



# Magistrates' Courts Act 1980

## 1980 CHAPTER 43

### PART VII

#### MISCELLANEOUS AND SUPPLEMENTARY

##### *Remand*

#### **128 Remand in custody or on bail.**

- (1) Where a magistrates' court has power to remand any person, then, subject to section 4 of the <sup>M1</sup>Bail Act 1976 and to any other enactment modifying that power, the court may—
- (a) remand him in custody, that is to say, commit him to custody to be brought before the court [<sup>F1</sup>, subject to subsection (3A) below,] at the end of the period of remand or at such earlier time as the court may require; or
  - (b) where it is inquiring into or trying an offence alleged to have been committed by that person or has convicted him of an offence, remand him on bail in accordance with the <sup>M2</sup>Bail Act 1976, that is to say, by directing him to appear as provided in subsection (4) below; or
  - (c) except in a case falling within paragraph (b) above, remand him on bail by taking from him a recognizance (with or without sureties) conditioned as provided in that subsection;

and may, in a case falling within paragraph (c) above, instead of taking recognizances in accordance with that paragraph, fix the amount of the recognizances with a view to their being taken subsequently in accordance with section 119 above.

[<sup>F2</sup>(1A) Where—

- (a) on adjourning a case under section 5, 10(1) [<sup>F3</sup>, 17C] or 18(4) above the court proposes to remand or further remand a person in custody; and
- (b) he is before the court; and
- <sup>F4</sup>(c) .....
- (d) he is legally represented in that court,

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*Status: Point in time view as at 26/07/2010. This version of this provision has been superseded.*  
**Changes to legislation:** Magistrates' Courts Act 1980, Section 128 is up to date with all changes known to be in force on or before 29 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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it shall be the duty of the court—

- (i) to explain the effect of subsections (3A) and (3B) below to him in ordinary language; and
- (ii) to inform him in ordinary language that, notwithstanding the procedure for a remand without his being brought before a court, he would be brought before a court for the hearing and determination of at least every fourth application for his remand, and of every application for his remand heard at a time when it appeared to the court that he had no [F5]legal representative]acting for him in the case.

(1B) For the purposes of subsection (1A) above a person is to be treated as legally represented in a court if, but only if, he has the assistance of [F6]a legal representative] to represent him in the proceedings in that court.

(1C) After explaining to an accused as provided by subsection (1A) above the court shall ask him whether he consents to hearing and determination of such applications in his absence.]

(2) Where the court fixes the amount of a recognizance under subsection (1) above or section 8(3) of the M3Bail Act 1976 with a view to its being taken subsequently the court shall in the meantime commit the person so remanded to custody in accordance with paragraph (a) of the said subsection (1).

(3) Where a person is brought before the court after remand, the court may further remand him.

[F7(3A) Subject to subsection (3B) below, where a person has been remanded in custody [F8]and the remand was not a remand under section 128A below for a period exceeding 8 clear days,], the court may further remand him [F8](otherwise than in the exercise of the power conferred by that section)]on an adjournment under section 5, 10(1) [F3, 17C] or 18(4) above without his being brought before it if it is satisfied—

- (a) that he gave his consent, either in response to a question under subsection (1C) above or otherwise, to the hearing and determination in his absence of any application for his remand on an adjournment of the case under any of those provisions; and
- (b) that he has not by virtue of this subsection been remanded without being brought before the court on more than two such applications immediately preceding the application which the court is hearing; and
- F9(c) .....
- (d) that he has not withdrawn his consent to their being so heard and determined.

(3B) The court may not exercise the power conferred by subsection (3A) above if it appears to the court, on an application for a further remand being made to it, that the person to whom the application relates has no [F10]legal representative] acting for him in the case (whether present in court or not).

(3C) Where—

- (a) a person has been remanded in custody on an adjournment of a case under section 5, 10(1) [F3, 17C] or 18(4) above; and
- (b) an application is subsequently made for his further remand on such an adjournment; and
- (c) he is not brought before the court which hears and determines the application; and

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- (d) that court is not satisfied as mentioned in subsection (3A) above, the court shall adjourn the case and remand him in custody for the period for which it stands adjourned.
- (3D) An adjournment under subsection (3C) above shall be for the shortest period that appears to the court to make it possible for the accused to be brought before it.
- (3E) Where—
- (a) on an adjournment of a case under section 5, 10(1) [<sup>F3</sup>, 17C] or 18(4) above a person has been remanded in custody without being brought before the court; and
  - (b) it subsequently appears—
    - (i) to the court which remanded him in custody; or
    - (ii) to an alternate magistrates' court to which he is remanded under section 130 below,that he ought not to have been remanded in custody in his absence, the court shall require him to be brought before it at the earliest time that appears to the court to be possible.]
- (4) Where a person is remanded on bail under subsection (1) above the court may, where it remands him on bail in accordance with the Bail Act 1976 direct him to appear or, in any other case, direct that his recognizance be conditioned for his appearance—
- (a) before that court at the end of the period of remand; or
  - (b) at every time and place to which during the course of the proceedings the hearing may be from time to time adjourned;
- and, where it remands him on bail conditionally on his providing a surety during an inquiry into an offence alleged to have been committed by him, may direct that the recognizance of the surety be conditioned to secure that the person so bailed appears—
- (c) at every time and place to which during the course of the proceedings the hearing may be from time to time adjourned and also before the Crown Court in the event of the person so bailed being committed for trial there.
- (5) Where a person is directed to appear or a recognizance is conditioned for a person's appearance in accordance with paragraph (b) or (c) of subsection (4) above, the fixing at any time of the time for him next to appear shall be deemed to be a remand; but nothing in this subsection or subsection (4) above shall deprive the court of power at any subsequent hearing to remand him afresh.
- (6) Subject to the provisions of [<sup>F11</sup>sections 128A and] 129 below, a magistrates' court shall not remand a person for a period exceeding 8 clear days, except that—
- (a) if the court remands him on bail, it may remand him for a longer period if he and the other party consent;
  - (b) where the court adjourns a trial under section 10(3) [<sup>F12</sup>above or section 11 of the Powers of Criminal Courts (Sentencing) Act 2000], the court may remand him for the period of the adjournment;
  - (c) where a person is charged with an offence triable either way, then, if it falls to the court to try the case summarily but the court is not at the time so constituted, and sitting in such a place, as will enable it to proceed with the trial, the court may remand him until the next occasion on which it will be practicable for the court to be so constituted, and to sit in such a place, as aforesaid, notwithstanding that the remand is for a period exceeding 8 clear days.

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- (7) A magistrates' court having power to remand a person in custody may, if the remand is for a period not exceeding 3 clear days, commit him to [F13detention at a police station].
- [F14(8) Where a person is committed to detention at a police station under subsection (7) above—
- (a) he shall not be kept in such detention unless there is a need for him to be so detained for the purposes of inquiries into other offences;
  - (b) if kept in such detention, he shall be brought back before the magistrates' court which committed him as soon as that need ceases;
  - (c) he shall be treated as a person in police detention to whom the duties under section 39 of the Police and Criminal Evidence Act 1984 (responsibilities in relation to persons detained) relate;
  - (d) his detention shall be subject to periodic review at the times set out in section 40 of that Act (review of police detention).]

#### Textual Amendments

- F1** Words inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 59(1), **Sch. 9 para. 2**
- F2** S. 128(1A)—(1C) inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 59(1), **Sch. 9 para. 3**
- F3** Words in s. 128(1A)(3A)(3C)(3E) inserted (4.7.1996 with effect as mentioned in s. 49(6) of the inserting Act) by [1996 c. 25, s. 49\(5\)\(a\)\(6\)](#) (with s. 78(1)); S.I. 1997/2199, **art. 2**
- F4** S. 128(1A)(C) repealed (4.7.1996 with effect as mentioned in s. 52(3)(4) of the repealing Act) by [1996 c. 25, ss. 52\(1\)\(3\), 80, Sch. 5 Table 4](#) (with s. 78(1)); S.I. 1997/36, **art. 2**
- F5** Words substituted by [Courts and Legal Services Act 1990 \(c. 41, SIF 37, 82\)](#), s. 125(3), **Sch. 18 para. 25(4)(a)**
- F6** Words substituted by [Courts and Legal Services Act 1990 \(c. 41, SIF 37, 82\)](#), s. 125(3), **Sch. 18 para. 25(3)(a)(b)**
- F7** S. 128(3A)—(3E) inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 59(1), **Sch. 9 para. 4**
- F8** Words inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. 123(6), 170(1), **Sch. 15 para. 69(1)**
- F9** S. 128(3A)(c) repealed (4.7.1996 with effect as mentioned in s. 52(3)(4) of the repealing Act) by [1996 c. 25, ss. 52\(1\)\(3\), 80, Sch. 5 Table 4](#) (with s. 78(1)); S.I. 1997/36, **art. 2**
- F10** Words substituted by [Courts and Legal Services Act 1990 \(c. 41, SIF 37, 82\)](#), s. 125(3), **Sch. 18 para. 25(4)(a)**
- F11** Words substituted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), **ss. 123(6)** 170(1), Sch. 15 para. 69(2)
- F12** Words in s. 128(6)(b) substituted (25.8.2000) by [2000 c. 6, ss. 165, 168\(1\)](#), **Sch. 9 para. 75**
- F13** Words substituted by [Police and Criminal Evidence Act 1984 \(c. 60, SIF 95\)](#), **ss. 48(a)**, 51, 52
- F14** S. 128(8) inserted by [Police and Criminal Evidence Act 1984 \(c. 60, SIF 95\)](#), **ss. 48(b)**, 51, 52

#### Modifications etc. (not altering text)

- C1** S. 128 amended by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), **s. 52(3)**
- C2** S. 128 restricted (30.9.1998) by [1998 c. 37, s. 47\(3\)\(a\)](#); S.I. 1998/2327, **art. 2(1)(k)**
- C3** S. 128 applied (with modifications) (25.8.2000) by [2000 c. 6, ss. 9\(2\)\(a\), 10\(3\)\(a\)](#), 168(1)  
S. 128 modified (28.8.2000) by [1989 c. 37, s. 21C\(4\)](#) (as inserted (28.8.2000) by [2000 c. 25, s. 1, Sch. 1 para. 4](#); S.I. 2000/2125, **art. 2**)  
S. 128 modified (25.8.2000) by [2000 c. 6, ss. 28, 168\(1\)](#), **Sch. 1 Pt. I para. 4(4)**
- C4** S. 128 modified (30.11.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 2, 153, **Sch. 2 para. 21(7)(b)**; S.I. 2009/3074, **art. 2(b)(n)**
- C5** S. 128 applied (with modifications) by [Street Offences Act 1959 \(c. 57\)](#), Sch. para. 10(3) (as inserted (1.4.2010) by [Policing and Crime Act 2009 \(c. 26\)](#), ss. 17(4), 116(1), **Sch. 1**; S.I. 2010/507, **art. 5(d)** (with **art. 6**))

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**C6** S. 128(7) modified (1.10.1992) by [Children and Young Persons Act 1969 \(c. 54, SIF 20\)](#), **s. 23(14)** (as substituted (1.10.1992) by [Criminal Justice Act 1991 \(c. 53, SIF 39:1\)](#)), **s. 60(1)**; S.I. 1992/333, art. 2(2), **Sch. 2**

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**Marginal Citations**

**M1** 1976 c. 63.  
**M2** 1976 c.63.  
**M3** 1976 c. 63.

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