



TITLE	LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012: AMENDMENTS TO THE YOUTH REMAND FRAMEWORK BY THE POLICE, CRIME, SENTENCING AND COURTS ACT 2022
From	Youth Justice Policy Unit
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This circular is for	Lord Chief Justice, Justices of the Supreme Court, President of the Queen's Bench Division, Deputy Head of Criminal Justice, Senior Presiding Judge for England and Wales, Lords Justices of Appeal, High Court Judges, Presiding Judges, Resident Judges, Crown Court Judges, District Judges (Magistrates' Courts), Chairmen of the Justices, Director of Public Prosecutions, Chief Officers of Police in England and Wales, Executive Director of the Youth Custody Service, Chief Executive of HM Courts and Tribunals Service, Chief Crown Prosecutors, Chief Executive of the Youth Justice Board for England and Wales, Chief Probation Officers, Director of Crime, Delivery Directors, Heads of Crime, Cluster Managers, Regional Support Units, Court Managers Crown Courts, Court Managers Magistrates Courts, Clerks to the Justices, Judicial College
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THE YOUTH REMAND FRAMEWORK CHANGES

Introduction

1. The purpose of this circular is to explain the changes to the youth remand framework in the Police, Crime, Sentencing and Courts (PCSC) Act 2022 and to amend the previous guidance on youth remand provisions issued in 2012.

2. This circular is for guidance only and should not be regarded as providing legal advice. Guidance for prosecutors on the topics of bail and the youth remand framework is available on the CPS website.

Youth remand provisions in the PCSC Act 2022

3. The main objective of the proposals in the PCSC Act 2022 is to ensure custodial remand is always used as a last resort. The PCSC Act 2022 strengthens the tests the courts must apply when deciding to remand a child to custody, where remand into the community is not appropriate.

4. The PCSC Act 2022 amends the relevant provisions of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 (sections 91-102), known here as the 'LASPO' tests.

5. The PCSC Act 2022 introduces a statutory duty for the courts to consider the best interests and welfare of the child when making their decision (section 91(4)(a)), LASPO Act 2012), in line with section 44 of the Children and Young People Act 1933, the principal aims of the youth justice system and the principles in the sentencing guidelines for children and young people.¹

6. The PCSC Act 2022 tightens the sentencing condition, also known as the 'real prospect test', to encourage consistency in decision-making (section 99(3)). The wording of the test is amended to raise the threshold for custodial remand for cases which appear so serious – on the basis of the facts available to the court – that custody seems 'very likely'.

7. The sentencing condition will also now apply to both the first and second set of conditions (whereas this only applied to the second set of conditions previously). The sentencing condition in section 98(2A) is met if it appears to the court that it is very likely that the child will be sentenced to a custodial sentence for the offence for which they are before the court under section 91(1).

8. The PCSC Act 2022 amends the second set of conditions to ensure that only a history of breach or offending while on bail, which is relevant in all the circumstances of the case and is both 'recent and significant' can result in custodial remand. This is to avoid instances of an isolated or minor breach resulting in custodial remand (section 99(5)).

9. The PCSC Act 2022 strengthens the necessity condition to ensure that, when bail is refused, courts should remand the child in the community unless the risk they pose cannot be safely managed there. This requires the court to be satisfied that there is no alternative mechanism for adequately dealing with the risk presented by the child in the community (sections 98(4) or 99(7)).

10. The PCSC Act 2022 introduces a statutory obligation for the courts to record their reasons for imposing custodial remand. This provision requires the courts to indicate that they have considered the welfare of the child in their decision and will also

¹ . Sentencing Children and Young People: <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/sentencing-children-and-young-people>

reinforce the existing presumption of non-custodial remand by ensuring the courts consider remand to Local Authority Accommodation as a first step (sections 102(4) and 102(5)).

Youth remand provisions in the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012

11. The youth remand provisions in the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 came into force on 3 December 2012.

12. The youth remand framework applies to all children concerned in criminal proceedings. For these purposes a child is defined as a person under the age of 18 (section 91(6), LASPO Act 2012). However, the age of criminal responsibility in England and Wales is set at 10 years of age.

13. The key changes made to the youth remand framework which came into force on 3 December 2012 can be summarised as follows:

- 10 to 17 year olds are treated according to the same remand framework and conditions for custodial remand regardless of their age and gender; the court must first consider whether to remand a child on bail.
- Where the court refuses bail it should then consider whether to remand to local authority accommodation or whether, if the child is aged 12-17, the conditions for a remand to youth detention accommodation are met;
- 17 year olds who are remanded will be treated in the same way as younger children. They may therefore now be remanded to local authority accommodation;
- A 12-17 year old can be remanded to youth detention accommodation if they meet one of two sets of conditions; the first are based on the type of offending and the second are based on the history of absconding or offending together with whether there is a real prospect of a custodial sentence; and
- every child remanded to youth detention accommodation to be treated as “looked after” by their designated local authority.

14. In addition, the LASPO Act 2012 gave local authorities greater financial responsibility for remands to youth detention accommodation. Youth Offending Teams therefore have a financial interest in ensuring that they are adequately prepared for the remand hearing. For example Youth Offending Teams should where appropriate assist the court with information relating to: available bail packages; available local authority accommodation; relevant conditions available that may be attached to a remand to local authority accommodation or bail; and which local authority should be designated by the court where a child has been remanded to local authority accommodation or youth detention accommodation.

Description of the sections

Bail

15. Section 91 of the LASPO Act 2012 applies where a court has considered whether it can release the child concerned in criminal or extradition proceedings on bail under the Bail Act 1976 and decided that it cannot. Section 4 of the Bail Act 1976 creates a general presumption to bail for all defendants involved in criminal proceedings but at the same time provides for certain exceptions set out in Schedule 1.

Remand to local authority accommodation

16. Where a child is not released on bail, section 91 of the LASPO Act 2012 requires the court to remand the child to local authority accommodation in accordance with section 92 unless one of the sets of conditions set out in sections 98 to 101 are met in which case the court may instead remand the child to youth detention accommodation.

17. A court that remands a child to local authority accommodation must designate the local authority that is to receive the child (section 92(2)). Under section 92(3) if the child has looked after status, the designated local authority must be the local authority that is currently looking after the child. Where the child is not looked after, the designated local authority may be the one in whose area the child habitually resides or where the offence or one of the offences was committed. The designated local authority must receive the child and provide or arrange for the provision of accommodation (section 92(3)).

18. Under section 93, after consultation with the designated local authority (subsection (4)), the court may require under:

- subsection (1) the child to comply with any conditions that could be imposed under section 3(6) of the Bail Act 1976;
- subsection (2) the child to comply with any conditions required for the purpose of securing compliance (of conditions imposed under subsection 1) with electronic monitoring;
- subsection (3)(a) the designated local authority to comply with any requirements to secure the child's compliance with a condition; and
- subsection (3)(b) the designated local authority not to place the child with a named person.

19. Under subsections (5) and (6) an application may be made to the court in respect of a child who has been remanded to local authority accommodation to impose, vary or revoke conditions.

20. Under subsection (7) where conditions have been imposed, the court must explain to the child in open court and in ordinary language why it is imposing or varying those conditions. In addition, magistrates' courts must specify the reason in the warrant of commitment and in the register.

21. The court may not impose electronic monitoring of a child's compliance with a condition imposed under section 93 unless the following conditions are satisfied (section 94):

- the child has reached the age of 12 (subsection (2));
- the offence or one or more of the offences to which the proceedings in which the child is remanded relate is imprisonable (subsection (3));
- either of the following:
 1. the offence(s) to which the proceedings in which the child is being remanded relate is a violent or sexual offence or one where an adult could be punished with a term of imprisonment of 14 years or more;
 2. or the offence(s), together with any other imprisonable offences that the child has been convicted of in any proceedings, would if the child were convicted of that offence(s), amount to a recent history of committing imprisonable offences while on bail or subject to a remand to local authority accommodation or youth detention accommodation (subsection (4)).

- the court is satisfied that the current arrangements in the local justice area allow for the provision of electronic monitoring (subsection (5)); and
- the Youth Offending Team has informed the court that in its opinion the imposition of electronic monitoring will be suitable in the child's case (subsection (6)).

22. Requirements for electronic monitoring in respect of children remanded in connection with extradition proceedings are set out in section 95.

23. The court must include a provision specifying who will be responsible officer for the electronic monitoring condition. In practice at the time of publication of this circular the relevant person is the local Youth Offending Team.

Remand to youth detention accommodation

24. The LASPO Act 2012 does not specify the sequence in which the conditions for a remand to youth detention accommodation should be considered by the court. The steps below, however, suggest the order in which they might be considered and should be read in conjunction with the diagram at **Annex A**. The description below does not apply to children subject to extradition proceedings and courts should therefore refer to the conditions in section 100 and 101 in such cases.

25. Before deciding whether to remand a child to youth detention accommodation in accordance with section 102 the court must consider the interests and welfare of the child (section 91 AA).

Step one: age

26. To be eligible for a remand to youth detention accommodation the child or young person must be aged 12 to 17 years (section 91(6) and 98(2) or section 99(2)). Where a child aged 10-11 is refused bail, they must be remanded to local authority accommodation.

Step two: legal representation

27. The court should consider whether the legal representation conditions have been satisfied (section 98(5) and (6) or 99(8) and (9)).

28. The 1st legal representation condition is that the child is legally represented before the court.

29. The 2nd legal representation condition is that the child is not legally represented before the court because either:

- it was provided and then withdrawn because of the child's conduct or because it appeared that the child's financial resources were such that the child was not eligible for such representation; or
- 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
- 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.

Step three: either the first or second set of conditions

The offence

30. A child can only be remanded in youth detention accommodation if the offence to which the proceedings relate is imprisonable.

The 1st set of conditions

31. The court should first consider whether the 1st set of conditions (section 98) are met. If the offence(s) is a violent or sexual offence or one where an adult could be punished with a term of imprisonment of 14 years or more (section 98(3)) and it is very likely (under section 98 (2) (a), the sentencing condition) 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, then the first condition is met. If the offence and sentencing condition are met, then the court should move straight on to consideration of the necessity condition (see Step Four). If this is not the case and thus the 1st set of conditions are not met, then the court may consider the 2nd set of conditions for a remand to youth detention accommodation.

The 2nd set of conditions – history conditions

32. Under the 2nd set of conditions (section 99) the court should consider whether either of the two sets of history conditions set out below apply and, if so, then go on to consider whether it is very likely that the child will be sentenced to a custodial sentence for the offence(s) the court is considering under section 91 (the sentencing condition).

33. Under the 1st history condition (section 99(5)) the child must:

- have a recent and significant history of absconding while remanded to local authority accommodation or youth detention accommodation, and it appears to the court that the history is relevant in all the circumstances of the case; and
- the offence(s) to which the proceedings relate, is alleged or was found to have been committed while remanded to local authority accommodation or youth detention accommodation.

34. If the 1st history condition does not apply then consideration should be given to whether the 2nd history condition applies.

35. Under the 2nd history condition (section 99(6)) if the offence(s) to which the proceedings relate, when taken with previous imprisonable offences for which they have been convicted, amounts to a recent and significant history of committing imprisonable offences while on bail or remand to local authority accommodation or youth detention accommodation and it appears to the court that the history is relevant in all the circumstances of the case then the 2nd history condition applies.

36. If either of the history conditions in sections 99(5) or (6) set out above apply, the court must additionally consider as with the 1st set of conditions, whether it is very likely that the child will be sentenced to a custodial sentence for the offence the court is considering now (section 99(3))('the sentencing condition').

37. When applying the sentencing condition during remand proceedings, it should be apparent from the outset that the alleged offence, taken in combination with relevant circumstances such as the defendant's previous convictions, would mostly likely warrant a custodial sentence. The court would not be expected to engage in a sentencing exercise in advance of the trial, but merely to form a view on the facts before it. If it appears not very likely that the child will receive a custodial sentence, the condition would not be satisfied and the child should not be remanded to youth detention accommodation.

Step four: the necessity condition

38. If the 1st set of conditions or the 2nd set of conditions are met then the court must consider (under section 98(4) or 99(7)) whether only a remand to youth detention accommodation would be adequate to: -

- protect the public from death or serious personal injury (physical or psychological) occasioned by further offences committed by the child; or
- prevent the commission by the child of further imprisonable offences and that the risks posed by the child cannot be managed safely in the community.

Step five: remand to youth detention accommodation

39. Where a court remands a child to youth detention accommodation, the court must state in open court and in ordinary language to the child the reasons for the custodial remand and that it has considered remanding the child to local authority accommodation and the interests and welfare of the child (section 102(4)).

40. The reasons for the custodial remand must be given in writing to the child, the child's legal representative and the child's Youth Offending Team (section 102(5)).

Youth detention accommodation

41. Youth detention accommodation is defined in section 102(2) of the LASPO Act 2012 and children are currently placed in :

- a. a secure children's home; or
- b. secure training centre; or
- c. young offender institution.

42. Where a court orders a remand to youth detention accommodation, the Youth Custody Service (YCS) under section 102(1) will place the child in youth detention accommodation according to the needs of the child. There is therefore no need for the court to specify in the warrant the precise home, centre or institution, but the court must specify the designated local authority so that the YCS may consult it on the placement decision.

Failure to surrender

43. Where a child who is remanded on bail fails to surrender to court, without reasonable cause sections 6 and 7 of the Bail Act 1976 will continue to apply.

Breach of conditions of remand to local authority accommodation

44. Under section 97 of the LASPO Act 2012, a constable may arrest a child without a warrant if the child has been remanded to local authority accommodation with conditions and they have reasonable grounds to suspect that the child has broken any of those conditions. The child must be brought before the court as soon as practicable and within 24 hours of the child's arrest. Where that 24-hour period includes the time appointed for the child's original court appearance, then the child should appear before that same court.

45. If the court is of the opinion that a child has broken any of the conditions of a remand to local authority accommodation, the court may once again consider the sets of conditions that are set out above and may attach new conditions to the remand to local authority accommodation or, if the conditions in section 98 to 101 are met, remand the child to youth detention accommodation.

46. If the court is not of the opinion that the child has broken any of the conditions of their remand to local authority accommodation, the court must remand the child subject to the original conditions imposed.

47. Where a child has been remanded to local authority accommodation, under section 93(5) the designated local authority may apply to have conditions imposed that were not imposed by the court at the time the child was remanded. Conversely, under section 93(6) the designated local authority or the child may apply to have the conditions of a remand to local authority accommodation varied or revoked.

Electronic monitoring of conditions imposed on a child on bail

48. Schedule 11 of the LASPO Act 2012 inserted Section 3AAA into the Bail Act 1976, which deals with the conditions for the imposition of electronic monitoring requirements for children released on bail in extradition proceedings. The test for electronically monitoring children concerned in criminal proceedings was amended consequentially.

Looked after children

49. Children remanded to local authority accommodation are looked after by the local authority as designated by the court under section 92(2). Section 104(1) of the LASPO Act provides that a child who is remanded to youth detention accommodation will be treated as looked after by the local authority designated by the court under section 102(6).

10-11 year olds

50. A 10 to 11 year old may only be remanded on bail or to local authority accommodation. If a child reaches the age of 12 during the course of a remand, it is possible that they may then be remanded to youth detention accommodation at the next court appearance should the relevant conditions (sections 98 to 101) be met.

51. A 10 to 17 year old remanded to local authority accommodation may be placed in secure local authority accommodation if the designated local authority obtains a court order permitting this under section 25 of the Children Act 1989 (as modified by the Secure Accommodation Regulations 1991).

Children who turn 18 years of age during their remand

52. When considering whether there is a real prospect that a child will be sentenced to a custodial sentence for the offence to which the proceedings relate and the child is likely to turn 18 before conviction, a custodial sentence can include an adult custodial sentence.

53. Where a child turns 18 during the course of their remand, they will remain in youth detention accommodation until they are released or returned to court. The YCS will not seek to recover costs from local authorities (section 103(2)) in respect of a child remanded to youth detention accommodation once the child has turned 18 years of age.

Looked after children

54. Under section 104(1), a child remanded to youth detention accommodation will be treated as looked after. Children remanded to local authority accommodation are also looked after under the Children Act 1989.

55. Section 22(3) of the Children Act 1989 imposes on whichever local authority has responsibility for a looked after child, a duty to promote and safeguard the welfare of that child. In the case of remanded children, the court will designate a local authority

to have responsibility, but it will usually be the local authority in which the child normally resides (the “home authority”).

Local authority accommodation

56. Local authority accommodation is provided by or on behalf of a local authority. It has a wide definition and can include the homes of relatives.

Escort arrangements

57. Children remanded to youth detention accommodation are transported under contract held by the YCS. Transport arrangements for children remanded to local authority accommodation are the responsibility of the local authority.

Useful links

Police, Crime, Sentencing and Courts Act 2022:

<https://www.legislation.gov.uk/ukpga/2022/32/contents/enacted>

Explanatory notes on the Police, Crime, Sentencing and Courts Act 2022

<https://publications.parliament.uk/pa/bills/lbill/58-02/040/5802040en01.htm>

Police, Crime, Sentencing and Courts Act 2022: youth custodial remand factsheet

<https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-factsheets/police-crime-sentencing-and-courts-bill-2021-youth-custodial-remand-factsheet>

Legal Aid, Sentencing and Punishment of Offenders Act 2012:

<http://www.legislation.gov.uk/ukpga/2012/10/contents>

Explanatory notes on the Legal Aid, Sentencing and Punishment of Offenders Act 2012:

<http://www.legislation.gov.uk/ukpga/2012/10/notes/contents>

END

ANNEX A - For a child to be eligible for a remand to youth detention accommodation (domestic cases)

Step 1 Consider the best interests and welfare of the child
Presumption of remand to LAA requirement

Step 2 Be aged between 12-17

AND

Satisfy the legal representation conditions

AND EITHER

Step 3

1st set of conditions

a) Have been charged with a violent or sexual offence (**OCCN**)

OR

b) Have been charged with an offence (**OCCN**) where an adult may receive a custodial sentence of 14 years

AND

It is very likely the child will receive a custodial sentence

2nd set of conditions

a) The 1st history condition
Have a recent and significant history of absconding while remanded to YDA or LAA and are charged with or convicted of an offence (**OCCN**) which was committed while remanded to LAA or YDA

OR

b) The 2nd history condition
Have been charged with or convicted of an offence (**OCCN**) which when taken with previous imprisonable offences (convicted), amounts (or would amount if convicted) to a recent and significant history of committing imprisonable offences while on bail or remand to LAA or YDA

AND

The history is relevant in all the circumstances of the case for the history condition(s) that applies

AND

It is very likely the child will receive a custodial sentence

AND

Step 4

Meet the necessity requirement
Only remanding the child to youth detention accommodation would be adequate to:

- Protect the public from death or severe injury; **OR**
- Prevent further imprisonable offences; **AND**
- The risk posed by the child cannot be managed safely in the community

Key:
OCCN – the offence(s) the court is considering now
LAA – local authority accommodation
YDA – youth detention accommodation

Step 5

Duty to state in open court (in ordinary language) and provide in writing:

- 1) the reasons for the remand; **AND**
- 2) the court has considered remand to LAA and interests and welfare of the child in decision-making