

CRIMINAL JUSTICE AND COURTS ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Young Offenders

Detention of Young Offenders

Section 38: Secure colleges and other places for detention of young offenders etc

376. *Subsection (1)* substitutes section 43 of the Prison Act 1952 (young offender institutions etc). Currently section 43 gives the Secretary of State a power to provide young offender institutions, remand centres and secure training centres. New section 43 gives the Secretary of State a power to provide young offender institutions, secure training centres and, additionally, secure colleges (a new form of youth detention accommodation) (see new section 43(1)(c)). Section 95 of the Act (commencement) is relevant to the power in section 43(1)(c) - see the note below at paragraph 694.
377. *Section 43* currently also provides that certain provisions of the Prison Act 1952 do not apply in relation to young offender institutions and secure training centres, and provides that certain provisions of that Act do apply in relation to those institutions (with or without modifications). Subsections (3) to (8) of section 43 largely replicate existing provision about the application of other provisions of the Prison Act 1952 in relation to young offender institutions and secure training centres, but this provision is expressed in clearer language. These subsections also make provision about the application of provisions of that Act in relation to secure colleges.
378. The provisions give the Secretary of State the power, in relation to secure colleges, to (among other things) purchase land, remove prisoners for judicial and other reasons and to make regulations for the measuring, photographing and drug/alcohol testing of prisoners.
379. *Subsection (2)* provides that rules modifying provisions of the Prison Act 1952 as they apply in relation to young offender institutions, secure training centres and secure colleges are subject to the negative procedure.

Schedule 9: Secure colleges etc: further amendments

380. *Schedule 9* contains further amendments of legislation relating to secure colleges and other places for the detention of young offenders.

Section 39: Contracting out secure colleges

381. *Section 39* introduces Schedule 10, which makes provision about contracting out the provision and running of secure colleges, about certification of secure college custody officers and about contracting out functions at directly managed secure colleges.

Schedule 10: Contracting out secure colleges

Part 1 Contracting out provision and running of secure colleges

382. *Paragraph 1* gives the Secretary of State a power to enter into a contract with another person for the other person to provide a secure college (or part of one) or run a secure college (or part of one), or both. Express provision is made allowing such a contract to provide for the running of the college to be sub-contracted.
383. *Paragraph 2* limits the power in paragraph 1 by providing that a contracted-out secure college must be run in accordance with Schedule 10 to the Act, the Prison Act 1952 as it applies to contracted-out secure colleges, and secure college rules (that is, rules made under section 47 of the Prison Act, as amended by Schedule 9 to this Act).
384. *Paragraph 3* exempts land leased by the Secretary of State for the purposes of a secure college from the operation of certain specified landlord and tenant and property legislation.
385. *Paragraph 4* imposes requirements as to the appointment of the principal of a contracted-out secure college and makes provision about the principal's functions.
386. *Paragraph 5* provides that a contracted-out secure college is to have a monitor, whose reviewing, investigatory and reporting functions are set out in sub-paragraph (3). The contractor (and any sub-contractors) are under a duty to take all reasonable steps to facilitate the carrying out of the monitor's functions.
387. *Paragraph 6* provides that the constabulary powers of prison officers do not apply in relation to officers of a contracted-out secure college. *Paragraph 7* sets out who may be an officer of a contracted-out secure college who performs custodial duties. The officers' duties and powers are set out in *paragraphs 8 to 11*. In particular, an officer has duties to prevent escape, to prevent the commission of unlawful acts, to ensure good order and discipline and to attend to the well-being of a person detained in a secure college. An officer has powers of search, and may use reasonable force where necessary in carrying out functions under paragraphs 8 and 9 if authorised to do so by secure college rules.
388. *Paragraph 12* makes provision in relation to intervention by the Secretary of State. The Secretary of State may, where it appears to him that the principal of a contracted-out secure college has lost effective control of the college, and the intervention is necessary to preserve a person's safety or prevent serious damage to property, replace the principal with a Crown servant whom the Secretary of State has appointed. During the period of intervention that person is to carry out the functions of the principal and the monitor. *Paragraph 12(4) and (6)* make provision about notification at the end of a period of intervention.
389. *Paragraph 13* creates an offence of resisting or obstructing a secure college custody officer. *Paragraph 14* creates an offence of assaulting a secure college custody officer.
390. *Paragraph 15* creates an offence of wrongful disclosure, by a person who is or has been employed at a contracted-out secure college, of information relating to persons in youth detention accommodation.

Part 2 Certification of secure college custody officers

391. *Part 2* makes provision in relation to the eligibility of a person to be certified by the Secretary of State as a secure college custody officer, and the procedure for becoming so certified.
392. In particular, *paragraph 17* sets out the criteria of which the Secretary of State must be satisfied before he certifies a person as a secure college custody officer. *Paragraphs*

18 and 19 make provision in relation to the suspension and revocation respectively of certificates.

Part 3 Contracting out functions at directly managed secure colleges

393. *Paragraph 20* gives the Secretary of State a power to enter into a contract with another person for secure college custody officers provided by that person to carry out functions at a directly managed secure college. *Paragraph 21* applies paragraphs 6(1) and 8 to 11 in relation to such officers.
394. *Paragraphs 23 and 24* create offences of obstruction and assault of such officers, and are substantively the same as the offences in paragraphs 13 and 14.
395. *Paragraph 25* creates an offence of wrongful disclosure by such an officer, and is substantively the same as the offence in paragraph 15.

Part 4 and 5 Definitions and further amendments

396. *Part 4* contains definitions for Schedule 10. *Part 5* contains further amendments to legislation relating to secure colleges. *Paragraph 28*, in particular, provides that a statutory instrument containing rules under section 47 of the Prison Act 1952 that authorise a secure college custody officer performing custodial duties at a secure college to use reasonable force is subject to the affirmative procedure.

Section 40: Powers of Youth Justice Board in relation to provision of accommodation

397. *Section 40* amends section 41(5) of the Crime and Disorder Act 1998 (which sets out powers of the Youth Justice Board for England and Wales ('the YJB')), to provide that the YJB may enter into agreements for the provision of accommodation in relation to young offenders subject to a sentence of detention for public protection (under section 226 of the Criminal Justice Act 2003), an extended determinate sentence of detention (under section 226B of that Act), an extended sentence of detention for public protection (under section 228 of that Act), and the Armed Forces Act 2006 equivalents.

Other matters

Section 41: Youth cautions and conditional cautions: involvement of appropriate adults

398. *Section 41* amends the Crime and Disorder Act 1998 so that any youth caution or youth conditional caution given to a young person aged 17 must be given in the presence of an appropriate adult. That is already a requirement where a youth caution or youth conditional caution is given to a child or young person aged under 17.

Section 42: Duties of custody officer after charge: arrested juveniles

399. *Section 42* changes the definition of "arrested juvenile" in section 37(15) of the Police and Criminal Evidence Act 1984 ("PACE") to include a person aged 17 (currently the definition covers 10 to 16 year olds).
400. *Section 42* affects Part 4 of PACE. The effect of this change is that where a 17 year old who is arrested and charged is not released (either on bail or without bail) then, as with 10 to 16 year olds, the police will be required to transfer them to local authority accommodation, as is required under section 38(6) of PACE, unless a custody officer certifies that to do so is impractical. Currently 17 year olds who are denied bail would be kept in police custody before appearing in court.
401. For those 17 year olds where transfer to local authority accommodation is not practicable, the requirement under section 38(6)(a) to complete a certificate by way of explanation of their continued detention overnight at the police station would apply.

402. The section also affects section 39(4) of PACE, so that a custody officer's responsibility to arrested 17 year olds (as with 10 to 16 year olds) would cease when they were moved to local authority accommodation. This responsibility encompasses the duty to ensure that the person is treated in accordance with the requirements of PACE and the PACE codes of practice and that all details in relation to them are recorded in a custody record.

Section 43: Referral orders: alternatives to revocation for breach of youth offender contract

403. **Section 43** amends Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000 (PCC(S)A 2000) to provide for alternatives to revocation of a referral order where the court finds that the terms of the youth offender contract under section 23 of the PCC(S)A 2000 have not been complied with.
404. *Subsection (1)* inserts a new paragraph 6A into Schedule 1 to the PCC(S)A 2000 to allow a court, where a breach of a referral order contract has been found, to impose a fine up to a maximum of £2,500 on an offender or extend the youth offender contract up to a maximum overall length of 12 months. The power for the court to extend the youth offender contract is not available when the referral order has already expired (new paragraph 6A(4)). The offender must be present in order for the court to impose a penalty under this paragraph (new paragraph 6A(5)).
405. New paragraph 6A(6) provides for the enforcement of any fine given by the court under new paragraph 6A(2)(a).
406. New paragraph 6A(7) confers on the Secretary of State a power by order to amend the maximum fine that may be imposed under that specified in sub-paragraph (2)(a).
407. The powers of the court to impose a fine or extend the period for which the youth offender contract takes effect in circumstances where the terms of the contract have been breached will apply where:
- the offender is referred back to court for failure to attend any part of a panel meeting (under section 22(2)(b) of PCC(S)A 2000);
 - the offender has been referred back to the court for failure to attend the progress meeting (under section 26(5) of PCC(S)A 2000);
 - the panel determine at the final meeting that the offender's compliance with the terms of the contract has not been such as to justify the conclusion that the offender has satisfactorily completed the contract (under section 27(4) of PCC(S)A 2000).
408. *Subsection (2)* amends paragraph 7 of Schedule 1 to the PCC(S)A 2000 to provide that where a court does not uphold the panel's decision to refer the offender back to the court, an offender will continue to be subject to any referral order (or orders) in all respects as if he had not been referred back to the court, subject to any subsequent order made pursuant to the new paragraph 6A(2)(b) to extend the length of the period of the contract.
409. *Subsection (3)* amends the heading of the relevant part of Schedule 1 to the PCC(S)A 2000 to make it clear that paragraph 7 sets out what procedures apply where a court does not revoke a referral order.
410. *Subsection (4)* amends section 160(3) of the PCC(S)A 2000 to provide that any orders made under new paragraph 6A(7) of Schedule 1 to that Act amend the maximum amount of fine are subject to the affirmative procedure.
411. *Subsection (5)* provides that the amendments made by section 43 apply only in relation to a person who fails to comply with a youth offender contract after this section has come into force.

Section 44: Referral orders: extension on further conviction

412. **Section 44** amends provisions in Part 2 of Schedule 1 to the PCC(S)A 2000 which provide for extension of a referral order where the offender has committed further offences.
413. *Subsection (1)* replaces paragraphs 10 to 12 with a new paragraph 10 that provides for a court to extend any existing referral order on further conviction up to a maximum overall period of 12 months, where the child or young person has been convicted of additional offences. *Subsections (2) and (3)* make further minor amendments to the Schedule consequent on subsection (1).
414. *Subsection (4)* provides that the amendments made by this section will apply where the court sentences for offences committed before and after these provisions are commenced.

Section 45: Referral orders: revocation on further conviction

415. **Section 45** amends provisions in paragraph 14 of Schedule 1 to the PCC(S)A 2000 which sets out circumstances in which the court must revoke an existing referral order or orders in circumstances where the offender is convicted of further offences.
416. *Subsection (2)* substitutes a new paragraph 14(2) to replace the current duty on the court to revoke one or more extant referral orders (and any related orders) with a power to revoke an order if it appears to be in the interests of justice to do so. It also amends paragraph 14(1) to include a conditional discharge as an order exempt from the current duty on the court (and the proposed discretionary power of the court) to revoke any existing orders in the event that the offender is convicted of further offences.
417. *Subsection (3)* amends section 18 of the PCC(S)A 2000 so that where a court makes a referral order in respect of an offender who is already subject to a referral order the court may direct that the new youth offender contract should not take effect until the earlier order has been revoked or completed.
418. *Subsection (4)* provides that these amendments will apply on commencement to a person dealt with for an offence committed either before or after that date for which section 45 comes into force.