



## Circular No. 2012/06

<b>TITLE</b>	<b>LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012: THE NEW YOUTH REMAND FRAMEWORK AND AMENDMENTS TO ADULT REMAND PROVISIONS</b>
<b>From</b>	Youth Justice and Women Criminal Trials and Criminal Procedure
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<b>Broad subject</b>	Criminal justice
<b>Sub category</b>	Youth remand and adult remand.
<b>This circular is addressed to</b>	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, HM Prison Service Director-General, 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.
<b>Copies are being sent to</b>	Council of Circuit Judges, Magistrates' Association, National Bench Chairmen's Forum, Bar Council, Criminal Bar Association, Law Society, Justices' Clerks' Society, Victim Support, Association of Chief Police Officers, Association of Police Authorities, Prison Reform Trust

# THE NEW YOUTH REMAND FRAMEWORK AND AMENDMENTS TO ADULT REMAND PROVISIONS

## Introduction

1. The youth remand provisions in the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 come into force on 3 December 2012. Sections 91 to 107 and Schedule 12 make significant changes to the remand framework for 10 to 17 year olds in criminal proceedings. Where a child has been remanded on bail, they will continue to be treated under the Bail Act 1976. Where the court refuses bail, the new youth remand framework introduced by section 91 of the LASPO Act 2012 will permit the court to remand a child to local authority accommodation or to youth detention accommodation. Section 90 and Schedule 11, which also come into force on 3 December 2012, make less extensive, but significant, amendments to provisions affecting adult remand.

2. 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) of the LASPO Act 2012). However the age of criminal responsibility in England and Wales is set at 10 years of age.

3. Changes to the youth remand framework were made following public concern that 17 year olds were being remanded like adults and not on the same principles as younger children. That practice has attracted criticism from the UN Committee on the Rights of the Child. Placement of children in secure accommodation was also seen to be discriminatory and unfair as it was predominantly determined by age and gender. Furthermore, many 15-17 year olds whose alleged offences are not the most serious and whose behaviour does not pose a risk to the public are remanded securely. A better approach to youth remand that maintains community-led supervision, support, education and training is needed.

4. The purpose of this circular is to explain the key changes to the youth remand framework which may 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 will now be treated as “looked after” by their designated local authority.

5. In addition the LASPO Act gives local authorities greater financial responsibility for remands to youth detention accommodation. Youth Offending Teams will 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.

6. 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 new youth remand framework will be made available on the CPS website.

7. The new youth remand framework will come into force on 3 December 2012.

### **Description of the sections**

#### **Bail**

8. 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. No changes have been made to these exceptions in respect of 10 to 17 year olds. Changes have been made in respect of adults which are dealt with at paragraph 54 *et seq* below.

#### **Remand to local authority accommodation**

9. 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.

10. 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)).

11. 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.

12. 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.

13. 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.

14. 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)).

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

16. The court must include a provision specifying who will be responsible for the electronic monitoring condition. In practice at the time of publication of this circular the relevant person is SERCO or G4S.

### **Remand to youth detention accommodation**

17. 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.

#### Step one: age

18. 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

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

20. The **1<sup>st</sup> legal representation condition** is that the child is legally represented before the court.

21. The **2<sup>nd</sup> 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*

22. 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*

23. The court should consider whether the **1<sup>st</sup> 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)) then the offence condition in the **1<sup>st</sup> set of conditions** (section 98) is met and the court should move straight on to consideration of the necessity condition (see **Step Four**). If this is not the case and thus the **1<sup>st</sup> set of conditions** are not met, then the court may consider the **2<sup>nd</sup> set of conditions** for a remand to youth detention accommodation.

*The 2nd set of conditions – history conditions & sentencing condition*

24. Under the **2<sup>nd</sup> 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 there is a real prospect that the child will be sentenced to a custodial sentence for the offence(s) the court is considering under section 91 (the sentencing condition).

25. Under the **1<sup>st</sup> history condition** (section 99(5)) the child must:

- have a recent history of absconding while remanded to local authority accommodation or youth detention accommodation; 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.

26. If the **1<sup>st</sup> history condition** does not apply then consideration should be given to whether the **2<sup>nd</sup> history condition** applies.

27. Under the **2<sup>nd</sup> history condition** (section 99(6)) the offence(s) to which the proceedings relate, when taken with previous imprisonable offences for which they have been convicted, amounts to a recent history of committing imprisonable offences while on bail or remand to local authority accommodation or youth detention accommodation.

28. If *either* of the two sets of history conditions set out above apply, the court must additionally consider whether there is a real prospect that the child will be sentenced to

a custodial sentence for the offence the court is considering now (section 99(3)). This is known as the sentencing condition.

29. 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, is such as to 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 is not clear that there is a real prospect of custody, the condition would not be satisfied and the child should not be remanded to youth detention accommodation.

#### Step four: the necessity condition

30. If the **1<sup>st</sup> set of conditions** or the **2<sup>nd</sup> set of conditions** are met then the court must consider (under section 98(4) or 99(7)) whether a remand to youth detention accommodation is necessary either 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.

#### Failure to surrender

31. 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

32. 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 he has 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.

33. 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.

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

35. 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

36. Schedule 11 of the LASPO Act 2012 inserts 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 for children concerned in criminal proceedings is amended consequentially.

### **Looked after children**

37. Children remanded to local authority accommodation will continue to be looked after by the local authority 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**

38. A 10-11 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.

39. 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).

### **Transitional arrangements for 10-17 year olds already remanded**

40. A child that has been remanded under the previous remand framework will remain remanded as ordered by the court until the remand comes to an end and the child is released, sentenced or remanded again. This applies to:

- 10-17 year olds remanded on bail under the Bail Act 1976;
- 10-16 year olds remanded to local authority accommodation under section 23 of the Children and Young Persons Act 1969;
- 12-16 year olds remanded to local authority accommodation with a security requirement under section 23 of the Children and Young Persons Act 1969; and
- 15-16 year old boys and 17 year olds remanded to prison under section 27 of the Criminal Justice Act 1948.

41. Where a child previously remanded under the old remand framework appears before the court for a new remand decision, they will be considered under the Bail Act 1976 and if refused bail, sections 91 to 107 of the LASPO Act 2012.

42. Periods spent on remand on bail, in local authority accommodation, local authority accommodation with a security requirement or prison under the old remand framework may be counted as necessary by the court when considering the **1<sup>st</sup> history condition** (section 99(5) or 101(5)) or **2<sup>nd</sup> history condition** (section 99(6) or 101(6)) for a remand to youth detention accommodation under the LASPO Act 2012.

### **Children who turn 18 years of age during their remand**

43. 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.

44. 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 YJB 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.

### **Amendments to the Criminal Procedure Rules (CPR): warrants, explanation in open court & the designated local authority**

45. Rule 18.3 of the CPR is to be amended (from April 2013) so that a warrant for detention or imprisonment must require each person to whom it is directed to detain the defendant and take him or her either to any place specified in the warrant or, where it is not possible immediately to include in the warrant the name of the local authority or youth detention accommodation to which the defendant is to be taken, to any place required or allowed by law.

46. Rule 18.4 is to be amended so that a warrant must include:

- whether the defendant must be detained in local authority accommodation or youth detention accommodation,
- the local authority designated by the court,
- any requirement imposed by the court on that authority,
- any condition imposed by the court on the defendant, and
- the reason for any such requirement or condition.

47. Rule 19.2(5) will be amended to reflect that the court must announce in terms the defendant can understand its reasons for:

- withholding bail, or imposing or varying a bail condition;
- granting bail, where the prosecutor opposed the grant; or
- where the defendant is under 18:
  - imposing or varying a bail condition when ordering the defendant to be detain in local authority accommodation; or
  - ordering the defendant to be detained in youth detention accommodation.

### **Looked after children**

48. 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.

49. 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**

50. 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.

### **Youth detention accommodation**

51. Youth detention accommodation is defined in section 102(2) of the LASPO Act 2012 and currently comprises:

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

52. Where a court orders a remand to youth detention accommodation, the Youth Justice Board 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 Youth Justice Board may consult it on the placement decision.

### **Escort arrangements**

53. Children remanded to youth detention accommodation will be transported under a new contract held by the Youth Justice Board. Children remanded to local authority accommodation will continue to be transported by the local authority.

### **Adult bail and remand**

54. Schedule 11, which is introduced by section 90, makes extensive amendments to the Bail Act 1976 that are designed to remove the option of remand in custody in most circumstances where there is no real prospect of the defendant being imprisoned if convicted. These changes apply to adult defendants who have not been convicted. They do not apply to extradition proceedings.

55. The limitation applies to the three main exceptions to bail (i.e. where there is a risk of the defendant failing to appear, committing further offences, or interfering with witnesses). It does not apply, however, where the defendant should be kept in custody for his own protection, or where there is a risk of further offending that might take the form of domestic violence (conduct likely to cause physical or mental injury to a person associated with the defendant within the meaning of section 62 of the Family Law Act 1996, or cause such a person to fear such injury).

56. The restriction only affects cases where it is apparent at the outset that the alleged offence, taken in combination with relevant circumstances such as the defendant's previous convictions, is not such as to warrant a custodial sentence. Where the Crown Prosecution Service consider that there is clearly no real prospect of custody, they will seek a remand on bail (on conditions, if appropriate). In cases the CPS consider less clear-cut, they might make representations against bail but invite the court to consider whether the 'no real prospect' restriction applies. 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 is not clear to the court that there is no real prospect of custody, the restriction would not apply.

### **Appeal against Crown Court grant of bail**

57. Schedule 11 also amends the Bail (Amendment) Act 1993 (which provides for a right of appeal to the Crown Court against bail granted by a magistrates' court) so as to enable the prosecution to appeal to the High Court against a Crown Court decision to grant bail.

58. This new route of appeal does not apply to a decision of a judge of the Crown Court that was itself made on appeal from the magistrates' court under the existing provisions in the 1993 Act.

59. The procedures are much the same as for appeals under the existing provisions in the 1993 Act, requiring -

- prosecuting counsel to inform the Crown Court at the end of the hearing, before the defendant is released from custody, that the CPS intend to appeal, and to serve written notice of appeal on the Crown Court within two hours;

- the Crown Court to remand the defendant in custody until the appeal is determined or otherwise disposed of;
- the Crown Court to forward the appeal notice to the High Court, with a copy of the note or record and the date of the next Crown Court hearing, if any.

60. If the prosecution does not serve the written notice, the appeal is deemed to have been disposed of, and the Crown Court is responsible for drawing up the paperwork to release the defendant.

61. If the appeal is abandoned before the High Court hearing, the High Court should notify the Crown Court of the abandonment and update its own records, but the Crown Court is responsible for drawing up the paperwork to release the defendant.

62. Where a hearing at the High Court takes place, it is the responsibility of the High Court to notify the Crown Court and the prison of the outcome, and, if the prosecution appeal is unsuccessful with the result that bail is granted, to draw up the orders for the prisoner's release and send them to the prison.

63. Part 19.9 of the Criminal Procedure Rules applies –

[www.justice.gov.uk/courts/procedure-rules/criminal/docs/crim-proc-rules-2012-part-19.pdf](http://www.justice.gov.uk/courts/procedure-rules/criminal/docs/crim-proc-rules-2012-part-19.pdf)

### **Useful links**

Legal Aid, Sentencing and Punishment of Offenders Act 2012:

[www.legislation.gov.uk/ukpga/2012/10/contents](http://www.legislation.gov.uk/ukpga/2012/10/contents)

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

[www.legislation.gov.uk/ukpga/2012/10/notes/contents](http://www.legislation.gov.uk/ukpga/2012/10/notes/contents)

Commencement order:

[www.legislation.gov.uk/uksi/2012/2906/introduction/made](http://www.legislation.gov.uk/uksi/2012/2906/introduction/made)

How the LASPO Act 2012 affects youth justice:

[www.justice.gov.uk/youth-justice/courts-and-orders/legal-aid-sentencing-and-punishment-of-offenders-act-2012](http://www.justice.gov.uk/youth-justice/courts-and-orders/legal-aid-sentencing-and-punishment-of-offenders-act-2012)

**END**

# Annex A

**To be eligible for a remand to youth detention accommodation (domestic cases), a child must:**

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

Step 1

Be aged between 12-17\*

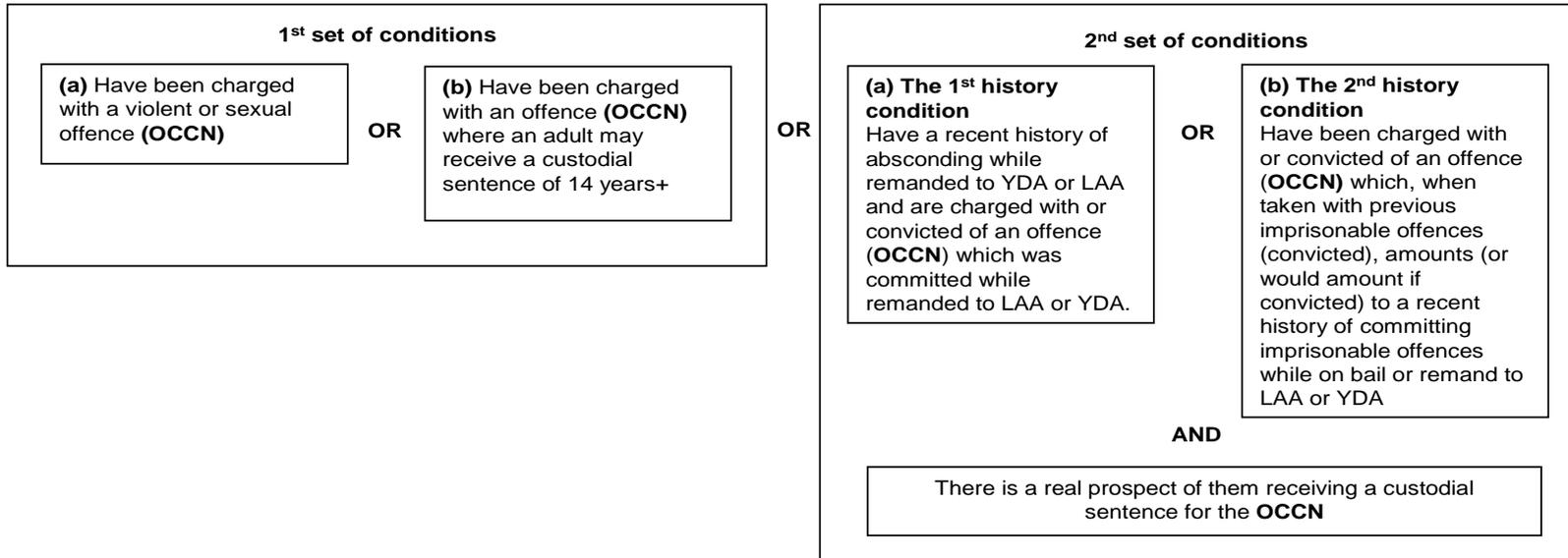
Step 2

Satisfy the legal representation conditions

AND

AND EITHER

Step 3



AND EITHER

Step 4

(a) It is necessary to protect the public from death or serious personal injury

OR

(b) It is necessary to prevent the commission by the child of further imprisonable offences