may benefit from structured interventions as part of their community sentence. These interventions are not restricted to Class A drugs, and may include cannabis. As the drug treatment and testing requirement relates to drugs classified under the Misuse of Drugs Act, it does not include alcohol.

### **In practice**

In order for young people between the ages of 10 and 17 years to be eligible for a drug treatment requirement as part of an Action Plan Order or a Supervision Order, the court must be satisfied that they are dependent on, or have the propensity to misuse, drugs – and that this requires treatment.

YOTs should ensure that a full assessment is undertaken at the PSR stage to identify substance misuse concerns, using *Asset – Core Profile*. The treatment proposed should be suited to the needs of the individual, and part of a structured care plan. The court may only include a drug treatment requirement in the order, if it is satisfied that arrangements either have been or can be made for the relevant treatment to be delivered.

When recommending a Drug Testing and Treatment Requirement, YOTs should specify that the young person is suitable for treatment, and that treatment is available.

### *Definitions of “treatment” and “treatment provider”*

Guidance issued to the pilot YOT areas recommends the use of the National Treatment Agency’s (NTA’s) definition of “treatment”, which is:

*a structured care planned intervention that is designed to remedy an identified problem or condition in relation to an individual’s physical, behavioural and psychological wellbeing.*

The NTA defines a “treatment provider” as:

*an agency which provides a named key worker to oversee a structured care planned provision of services which can range from drug rehabilitation, detoxification (both in-patient and community based), structured day care, structured care planned interventions focusing on drug use, health, and harm reduction support and advice.*

Young people aged 14 years or over must give their consent to the inclusion of a drug treatment requirement. If the young person is aged between 10 and 13 years, he or she does not have to give consent, but should be included in the discussions. Parent/carer involvement should also be sought.

### *Testing*

The drug testing requirement is made in order to find out whether the young person has any drug in their body during the treatment period. This information will assist the treatment provider in determining whether the young person's care plan is effective. The court may only include a drug testing requirement alongside a drug treatment requirement if the young person is aged 14 or over, and gives consent. The court may not include a drug testing requirement as a stand-alone requirement – it must always be given in conjunction with a drug treatment requirement.

The Act also introduces drug testing at the point of arrest, which enables a custody officer who has reasonable grounds to do so, to detain and test a young person for Class A drugs. This will usually be in the form of an oral swipe, and its use is restricted to young people aged between 14 and 17 years. Again, this is only available in the five participating authorities (Middlesbrough, Newham, Calderdale, Manchester and Bradford).

A sample may only be taken from a young person under the age of 17 years when in the presence of an appropriate adult.

For more detail on this subject, see the Home Office's guidance, *Drug Testing and Treatment Requirements within Action Plan Orders and Supervision Orders*.<sup>34</sup>

### **Parenting Orders and Referral Orders<sup>35</sup>**

The Act introduces an amendment that allows a Parenting Order to be made at the same time as a Referral Order. However, before doing this, the court must consider a report by the YOT indicating:

- the proposed requirements of the order
- why a Parenting Order would be appropriate
- information on the family's circumstances.

The requirements of a Parenting Order remain unchanged, and are as follows:

- to comply, for a period not exceeding 12 months, with such requirements as specified in the order
- to attend, for a concurrent period not exceeding three months, such counselling or guidance programme as may be specified in directions given by the responsible officer.

### **Residential requirement**

The Act also states that a residential requirement can now be included in all Parenting Orders – if such a provision is available through the YOT, assessed to be suitable, and if the court is satisfied that the following apply.

- Attendance at a residential course is likely to be more effective than attendance at a non-residential course.

<sup>34</sup> Available at [www.homeoffice.gov.uk/docs3/apoguidance.pdf](http://www.homeoffice.gov.uk/docs3/apoguidance.pdf).

<sup>35</sup> These are covered in part 13, section 224 of the Act.

- Any interference in family life that is likely to result from attendance is proportionate when all the circumstances are taken into consideration.

### **Youth offender panels**

A court making a Referral Order may already require the parent to attend the meetings of the youth offender panel. The Act states that, if the parent fails to comply with this order, the panel may send the case back to the youth court, so allowing a further opportunity to make a Parenting Order.

When it does send a case back to court, the panel must prepare a report explaining why the parent is being referred. The court may then make a Parenting Order if they are satisfied that the following apply.

- The parent has failed, without reasonable excuse, to comply with an order made by the court to attend the youth offender panel.
- The court believes that it is desirable in the interests of preventing further offences being committed by the young person.

### **In practice**

For detailed guidance and information on Parenting Orders made with Referral Orders, please see the joint Home Office/YJB document, *Circular: Parenting Orders and Contracts for Criminal Contact or Anti-Social Behaviour*.<sup>36</sup>

### **Individual Support Orders<sup>37</sup>**

ISOs can now be attached to a stand-alone Anti-Social Behaviour Order (ASBO) made on a young person. An ISO imposes positive conditions on the child or young person to address the underlying causes of the behaviour that led to the ASBO being made.

ISOs can only be made by civil courts and as part of a stand-alone ASBO. Where a magistrates' court (civil court) is imposing a stand-alone ASBO on a young person aged between 10 and 17 years, it will be obliged to make an ISO if it takes the view that this would help prevent further anti-social behaviour.

ISOs are not available to criminal courts when imposing an order on conviction.

### **In practice**

The YOT should advise the court of the need for the ISO, and on what it should contain, based on a thorough needs assessment of the young person and his or her family. YOTs should work closely with local partners throughout the ASBO initial application process, identifying local provision and those partners who would be involved in delivery.

<sup>36</sup> Home Office/YJB (2004). Available at [www.yjb.gov.uk](http://www.yjb.gov.uk).

<sup>37</sup> These are covered in part 13, section 322 of the Act.

Delivery of an ISO should be co-ordinated by the YOT. It may last up to six months, and can require a young person to attend up to two sessions a week. Each ISO is overseen by a responsible officer, who could be from the local YOT, local education authority or social services department. YOTs should establish local protocols with social services and education departments regarding the provision of responsible officers.

A responsible officer's role will include making arrangements for the delivery of the requirements of the order, and explaining the order, its purpose and the practicalities to the young person, including any monitoring arrangements and the consequences of non-compliance.

Breach of an ISO is a criminal offence. Where a breach is prosecuted, the court may impose a fine, usually on the young person's parents/carers. For further details on ISOs and ASBOs, see the YJB's *Anti-Social Behaviour Guidance*.<sup>38</sup>

### **Multi-Agency Public Protection Arrangements for assessing risk<sup>39</sup>**

The Criminal Justice Act 2003 clarifies the role of MAPPAs. It identifies the chief of police, the local probation board for each area, and the Prison Service as the Responsible Authorities, and places a duty on them to:

*establish and keep under review arrangements for assessing and managing the risks posed by relevant sexual and violent offenders, or other offenders who may cause serious harm to the public.*

YOTs are one of the bodies with "a duty to co-operate" with the Responsible Authority. Each Responsible Authority must draw up a protocol setting out how co-operation is to be achieved, including guidelines on the exchange of information.

#### **In practice**

YOTs must ensure that arrangements are in place regarding their duty to co-operate with the Responsible Authority, and all YOT practitioners must be aware of MAPPAs and MAPPAs referral processes.

Rigorous and continuous risk assessment using *Asset – Core Profile* and *Asset – Risk of Serious Harm* must be undertaken of all young people subject to MAPPAs provisions.

A more detailed explanation of MAPPAs, and how they directly relate to practice, can be found in the YJB's *Multi-Agency Public Protection Arrangements: Guidance for Youth Offending Teams*.<sup>40</sup>

<sup>38</sup> YJB (2005c). Available at [www.yjb.gov.uk](http://www.yjb.gov.uk).

<sup>39</sup> MAPPAs are covered in part 13, section 325 of the Act.

<sup>40</sup> YJB (2006), available at [www.youth-justice-board.gov.uk](http://www.youth-justice-board.gov.uk). Note that a revision of this guidance will be published later this year.



## **Determinate sentences under section 91<sup>41</sup>**

The Act introduces changes to the release provisions for section 91 offenders serving determinate sentences. They will now receive automatic conditional release at the mid-point of their sentence, and the licence period in the community will last until the full sentence expiry date, irrespective of sentence length (at present, those sentenced to four years or more can normally only be released on the recommendation of the Parole Board).

All young people serving this sentence (subject to current exceptions) will become eligible for Home Detention Curfew<sup>42</sup> although, as a matter of policy, it is expected only to be granted to those convicted of certain offences in exceptional circumstances. The detail of the policy has still to be agreed.

### **In practice**

It will be the responsibility of the YOT to ensure that all risk assessments using *Asset – Core Profile* and *Asset – Risk of Serious Harm* have been completed in full in preparation for release. As with current practice, where a young person is returning to a different YOT, it is the responsibility of the originating YOT to submit all paperwork before the young person returns to the community.

The recall of the determinate sentence when in breach will be enacted by the NOMS Release and Recall Section. Depending on the nature of the breach, the Release and Recall Section will be notified by the YOT, the electronic-monitoring company or the police. The YOT will then request secure accommodation through the YJB's Placements Team, with the placement being authorised by the section 90/91 unit in the usual manner. The Release and Recall Section of NOMS will consider all recall requests within 24 hours of being notified, with emergency requests being acted on within two hours (see Appendix 3 of this guidance for more information on the NOMS Release and Recall Section). All recall decisions will be reviewed by the Parole Board within 14 days of recall.

YJB is working with the Release and Recall Section to clarify the process of executive recall for young people known to YOTs subject to section 90/91 sentences, as well as extended sentences under the Criminal Justice Act 2003. However, it has been confirmed that YOT managers can and should endorse recall requests for all young people recalled.

Recall provisions for section 91 offenders are retrospective. This means that young people released on licence and subsequently recalled on or after 4 April 2005 will be recalled under the provisions of the new Act, regardless of the date of the offence or sentence.

<sup>41</sup> These are covered in chapter 6 of the Act.

<sup>42</sup> For more information, or to establish relevant criteria, phone the Home Detention Curfew helpline on 020 7217 6451. See also Appendix 2 of this guidance for categories of offence for which the measure may be deemed unsuitable.

## **Firearms offences<sup>43</sup>**

The Act provides for a minimum three-year custodial sentence under section 91 (Powers of Criminal Courts (Sentencing) Act 2000) for certain firearms offences (from section 5 of the Firearms Act 1968) where a young person is convicted on indictment, i.e. in the Crown Court. These relate to possessing or distributing a prohibited weapon, ammunition or a firearm disguised as another object.<sup>44</sup>

The new sentence applies to 16 to 17-year-olds – unless there are exceptional circumstances relating to the offence or the offender which mean that the Court would be justified in not imposing a custodial sentence. For 10 to 15-year-olds, the sentence a court imposes remains discretionary.

### **In practice**

YOTs should be aware of the new minimum sentence when assessing the seriousness of a firearm-related offence. If, as a result of a full assessment, the PSR author thinks that there may be exceptional circumstances in a case (involving 16 to 17-year-olds), these should be clearly addressed within the PSR.

<sup>43</sup> This is covered in chapter 8, sections 287–291 of the Act.

<sup>44</sup> YOTs need to be aware that these are different from the firearms offences listed in schedule 15 of this Act, which are: possession of firearm with intent to endanger life, possession of firearm with intent to cause fear of violence, use of firearm to resist arrest, possession of firearm at time of committing or being arrested for offence and carrying a firearm with criminal intent. As these are specified offences, they will trigger an assessment of dangerousness by the court. In such cases, a young person may become subject to one of the new sentences for public protection rather than the section 91 sentence discussed here.

## Appendix 1: Schedule 15 offences

*Specified violent and sexual offences (those marked with an asterisk are serious specified offences)*

1. Manslaughter.\*
2. Kidnapping.\*
3. False imprisonment.\*
4. An offence under section 4 of the Offences Against the Person Act 1861 (c.100) (soliciting murder).\*
5. An offence under section 16 of that Act (making threats to kill).\*
6. An offence under section 18 of that Act (wounding with intent to cause grievous bodily harm).\*
7. An offence under section 20 of that Act (malicious wounding).
8. An offence under section 21 of that Act (attempting to choke, suffocate or strangle in order to commit or assist in committing an indictable offence).\*
9. An offence under section 22 of that Act (using chloroform, etc, to commit or assist in the committing of any indictable offence).\*
10. An offence under section 23 of that Act (maliciously administering poison, etc, so as to endanger life or inflict grievous bodily harm).\*
11. An offence under section 27 of that Act (abandoning children).
12. An offence under section 28 of that Act (causing bodily injury by explosives).\*
13. An offence under section 29 of that Act (using explosives, etc, with intent to do grievous bodily harm).\*
14. An offence under section 30 of that Act (placing explosives with intent to do bodily injury).\*
15. An offence under section 31 of that Act (setting spring guns, etc, with intent to do grievous bodily harm).
16. An offence under section 32 of that Act (endangering the safety of railway passengers).\*
17. An offence under section 35 of that Act (injuring persons by furious driving).
18. An offence under section 37 of that Act (assaulting officer preserving wreck).
19. An offence under section 38 of that Act (assault with intent to resist arrest).
20. An offence under section 47 of that Act (assault occasioning actual bodily harm).
21. An offence under section 2 of the Explosive Substances Act 1883 (c.3) (causing explosion likely to endanger life or property).\*
22. An offence under section 3 of that Act (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property).\*

23. An offence under section 1 of the Infant Life (Preservation) Act 1929 (c.34) (child destruction).\*
24. An offence under section 1 of the Children and Young Persons Act 1933 (c.12) (cruelty to children).\*
25. An offence under section 1 of the Infanticide Act 1938 (c.36) (infanticide).\*
26. An offence under section 16 of the Firearms Act 1968 (c.27) (possession of firearm with intent to endanger life).\*
27. An offence under section 16A of that Act (possession of firearm with intent to cause fear of violence).\*
28. An offence under section 17(1) of that Act (use of firearm to resist arrest).\*
29. An offence under section 17(2) of that Act (possession of firearm at time of committing or being arrested for offence specified in schedule 1 to that Act).\*
30. An offence under section 18 of that Act (carrying a firearm with criminal intent).\*
31. An offence under section 8 of the Theft Act 1968 (c.60) (robbery or assault with intent to rob).\*
32. An offence under section 9 of that Act of burglary with intent to:
  - a. inflict grievous bodily harm on a person, or
  - b. do unlawful damage to a building or anything in it.\*
33. An offence under section 10 of that Act (aggravated burglary).\*
34. An offence under section 12A of that Act (aggravated vehicle-taking) involving an accident which caused the death of any person.\*
35. An offence of arson under section 1 of the Criminal Damage Act 1971 (c.48).\*
36. An offence under section 1(2) of that Act (destroying or damaging property) other than an offence of arson.\*
37. An offence under section 1 of the Taking of Hostages Act 1982 (c.28) (hostage-taking).\*
38. An offence under section 1 of the Aviation Security Act 1982 (c.36) (hijacking).\*
39. An offence under section 2 of that Act (destroying, damaging or endangering the safety of aircraft).\*
40. An offence under section 3 of that Act (other acts endangering or likely to endanger the safety of aircraft).\*
41. An offence under section 4 of that Act (offences in relation to certain dangerous articles).
42. An offence under section 127 of the Mental Health Act 1983 (c.20) (ill-treatment of patients).
43. An offence under section 1 of the Prohibition of Female Circumcision Act 1985 (c.38) (prohibition of female circumcision).
44. An offence under section 1 of the Public Order Act 1986 (c.64) (riot).\*

45. An offence under section 2 of that Act (violent disorder).
46. An offence under section 3 of that Act (affray).
47. An offence under section 134 of the Criminal Justice Act 1988 (c.33) (torture).\*
48. An offence under section 1 of the Road Traffic Act 1988 (c.52) (causing death by dangerous driving).\*
49. An offence under section 3a of that Act (causing death by careless driving when under the influence of drink or drugs).\*
50. An offence under section 1 of the Aviation and Maritime Security Act 1990 (c.31) (endangering safety at aerodromes).\*
51. An offence under section 9 of that Act (hijacking of ships).\*
52. An offence under section 10 of that Act (seizing or exercising control of fixed platforms).\*
53. An offence under section 11 of that Act (destroying fixed platforms or endangering their safety).\*
54. An offence under section 12 of that Act (other acts endangering or likely to endanger safe navigation).\*
55. An offence under section 13 of that Act (offences involving threats).\*
56. An offence under Part II of the Channel Tunnel (Security) Order 1994 (S.I. 1994/570) (offences relating to Channel Tunnel trains and the tunnel system).\*
57. An offence under section 4 of the Protection from Harassment Act 1997 (c.40) (putting people in fear of violence).
58. An offence under section 29 of the Crime and Disorder Act 1998 (c.37) (racially or religiously aggravated assaults).
59. An offence falling within section 31(1)(a) or (b) of that Act (racially or religiously aggravated offences under section 4 or 4a of the Public Order Act 1986 (c.64)).
60. An offence under section 51 or 52 of the International Criminal Court Act 2001 (c.17) (genocide, crimes against humanity, war crimes and related offences), other than one involving murder.\*
61. An offence under section 1 of the Female Genital Mutilation Act 2003 (c.31) (female genital mutilation).\*
62. An offence under section 2 of that Act (assisting a girl to mutilate her own genitalia).\*
63. An offence under section 3 of that Act (assisting a non-UK person to mutilate overseas a girl's genitalia).\*
64. An offence of:
  - a. aiding, abetting, counselling, procuring or inciting the commission of an offence specified in this part of this schedule
  - b. conspiring to commit an offence so specified, or
  - c. attempting to commit an offence so specified.\*

65. An attempt to commit murder or a conspiracy to commit murder.

*(specified sexual offences)*

66. An offence under section 1 of the Sexual Offences Act 1956 (c.69) (rape).\*
67. An offence under section 2 of that Act (procurement of a woman by threats).
68. An offence under section 3 of that Act (procurement of a woman by false pretences).
69. An offence under section 4 of that Act (administering drugs to obtain or facilitate intercourse).
70. An offence under section 5 of that Act (intercourse with a girl under 13).\*
71. An offence under section 6 of that Act (intercourse with a girl under 16).
72. An offence under section 7 of that Act (intercourse with a defective).
73. An offence under section 9 of that Act (procurement of a defective).
74. An offence under section 10 of that Act (incest by a man).\*
75. An offence under section 11 of that Act (incest by a woman).
76. An offence under section 14 of that Act (indecent assault on a woman).\*
77. An offence under section 15 of that Act (indecent assault on a man).\*
78. An offence under section 16 of that Act (assault with intent to commit buggery).\*
79. An offence under section 17 of that Act (abduction of a woman by force or for the sake of her property).\*
80. An offence under section 19 of that Act (abduction of an unmarried girl under 18 from parent or guardian).
81. An offence under section 20 of that Act (abduction of an unmarried girl under 16 from parent or guardian).
82. An offence under section 21 of that Act (abduction of a defective from parent or guardian).
83. An offence under section 22 of that Act (causing prostitution of women).
84. An offence under section 23 of that Act (procuration of a girl under 21).
85. An offence under section 24 of that Act (detention of a woman in a brothel).
86. An offence under section 25 of that Act (permitting a girl under 13 to use premises for intercourse).\*
87. An offence under section 26 of that Act (permitting a girl under 16 to use premises for intercourse).
88. An offence under section 27 of that Act (permitting a defective to use premises for intercourse).
89. An offence under section 28 of that Act (causing or encouraging the prostitution of, intercourse with or indecent assault on a girl under 16).

90. An offence under section 29 of that Act (causing or encouraging the prostitution of a defective).
91. An offence under section 32 of that Act (soliciting by men).
92. An offence under section 33 of that Act (keeping a brothel).
93. An offence under section 128 of the Mental Health Act 1959 (c.72) (sexual intercourse with patients).
94. An offence under section 1 of the Indecency with Children Act 1960 (c.33) (indecent conduct towards a young child).\*
95. An offence under section 4 of the Sexual Offences Act 1967 (c.60) (procuring others to commit homosexual acts).
96. An offence under section 5 of that Act (living on earnings of male prostitution).
97. An offence under section 9 of the Theft Act 1968 (c.60) (burglary with intent to commit rape).\*
98. An offence under section 54 of the Criminal Law Act 1977 (c.45) (inciting girl under 16 to have incestuous sexual intercourse).
99. An offence under section 1 of the Protection of Children Act 1978 (c.37) (indecent photographs of children).\*
100. An offence under section 170 of the Customs and Excise Management Act 1979 (c.2) (penalty for fraudulent evasion of duty, etc) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (c.36) (indecent or obscene articles).
101. An offence under section 160 of the Criminal Justice Act 1988 (c.33) (possession of an indecent photograph of a child).\*
102. An offence under section 1 of the Sexual Offences Act 2003 (c.42) (rape).\*
103. An offence under section 2 of that Act (assault by penetration).\*
104. An offence under section 3 of that Act (sexual assault).\*
105. An offence under section 4 of that Act (causing a person to engage in sexual activity without consent).\*
106. An offence under section 5 of that Act (rape of a child under 13).\*
107. An offence under section 6 of that Act (assault of a child under 13 by penetration).\*
108. An offence under section 7 of that Act (sexual assault of a child under 13).\*
109. An offence under section 8 of that Act (causing or inciting a child under 13 to engage in sexual activity).\*
110. An offence under section 9 of that Act (sexual activity with a child).\*
111. An offence under section 10 of that Act (causing or inciting a child to engage in sexual activity).\*
112. An offence under section 11 of that Act (engaging in sexual activity in the presence of a child).\*

113. An offence under section 12 of that Act (causing a child to watch a sexual act).\*
114. An offence under section 13 of that Act (child sex offences committed by children or young persons).
115. An offence under section 14 of that Act (arranging or facilitating commission of a child sex offence).\*
116. An offence under section 15 of that Act (meeting a child following sexual grooming, etc).\*
117. An offence under section 16 of that Act (abuse of a position of trust: sexual activity with a child).
118. An offence under section 17 of that Act (abuse of a position of trust: causing or inciting a child to engage in sexual activity).
119. An offence under section 18 of that Act (abuse of a position of trust: sexual activity in the presence of a child).
120. An offence under section 19 of that Act (abuse of a position of trust: causing a child to watch a sexual act).
121. An offence under section 25 of that Act (sexual activity with a child family member).\*
122. An offence under section 26 of that Act (inciting a child family member to engage in sexual activity).\*
123. An offence under section 30 of that Act (sexual activity with a person with a mental disorder impeding choice).\*
124. An offence under section 31 of that Act (causing or inciting a person with a mental disorder impeding choice to engage in sexual activity).\*
125. An offence under section 32 of that Act (engaging in sexual activity in the presence of a person with a mental disorder impeding choice).\*
126. An offence under section 33 of that Act (causing a person with a mental disorder impeding choice to watch a sexual act).\*
127. An offence under section 34 of that Act (inducement, threat or deception to procure sexual activity with a person with a mental disorder).\*
128. An offence under section 35 of that Act (causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception).\*
129. An offence under section 36 of that Act (engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder).\*
130. An offence under section 37 of that Act (causing a person with a mental disorder to watch a sexual act by inducement, threat or deception).\*
131. An offence under section 38 of that Act (care workers: sexual activity with a person with a mental disorder).\*
132. An offence under section 39 of that Act (care workers: causing or inciting sexual activity).\*



133. An offence under section 40 of that Act (care workers: sexual activity in the presence of a person with a mental disorder).
134. An offence under section 41 of that Act (care workers: causing a person with a mental disorder to watch a sexual act).
135. An offence under section 47 of that Act (paying for the sexual services of a child).\*
136. An offence under section 48 of that Act (causing or inciting child prostitution or pornography).\*
137. An offence under section 49 of that Act (controlling a child prostitute or a child involved in pornography).\*
138. An offence under section 50 of that Act (arranging or facilitating child prostitution or pornography).\*
139. An offence under section 52 of that Act (causing or inciting prostitution for gain).
140. An offence under section 53 of that Act (controlling prostitution for gain).
141. An offence under section 57 of that Act (trafficking into the UK for sexual exploitation).\*
142. An offence under section 58 of that Act (trafficking within the UK for sexual exploitation).\*
143. An offence under section 59 of that Act (trafficking out of the UK for sexual exploitation).\*
144. An offence under section 61 of that Act (administering a substance with intent).\*
145. An offence under section 62 of that Act (committing an offence with intent to commit a sexual offence).\*
146. An offence under section 63 of that Act (trespass with intent to commit a sexual offence).\*
147. An offence under section 64 of that Act (sex with an adult relative: penetration).
148. An offence under section 65 of that Act (sex with an adult relative: consenting to penetration).
149. An offence under section 66 of that Act (exposure).
150. An offence under section 67 of that Act (voyeurism).
151. An offence under section 69 of that Act (intercourse with an animal).
152. An offence under section 70 of that Act (sexual penetration of a corpse).
153. An offence of:
  - a. aiding, abetting, counselling, procuring or inciting the commission of an offence specified in this part of this schedule
  - b. conspiring to commit an offence so specified
  - c. attempting to commit an offence so specified.

## Appendix 2: Home Detention Curfew – presumption of unsuitability

The following itemises the offence categories for which Home Detention Curfew may be deemed unsuitable. The list is not exhaustive: if in doubt, please consult the Home Detention Curfew helpline on 020 7217 6451.

Offence category	Examples
<b>Homicide</b>	<p>Manslaughter            Attempted murder            Making threats to kill            Conspiring or soliciting, etc, to commit murder            Causing death by reckless/dangerous driving            Causing death by careless driving when under the influence of drink or drugs            Aggravated vehicle-taking resulting in death</p>
<b>Explosives</b>	<p>Causing grievous bodily harm (GBH) by explosion            Attempting/Causing an explosion with intent            Placing explosives with intent            Making explosives            Possession of explosives with intent to endanger life</p>
<b>Possession of offensive weapons</b>	<p>Possession of an offensive weapon            Possessing a sharp-bladed instrument</p>
<b>Possession of firearms with intent</b>	<p>Possession of firearms (including imitation firearms) with intent to:</p> <ul style="list-style-type: none"> <li>▪ endanger life or commit an offence</li> <li>▪ resist arrest</li> <li>▪ cause fear of violence.</li> </ul>
<b>Cruelty to children</b>	<p>ill-treatment or neglect            child abduction            abandoning children under two years            other offences, not elsewhere specified, where a person aged 16 years or more who has the custody, charge or care of any child or young person under 16 years wilfully assaults or causes unnecessary suffering (this may include some schedule 1 offenders, if the offender was convicted of, for example, actual bodily harm [ABH] or GBH instead of child cruelty).</p>

<p><b>Racially aggravated offences</b></p>	<p>Racially aggravated offences under the Crime and Disorder Act 1998, sections 29 to 32:</p> <ul style="list-style-type: none"> <li>▪ malicious wounding or GBH</li> <li>▪ ABH</li> <li>▪ common assault</li> <li>▪ criminal damage</li> <li>▪ intentional harassment, alarm or distress</li> <li>▪ harassment</li> <li>▪ causing fear of violence</li> </ul> <p>Using words or distributing material or possessing material to stir up racial hatred</p>
<p><b>Sexual offences*</b></p>	<p>Offences listed in the Sex Offenders Act 1997 schedule 1 section 1(1(a) to (f)). Note that offences involving consensual homosexual activity between adults not in a public place are not included in the presumption of unsuitability.</p> <p>Abduction under sections 17, 19, 20 and 21 of the Sexual Offences Act 1956 (e.g. “abduction of woman by force” and “abduction of unmarried girl under 18 from parent or guardian”. Note that offences committed under the Child Abduction Act 1984, sections 1 and 2, are not included in the presumption against suitability.</p> <p>Burglary with intent to commit rape</p> <p>Incest</p> <p>Indecent exposure.</p> <p>Abuse of position of trust (section 3 of the Sex Offences Act 2000)</p> <p>Breaches of sex offender orders</p> <p>Offences relating to obscene publications, e.g. taking, making, distributing or publishing indecent photographs.</p> <p>Possession of indecent photographs of children.</p> <p>Internet pornography offences.</p> <p>Offences relating to exploitation of prostitutes or causing prostitution (e.g. brothel-keeping and living off immoral earnings). Male/female prostitution is not included in the presumption against suitability.</p>

## Appendix 3: NOMS Release and Recall Section

The NOMS Release and Recall Section has responsibility for policy and procedures in relation to parole and the release of prisoners serving determinate sentences, including overall responsibility for the parole process. This includes:

- sponsoring the Parole Board
- enforcement of licence conditions (including Home Detention Curfew and the Extended Sentence for Public Protection)
- administration of compassionate release cases
- transfer of prisoners under the mental health acts
- discretionary release for deportation
- responsibility for the administration of the Early Removal Scheme for foreign national prisoners.

The NOMS Release and Recall Section has now been reorganised into regional teams, and each probation area has a named contact to give advice on recalls, licence condition, and so on. A full list of names and contact details can be found below. More details regarding release arrangements, licence conditions, recalls, and further changes in relation to the Criminal Justice Act 2003 – as outlined in *Probation Circular 16/2005* – can be found at [www.probation.homeoffice.gov.uk/files/pdf/PC16%202005.pdf](http://www.probation.homeoffice.gov.uk/files/pdf/PC16%202005.pdf).

YOTs should contact the named NOMS Release and Recall Section link person in relation to all the issues outlined above.

### **Release and Recall Section contact details<sup>45</sup>**

The NOMS Probation Early Release and Recall Section operates from two different sites. All Automatic Conditional Release and<sup>46</sup> Discretionary Conditional Release case-working teams are located at:

7th Floor  
Amp House  
Croydon  
CR0 2LX

<sup>45</sup> Contact details taken from NAPO Directory 2006

<sup>46</sup> Please note that additional ACR licence conditions may now be approved by prison governors without reference to the Release and Recall Section. Please see chapter 14 of *PSO 6000* and *ProbationCircular16/2005* for guidance (both published by the Home Office, available at [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)).

All other functions of the section are carried out in rooms 125–127 and 135,136a and 137 at:

Abell House  
John Islip Street  
London  
SW1P 4LH

**Out of hours contact telephone number**

0870 000 1585

**Recall requests**

All ACR requests are dealt with by the Croydon office (tel: 020 8774 0222, fax 020 8760 1746). The only exceptions are immediate MAPPA Level 3 recalls which are dealt with by the Public Protection Team in the London office (see below).

**Team 1 – responsible for London and Yorkshire and Humberside probation regions (London area, North Yorkshire, West Yorkshire, South Yorkshire, Humberside)**

EO Casework Managers Hayley Chalkley 020 8774 0264 [hayley.chalkley@hmps.gsi.gov.uk](mailto:hayley.chalkley@hmps.gsi.gov.uk)

Note: the fax number for breach notification reports is 020 8774 0268

**Team 2 – Responsible for North West and South West probation regions (Cumbria, Lancashire, Merseyside, Greater Manchester, Cheshire, Wiltshire, Gloucestershire, Dorset, Avon and Somerset, Devon and Cornwall)**

EO Casework Managers Lynn Thurgood 020 8774 0261 [lynn.thurgood@hmps.gsi.gov.uk](mailto:lynn.thurgood@hmps.gsi.gov.uk)

Note: the fax number for breach notification reports is 020 8760 1766

**Team 3 – Responsible for North East, South East and East Midlands probation regions (Northumbria, Durham, Teeside, Nottinghamshire, Lincolnshire, Leicester and Rutland, Derbyshire, Northamptonshire, Kent, Sussex, Thames Valley, Surrey, Hampshire)**

EO Casework Managers Jackie King 020 8760 1717 [jackie.king@hmps.gsi.gov.uk](mailto:jackie.king@hmps.gsi.gov.uk)

Daniel Bainbridge 020 8760 1856 [daniel.bainbridge@hmps.gsi.gov.uk](mailto:daniel.bainbridge@hmps.gsi.gov.uk)

Note: the fax number for breach notification reports is 020 8760 1746

**Team 4 – Responsible for East of England, and Wales and West Midlands probation regions (Hertfordshire, Cambridgeshire, Bedfordshire, Essex, Norfolk, Suffolk, North Wales, Dyfed/Powys, Gwent, South Wales, West Mercia, Staffordshire, West Midlands, Warwickshire)**

EO Casework Managers [bradley.campagnac@hmps.gsi.gov.uk](mailto:bradley.campagnac@hmps.gsi.gov.uk)

Bradley Campagnac 020 8774 0225

**Oral Hearing and Further Reviews**

Nuzhat Razvi 020 7217 5067 [nuzhat.razvi@hmps.gsi.gov.uk](mailto:nuzhat.razvi@hmps.gsi.gov.uk)

Alison Sellers 020 7217 5546 [alison.sellars@hmps.gsi.gov.uk](mailto:alison.sellars@hmps.gsi.gov.uk)

Note: the fax number for breach notification reports is 020 8760 1781

### **Home Detention Curfew (HDC) Breach Team**

All recalls of offenders on HDC

Shirley Hamilton 020 7217 5764 [shirley.hamilton@hmps.gsi.gov.uk](mailto:shirley.hamilton@hmps.gsi.gov.uk)  
(All regions – Fri/Sat/Sun only)

Gareth Hunter 020 7217 2069 [gareth.hunter@hmps.gsi.gov.uk](mailto:gareth.hunter@hmps.gsi.gov.uk)

Conroy Barnet 020 7217 5764 [conroy.barnet@hmps.gsi.gov.uk](mailto:conroy.barnet@hmps.gsi.gov.uk)

Note; fax number is 020 7217 2085

### **Public Protection Team**

**All Multi-Agency Public Protection Panel Level 3 recalls, extended sentence recalls and licence conditions, electronic monitoring and satellite tracking pilot projects recalls and licence conditions, and advice on associated casework and licence conditions**

Lucy Derilo 020 7217 5417 [lucy.derilo@hmps.gsi.gov.uk](mailto:lucy.derilo@hmps.gsi.gov.uk)

Laura Gould 020 7217 2063 [laura.gould@hmps.gsi.gov.uk](mailto:laura.gould@hmps.gsi.gov.uk)

Shams Ahmed 020 7217 5205 [shams.ahmed@hmps.gsi.gov.uk](mailto:shams.ahmed@hmps.gsi.gov.uk)

Fax number: 020 7217 5223

**Queries on Pre-Release Casework, including Parole, for Deportees/Licence Conditions**

James Hough 020 7217 5276 [james.hough@hmps.gsi.gov.uk](mailto:james.hough@hmps.gsi.gov.uk)  
fax 020 7217 5332

## Appendix 4: NOMS Lifer Review and Recall Section

The NOMS Lifer Review and Recall Section (LRRS) is responsible for pre- and post-release issues on individuals sentenced to Life Imprisonment and Imprisonment or Detention for Public Protection (Section 225 of the Criminal Justice Act 2003).

Contact details:

1<sup>st</sup> Floor Abell House  
John Islip Street  
London  
SW1P 4LH  
General enquiries: 020 7217 5583

Casework Team 6 deals with pre-release issues for young people serving an indeterminate sentence. Contact Howard Smith, tel: 020 7217 5299, fax: 020 7217 5892. The number for out of hours enquiries is 020 7217 5478.

Casework Team 3 deals with all post-release cases. Contact Steve Watson, tel: 020 7217 5699, fax: 020 7217 5383. The number for out of hours enquiries is 020 7217 5742.

## Appendix 5: Adult Community Order

The Adult Community Order (ACO) comprises one or more of 12 possible requirements. Requirements are combined to produce an individual package for each adult offender, with the content of the sentence determined by the risk of harm, likelihood of reconviction and the offending-related needs of the offender. The ACO can last up to three years.

The 12 basic (or model) requirements for an ACO are:

- unpaid work
- supervision
- activity
- programme (accredited)
- drug rehabilitation
- alcohol treatment
- mental health treatment
- residence
- prohibited activity
- exclusion
- curfew
- attendance centre.

Each ACO will comprise one or more of the requirements above. These must be:

- compatible with each other
- suitable for the offender
- able to ensure that restriction of liberty is commensurate with the seriousness of the offence
- not in conflict with the offender's religious beliefs, or with the requirements of work, education or another order.

The Criminal Justice Act 2003 states that a number of the requirements cannot be made by a court unless specifically recommended by the PSR. These are:

- unpaid work
- activity
- programme
- prohibited activity
- drug rehabilitation.



For more information, visit [www.probation.homeoffice.gov.uk](http://www.probation.homeoffice.gov.uk).

## References

Home Office (2005) *Probation Circular 91/2005: Case Transfer Protocol between Youth Offending Teams (YOTs) and Probation*. Home Office: London

Home Office, YJB (2004) *Circular: Parenting Orders and Contracts for Criminal Contact or Anti-Social Behaviour*. London: Home Office/YJB

YJB (2004) *National Standards for Youth Justice Services 2004*. London: YJB

YJB (2005a) *ISSP Management Guidance*. London: YJB

YJB (2005b) *Effective Practice Reader: Managing Risk in the Community*.

London: YJB

YJB (2005c) *Anti-social Behaviour Guidance: A Guide to the Role of Youth Offending Teams in Dealing with Anti-Social Behaviour*. London: YJB

YJB (2006) *Multi-Agency Public Protection Arrangements: Guidance for Youth Offending Teams*. London: YJB