EXPLANATORY MEMORANDUM TO

THE YOUTH REHABILITATION ORDER (REVIEW BY SPECIFIED COURTS) ORDER

2010 No. [Draft]

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The draft Youth Rehabilitation Order (Review by Specified Courts) Order 2010 ("the draft Order"), if approved by Parliament, would enable specified courts making certain Youth Rehabilitation Orders ("YROs") to be made the subject of periodic reviews by the courts. This would allow the courts to review the progress the offender is making with their sentence. The YROs which could be subject to review are those which include or consist of those with a drug treatment requirement, drug testing requirement, an intoxicating substance requirement, a fostering requirement or with intensive supervision and surveillance.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Part 1 of the Criminal Justice and Immigration Act 2008 (the "2008 Act") provides for a new community sentence for under-18s - the YRO. The YRO came into effect on 30 November 2009 for offences committed on or after this date.

4.2 Schedule 1 to the 2008 Act sets out requirements that may be included in a YRO and provisions pertaining to those individual requirements, and makes further provisions about YROs.

4.3 Paragraph 35 of Schedule 1 to the 2008 Act gives the Secretary of State the power, by order, to make provision for the review of a YRO and to make provision the frequency and conduct of those reviews and the courts powers on review. This is the first use of the enabling power.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

The Rt Hon. Maria Eagle MP, The Minster of State, Ministry of Justice, has made the following statement regarding Human Rights:

In my view the provisions of the draft Youth Rehabilitation Order (Review by Specified Courts) Order 2010 are compatible with the Convention rights.

7. Policy background

7.1 The YRO was made available to criminal courts when sentencing offenders aged under 18 years for offences committed from 30 November 2009 and replaces nine community sentences. The YRO provides a menu of 18 requirements including programmes, reparation, treatment for mental health and drug or substance misuse, supervision and curfew, which the court can choose from to suit the individual offender taking into account the seriousness of the offence and the needs of the offender.

7.2 Paragraph 35 Schedule 1 to the 2008 Act gives the Secretary of State an order making power to allow courts to review YROs periodically. Section 147(2) of the 200 Act provides that such orders may make provision for specified cases or circumstances and different provisions for different circumstances or areas. YROs including or consisting of 5 different provisions would be made subject to the court review process. These are the YRO with intensive supervision and surveillance; with a fostering requirement; drug treatment requirement; a drug testing requirement; or an intoxicating substance treatment requirement. The fostering requirement and intensive supervision and surveillance are only available to the courts when a person under 18 is convicted of an offence if the custody threshold is met. The drug treatment, drug testing and intoxicating substance requirement will in practice only be imposed as a requirement where the offender has failed to respond through voluntary referral. These requirements have been chosen to target the most serious offenders who get a YRO where it is considered that both the offender and the court can benefit the most from the review process. The court review process is intended to promote compliance with the YRO and should lessen instances of breach.

7.3 Where YROs including one of the drug or intoxicating substance treatment requirement(s) is/are being reviewed, the draft Order enables the court to require the responsible officer to include a progress report from the treatment provider in the report they are required to make to the court prior to the review. Where a drug testing requirement is included the court may require the test results to be included in the

responsible officer's report to the court together with the treatment provider's comments on the test results.

7.4 The draft Order allows specified courts at a review hearing to amend any YRO which consists of or includes any one of the specified provision. The draft Order does not allow the court undertaking the review to make the YRO more onerous, include a different requirement or amend a treatment or drug testing requirement, unless the offender expresses their willingness to comply.

7.5 The draft Order also ensures that any amendments made to the YRO or to a requirement within the YRO will still comply with the time limits applying to completion of the Order or the individual elements within it as set out in the 2008 Act.

8. Consultation Outcome

8.1 Youth courts and the Crown Court in England and Wales were asked to consider whether they wished to participate in a pilot of court reviews of YROs and more than 40 indicated that they wished to do so. These courts are specified in the Schedule to the draft Order. Courts taking part have consulted the local authority youth offending teams within their area to gain their agreement to participation in the scheme.

8.2 Court reviews of the adult community order have already been piloted. The extension of this process to the new youth rehabilitation order is an extension of the principle to courts dealing with under-18s, although it will be subject to separate assessment to reflect the different sentencing framework and processes that apply for under-18s.

9. Guidance

9.1 If the draft Order is approved by Parliament, guidance on the YRO court review process will be disseminated to participating courts prior to the coming into force of the Order. This will also be supplemented by brief training sessions with magistrates, should courts determine that this is required.

10. Impact

10.1 There is no impact on charities, voluntary bodies or business.

10.2 The main impact on the public sector is that there will be more court hearings in the specified areas in relation to YROs as part of the review process. However, if these are effective, it is hoped there should be a decline in the number of hearings in relation to breach of YROs. There will also be an effect on youth offending teams' workload as they will need to provide the courts with progress reports, but again this might be expected to be offset to some extent by reduced breach proceedings.

There may also be some small costs to the Criminal Defence Service as offenders required to attend review hearings may qualify for legal aid.

10.3 An Impact Assessment was prepared for the 2008 Act but no separate Impact Assessment has been prepared for this instrument because it is to take effect in limited areas. Should the power be extended nationally, then information from the evaluation (see paragraph 11 below) will be used to inform an Impact Assessment at that time.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The effect of the Order will be monitored via an evaluation of the court review. The results of the evaluation will form part of the decision making process regarding whether a full national roll out is appropriate.

13. Contact

13.1 Nadia Rosun, Joint Youth Justice Unit (Ministry of Justice/ Department for Children, Schools and Families), tel: 020 7340 8024 or email: nadia.rosun@dcsf.gsi.gov.uk can answer any queries regarding the instrument.