

CYPA 2001 s.27

## CHAPTER 6

### SECURE ACCOMMODATION

#### INTRODUCTION

- 1 Restricting the liberty of children has been regarded with increasing seriousness over the past thirty years. This Act reaffirms that in Manx law. It must be a 'last resort'. All alternatives must first have been considered in detail and rejected. All children who have their liberty restricted (unless under the Mental Health Act 1998 or an assessment order) will be accommodated in the Secure Care Home at White Hoe, Douglas.
- 2 There are essentially four routes into the Secure Care Home.
  - a. Section 27 CYPA - the "welfare" route to which the Secure Accommodation Regulations 2002 apply,
  - b. Section 76(6) a remand to accommodation provided by the Department with a security requirement to which the Remands to Accommodation provided by the Department Regulations 2002 apply (imposed by criminal courts),
  - c. Section 76(2) a remand to custody (imposed by criminal courts),
  - d. a custodial sentence (imposed by criminal courts).
- 3 The Secure Care Home is designated a custodial institution in order to allow children to be detained under (c) and (d). (b)(c) and (d) are criminal court routes into the Secure Care Home.
- 4 The grounds for its use under Section 27 are quite specific: they are set out in the next section under the heading CRITERIA and is only for use in relation to looked after children (although secure accommodation can be used under Section 27 and Section 41(6) Police Powers and Procedures Act 1998 for a child not looked after in specific circumstances). Other reasons to justify the use of the Secure Care Home will not suffice. For example, the following are unacceptable grounds for an application:
  - a. the lack of an alternative placement,
  - b. inadequacies in staffing,
  - c. the child has a high nuisance value,
  - d. the child constantly runs away,
  - e. the child should be locked up as "a lesson".
- 5 The objectives of a secure placement should be clear and explicit and the unit providing it should be demonstrably capable of delivering them, within the timescale permitted by the order and more quickly

<p>CYPA 2001 s.27 Secure Accommodation Regulations 2002</p>	<p>if possible.</p> <p>6 The guidance in this chapter is confined to court orders and regulations. Of course the practice and management issues which are pertinent to all children in residential care apply equally to it.</p> <p>Chapter in the guidance and regulations on residential care (Volume D) deals in more detail with the practice and management issues concerning secure accommodation.</p> <p>The Secure Accommodation Regulations 2002 are at Annex 1.</p> <p><b>CRITERIA</b></p> <p>7 The use of secure accommodation is subject to restrictions:</p> <ul style="list-style-type: none"> <li>• only for children already looked after by the Department, with one exception - see paragraph 11.</li> <li>• the circumstances in which children looked after may be secured - <b>N.B:</b> it is a restriction on how children may be looked after, NOT a power.</li> <li>• the maximum periods secure accommodation may be used, with or without a court order.</li> </ul> <p>8 Where a placement is intended to exceed 72 hours the Department must seek the authority of the court.</p> <p>9 With the exceptions discussed below no child may be placed or kept in secure accommodation unless:</p> <ol style="list-style-type: none"> <li>a. he has a history of and is likely to abscond from any other description of accommodation and if he absconds, will or is likely to suffer significant harm, or</li> <li>b. if he is kept in any other kind of accommodation he is likely to injure himself or other persons.</li> </ol>
<p>CYPA 2001 s.27(6)</p>	<p>10 There are powers to exclude particular groups of children from these restrictions and these are children detained under the Mental Health Act 1998, the Custody Act 1995 or subject of an assessment order and these groups are excluded under Regulation 2 of the Secure Accommodation Regulations 2002.</p>
<p>Secure Accommodation Regulations 2002 Regulation 3</p>	<p>11 The criteria are also slightly varied in relation to certain children who are being detained by the Police under the Police Powers and Procedures Act 1998 Section 41(6) where in effect the custody sergeant has determined that a child falls within the criteria to be detained following charge but he has a duty under Section 41(6) to arrange for the child to be taken into the care of the Department unless it is impracticable.</p> <p>12 In this case the requirement for a history of absconding is removed and of significant harm and only likelihood of absconding from other</p>

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accommodation is necessary or the likelihood of injuring self or other persons is required. This is a limited variation for use in limited circumstances but could allow for Section 27 to apply to a child looked after by the Department with no history of absconding but a fear that he would.

13 This is the only means by which a child not looked after can be secured under the 'welfare' provisions in these circumstances there are no set criteria, however, in practice the Department will apply the same criteria to a child not already looked after as to a child who is looked after.

14 The decision whether or not to use the Secure Care Home in these circumstances is that of the Department and not the Police (whether for a looked after child or otherwise) and a decision of the Department not to use that power should not be considered a reason for release to the Department under Section 41(6) as being impracticable in itself.

## APPLICATIONS TO COURT

15 A child meeting the criteria may be placed in secure accommodation for up to 72 hours in 28 days without court authority. If the Department (and only the Department) wishes to keep him or her there beyond that period it must apply to the court for authority to do so. The period of 72 hours can be slightly extended if it expires on a Sunday or Bank Holiday or if the Department nears the end of the 72 hours discretion on the last of a series of admissions in the last 27 days.

### The role of the court

16 Its role is to consider if the criteria are met for the use of secure accommodation. It must be satisfied that the statutory criteria have been met.

17 If so satisfied the Court must make an order, although it need not be for the maximum period. The welfare principle does apply but not the "welfare checklist".

### Legal representation

18 Legal representation is a requirement of the Act unless the child has been informed of his right to apply for legal aid and has refused it. In each case an application is made for the child to be made a party to the application at the same time as the substantive application for a Section 27 Order so giving rise to the child's involvement in the proceedings and right to apply for legal aid.

### Court powers

19 The court may make a order:

<p>Accommodation Regulations 2002 Regulation 5</p>	<p>a. authorising the child to be kept in secure accommodation</p> <p>b. specifying the maximum period of the order</p> <p>20 The maximum periods a court may authorise a child to be kept in secure accommodation are:</p> <ul style="list-style-type: none"> <li>• three months on first application</li> <li>• six months on any further application</li> </ul> <p>21 On adjournment the court may make an interim order permitting the child to be kept in secure accommodation until the next hearing. In this case the criteria need not be met and the child need not be represented but clearly to justify an order the Court must believe a prima facie case exists.</p> <p>22 As the proceedings are not family proceedings within the definition of Section 102 of the Act hearsay evidence may not be used under Section 78.</p>
<p>CYPA 2001 s.27(4)</p>	<p><b>Appeals</b></p> <p>23 Any party or aggrieved person may appeal by way of case stated, on the basis that the decision is wrong in law or in excess of jurisdiction.</p> <p><b>Limitations</b></p> <p>24 If a child is accommodated (as opposed to in care) they may be removed from the Department's accommodation by their parents (or someone with parental responsibility in accordance with Section 25). Once a child has attained 16 years of age they effectively control themselves whether they are accommodated or not. This means that even a child the subject of a Secure Order may leave/be removed in the same circumstances as any other voluntary accommodation.</p> <p>25 The effect is therefore that in some cases an application for a Care Order and Interim Care Order will coincide with an application for a Secure Order.</p>
<p>Summary Jurisdiction Act 1989 Section 109</p>	<p style="background-color: #cccccc; text-align: center;"><b>THE "CRIMINAL" ROUTE</b></p> <p>26 These apply to children under 17 years only with limited exceptions as set out.</p> <p><b>Remands to the Department's accommodation with a security requirement</b></p> <p>27 The Court has power to remand a child to accommodation provided by the Department as an alternative to a remand on bail and may add a security requirement which will mean that a child is placed in the Secure Care Home.</p> <p><i>Criteria</i></p>
<p>CYPA 2001 s.76(3)</p>	

<p>CYPA 2001 s.76(6) &amp; (7)</p>	<p>28 The criteria for a remand to the Department's Accommodation are:</p> <ul style="list-style-type: none"> <li>a. he will or is likely to suffer significant harm if not remanded to the Department's accommodation, or</li> <li>b. the public will not be adequately protected from him if he is not remanded to the Department's accommodation.</li> </ul>
<p>CYPA 2001 s.76(6)</p>	<p>29 The Court cannot add a security requirement unless it is satisfied that:</p> <ul style="list-style-type: none"> <li>a. he is charged with or guilty of a violent/sexual offence or an offence punishable with a minimum of 10 years custody in the case of an adult, or</li> <li>b. he has a recent history of absconding whilst being looked after by the Department and has been charged/found guilty of an offence committed whilst being looked after, and</li> </ul> <p>in either case only a security requirement would adequately protect the public from harm.</p>
<p>CYPA 2001 s.76(2)</p>	<p><i>The role of the Court</i></p> <p>30 The Court therefore has two hurdles to consider, firstly if the criteria for a remand to the Department's accommodation are met and secondly if the criteria for a security requirement are then met.</p> <p>31 The "no order" principle does not apply.</p> <p>32 The Court must consult with the Department if considering a security requirement.</p> <p>33 The Court may impose conditions on a remand to the Department's accommodation and good use of this as an alternative to a security requirement is encouraged along with other available alternatives.</p> <p><b>Remands in custody</b></p> <p>34 The Court has power to remand a child in custody which will also result in a child being detained in the Secure Care Home as a designated custodial institution. The other prison on the Isle of Man is designated for over 16 year olds only. The Secure Care Home is designated for those under 17 years or commencing sentence/remand under 17 years of age.</p> <p><i>Criteria</i></p> <p>35 A Court may only remand a child in custody if:</p> <ul style="list-style-type: none"> <li>a. he is charged with homicide, or</li> <li>b. only his detention in custody will protect the public from death or serious personal injury caused by his offences.</li> </ul> <p><b>Sentences to custody</b></p> <p>36 The Secure Care Home is the only custodial institution designated for under 17 year olds and therefore custodial sentences will be served at the Secure Care Home. In addition children sentenced whilst</p>

	under 17 years <u>may</u> continue their sentences at the Secure Care Home although obviously if sentences are long a transfer is likely.
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