

FAQs relating to the drug 'related' requirements of the YRO

Youth Rehabilitation Order - Drug Treatment Requirement, Drug Testing Requirement and Intoxicating Substance Misuse Requirement

Available: YJB and NTA website

Audience: *Commissioners, NTA Regional Teams, YJB Regional Managers and YOT Managers, Magistrates, Young People's Substance Misuse Treatment Services*

Questions have been submitted to the YJB and NTA on Youth Rehabilitation Order – Drug Treatment Requirement, Drug Testing Requirement and Intoxicating Substance Misuse Requirement. These have been collated into Frequently Asked Questions.

If you have a query not listed in the Frequently Asked Questions document, contact the Kirsty.Blenkins@nta-nhs.org.uk or Howard.Jasper@yjb.gov.uk

Drug Treatment Requirement

What is a drug treatment requirement?

A Drug Treatment Requirement means that the young person must agree to treatment during the period specified in the Order with a view to the reduction or elimination of the young person's dependency on, or propensity to misuse, drugs.

The treatment required and specified as part of the order must be either residential or non-residential treatment, but the court cannot further specify the nature of the treatment.

When should a drug treatment requirement be used?

A Drug treatment requirement must only be attached to a YRO when a young person's drug use has been identified as a substantive factor in their offending behaviour and this requirement is necessary to address these issues. YOT's should first consider all other available options to deal with these issues outside of a formal requirement.

What are the responsibilities of the treatment provider?

Prior to the Order being given, the treatment provider must have met the young person and agreed to provide treatment. The specialist substance misuse assessment carried out by a young people's specialist substance misuse treatment service needs to ascertain if the young person is dependent on, or has the propensity to misuse, drugs and their dependency or propensity is such that it requires and may be susceptible to treatment.

Drug Testing Requirement

What is a Drug Testing Requirement?

A Drug Testing Requirement can only be attached to a YRO when a Drug Treatment Requirement has also been attached.

A YRO with a Drug Testing Requirement requires that the young person must provide samples as instructed by their responsible officer or treatment provider in order to ascertain whether there are any drugs in their body during the treatment period.

All testing arrangements need to be considered appropriate in the opinion of the treatment provider and the young person should have expressed a willingness to comply.

How do courts decide whether to issue a drug testing requirement?

A court may not attach a Drug Testing Requirement unless:

- there are arrangements for implementing this requirement in the local justice area in which the young person resides, as notified by the Secretary of State
- the order also imposes a Drug Treatment Requirement
- the young person has expressed willingness to comply with the requirement.

Can a drug testing requirement be attached to a DTO licence?

The wording of the DTO licence should not be a requirement to provide negative samples. It should be worded in a similar way to that of the YRO drug treatment and testing requirement, this being a requirement to submit to drug testing, not a requirement to provide negative results. This should be completed in collaboration between the YOT and the secure establishment in the form of a notice of supervision (see NS 2009 9.68-9.74)

How will the young person be tested for drugs and how often will they be tested?

A YRO which imposes a Drug Testing requirement must specify for each month of the requirement the minimum number of occasions on which samples are to be provided by the young person and may specify times at which and circumstances in which the responsible officer or treatment provider may require samples to be provided and descriptions of the samples which may be required.

The YRO must state exactly by what method and how often the young person must be tested. The YRO must also state for which drugs the young person must be tested..

Is there a difference between urine and oral fluid testing?

The clinician in the specialist substance misuse service should be aware of detection times of the various drugs in urine and oral fluid, be able to interpret the findings and be aware of false negative results. Urine testing has the advantage that drug contradictions are higher and the window for detection is longer. Oral fluid, while less invasive to collect and harder to adulterate, will provide results only on very recent drug use (24 – 48 hours) (Department of Health, 2007)

- **Protocol for drug toxicology**

Supervised urination may be appropriate in some circumstances though it can be conducted only with consent. It can be seen as humiliating; it is not always practical and is generally not acceptable for those under 16.

- **Oral fluid drug analysis**

These are useful as they can be easily supervised. They ensure certainty that the sample belongs to the correct young person and a result is often available immediately. However, the immediate results are not as sensitive and the window of detection of positive negative results is much shorter than for urine tests.

What is the link between drug testing and drug treatment?

Drug testing can be a useful tool in assessment and in monitoring compliance with the order and outcome of treatment. Prior to providing pharmacological interventions, a drug toxicology test is vital for establishing current use. This is to confirm self-report of opioid or benzodiazepine use and the use of other drugs that may complicate the presentation and management. Drug toxicology is also used to monitor ongoing treatment.

Is missing the test a breach?

If a young person fails to take the test itself, this could result in breach action being taken but this will need to be considered by the YOT responsible officer together with the specialist substance misuse treatment provider and taking into account other issues regarding compliance.

What if the young person fails the test?

Failing this test, that is the test showing positive, is not a breach. Taken in isolation drug test results are rather blunt instruments by which to measure progress. Many young people who continue to use drugs while on the order will do so in greatly reduced quantities and on a much less frequent basis but will still provide positive samples. The results of drug tests therefore need to be considered, alongside other indicators, in the context of the young offender's overall progress on the order.

The test may not always be used with the purpose of requiring abstinence as it is accepted that time is needed to effectively change the drug use of a young person, supported by treatment. Therefore, judgements in relation to expectations of abstinence by the young person need to be made in this context.

Who pays for testing?

The NTA has advised that commissioners have been told that occasional requests for tests should be agreed without charge but that regular testing will need to be paid for from the YOT, court or children's funds.

Drug testing requirement arrangements should be outlined in local protocols between the YOT and young people's substance misuse services and should be managed by specialist substance misuse staff. The test results are used to inform the treatment agency and YOT of the progress the young person is making through drug treatment.

Intoxicating Substance Treatment Requirement

What is an Intoxicating Substance Treatment Requirement?

An Intoxicating Substance Treatment Requirement attached to a YRO means that the young person must submit to treatment during the period specified in the Order with a view to the reduction or elimination of the young person's dependency on, or propensity to misuse, intoxicating substances. The treatment required and specified as part of the Order must be either residential or non-residential treatment, but the court cannot further specify the nature of the treatment.

When is it appropriate?

An Intoxicating Substance Treatment Requirement is appropriate where the young person is formally assessed as requiring treatment for misuse of intoxicating substances, is susceptible to treatment where the substance misuse issues have been identified as a substantive factor in their offending behaviour and where this requirement is necessary to address these issues. YOTs should consider all other available options to deal with these issues outside of a formal requirement.

How does this differ from a drug treatment requirement?

In this context, intoxicating substance means alcohol or any other substance or products (excluding drugs) which are capable of being inhaled or otherwise used for the purposes of intoxication.

General questions about all drug related requirements

How do courts decide whether to issue these requirements?

A court may not include these requirements unless it is satisfied that:

- The young person is dependent on, or has the propensity to misuse, drugs and that their dependency or propensity is such that it requires and may be susceptible to treatment.
- Arrangements for implementing the requirement are in force in the local justice area in which the young person resides or is to reside as notified by the Secretary of State.
- Arrangements have or can be made for any treatment they intend to specify in the order (the treatment provider must have met the young person beforehand and agreed that they will provide treatment prior to the order being given).
- The requirement has been recommended by the YOT or local probation service as suitable for the young person in question.
- The young person has expressed a willingness to comply.

Who manages these requirements?

The YOT is responsible for monitoring and enforcing these requirements. External service providers will be expected to inform the YOT of progress, in terms of attending appointments and engagement, so that the YOT can effectively monitor them.

YOTs should refer to *Key Elements of Effective Practice – Substance Misuse* to inform their management of these requirements and should manage these requirements in line with the CJ&I Act 2008 and the relevant sections of *National Standards for Youth Justice Services* and, where necessary, undertake Warnings and breach proceedings as directed. *Case Management Guidance* should be referred to for more detail on the practice implications and management of these requirements.

What is the role of the case manager in the process?

Where a YRO with an Intoxicating Substance/ Drug Treatment Requirement is made, the YOT case manager should maintain regular liaison with the treatment provider. It is unlikely that the requirement will be made without the court also making a Supervision Requirement. The existence of a Supervision Requirement alongside a Treatment Requirement will require close liaison between the treatment provider and the YOT case manager. As a minimum, the YOT case manager should:

- undertake sufficient contacts (in line with the assessed intervention level) with the young person to adequately discharge their responsibility as case manager

- ensure that there is at a minimum monthly contact between the YOT case manager and treatment provider regarding the progress of the order
- ensure that formal three-monthly reviews are undertaken of the progress of the Order as outlined in *National Standards for Youth Justice Services*.

What is the young person's role in the process?

The young person should be made aware of the purpose of the comprehensive assessment, the assessment process and the specific roles of those undertaking the assessment at the outset. Prior to sentence young people assessed as suitable for a YRO with any of the following:

- Drug Treatment Requirement,
- Drug Testing Requirement and
- Intoxicating Substance Misuse Requirement

are required to sign the relevant documentation consenting to the treatment requirement of the Order. Suggested good practise would be for this to be done at the end of the assessment process.

What happens if the young person agrees at first then subsequently refuses to the requirement(s)?

Where a young person withdraws his/her willingness to comply with the requirement, the YOT case manager should return the case to court for revocation/amendment as the requirement is unworkable. The court may consider, depending on the circumstances, that the unwillingness by the young person constitutes a breach of the requirement.

A lack of consent to a particular form of treatment being provided once the requirement is in place, does not itself constitute an unwillingness to comply with the requirement and is not, therefore, a potential breach. The matter of consent to treatment will be treated in the legally accepted way.

What can be done to assist with compliance?

Compliance with these requirements needs to be carefully explained to the young person/parent/carer. They will need to be told the nature of the requirement, its duration and the consequences on non-compliance. Particular care should be taken to ensure that the requirement is carefully explained using appropriate expertise where the child/young person and or parents/carers have learning difficulties or speech, language and communication requirements.

Points on commissioning and joint working agreements

Information Sharing

There need to be protocols in place regarding confidentiality and information sharing between the YOT and Young Person's Specialist Substance Misuse Treatment Service. These should be agreed locally by the young people's partnership commissioning group and Young People's Specialist Substance Misuse providers.

Communication

A key requirement for effective working is open and regular communication between the partners, especially managers.

Commissioning

Young people's substance misuse commissioners need to ensure that range of substance misuse interventions are available for young people on YRO's, including testing provisions. YOT Managers should ensure that appropriate services are commissioned so that young people who offend can access the substance misuse treatment services they need.

Young people's substance misuse commissioning groups should include a senior representative from Youth Offending Team.

Young people must be able to access the five young people's specialist substance misuse treatment interventions as described in the interim Commissioning Guidance for Young People's specialist substance misuse treatment services¹ and in guidance *Assessing young people for substance misuse*² published by the NTA in 2007. These five interventions constitute the basis of an effective treatment system.

¹Interim - Commissioning Young People's Specialist Substance Misuse Treatment Services, NTA 2008

² Assessing young people for substance misuse, NTA 2007