

CRIMINAL JUSTICE AND COURTS ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Young Offenders

Detention of Young Offenders

Section 38: Secure colleges and other places for detention of young offenders etc

376. *Subsection (1)* substitutes section 43 of the Prison Act 1952 (young offender institutions etc). Currently section 43 gives the Secretary of State a power to provide young offender institutions, remand centres and secure training centres. New section 43 gives the Secretary of State a power to provide young offender institutions, secure training centres and, additionally, secure colleges (a new form of youth detention accommodation) (see new section 43(1)(c)). Section 95 of the Act (commencement) is relevant to the power in section 43(1)(c) - see the note below at paragraph 694.
377. *Section 43* currently also provides that certain provisions of the Prison Act 1952 do not apply in relation to young offender institutions and secure training centres, and provides that certain provisions of that Act do apply in relation to those institutions (with or without modifications). Subsections (3) to (8) of section 43 largely replicate existing provision about the application of other provisions of the Prison Act 1952 in relation to young offender institutions and secure training centres, but this provision is expressed in clearer language. These subsections also make provision about the application of provisions of that Act in relation to secure colleges.
378. The provisions give the Secretary of State the power, in relation to secure colleges, to (among other things) purchase land, remove prisoners for judicial and other reasons and to make regulations for the measuring, photographing and drug/alcohol testing of prisoners.
379. *Subsection (2)* provides that rules modifying provisions of the Prison Act 1952 as they apply in relation to young offender institutions, secure training centres and secure colleges are subject to the negative procedure.

Schedule 9: Secure colleges etc: further amendments

380. *Schedule 9* contains further amendments of legislation relating to secure colleges and other places for the detention of young offenders.

Section 39: Contracting out secure colleges

381. *Section 39* introduces Schedule 10, which makes provision about contracting out the provision and running of secure colleges, about certification of secure college custody officers and about contracting out functions at directly managed secure colleges.

Schedule 10: Contracting out secure colleges

Part 1 Contracting out provision and running of secure colleges

382. *Paragraph 1* gives the Secretary of State a power to enter into a contract with another person for the other person to provide a secure college (or part of one) or run a secure college (or part of one), or both. Express provision is made allowing such a contract to provide for the running of the college to be sub-contracted.
383. *Paragraph 2* limits the power in paragraph 1 by providing that a contracted-out secure college must be run in accordance with Schedule 10 to the Act, the Prison Act 1952 as it applies to contracted-out secure colleges, and secure college rules (that is, rules made under section 47 of the Prison Act, as amended by Schedule 9 to this Act).
384. *Paragraph 3* exempts land leased by the Secretary of State for the purposes of a secure college from the operation of certain specified landlord and tenant and property legislation.
385. *Paragraph 4* imposes requirements as to the appointment of the principal of a contracted-out secure college and makes provision about the principal's functions.
386. *Paragraph 5* provides that a contracted-out secure college is to have a monitor, whose reviewing, investigatory and reporting functions are set out in sub-paragraph (3). The contractor (and any sub-contractors) are under a duty to take all reasonable steps to facilitate the carrying out of the monitor's functions.
387. *Paragraph 6* provides that the constabulary powers of prison officers do not apply in relation to officers of a contracted-out secure college. *Paragraph 7* sets out who may be an officer of a contracted-out secure college who performs custodial duties. The officers' duties and powers are set out in *paragraphs 8 to 11*. In particular, an officer has duties to prevent escape, to prevent the commission of unlawful acts, to ensure good order and discipline and to attend to the well-being of a person detained in a secure college. An officer has powers of search, and may use reasonable force where necessary in carrying out functions under paragraphs 8 and 9 if authorised to do so by secure college rules.
388. *Paragraph 12* makes provision in relation to intervention by the Secretary of State. The Secretary of State may, where it appears to him that the principal of a contracted-out secure college has lost effective control of the college, and the intervention is necessary to preserve a person's safety or prevent serious damage to property, replace the principal with a Crown servant whom the Secretary of State has appointed. During the period of intervention that person is to carry out the functions of the principal and the monitor. *Paragraph 12(4) and (6)* make provision about notification at the end of a period of intervention.
389. *Paragraph 13* creates an offence of resisting or obstructing a secure college custody officer. *Paragraph 14* creates an offence of assaulting a secure college custody officer.
390. *Paragraph 15* creates an offence of wrongful disclosure, by a person who is or has been employed at a contracted-out secure college, of information relating to persons in youth detention accommodation.

Part 2 Certification of secure college custody officers

391. *Part 2* makes provision in relation to the eligibility of a person to be certified by the Secretary of State as a secure college custody officer, and the procedure for becoming so certified.
392. In particular, *paragraph 17* sets out the criteria of which the Secretary of State must be satisfied before he certifies a person as a secure college custody officer. *Paragraphs*

*These notes refer to the Criminal Justice and Courts Act 2015
(c.2) which received Royal Assent on 12 February 2015*

18 and 19 make provision in relation to the suspension and revocation respectively of certificates.

Part 3 Contracting out functions at directly managed secure colleges

393. *Paragraph 20* gives the Secretary of State a power to enter into a contract with another person for secure college custody officers provided by that person to carry out functions at a directly managed secure college. *Paragraph 21* applies paragraphs 6(1) and 8 to 11 in relation to such officers.
394. *Paragraphs 23 and 24* create offences of obstruction and assault of such officers, and are substantively the same as the offences in paragraphs 13 and 14.
395. *Paragraph 25* creates an offence of wrongful disclosure by such an officer, and is substantively the same as the offence in paragraph 15.

Part 4 and 5 Definitions and further amendments

396. *Part 4* contains definitions for Schedule 10. *Part 5* contains further amendments to legislation relating to secure colleges. *Paragraph 28*, in particular, provides that a statutory instrument containing rules under section 47 of the Prison Act 1952 that authorise a secure college custody officer performing custodial duties at a secure college to use reasonable force is subject to the affirmative procedure.

Section 40: Powers of Youth Justice Board in relation to provision of accommodation

397. *Section 40* amends section 41(5) of the Crime and Disorder Act 1998 (which sets out powers of the Youth Justice Board for England and Wales ('the YJB')), to provide that the YJB may enter into agreements for the provision of accommodation in relation to young offenders subject to a sentence of detention for public protection (under section 226 of the Criminal Justice Act 2003), an extended determinate sentence of detention (under section 226B of that Act), an extended sentence of detention for public protection (under section 228 of that Act), and the Armed Forces Act 2006 equivalents.