



# Legal Aid, Sentencing and Punishment of Offenders Act 2012

## 2012 CHAPTER 10

### PART 3

#### SENTENCING AND PUNISHMENT OF OFFENDERS

### CHAPTER 3

#### REMANDS OF CHILDREN OTHERWISE THAN ON BAIL

##### *Remands to youth detention accommodation*

#### **98 First set of conditions for a remand to youth detention accommodation**

- (1) For the purposes of section 91(4)(a), the first set of conditions for a remand to youth detention accommodation is met in relation to a child if each of the following is met in relation to the child—
  - (a) the age condition (see subsection (2)),
  - (b) the offence condition (see subsection (3)),
  - (c) the necessity condition (see subsection (4)), and
  - (d) the first or second legal representation condition (see subsections (5) and (6)).
- (2) The age condition is that the child has reached the age of twelve.
- (3) The offence condition is that the offence mentioned in section 91(1), or one or more of those offences—
  - (a) is a violent or sexual offence, or
  - (b) is an offence punishable in the case of an adult with imprisonment for a term of 14 years or more.

*Status: Point in time view as at 26/04/2013.*

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- (4) The necessity condition is that the court is of the opinion, after considering all the options for the remand of the child, that only remanding the child to youth detention accommodation would be adequate—
- (a) to protect the public from death or serious personal injury (whether physical or psychological) occasioned by further offences committed by the child, or
  - (b) to prevent the commission by the child of imprisonable offences.
- (5) The first legal representation condition is that the child is legally represented before the court.
- (6) The second legal representation condition is that the child is not legally represented before the court and—
- (a) representation was provided to the child under Part 1 of this Act for the purposes of the proceedings, but was withdrawn—
    - (i) because of the child's conduct, or
    - (ii) because it appeared that the child's financial resources were such that the child was not eligible for such representation,
  - (b) the child applied for such representation and the application was refused because it appeared that the child's financial resources were such that the child was not eligible for such representation, or
  - (c) having been informed of the right to apply for such representation and having had the opportunity to do so, the child refused or failed to apply.

#### Commencement Information

**II** S. 98 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(c) (with art. 7(1)(3))

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

- (1) For the purposes of section 91(4)(a), the second set of conditions for a remand to youth detention accommodation is met in relation to a child if each of the following is met in relation to the child—
- (a) the age condition (see subsection (2)),
  - (b) the sentencing condition (see subsection (3)),
  - (c) the offence condition (see subsection (4)),
  - (d) the first or second history condition or both (see subsections (5) and (6)),
  - (e) the necessity condition (see subsection (7)), and
  - (f) the first or second legal representation condition (see subsections (8) and (9)).
- (2) The age condition is that the child has reached the age of twelve.
- (3) The sentencing condition is that it appears to the court that there is a real prospect that the child will be sentenced to a custodial sentence for the offence mentioned in section 91(1) or one or more of those offences.
- (4) The offence condition is that the offence mentioned in section 91(1), or one or more of those offences, is an imprisonable offence.
- (5) The first history condition is that—
- (a) the child has a recent history of absconding while subject to a custodial remand, and

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- (b) the offence mentioned in section 91(1), or one or more of those offences, is alleged to be or has been found to have been committed while the child was remanded to local authority accommodation or youth detention accommodation.
- (6) The second history condition is that the offence or offences mentioned in section 91(1), together with any other imprisonable offences of which the child has been convicted in any proceedings, amount or would, if the child were convicted of that offence or those offences, amount to a recent history of committing imprisonable offences while on bail or subject to a custodial remand.
- (7) The necessity condition is that the court is of the opinion, after considering all the options for the remand of the child, that only remanding the child to youth detention accommodation would be adequate—
  - (a) to protect the public from death or serious personal injury (whether physical or psychological) occasioned by further offences committed by the child, or
  - (b) to prevent the commission by the child of imprisonable offences.
- (8) The first legal representation condition is that the child is legally represented before the court.
- (9) The second legal representation condition is that the child is not legally represented before the court and—
  - (a) representation was provided to the child under Part 1 of this Act for the purposes of the proceedings, but was withdrawn—
    - (i) because of the child's conduct, or
    - (ii) because it appeared that the child's financial resources were such that the child was not eligible for such representation,
  - (b) the child applied for such representation and the application was refused because it appeared that the child's financial resources were such that the child was not eligible for such representation, or
  - (c) having been informed of the right to apply for such representation and having had the opportunity to do so, the child refused or failed to apply.
- (10) In this Chapter “custodial sentence” means a sentence or order mentioned in section 76(1) of the Powers of Criminal Courts (Sentencing) Act 2000.
- (11) The reference in subsection (5)(b) to a child being remanded to local authority accommodation or youth detention accommodation includes—
  - (a) a child being remanded to local authority accommodation under section 23 of the Children and Young Persons Act 1969, and
  - (b) a child being remanded to prison under that section as modified by section 98 of the Crime and Disorder Act 1998 or under section 27 of the Criminal Justice Act 1948.

#### **Commencement Information**

**I2** S. 99 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(c) (with art. 7(1)(3))

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

- (1) For the purposes of section 91(4)(b), the first set of conditions for a remand to youth detention accommodation in an extradition case is met in relation to a child if each of the following is met in relation to the child—
  - (a) the age condition (see subsection (2)),
  - (b) the offence condition (see subsection (3)),
  - (c) the necessity condition (see subsection (4)), and
  - (d) the first or second legal representation condition (see subsections (5) and (6)).
- (2) The age condition is that the child has reached the age of twelve.
- (3) The offence condition is that the conduct constituting the offence to which the extradition proceedings relate, or one or more of those offences, would, if committed in England and Wales, constitute—
  - (a) a violent or sexual offence, or
  - (b) an offence punishable in the case of an adult with imprisonment for a term of 14 years or more.
- (4) The necessity condition is that the court is of the opinion, after considering all the options for the remand of the child, that only remanding the child to youth detention accommodation would be adequate—
  - (a) to protect the public from death or serious personal injury (whether physical or psychological) occasioned by further offences committed by the child, or
  - (b) to prevent the commission by the child of imprisonable offences.
- (5) The first legal representation condition is that the child is legally represented before the court.
- (6) The second legal representation condition is that the child is not legally represented before the court and—
  - (a) representation was provided to the child under Part 1 of this Act for the purposes of the proceedings, but was withdrawn—
    - (i) because of the child's conduct, or
    - (ii) because it appeared that the child's financial resources were such that the child was not eligible for such representation,
  - (b) the child applied for such representation and the application was refused because it appeared that the child's financial resources were such that the child was not eligible for such representation, or
  - (c) having been informed of the right to apply for such representation and having had the opportunity to do so, the child refused or failed to apply.

### **Commencement Information**

**I3** S. 100 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(e) (with art. 7(1)(3))

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

- (1) For the purposes of section 91(4)(b), the second set of conditions for a remand to youth detention accommodation in an extradition case is met in relation to a child if each of the following is met in relation to the child—
  - (a) the age condition (see subsection (2)),
  - (b) the sentencing condition (see subsection (3)),
  - (c) the offence condition (see subsection (4)),
  - (d) the first or second history condition or both (see subsections (5) and (6)),
  - (e) the necessity condition (see subsection (7)), and
  - (f) the first or second legal representation condition (see subsections (8) and (9)).
- (2) The age condition is that the child has reached the age of twelve.
- (3) The sentencing condition is that it appears to the court that, if the child were convicted in England and Wales of an offence equivalent to the offence to which the extradition proceedings relate or one or more of those offences, there would be a real prospect that the child would be sentenced to a custodial sentence for that offence or those offences.
- (4) The offence condition is that the offence to which the extradition proceedings relate, or one or more of those offences, is an imprisonable offence.
- (5) The first history condition is that—
  - (a) the child has a recent history of absconding while subject to a custodial remand, and
  - (b) the offence to which the extradition proceedings relate, or one or more of those offences, is alleged to be or has been found to have been committed while the child was subject to a custodial remand.
- (6) The second history condition is that the offence or offences to which the extradition proceedings relate, together with any other imprisonable offences of which the child has been convicted, amount or would, if the child were convicted of that offence or those offences, amount to a recent history of committing imprisonable offences while on bail or subject to a custodial remand.
- (7) The necessity condition is that the court is of the opinion, after considering all the options for the remand of the child, that only remanding the child to youth detention accommodation would be adequate—
  - (a) to protect the public from death or serious personal injury (whether physical or psychological) occasioned by further offences committed by the child, or
  - (b) to prevent the commission by the child of imprisonable offences.
- (8) The first legal representation condition is that the child is legally represented before the court.
- (9) The second legal representation condition is that the child is not legally represented before the court and—
  - (a) representation was provided to the child under Part 1 of this Act for the purposes of the proceedings, but was withdrawn—
    - (i) because of the child's conduct, or
    - (ii) because it appeared that the child's financial resources were such that the child was not eligible for such representation,

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- (b) the child applied for such representation and the application was refused because it appeared that the child's financial resources were such that the child was not eligible for such representation, or
- (c) having been informed of the right to apply for such representation and having had the opportunity to do so, the child refused or failed to apply.

#### Commencement Information

**I4** S. 101 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(c) (with art. 7(1)(3))

### 102 Remands to youth detention accommodation

- (1) A remand to youth detention accommodation is a remand to such accommodation of a kind listed in subsection (2) as the Secretary of State directs in the child's case.
- (2) Those kinds of accommodation are—
  - (a) a secure children's home,
  - (b) a secure training centre,
  - (c) a young offender institution, and
  - (d) accommodation, or accommodation of a description, for the time being specified by order under section 107(1)(e) of the Powers of Criminal Courts (Sentencing) Act 2000 (youth detention accommodation for purposes of detention and training order provisions).
- (3) A child's detention in one of those kinds of accommodation pursuant to a remand to youth detention accommodation is lawful.
- (4) Where a court remands a child to youth detention accommodation, the court must—
  - (a) state in open court that it is of the opinion mentioned in section 98(4), 99(7), 100(4) or 101(7) (as the case may be), and
  - (b) explain to the child in open court and in ordinary language why it is of that opinion.
- (5) A magistrates' court must ensure a reason that it gives under subsection (4)(b)—
  - (a) is specified in the warrant of commitment, and
  - (b) is entered in the register.
- (6) Where a court remands a child to youth detention accommodation, the court must designate a local authority as the designated authority for the child for the purposes of—
  - (a) subsection (8),
  - (b) regulations under section 103 (arrangements for remands), and
  - (c) section 104 (looked after child status).
- (7) That authority must be—
  - (a) in the case of a child who is being looked after by a local authority [<sup>F1</sup>otherwise than by virtue of section 104(1)], that authority, and
  - (b) in any other case [<sup>F2</sup>but subject to subsection (7B), a local authority] in whose area it appears to the court that the child habitually resides or the offence or one of the offences was committed.

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- [<sup>F3</sup>(7A) In a case to which subsection (7)(b) applies, the court is to designate a local authority in whose area it appears to the court that the child habitually resides (a “home authority”) except where the court—
- (a) considers as respects the home authority, or each home authority, that it is inappropriate to designate that authority, or
  - (b) is unable to identify any place in England and Wales where the child habitually resides.
- (7B) If in a case to which subsection (7)(b) applies—
- (a) the court is not required by subsection (7A) to designate a home authority, but
  - (b) it appears to the court that the offence was not, or none of the offences was, committed in England and Wales,
- the court is to designate a local authority which it considers appropriate in the circumstances of the case.]
- [<sup>F4</sup>(7C) Where a child has been remanded to youth detention accommodation, the court—
- (a) which remanded the child, or
  - (b) to which the child was remanded,
- may designate a local authority (“B”) as the designated authority for the child in substitution for the authority previously designated (whether that previous designation was made when the child was remanded or under this subsection).
- (7D) Where a child has at any one time been subject to two or more remands to youth detention accommodation, a court which has jurisdiction to make a replacement designation under subsection (7C) in connection with one or some of the remands also has jurisdiction to make such a replacement designation in connection with each of the other remands.
- (7E) Where a replacement designation is made under subsection (7C) after the end of the period of remand concerned, the substitution of B for the previously-designated authority has effect only for the purposes of regulations under section 103.
- (7F) Where a replacement designation is made under subsection (7C) during the period of remand concerned, the substitution of B for the previously-designated authority—
- (a) has effect, as respects the part of that period ending with the making of the replacement designation, only for the purposes of regulations under section 103, and
  - (b) has effect, as respects the remainder of that period, for all of the purposes listed in subsection (6).
- (7G) A court may make a replacement designation under subsection (7C) only if it considers that, had everything it knows been known by the court which made the previous designation, that court would have designated B instead.
- (7H) Where a replacement designation is made under subsection (7C) in relation to a remand, the previously-designated authority is to be repaid any sums it paid in respect of the remand pursuant to regulations under section 103.
- (7J) A court which has jurisdiction to make a replacement direction under subsection (7C) may exercise that jurisdiction on an application by a local authority or of its own motion.]

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- (8) Before giving a direction under subsection (1), the Secretary of State must consult the designated authority.
- (9) A function of the Secretary of State under this section (other than the function of making regulations) is exercisable by the Youth Justice Board for England and Wales concurrently with the Secretary of State.
- (10) The Secretary of State may by regulations provide that subsection (9) is not to apply, either generally or in relation to a particular description of case.
- (11) In this Chapter “secure children's home” means accommodation which is provided in a children's home, within the meaning of the Care Standards Act 2000—
- (a) which provides accommodation for the purposes of restricting liberty, and
  - (b) in respect of which a person is registered under Part 2 of that Act.
- (12) Before the coming into force in relation to England of section 107(2) of the Health and Social Care (Community Health and Standards) Act 2003, subsection (11) has effect as if it defined “secure children's home” in relation to England as accommodation which—
- (a) is provided in a children's home, within the meaning of the Care Standards Act 2000, in respect of which a person is registered under Part 2 of that Act, and
  - (b) is approved by the Secretary of State for the purpose of restricting the liberty of children.

#### Textual Amendments

- F1** Words in s. 102(7)(a) inserted (26.4.2013) by [Crime and Courts Act 2013 \(c. 22\)](#). {ss. 19(2)}, 61(5) (with s. 19(6)(7))
- F2** Words in s. 102(7)(b) substituted (26.4.2013) by [Crime and Courts Act 2013 \(c. 22\)](#). {ss. 19(3)}, 61(5) (with s. 19(6)(7))
- F3** S. 102(7A)(7B) inserted (26.4.2013) by [Crime and Courts Act 2013 \(c. 22\)](#). {ss. 19(4)}, 61(5) (with s. 19(6)(7))
- F4** S. 102(7C)-(7J) inserted (26.4.2013) by [Crime and Courts Act 2013 \(c. 22\)](#). {ss. 19(5)}, 61(5) (with s. 19(6)(7))

#### Commencement Information

- I5** S. 102 wholly in force at 3.12.2012, see s. 151(1) and [S.I. 2012/2906](#), [art. 2\(c\)](#) (with [art. 7\(1\)\(3\)](#))



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