

SOCIAL SERVICES AND WELL- BEING (WALES) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 186 - Children in youth detention accommodation, prison or bail accommodation etc

469. This section makes provision in relation to children who are detained in youth detention accommodation or in prison, or who are required to reside at “approved premises” or at other premises as a result of a condition of bail in criminal proceedings. Such children will often have an established relationship with their local authority, so in order to ensure continuity of care, that local authority will generally be responsible for carrying out any assessments, meeting any needs, etc. required under this Act (unlike the position for adults who are detained in youth detention accommodation or in prison, or who are required to reside at approved premises or at other premises as a result of a condition of bail in criminal proceedings).
470. A child may be looked after by a local authority in accordance with an order made under the Children Act 1989 (section 31) or immediately before being convicted may have been receiving services from a local authority under Part 4 of this Act. The provision made by this section recognises the continuing responsibilities of the local authority in which such a child is ordinarily resident (whether under this Act, or under the Children Act 1989).
471. However, in the case of a child who is detained in youth detention accommodation or in prison in Wales, or who is required to reside at approved premises or at other premises as a result of a condition of bail in criminal proceedings in Wales, and:
- a) who is not ordinarily resident in Wales, and
 - b) for whom no specific provision is made within these provisions (or within sections 21, 37 and 38),
- it is the local authority in whose area the child is detained or required to reside that is under a duty to carry out any assessment required by this Act, to meet any needs etc.
472. A child detained in youth detention accommodation or in prison or required to reside in approved premises or other premises is defined as a “relevant child” by subsection (1).
473. Subsection (2) makes it clear that if a relevant child has been receiving services from their home local authority under Part 4 of this Act, or is a looked after child or is ordinarily resident in a local authority in Wales, then he or she will be treated as though they are within the area of their home local authority. It is that home local authority that will be responsible for undertaking any assessment of needs under this Act, for meeting needs etc.
474. Subsections (3) and (4) disapply certain provisions of this Act in respect of a child detained in youth detention accommodation or in prison or required to reside

in approved premises. This is necessary to ensure the balance of responsibilities for such a child is adjusted to take account of their detention or the residence requirement. For example, section 81 (Ways in which looked after children are to be accommodated and maintained), is disapplied because a relevant child will be provided with accommodation.

475. Subsection (5) disapplies section 119 (Use of accommodation for restricting liberty) in relation to children who have been convicted of an offence and detained in youth detention accommodation or prison or required to reside in approved premises, or who are remanded to youth detention accommodation in accordance with section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
476. Subsections (6) and (7) contain provision about children who are detained in youth detention accommodation or in prison or who are required to reside in approved premises and who were, immediately before conviction, provided with accommodation by a local authority in England in accordance with section 20 of the Children Act 1989. The local authority in England which provided the child with such accommodation will retain responsibility for the child in accordance with section 23ZA of the Children Act 1989 and with the regulations made under that section. Accordingly, if such a child requires care and support whilst detained in youth detention accommodation or in prison or required to reside in approved premises, it will be their “home” local authority who will be responsible for the provision of such care.
477. Subsection (8) contains a signpost to section 187 which contains further modifications of the provisions of this Act to both children and adults who are detained or residing in approved premises.
478. The terms “approved premises”, “bail in criminal proceedings”, “prison” and “youth detention accommodation” are all defined in section 188.
479. A child who, immediately before conviction and detention or being required to reside in approved premises in Wales, was being looked after by a local authority in England (in accordance with section 31 of the Children Act 1989) will remain the responsibility of the local authority that last looked after them. Their looked after status continues and the local authority in England, which is the responsible local authority for the purposes of the Children Act 1989, will continue to be responsible for any care and support the child requires whilst detained in youth detention accommodation or in prison or required to reside in approved premises in Wales.
480. The responsibilities of such a child’s “home” local authority are set out in the Children Act 1989 (applying the judgement in the case of *R. (on the application of the Howard League for Penal Reform) v the Secretary of State for the Home Department and the Department of Health (CO/1806/2002)* (the “Munby judgement”).
481. The obligations and powers of the local authority in Wales in whose area the prison, youth detention accommodation or approved premises are located, to undertake an assessment of needs, or to provide care and support, to such children are disapplied by sections 21(8), 37(6) and 38(4) of this Act.