

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 3: Sentencing and punishment of offenders

Chapter 3: Remands of children otherwise than on bail

Remands

Section 91: Remands of children otherwise than on bail

503. **Section 91** is concerned with a child who has not been granted bail and who either (a) has been charged with or convicted of an offence and is awaiting trial or sentence or (b) is the subject of extradition proceedings.
504. **Subsection (3)** provides that the court must remand that child to local authority accommodation unless one of the sets of conditions set out in sections 98 to 101 is met. (Sections 98 and 99 provide two sets of conditions, one set of which must be met for a child charged with or convicted of a criminal offence; and sections 100 and 101 provide equivalent alternate sets of conditions for children concerned in extradition proceedings).
505. **Subsection (6)** defines a child as a person under the age of 18. This has the effect of applying these provisions to all under 18s who are before the court in the above circumstances. Currently, 17 year olds are remanded to prison either under section 27 of the Criminal Justice Act 1948 in the case of those charged with or convicted of an offence or the Extradition Act 2003 for those involved in extradition proceedings.

Section 92: Remands to local authority accommodation

506. **Section 92** sets out the practical effect of and arrangements for a remand to local authority accommodation.
507. **Subsection (4)** provides that a local authority designated by the court must receive the child and provide or arrange suitable accommodation for them. The powers and duties of a local authority to place a child that is remanded under this section are set out in section 22C of the Children Act 1989.

Section 93: Conditions etc on remands to local authority accommodation

508. **Subsection (1)** of section 93 provides that a court may impose conditions on a child who it has remanded to local authority accommodation. These conditions are the same as the court may apply to a child who is remanded on bail pursuant to section 3 of the Bail Act 1976. **Subsection (3)** also provides that the court may impose requirements on the designated local authority to secure compliance with any of the conditions imposed on the child.

509. *Subsection (2)* additionally allows the court to order that compliance with any requirements imposed under *subsection (1)* be secured by means of electronic monitoring. In the case of children who are charged with or convicted of an offence the conditions imposed in section 94 must be met. These are same as those which apply to electronic monitoring imposed pursuant to section 3A of the Bail Act 1976. In the case of children concerned in extradition proceedings, the conditions in section 96 must be met.

Section 94: Requirements for electronic monitoring

510. *Section 94* applies in cases other than extradition cases and sets out five requirements that must be satisfied before a court may impose electronic monitoring on a child remanded to local authority care pursuant to section 92.

Section 95: Requirements for electronic monitoring: extradition cases

511. *Section 95* provides for a modified version of the five requirements in section 94 in respect of children concerned in extradition proceedings. The effect of the requirements is broadly the same as for section 94 but the drafting reflects the fact that the child is subject to extradition proceedings in England and Wales.

Section 96: Further provisions about electronic monitoring

512. *Section 96* provides that when imposing a condition of electronic monitoring the court must make a person responsible for the monitoring and that they must be of a description specified by the Secretary of State.
513. *Subsection (2)* confers a power on the Secretary of State to prescribe by order the description of persons who may be responsible for electronic monitoring, and *subsection (3)* confers a power to make rules regulating electronic monitoring in general and the functions of the person responsible for carrying out the monitoring in particular. Both the order and the rules must be made by statutory instrument and the rules are subject to the negative resolution procedure in Parliament.

Section 97: Liability to arrest for breaking conditions of remand

514. *Section 97* confers a power for a constable to arrest without a warrant a child who the constable has reasonable grounds for suspecting has breached any of the conditions imposed under section 93. It also imposes a duty on the constable to bring the child before a court as soon as reasonably practicable and in any event within 24 hours.
515. If the court determines that the child has broken any of the conditions imposed under the original remand it can remand the child on new conditions or, if it thinks the test for remand to youth detention accommodation is met, remand the child to youth detention accommodation. If it is not satisfied that the conditions have been breached then the child must be remanded to local authority accommodation, again subject to the same conditions as those originally imposed.

Remands to youth detention accommodation

516. A child can be only be remanded to youth detention accommodation under the provisions of this chapter if at least one of four sets of conditions set out in sections 99, 100, 101 or 102 is met.

Section 98: First set of conditions for a remand to youth detention accommodation

517. *Section 98* applies to a child charged with or convicted of an offence and describes the first set of conditions that, if met, would allow the court to remand the child to youth detention accommodation. This set of conditions includes a requirement relating to the seriousness of the offence which must be either a violent or sexual offence or one that

is punishable if committed by an adult with a sentence of imprisonment of fourteen years or more.

Section 99: Second set of conditions for a remand to youth detention accommodation

518. **Section 99** defines an alternative set of conditions that would enable the court to remand a child charged or convicted of an offence to youth detention accommodation. This set of conditions focuses on the behaviour of the offender while on remand. It applies if the child faces a realistic prospect of receiving a custodial sentence. In these circumstances, if they have or are alleged to have committed an offence while on remand in custody and have a recent history of absconding while on remand, or, alternatively, the offence forms part of a recent history of committing imprisonable offences while on remand (on bail or in custody) then they may be remanded securely pursuant to this section.

Section 100: First set of conditions for a remand to youth detention accommodation: extradition cases

519. **Section 100** sets out an equivalent set of conditions to those in Section 98, this time for a child in an extradition case.

Section 101: Second set of conditions for a remand to youth detention accommodation: extradition cases

520. **Section 101** sets out an equivalent set of conditions to those in Section 99, this time for a child in an extradition case.

Section 102: Remands to youth detention accommodation

521. This section contains general provisions regarding arrangements when a child is remanded to youth detention accommodation.

522. It provides that the Secretary of State and the Youth Justice Board for England and Wales may direct that the child be placed in a youth detention establishment of one of the kinds in *subsection (2)* namely a secure children's home, a secure training centre, a young offender institution or a new form of youth detention accommodation specified by the Secretary of State pursuant to the existing order-making power in section 107(1) (e) of the Powers of the Criminal Courts (Sentencing) Act 2000.

523. The Secretary of State, or the Youth Justice Board, must consult the local authority designated by the court before directing where the child must be placed. *Subsection (7)* specifies which authority may be designated.

524. *Subsections (4) and (5)* make specific provision regarding the giving of reasons and, in the case of the magistrates' court, the recording of reasons for the remand.

Supplementary

Section 103: Arrangements for remands

525. **Section 103** gives the Secretary of State, and the Youth Justice Board, the power to make arrangements for accommodation in a secure children's home for those children who are subject to a remand to youth detention accommodation. Existing legislation enables the Secretary of State to make arrangements for remands to secure training centres and young offender institutions.

526. *Subsections (2) and (6)* give the Secretary of State the power to make regulations (subject to the negative resolution procedure in Parliament) enabling the Secretary of State, the Youth Justice Board or another provider of youth detention accommodation to recover the costs of youth detention accommodation from designated local authorities.

It also gives the power to recover associated costs, such as those for providing transport for the child from the court to the chosen form of accommodation.

527. Conversely, *subsection (4)* gives the Secretary of State the power to make payments to a local authority for the purpose of enabling it to exercise its functions in respect of children who are remanded to local authority accommodation or to make payments in respect of remands to youth detention accommodation.
528. *Subsection (7)* allows the Secretary of State to provide by regulations that those of his functions that are capable of being exercised concurrently by the Youth Justice Board are to be exercised solely by the Secretary of State either generally or in relation to a particular type of case. Such regulations are subject to the affirmative resolution procedure.

Section 104: Looked after child status

529. *Section 104(1)* provides that any child remanded to youth detention accommodation is to be treated as looked after by the designated authority.
530. *Subsection (2)* gives the Secretary of State the power to apply with modifications or not apply, any legislation (including an Act or Measure of the National Assembly of Wales) to a child who is treated as looked after by virtue of being remanded under this Chapter (children who are remanded to local authority accommodation are treated as looked after by virtue of provisions in the Children Act 1989).

Section 105 and Schedule 12: Minor and consequential amendments

531. *Section 105* gives effect to Schedule 12 which makes various amendments and repeals which are consequential on the new scheme for remands of children otherwise than on bail introduced by Chapter 3 of Part 3.
532. In general these are very straightforward and involve replacing references to sections of the Children and Young Persons Act 1969 or repealing legislation that created powers and duties associated with remand under that Act. Of note however are:
- *Paragraphs 1 to 3* which amend the Criminal Justice Act 1948. This previously required 17 year olds to be remanded to prison. Under the Act they will be remanded to local authority accommodation or youth detention accommodation.
 - *Paragraph 10* which amends section 32 of the Children and Young Persons Act 1969. It has the effect of providing that where a child is remanded to local authority accommodation and they abscond, if found they will be escorted back to local authority accommodation and the cost will be met by that local authority. Where the child is remanded in youth detention accommodation they will be escorted back to youth detention accommodation at the cost of the Secretary of State.
 - *Paragraph 13* which inserts a reference to this Act into the Local Authority Social Services Act 1970. The effect of this is to include the functions carried out by local authorities in relation to children remanded to local authority accommodation under the Act in the definition of social services functions for the purposes of the Local Authority Social Services Act 1970. This, in turn, brings children who are remanded to local authority accommodation under the Act into the definition of a ‘looked after child’ set out in section 22 of the Children Act 1989. In this way a child who is remanded to local authority accommodation under the Act becomes a “looked after child” within the meaning of the Children Act 1989.

Section 106: Regulations under this Chapter

533. *Section 106* specifies which regulations made under Chapter 3 are subject to negative procedure and which are subject to affirmative procedure. Any regulations made

These notes refer to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) which received Royal Assent on 1 May 2012

under this Chapter may make different provision for different cases and may include supplementary, incidental, transitional, transitory or saving provision.

Section 107: Interpretation of Chapter 3

534. **Section 107** provides definitions of terms used in Chapter 3.