



## BRIEFING PAPER

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# Police, Crime, Sentencing and Courts Bill: Parts 8 and 9 - Youth justice, secure children's homes and secure academies

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## Summary

This briefing paper is one of a collection of Commons Library briefing papers on the Police, Crime Sentencing and Courts Bill (the Bill). It deals only with the provisions in Parts 8 and 9 of the Bill which concern youth sentencing and youth custody. Briefing papers dealing with other parts of the Bill and general background, are available on the Commons Library website.

Part 8 of the Bill would:

- Make changes to the tests for custodial remand for children with the aim of reducing its use and provide a statutory duty for the court to consider the welfare and best interests of the child when applying the tests to remand a child to custody.
- Makes changes to Detention and Training Orders (DTOs):
  - To remove the fixed lengths of the DTO.
  - To provide that where an offender is given two or more sentences (one of which is a DTO), those sentences are to be treated as a single term for the purposes of crediting days spent in custody or on qualifying bail.
  - To provide that time spent on remand or bail subject to a qualifying curfew condition and an electronic monitoring condition is counted as time served and credited against the custodial part of the DTO.
- Makes changes to Youth Rehabilitation Orders (YROs):
  - To increase the maximum daily curfew to 20 hours while retaining a weekly maximum of 112 hours.
  - To introduce location monitoring as a standalone requirement that can be imposed in YROs. This measure would be piloted.
  - To make youth offending teams or probation staff the Responsible Officers in cases where electronic monitoring requirements are imposed.
  - To increase the maximum length of an extended activity requirement of a YRO with Intensive Supervision and Surveillance (ISS) to 12 months and add a location monitoring requirement as a mandatory element of the ISS. These measures would be piloted.
  - To raise the age limit of the education requirement so that it is the same as the age of compulsory education and training, rather than compulsory school age.
- Abolish Reparation Orders.

Part 9 of the Bill would:

- Provide a statutory power for the temporary release of children detained in Secure Children's Homes.
- Allow 16-19 academies to provide secure accommodation and allow for the establishment and running of a secure 16 to 19 academy to be treated as a charitable purpose.
- Insert secure 16 to 19 academies into the definition of youth detention accommodation and apply the provisions of the Children's Homes (England) Regulations 2015 to secure 16 to 19 academies.

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The clauses discussed in this briefing would apply and extend to England and Wales only, except for Clause 138 which would extend to England and Wales, apply to England and apply to Wales in part.

The Government has published the following factsheets in connection with these parts of the Bill:

- [Police, Crime, Sentencing and Courts Bill 2021: youth custodial remand factsheet](#)
- [Police, Crime, Sentencing and Courts Bill 2021: youth community sentences factsheet](#)
- [Police, Crime, Sentencing and Courts Bill 2021: secure schools factsheet](#)

# 1. Background

## 1.1 Sentencing of children

When sentencing a child (meaning someone aged under 18) judges and magistrates must consider the main aim of the youth justice system, the prevention of offending, as well as the welfare of the child.<sup>1</sup>

The Sentencing Council has issued a [definitive overarching guideline](#) on the approach to be used when sentencing children and young persons. The guideline sets out the following principles (amongst others):

- For a child or young person the sentence should focus on rehabilitation where possible
- It is important to avoid “criminalising” children and young people unnecessarily; the primary purpose of the youth justice system is to encourage children and young people to take responsibility for their own actions and promote re-integration into society rather than to punish.
- When considering a child or young person’s age their emotional and developmental age is of at least equal importance to their chronological age (if not greater).
- Children and young people are likely to benefit from being given an opportunity to address their behaviour and may be receptive to changing their conduct. They should, if possible, be given the opportunity to learn from their mistakes without undue penalisation or stigma, especially as a court sanction might have a significant effect on the prospects and opportunities of the child or young person and hinder their re-integration into society.<sup>2</sup>

Certain sentences are only available for children, including reparation orders, referral orders, Youth Rehabilitation Orders, Detention and Training Orders, detention under section 250 of the Sentencing Act 2020, extended determinate sentences of detention, sentences of detention for life and Detention at Her Majesty’s Pleasure.

A **reparation order** requires a child to make practical amends to the victim or another affected party and must be completed within three months. Reparation orders are rarely made and would be abolished by clause 136 of the Bill (see below).

A **referral order** requires the child to attend a youth offender panel (made up of two members of the local community and an advisor from a youth offending team) and agree a contract, containing commitments, which will last between three months and a year. Referral orders are the main sentence for delivering restorative justice. They aim to encourage children to take responsibility for their actions and to understand the effect of their offence on the victim. A referral order must be imposed for a first offence where the child has pleaded

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<sup>1</sup> Sentencing Council. [Sentencing children and young people](#)

<sup>2</sup> Sentencing Council, [Sentencing children and young people: Definitive guideline](#), March 2017

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guilty (unless the court decides that another sentence is justified) and may be imposed in other circumstances.<sup>3</sup>

A **Youth Rehabilitation Order** (YRO) is a community sentence. It can include one or more requirements that the offender must comply with and can last for up to three years. Some examples of the requirements that can be imposed are a curfew, supervision, unpaid work, electronic monitoring, drug treatment, mental health treatment and education requirements.<sup>4</sup> The offender must keep in touch with their responsible officer during the order.

A **Detention and Training Order** (DTO) is the most common custodial sentence for children. Currently a DTO can only be given in a fixed length (of 4, 6, 8, 10, 12, 18 or 24 months). DTOs are made up of two halves, the first half of the sentence is spent in custody and the other half in the community supervised by a Youth Offending Team (YOT).

Both the youth courts and the magistrates' court can impose DTOs of up to 24 months, despite their inability to impose sentences of imprisonment for more than six months.

A DTO can only be imposed on an offender aged under 15 where the court is satisfied the offender is a persistent offender.

A sentence for **detention under section 250 of the Sentencing Act 2020** is available for any offence punishable in the case of an adult by a sentence of 14 years' imprisonment or more, or certain listed offences. This sentence allows for a child to be sentenced to any custodial term that would be available in respect of an adult offender.

A **sentence of detention for life** or an **extended sentence of detention** may be imposed if a child or young person is convicted of a specified offence and the Crown Court considers that there is a significant risk of serious harm to members of the public from them committing further specified offences.<sup>5</sup>

**Detention at Her Majesty's Pleasure** is a mandatory life sentence and will be imposed when someone is convicted or pleads guilty to murder committed when aged 10-17.<sup>6</sup>

### 1.2 White Paper

In September 2020 the Ministry of Justice published a White Paper, [A Smarter Approach to Sentencing](#) (the White Paper). It had 5 sections, one of which was about youth sentencing.

The White Paper set the legislative changes proposed to youth sentencing in the context of the Government's wider agenda for youth justice. The White Paper noted the successes of the youth justice system in the last decade in reducing the number of first time entrants to the

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<sup>3</sup> Sentencing Council, [Types of sentences for children and young people](#)

<sup>4</sup> Sentencing Council, [Types of sentences for children and young people](#)

<sup>5</sup> Sentencing Council, [Types of sentences for children and young people](#)

<sup>6</sup> Sentencing Council, [Types of sentences for children and young people](#)

criminal justice system and in the reduction in children sentenced to custody.

The White Paper identified challenges that remain to be addressed, including:

- that the reoffending rate for children is the highest in the criminal justice system, particularly for those children sentenced to a short period in custody; and
- that there are too many children in custody on remand, awaiting trial or sentencing.

On youth sentencing, the White Paper proposed reforms of:

- Detention and Training Orders;
- existing provisions for murder and serious violent and sexual offences (for details see the Library briefing on Part 7 of the Bill);
- Youth Rehabilitation Orders; and
- the legal tests for custodial remand.

### 1.3 Secure schools

In England and Wales children remanded to custody or sentenced to custody are currently placed in one of three types of institution:

- a Young Offenders Institution (YOI);
- a Secure Training Centre (STC) or
- a Secure Children's Home (SCH).<sup>7</sup>

In September 2015 Charlie Taylor was asked by the then Justice Secretary, Michael Gove, to lead a review of the youth justice system. An [Interim report of emerging findings](#) was published in February 2016 and a final report, [Review of the Youth Justice System in England and Wales](#), in December 2016.

Charlie Taylor proposed the creation of secure schools to replace youth prisons and described them as follows:

These will be smaller custodial establishments of up to 60-70 places which are located in the regions that they serve. They should be set up within schools legislation, commissioned in England in a similar way to alternative provision free schools, and governed and inspected as schools. Rather than seeking to import education into youth prisons, schools must be created for detained children which bring together other essential services, and in which are then overlaid the necessary security arrangements. Education, health and offender desistance programmes need to be at the heart of work to rehabilitate children.<sup>8</sup>

The Government [response](#) to Mr Taylor's report stated that it would develop two secure schools in line with the principles set out in the

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<sup>7</sup> For details of current provision and background see the Library briefing [Youth Custody](#), 31 January 2020

<sup>8</sup> Ministry of Justice, [Review of the Youth Justice System in England and Wales by Charlie Taylor](#), in December 2016, para 141



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review. In June 2018 the Ministry of Justice published its [Secure Schools Vision](#) and guidance setting out the expectations and requirements for prospective Secure School providers. In October 2018 the Ministry of Justice [announced](#) that the first secure school would be at Medway where the current STC would be closed and the site used as a secure school.

Concerns have been raised by interested groups about the proposals for secure schools and about the use of the Medway site in particular.<sup>9</sup>

In July 2019 the Government announced that Oasis Charitable Trust had been chosen to run the first secure school.<sup>10</sup> It was reported in late 2019 that the opening had been delayed until 2021. This has since been further delayed to [2022](#).

In the September 2020 White Paper, the Government said it wanted to “establish secure schools using both SCH and 16–19 academy legislation to combine the best ethos and practice from the SCH and academy sectors”.<sup>11</sup>

The Justice Committee, in its February 2021 report [Children and Young People in Custody \(part 2\): The Youth Secure Estate and Resettlement](#), commented that the Government’s commitment to developing secure schools has been widely welcomed but that there is concern about the pace and scale of the reform.<sup>12</sup> The Committee also commented that although the concept has been welcomed, the decision to locate the first school at Medway was not met with universal approval.

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<sup>9</sup> See section 8 of the Library briefing [Youth Custody](#), 31 January 2020

<sup>10</sup> Gov.uk, press release, [Global education charity to run UK’s first secure school](#), 1 July 2019

<sup>11</sup> Ministry of Justice, [A Smarter Approach to Sentencing](#), September 2020, para 285

<sup>12</sup> Justice Committee, [Children and Young People in Custody \(part 2\): The Youth Secure Estate and Resettlement](#), HC 922, 10 February 2021



## 2. The Bill

### 2.1 Remand to youth detention accommodation

Where a court refuses bail it must decide whether the conditions to remand to youth detention accommodation (YDA) are met. YDA means Secure Children's Homes, Secure Training Centres, and Young Offenders Institutions. If the court does not remand to YDA then the court must remand the child to local authority accommodation. Even where the conditions for remand to YDA are met, the court has a discretion whether to remand the child to YDA.

#### The current law

The law on remand for children was changed by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO).<sup>13</sup> This was because of concerns that custodial remand for children had not been falling at the same rate as custodial sentences for children.<sup>14</sup> LASPO therefore changed the criteria for the use of custodial remand for children so that currently the tests provided for in [Sections 98](#) and [99](#) of LASPO require that:

- the child is at least 12 years old;
- the court is satisfied that a remand to custody is necessary to protect the public from death or serious personal injury, or to prevent the commission of an imprisonable offence/s (the necessity condition);
- the child is legally represented (unless one of a number of specified conditions applies); and

#### **either, under section 98 of LASPO,**

- the child is charged with a serious offence<sup>15</sup> (the offence condition)

#### **or, under section 99 of LASPO,**

- the child is charged with an imprisonable offence (the offence condition);
- it appears to the court that there is a real prospect that the child will be sentenced to custody for the offence (the sentencing condition); and
- the child has a recent history of absconding while subject to custodial remand and the offence is alleged to have been committed while the child was remanded, or the offence amounts

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<sup>13</sup> For background see Library briefing [Legal aid, Sentencing and Punishment of Offenders Bill No 205 of 2010-12](#), 4 July 2011, Section 7

<sup>14</sup> Ministry of Justice, [Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders](#), December 2010, para 245

<sup>15</sup> A violent sexual or terrorism offence or an offence punishable in the case of an adult with imprisonment of 14 years or more

to a recent history of committing imprisonable offences while on bail or subject to custodial remand. (the history conditions).

## Concerns about the use of custodial remand for children

Concerns have been raised about the increased use of custodial remand for children. In 2019 the Independent Inquiry into Child Sexual Abuse (IICSA) in its [Sexual Abuse of Children in Custodial Institutions: 2009-2017 Investigation Report](#) noted a significant increase in the use of custodial remand for children and recommended that the Government investigate why the child remand population is as high as it is. The Government committed to a review of custodial remand for children and to develop options to reduce its use where appropriate.<sup>16</sup>

The Justice Committee in its report [Children and Young People in Custody \(Part 1\): Entry into the youth justice system](#), November 2020 sought to understand why the number of children on remand had increased recently. The Committee concluded there appeared to be no single reason but identified common themes amongst witness responses including: an increase in serious violence; lack of credible community alternatives; and limited time to put together alternative bail packages<sup>17</sup>.

The Committee also noted that BAME children are disproportionately remanded to custody, stating that this had not satisfactorily been explained.

The Justice Committee said it welcomed the Government's review of youth remand and recommended that it set out the timeframe in which it intended to complete the review and publish its results and any action plan.

A [Youth Justice Board report](#) published in January 2021 found that

...even after taking into account the influence of offending, demographics, and practitioner assessments, Black children remained less likely to receive community remand (8 percentage points).<sup>18</sup>

## Youth remand statistics

In the year ending March 2019, 11,000 10-17 year olds were remanded by criminal courts. The majority (83%) of these were instances of bail remand. Just over 1,200 (6%) were instances of remand in custody. The total number of remands and remands in custody have fallen over the past five years.<sup>19</sup>

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<sup>16</sup> Independent Inquiry into Child Sexual Abuse, [Sexual Abuse of Children in Custodial Institutions: 2009-2017 Investigation Report](#), 2019

<sup>17</sup> Justice Committee, [Children and Young People in Custody \(Part 1\): Entry into the youth justice system](#), November 2020, para 92

<sup>18</sup> Youth Justice Board, [Ethnic disproportionality in remand and sentencing in the youth justice system: Analysis of administrative data](#), January 2021, para 15

<sup>19</sup> Ministry of Justice, [Youth justice statistics 2018/19](#), table 6.2

<b>10-17 year old defendants on remand at criminal courts</b>						
England and Wales						
Remand type	Year ending March					Proportion of total, year ending March 2019
	2015	2016	2017	2018	2019	
<b>Bail remands</b>						
Unconditional Bail	7,319	6,526	7,202	6,610	5,582	51%
Conditional Bail	8,713	7,705	6,920	5,097	3,577	32%
<b>Total bail remands</b>	<b>16,032</b>	<b>14,231</b>	<b>14,122</b>	<b>11,707</b>	<b>9,159</b>	<b>83%</b>
<b>Community remands with intervention</b>						
Bail Supervision and Support	386	281	254	265	255	2%
ISS Bail	266	174	190	163	146	1%
Remand to Local Authority Accommodation	320	96	326	302	244	2%
<b>Total community remands with intervention</b>	<b>972</b>	<b>551</b>	<b>770</b>	<b>730</b>	<b>645</b>	<b>6%</b>
<b>Youth Detention Accommodation remands</b>						
Remand to Youth Detention Accommodation	1,456	1,483	1,481	1,553	1,221	11%
<b>Total remands</b>	<b>18,460</b>	<b>16,265</b>	<b>16,373</b>	<b>13,990</b>	<b>11,025</b>	<b>100%</b>

**Source:** Ministry of Justice, [Youth justice statistics 2018/19](#), table 5.7

**Notes:** 1) The table presents the number of remand decisions made. Only the most restrictive remand decision applied during the course of the court proceeding is presented in this chapter. Where a child was given more than one remand decision during the court process, only the most restrictive is shown. For example, if a child was given unconditional bail and then conditional bail during the court proceeding leading to sentencing then the conditional bail would be counted as it is the most restrictive remand decision given.

2) Due to technical issues, Wandsworth YOT did not submit remand case level data for the years ending March 2017 to 2019 and Kent YOT did not submit remand case level data for the year ending March 2019.

Due to the decreased use of remand in custody for defendants under the age of 18, the average population on remand in youth custody has generally been falling over time. In 2008/09, there were 605 children on remand in custody on average per month, compared with 183 in 2016/17. The last two years for which we have data have reversed the downward trend. The average monthly population on remand in youth custody in 2018/19 was 243 – the highest number since 2014.<sup>20</sup>

## The White Paper

The White Paper, *A Smarter Approach to Sentencing*, acknowledged that unnecessary exposure to custody on remand has detrimental impacts on children.<sup>21</sup> The White Paper highlighted the recent increase in the remand population of those aged under 18. It noted that nearly around two thirds of remanded children do not go on to receive a custodial sentence and stated that this suggests that more can be done to ensure children are only remanded to custody as a last resort.

The White Paper therefore proposed changes to the legal tests for custodial remand for children. It stated that the term “real prospect” in

<sup>20</sup> Ministry of Justice, [Youth justice statistics 2018/19](#), table 6.3

<sup>21</sup> Ministry of Justice, [A Smarter Approach to Sentencing](#), September 2020, para 369

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the sentencing condition is open to too wide an interpretation and proposed to make the threshold higher. It proposed that judges be required to provide a justification for their assessment that there is a high likelihood the child would receive a custodial sentence.<sup>22</sup>

The White Paper proposed amending the history conditions so that only a recent and significant history of breach or serious offending while on bail will result in custodial remand.<sup>23</sup>

Following a Law Commission recommendation, the Government also proposed that these remand provisions should apply where a child is brought in front of the court on an arrest warrant or on an adjournment in connection with a previously imposed order.<sup>24</sup>

Responding to the White Paper, some argued the Government should go further:

JUSTICE recommends that the Government commit to introducing a maximum of 14 days during which children can be placed on custodial remand to YDA. Extensions beyond this period should be exceptional, and require certification by a Crown Court judge every 14 days thereafter, accompanied with written justification.<sup>25</sup>

**Clause 131** would amend the legal tests in the following ways:

- So that when assessing whether the likelihood that the alleged offence would result in a custodial sentence under the sentencing condition, the court must be of the opinion that the prospect of custody is '**very likely**'.
- To include the sentencing condition in the conditions under section 98 of LASPO, where it currently only applies under section 99.
- To introduce an additional consideration, that for the necessity condition to be satisfied, the court must be of the opinion that no alternative is available to manage the risk posed by the child safely in the community.
- To provide that, for the history condition, only a recent and significant history of breaching bail, or offending while on bail, should justify custodial remand.

**Clause 131** would provide a statutory duty for the court to consider the welfare and best interests of the child when applying the sets of conditions that must be met in order to remand a child to custody. The Explanatory Notes state that this reflects the welfare principle set out in section 44 of the Children and Young Persons Act 1933 and promotes a 'child first' approach to decision-making.<sup>26</sup>

Clause 131 would also introduce a duty for the court to provide the reasons for the decision to remand the child to Youth Detention Accommodation and to require the court to state that they have

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<sup>22</sup> Ministry of Justice, [A Smarter Approach to Sentencing](#), September 2020, para 382

<sup>23</sup> Ministry of Justice, [A Smarter Approach to Sentencing](#), September 2020, para 385

<sup>24</sup> Ministry of Justice, [A Smarter Approach to Sentencing](#), September 2020, para 388

<sup>25</sup> Justice, '[A Smarter Approach to Sentencing](#)' White paper: response to the Ministry of Justice, November 2020

<sup>26</sup> [Explanatory Notes](#), para 1000

considered the welfare of the child and remand to Local Authority accommodation in making their decision.

## 2.2 Detention and training orders

The DTO is the most common custodial sentence for children. Half of the sentence is spent in custody and the other half in the community supervised by a Youth Offending Team. Currently a DTO can only be given in a fixed length (of 4, 6, 8, 10, 12, 18 or 24 months). The Government believes that these fixed periods restricts courts in deciding the most appropriate length of sentence.

Between 2010 and 2019, 20,000 offenders under the age of 18 were sentenced to a DTO.<sup>27</sup> No information is published as to how many of these DTOs were of each fixed length. The number issued went down in each year during this period, from 3,757 in 2010 to 915 in 2019.

The Government proposed in the White Paper to remove these fixed lengths. The four-month minimum would be retained. This, it said would avoid very short, potentially counter-productive terms of custody.<sup>28</sup>

The Government also proposed changing the structure of the DTO. The current structure of a DTO is for half to be spent in detention and training (in custody) and half on supervision (in the community).<sup>29</sup>

**Clause 132** would remove the fixed lengths of the DTO and provide that the length of DTO must be at least 4 months and no longer than 24 months.

**Clause 133** would provide that where an offender is given two or more sentences (one of which is a DTO), those sentences are to be treated as a single term for the purposes of crediting days spent in custody or on qualifying bail

The Explanatory Notes explain that this clause is intended to “fix an existing discrepancy in relation to early release which meant that different lengths of early release were available for offenders sentenced to a DTO and another sentence consecutively, depending on the order in which they received those sentences”.<sup>30</sup> Clause 133 would ensure that where an offender is serving a DTO and another sentence consecutively, the offender is able to benefit from the same amount of early release regardless of the order in which the sentences are given.

**Clause 134** and **Schedule 15** would provide that that time spent on remand or bail subject to a qualifying curfew condition and an electronic monitoring condition is counted as time served and credited against the custodial part of the DTO.

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<sup>27</sup> Ministry of Justice, [Criminal justice statistics quarterly: October to December 2019: Outcomes by offence data tool](#)

<sup>28</sup> Ministry of Justice, [A Smarter Approach to Sentencing](#), September 2020, para 299

<sup>29</sup> Ministry of Justice, [A Smarter Approach to Sentencing](#), September 2020, para 300

<sup>30</sup> [Explanatory Notes](#), para 1008

## 2.3 Youth Rehabilitation Orders

A Youth Rehabilitation Order (YRO) is a community sentence. It can require the offender to comply with one or more the youth rehabilitation requirements listed in [Schedule 6](#) of the Sentencing Act 2020. Some examples of the requirements that can be imposed are a curfew, supervision, unpaid work, electronic monitoring, drug treatment, mental health treatment and education requirements. The YRO can last for up to three years.

A YRO can be imposed whenever an offender is convicted under the age of 18 and the offence is serious enough to warrant it. A YRO with intensive supervision and surveillance (ISS) or with fostering is only available in respect of imprisonable offences or where there have been persistent failures to comply with a YRO and where:

- The offence and any associated offences was so serious that, but for the availability of the YRO with ISS or fostering, a custodial sentence would be appropriate and,
- if the offender is under 15 when convicted, the offender is a persistent offender.<sup>31</sup>

A YRO with fostering also requires that the court is satisfied of four further conditions stated in Schedule 6, para 27.

Between 2010 and 2019, around 101,000 offenders under the age of 18 were sentenced to youth rehabilitation orders.<sup>32</sup> The table below shows the conditions attached to YROs in 2018/19, the most recent period for which we have this data. In that year, 5,075 YROs were handed down, involving 11,525 requirements.

As shown in the table, the most common requirement was supervision (featured in 32% of YROs), followed by a mandated activity (19%), and electronic monitoring (14%).

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<sup>31</sup> Section 178, Sentencing Act 2020

<sup>32</sup> Ministry of Justice, [Criminal justice statistics quarterly: October to December 2019](#): Outcomes by offence data tool

## Types of requirements given to children receiving a Youth Rehabilitation Order

England and Wales, year ending March 2019

Requirement	Number of requirements	Share
Supervision	3,655	32%
Activity	2,138	19%
Electronic Monitoring	1,556	14%
Curfew	1,478	13%
Programme	930	8%
Unpaid Work	434	4%
Prohibited Activity	418	4%
Attendance Centre	330	3%
Exclusion	290	3%
Education	108	1%
Residence	74	1%
Local Authority Residence	54	0%
Drug Treatment	24	0%
Drug Testing	13	0%
Mental Health Treatment	12	0%
Intoxicating Substance Treatment	11	0%
Total	11,525	100%

**Source:** Ministry of Justice, [Youth justice statistics 2018/19](#), table 5.7

**Notes:** 1) In the year ending March 2019 according to YJAF there were 5,075 YROs given to 3,883 children. These YROs had 11,525 requirements attached to them. For 1,240 of 5,075 YROs given no requirement type was recorded.

2) Due to technical issues, Kent YOT and Wandsworth YOT have been unable to submit YRO data for the year ending March 2019.

## Changes proposed in the White Paper

The White Paper proposed changes to the YRO.<sup>33</sup>

### Curfew

Currently a curfew can be included as a requirement in any YRO and can last for up to 12 months. Curfews can currently be imposed for up to 16 hours each day. The White Paper proposed increasing this maximum daily curfew to 20 hours. However, the maximum number of hours which could be imposed in any week would remain the same at 112 hours. This is intended to give sentencers flexibility, for example to impose longer curfews at weekends.

### Location monitoring

The White Paper also proposed the introduction of location monitoring as a standalone requirement in YROs. Currently GPS tagging is used to monitor compliance with other conditions of a YRO. Standalone location monitoring is already available for adults and for children as part of the supervision period of a Detention and Training Order.

The Government proposed making youth offending teams or probation staff the Responsible Officers in cases where electronic monitoring is imposed, rather than the electronic monitoring provider, as is now the case.

<sup>33</sup> Ministry of Justice, [A Smarter Approach to Sentencing](#), September 2020, p97-100



### Changes to ISS

A YRO can include Intensive Supervision and Surveillance (ISS). ISS includes an extended activity requirement, a supervision requirement and an electronically monitored curfew. Currently, the extended activity requirement is limited to six months, regardless of the length of the YRO. The Government proposed to increase this to 12 months. The Government also proposed adding a location monitoring requirement as a mandatory element of the ISS. The White Paper said these measures would be piloted before any national rollout.

### The provisions of the Bill

**Clause 135** and **Schedule 16** would make the changes to YROs as proposed in the White Paper.

Clause 135 would allow provisions making changes to electronic monitoring requirements and YROs with intensive supervision and surveillance ("ISS") to be brought into force for specific purposes i.e. for the purposes of a pilot. The clause also gives the Secretary of State a power to make amendments by affirmative statutory instrument to any piloted provisions before bringing them fully into force.

Schedule 16 would also provide for the age limit of the education requirement to be raised so that it is the same as the age of compulsory education and training, rather than compulsory school age.<sup>34</sup>

## 2.4 Abolition of reparation orders

**Clause 136** would abolish reparation orders which were introduced in the Powers of Criminal Courts (Sentencing) Act 2000. These orders require a child to make practical amends to the victim or another affected party. The order must specify the reparation to be made.

The White Paper stated that these orders are little used, probably because they have been replaced with other more widely used sentencing options and so have become redundant.<sup>35</sup>

Between 2010 and 2019, around 5,000 offenders under the age of 18 were sentenced to reparation orders.<sup>36</sup> The number of reparation orders handed down fell in each year during this period. In 2019, 66 of these sentences were passed, compared with 2,400 in 2010.

## 2.5 Temporary release from Secure Children's Homes

Secure Children's Homes accommodate boys and girls aged 10–17 assessed as particularly vulnerable. As well as children held on justice grounds (either after conviction or on remand) Secure Children's Homes accommodate children detained on welfare grounds for their protection or the protection of others.

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<sup>34</sup> See [Explanatory Notes](#), para 1024

<sup>35</sup> Ministry of Justice, [A Smarter Approach to Sentencing](#), September 2020, p101

<sup>36</sup> Ministry of Justice, [Criminal justice statistics quarterly: October to December 2019](#): Outcomes by offence data tool

The Explanatory Notes state that the Youth Custody Service and Secure Children's Homes providers currently rely on inherent powers to make arrangements for the 'mobility' of children detained in such accommodation to help address their offending behaviour and to support the integration of children back into the community at the end of their sentence.<sup>37</sup>

**Clause 137** would provide a statutory power for the temporary release of children detained in SCHs.

The Secretary of State or the registered manager of the home would be able to temporarily release a child to whom the clause applies. Temporary release under this clause could be granted under conditions. The Secretary of State and registered managers would have concurrent powers to recall children temporarily released. The Secretary of State would be able to issue guidance to registered managers of secure children's homes on the use of their powers of temporary release. A registered manager of a SCH would be required to have regard to any such guidance. If the period for which the child is temporarily released expires or if the child has been recalled, the child would be deemed to be unlawfully at large.

## 2.6 Secure 16 to 19 Academies

The Government has said secure schools will be "dual-established" as SCHs and secure 16-19 academies. A 16 to 19 academy which provides secure accommodation is to be known as a "secure 16-19 academy."

**Clause 138** would amend the Academies Act 2010 so that 16-19 academies can provide secure accommodation for the purpose of restricting liberty but only if approved to do so by the Secretary of State.

Clause 138 would amend the Academies Act 2010 so that the establishment and running of a secure 16 to 19 academy is to be treated as a charitable purpose within the meaning of section 2 of the Charities Act 2011. The Government has said:

As secure schools are being set up in a justice context, there are some complex issues regarding their potential charitable status. We have been working through these issues with the Charity Commission and we have now concluded it would be helpful to clarify the issue to provide a clear platform for charitable providers of secure schools.<sup>38</sup>

Clause 138 would insert secure 16 to 19 academies into the definition of youth detention accommodation. This clause would also apply the provisions of the Children's Homes (England) Regulations 2015 to secure 16 to 19 academies.

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<sup>37</sup> [Explanatory Notes](#), paras 177-178

<sup>38</sup> [Police, Crime, Sentencing and Courts Bill 2021: secure schools factsheet](#)

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