



# The Offender Rehabilitation Act

April 2015

## Introduction

The Offender Rehabilitation Act<sup>1</sup> (ORA) is the Act of Parliament which accompanies the Transforming Rehabilitation programme. The Act makes changes to the sentencing and releasing framework to extend probation supervision after release to offenders serving short term sentences. It also creates greater flexibility in the delivery of sentences served in the community.<sup>2</sup>

The ORA came into full force on 1st February 2015. At the heart of the reforms is the extension of supervision to approximately 45,000 additional offenders a year who are released from short prison sentences of less than 12 months. This means that any person whose offence was committed on or after 1st February 2015, who is sentenced to a custodial term of more than 1 day, and is 18 years old or over when released, will now receive supervision in the community.

This briefing provides information on how the Act will affect offenders serving custodial sentences and sentences in the community so that voluntary sector organisations working in the Criminal Justice System can better understand how it could impact their services users and help staff and volunteers to understand the changes.

This briefing provides additional information to Clinks previous briefings on the Transforming Rehabilitation reforms, these include:

- [Clinks briefing on the competition stage of the Transforming Rehabilitation reforms \(September 2013\)](#). This explains the early stages of the contracting process and outlines how the reforms could affect the delivery of services in prisons and the community.
- [Clinks briefing on The Invitation to Negotiate stage of the Transforming Rehabilitation reforms \(February 2014\)](#). This briefing summarises the information contained in the Target Operating Model and Payment Mechanism Overview.

Both these briefings as well as a detailed overview of the reforms, frequently asked questions and what action voluntary sector organisations need to take in relation to them can be found at <http://www.clinks.org/criminal-justice/transforming-rehabilitation>

## Offenders serving custodial sentences

The ORA extends statutory monitoring and supervision to offenders serving short term custodial sentences for a mandatory period of up to 12 months. It also amends license conditions for those serving sentences of 12-24 months in order to ensure that they do not receive shorter periods of supervision than those serving sentences of less than 1 year.

### Reduction of unconditional release

Previously, adults serving custodial sentences of less than 12 months were released unconditionally after one half of their sentence had been served.

Under the ORA adults serving custodial sentences of less than 12 months, for an offence committed after 1 February 2015, will be released on license after serving one half of their sentence in prison and will serve the remaining period in the community.

### Introduction of a new supervision period

The ORA introduces a new period of post sentence supervision for all offenders sentenced to less than 2 years in custody.

Offenders sentenced to less than 2 years and released on license, as outlined above, will be subject to an additional period of supervision, for the purposes of rehabilitation once their license period comes to an end. The license and supervision periods will together make up 12 months.

Depending on the length of the custodial sentence, the length of the supervision period can vary significantly:

*Offender A is sentenced to two months in custody, he serves one month in prison, one month on license and receives an additional 11 months post sentence supervision.*

*Offender B is sentenced to 18 months in prison. He serves 9 months of this sentence in custody and is then released to serve the remaining 9 months in the community, on license. In addition, after his 18 month sentence comes to an end he receives a further 3 months supervision in the community.*

The new supervision period also applies to individuals who are released immediately after sentencing due to the time they have already served on remand.

*Offender C has served 6 months on remand, at trial he is sentenced to 6 months in prison. He is released immediately, and then receives a further 12 months supervision.*

The only exceptions include: those sentenced to 1 day and who are therefore not taken into custody, for example, fine defaulters; those aged under 18 on the last day of their custodial period; and those who committed their offence before 1st February 2015.

Supervision requirements may include:

- a requirement to be of good behaviour and not to behave in a way which undermines the purpose of the supervision period;
- a requirement not to commit any further offence;
- a requirement to keep in touch with the supervisor in accordance with the instructions of the supervisor;
- a requirement to reside permanently at an address approved by the supervisor and to obtain the prior permission of the supervisor for any stay of one or more nights at a different address;
- a requirement not to undertake work, or a particular type of work, unless it is approved by the supervisor and to notify the supervisor in advance of any proposal to undertake work or a particular type of work;
- a requirement not to travel outside the British Islands, except with prior permission of the supervisor or in order to comply with a legal obligation;
- a requirement to participate in activities in accordance with any instructions given by a supervisor;

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- a drug testing requirement (see below);
- a drug appointment requirement (see below).

### Drug testing and drug appointments

The ORA allows for problematic drug use to be tackled as part of an offender's period of supervision on release. It extends previous provision to impose drug testing requirements for Class A drugs to also include Class B drugs. In addition, it introduces a new power to require offenders, on release, to attend appointments designed to address their dependency on, or propensity to, misuse a controlled drug.

### Young adult offenders

Those under 18 years old at the point of sentencing but who reach 18 before release will also be subject to the new license and supervision periods.

This means that young adults could receive variable sentences depending on when they reach their 18th birthday:

*Offenders D and E are both under 18 at the time of their offence. They are arrested together and convicted of the same crime, receiving the same sentence. However offender D is one day older than offender E meaning that on release offender D is 18 whereas offender E is 17. Offender D will receive 1 year supervision in the community under the adult justice system whereas offender E will serve their sentence entirely within the youth justice system<sup>3</sup>.*

### Female offenders

The ORA states that in providing supervision or rehabilitation the Secretary of State must comply with the public sector equality duty under the Equality Act 2010 as it relates to female offenders and must also identify anything in the arrangements that is intended to meet the particular needs of this group.

*Offender F is a woman released from prison who after completing a period on license in the community is subject to an additional supervision period of 6 months. The Community Rehabilitation Company responsible for her supervision must ensure that it meets her particular needs as a woman.*

### Breach and recall

Those subject to the new license and supervision periods outlined above, will now also be subject to sanctions if they breach their license or supervision conditions, as is the existing position for longer sentenced prisoners.

Breaches during the license period will be dealt with by the National Probation Service (NPS) who will have discretion to consider a reported breach of conditions and will be able to issue a warning to the offender, ask for a variation in license conditions (for example, by adding curfew or imposing electronic monitoring) or ultimately to recall an offender to custody. Offenders recalled to custody will generally be recalled for an automatic period of 14 days (as opposed to 28 days for prisoners sentenced to over 2 years) but where the person is assessed as presenting a risk of serious harm to the public, they can be recalled until the end of their sentence.<sup>4</sup>

Offenders who breach the new supervision period requirements will be brought back before the court. The court will have the power to impose the following sanctions: a fine, unpaid work, a curfew, or ultimately, a return to custody for a period of up to 14 days.



Delivery and enforcement of the new supervision period will be the responsibility of the Community Rehabilitation Company (CRC) or NPS, depending on who has responsibility for managing the offender<sup>5</sup>. Issuing a warning can also be the responsibility of either the CRC or the NPS, but laying information before the court to enforce the breach remains the responsibility of the public sector, and is therefore undertaken by the NPS.

## Offenders serving community orders or suspended sentences

The ORA creates, for community orders and suspended sentence orders, a new rehabilitative activity requirement. This replaces the existing 'activity' and 'supervision' requirements.

A rehabilitation activity requirement means that the offender must comply with any instructions given to attend appointments and/or participate in activities. It must specify the maximum number of days for which the offender may be instructed to participate in activities. Instructions given under a rehabilitation activity requirement must promote rehabilitation but can also pertain to other purposes in addition to rehabilitation.

Rehabilitation activity requirements can include:

- instructions to participate in specified activities;
- instructions to go to a specified place;
- activities that form a part of an accredited programme; and
- activities with a reparative purpose, such as restorative justice.

An activity is considered a restorative justice activity if:

- the participants consist of, or include, the offender and one or more victims;
- the aim of the activity is to maximise the offender's awareness of the impact of the offending concerned on the victims; and
- the activity gives a victim or victims an opportunity to talk about, or otherwise express experience of, the offending and its impact.

The previous legislation that all community orders must contain a punitive element remains in place.

Courts will determine, taking into consideration the advice in a Pre-Sentence Report prepared by the NPS, what requirements to impose in a community order or suspended sentence order. When considering the content of a rehabilitation activity requirement (including confirmation of available activities) the NPS must identify and pay proper regard to the rehabilitative and criminogenic needs of offenders, as well as an assessment of their offending behaviour and associated risks.<sup>6</sup>

Each CRC will make information available to the NPS about what rehabilitative services are available in their contract package area and this will shape the advice the NPS gives to the courts on sentencing. This means that rehabilitation activity requirements are likely to vary from one contract package area to another.

The ORA came into force on 1st February but in reality a transition process is taking place as the new CRCs take over the provision of probation services for offenders assessed as a medium-low risk to the public. CRCs are designing the rehabilitative services that they are able to make available for the purposes of rehabilitation activity requirements. This means that services provided by, and referrals made to, other delivery organisations in a CRC's supply chain could form part of a court order which an offender is mandated to attend as part of their license conditions.



# CLINKS

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## Further information

This briefing has outlined the new legislative framework, introduced by the Offender Rehabilitation Act, which extends monitoring and supervision support to short term sentenced offenders and those serving sentence in the community. For further information on the Transforming Rehabilitation reforms, their implementation and the implications for voluntary sector organisations please visit <http://www.clinks.org/criminal-justice/transforming-rehabilitation>

## End notes

- <sup>1</sup> Parliament UK (2015) Offender Rehabilitation Act 2014, Online: <http://services.parliament.uk/bills/2013-14/offenderrehabilitation.html> (last accessed 2.04.2015)
- <sup>2</sup> The Prison Reform Trust published a number of briefings at each stage of The Offender Rehabilitation Act's passage through parliament. You can download these from <http://www.prisonreformtrust.org.uk/PressPolicy/Parliament/Legislation>
- <sup>3</sup> For further information on the supervision of young adults see National Offender Management Service PSI 37/2012 <https://www.justice.gov.uk/offenders/psis/prison-service-instructions-2012>
- <sup>4</sup> Transforming Rehabilitation: A strategy for reform (2013) Online: <https://www.gov.uk/government/publications/transforming-rehabilitation-a-strategy-for-reform> (last accessed 02.04.2015)
- <sup>5</sup> Under Transforming Rehabilitation the previous 35 Probation Trusts have been replaced with a single National Probation Service, responsible for the management of high-risk offenders; and 21 Community Rehabilitation Companies responsible for the management of low- medium risk offenders in their contract package areas.
- <sup>6</sup> National Offender Management Service Probation Instruction 58/2014, Online: <https://www.justice.gov.uk/offenders/probation-instructions> (last accessed 02.04.2015)