

## **CHAPTER 8 SECURE ACCOMMODATION**

### **INTRODUCTION**

CYPA 2001 s.27

- 1 This Chapter describes the statutory framework for secure accommodation set out in the Act, and governing:
  - a. the restriction of liberty of children being looked after by the Department,
  - b. how this statutory protection covers children in other types of accommodation, and
  - c. the further provisions included in The Secure Accommodation Regulations 2002.

For further information regarding the use of the Secure Care Home see Volume A, Chapter 6

- 2 The provisions of the Act and the Regulations apply to children placed by the Department in secure accommodation provided and managed by the Department.
- 3 The provisions allow the Department to use only accommodation provided for the purpose of restricting liberty.

### **PLACEMENTS IN SECURE ACCOMMODATION**

- 4 All reasonable steps should be taken to avoid the need for children to be placed in secure accommodation.
- 5 Physical restriction of liberty is prohibited except in premises provided by the Department for use as secure accommodation.
- 6 Restricting the liberty of a child is a serious step, which must only be taken when all other possibilities have been considered and rejected.
- 7 A child should never be placed in secure accommodation:
  - a. because no other placement is available,
  - b. because of staff limitations,
  - c. because the child is being a nuisance, or
  - d. runs away from his or her accommodation and is not likely to suffer significant harm in doing so, and
  - e. as a form of punishment.
- 8 Occasionally, the safety of secure premises, the skills and enhanced levels of the staff available, and the specialist programmes which can be provided, may be the most appropriate, and only, way of responding to the likelihood of a child suffering significant harm or injuring himself or others.

	<p>9 The following points should be considered carefully before making a secure placement:</p> <ol style="list-style-type: none"><li>a. Is there a clear view of its aims and objectives?</li><li>b. Will those providing the accommodation be able to meet fully the aims and objectives of the placement?</li><li>c. A secure placement should be made for only as long as absolutely necessary and unavoidable. The maximum period, for which a court may initially authorise a child to be kept in secure accommodation, without a further application, is three months.</li><li>d. A child should not be retained in security simply to complete a pre-determined assessment or 'treatment' programme.</li><li>e. Plans should be made for continuity of the child's care, education and, where appropriate, access to professional (e.g. psychiatric) support when he or she leaves secure accommodation.</li></ol> <p>10 All decisions to seek a placement for a child in secure accommodation should be taken at the level of at least Assistant Director, and that person should be accountable to the Director of Social Services for the decision.</p> <p><b>General Principles</b></p> <p>11 Wherever practicable the placement in secure accommodation of a child the Department is looking after should be part of the overall plan for his or her welfare.</p> <p>12 The plans should have regard to the Department's general duties under section 24 of the Act, including the duty to safeguard and promote the child's welfare.</p> <p>13 As far as reasonably practicable, the Department should seek to ascertain the wishes and feelings of:</p> <ol style="list-style-type: none"><li>a. the child,</li><li>b. his or her parents,</li><li>c. any other person who has parental responsibility for him or her, and</li><li>d. any other person whose wishes and feelings are considered relevant.</li></ol> <p><b>Secure accommodation provided on a voluntary basis</b></p> <p>14 When a child is provided with accommodation on a voluntary basis under the Act, a person with parental responsibility for him or her may remove him or her at any time, unless the exceptions apply. This includes removal from a placement in secure accommodation, whether or not the authority of the court to restrict the liberty of the child has</p>
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been obtained.

- 15 A written agreement about the placement made between the Department and the parents should include the expected duration of the placement and the arrangements for bringing the placement to an end, in line with the requirements of the regulations and guidance covering voluntary arrangements.

## **STATUTORY FRAMEWORK FOR THE RESTRICTION OF LIBERTY**

- 16 The Act sets out the statutory criteria which must be met before a child being looked after by the Department can be placed and kept in secure accommodation.

The associated regulations are the Secure Accommodation Regulations 2002.

- 17 Careful scrutiny by the court is required before a secure order is made. The Act requires that the child's welfare must be the court's paramount consideration. The Act requires that the court should not make an order unless this would be better for the child than making no order, however, Section 27 requires an order to be made if the criteria are met but the duration is still clearly within the direction of the Court subject to the maximum 3/6 month periods.

- 18 The purpose of the statutory framework is to:
- a. protect children looked after by the Department from inappropriate placement in secure accommodation,
  - b. ensure that administrative decisions taken by the Department or others are scrutinised and endorsed by the court, and
  - c. ensure that placements are for only so long as is necessary and appropriate.

- 19 When an application is made to the court to keep a child in secure accommodation, it is the court's responsibility to safeguard the rights of the child by satisfying itself that adequate evidence has been produced to demonstrate that the statutory criteria are met.

- 20 The court is then required to make an order authorising placement in secure accommodation, for the duration considered appropriate in the light of the evidence.

- 21 If at any stage the criteria for keeping the child in secure accommodation do not apply, he or she should be released and placed in alternative accommodation.

### **Definition of "Restriction of Liberty"**

- 22 The interpretation of the term "accommodation provided for the purpose of restricting liberty ("secure accommodation") in the Act is a matter to be determined by the court.

23 Any measure which prevents a child from leaving a room or building of his or her own free will may be deemed by the court to constitute "restriction of liberty".

24 For example, the locking of a child in a room, or part of a building, to prevent him leaving voluntarily is clearly caught by the statutory definition. Other practices which placing restrictions on freedom of mobility, or creating a human barrier, for instance, are not so clear-cut.

### **Restriction of liberty – Children looked after by the Department**

25 Section 27(1) applies to any proposed short-term placement of a child in a locked room for 'time-out' or seclusion purposes.

26 The maximum period a child may be kept in secure accommodation without the authority of a court is 72 hours, whether consecutively or in aggregate, in any period of 28 consecutive days.

The arrangements for seeking and granting authority to keep a child or young person in secure accommodation are described on p.169 below.

27 When an application to the court to keep a child in secure accommodation is being considered, the Department's Advocate should be consulted at an early stage.

### **Application of Secure Accommodation Regulations 2002**

28 The various provisions of the Secure Accommodation Regulations 2002 refer to "secure accommodation".

29 The regulations as a whole apply to the placement of looked after children in secure accommodation.

### **Children to whom Section 27 does not apply**

30 The Regulations describe groups of children to whom section 27 of the Act does not apply because lawful authority to restrict their liberty is provided elsewhere. They are:

- a. children detained under the Mental Health Act (1998)
- b. a child subject to a sentence or order under Section 8(1) of the Custody Act 1995 (detention during her Majesty's pleasure)
- c. those subject to an Assessment Order.

### **Criteria for restricting liberty**

31 The Act specifies the criteria which must apply before a child may have his or her liberty restricted. They are that:

- a. i. he has a history of absconding and is likely to abscond from any other description of accommodation, and

- ii. if he absconds, he is likely to suffer significant harm, or
- b. that if he is kept in any other description of accommodation he is likely to injure himself or other persons.

32 In this context, "harm" has the same meaning as in section 23(6) of the Act, i.e. ill treatment or impairment of health or development. The question of whether harm is significant depends on the child's health or development, which should be compared with that which could reasonably be expected of a similar child.

33 Subject to the points about remanded and detained children below, it is unlawful for:

- a. the liberty of a child to be restricted unless one of the criteria above is met, no matter for how short the period, and
- b. a child to continue to have his or her liberty restricted once the criteria cease to apply, even if there is a current court order authorising restriction of liberty.

### **Children detained under the Police Powers and Procedures Act 1998**

34 Regulation 3 varies the application of the criteria in section 27(1)(a) and (b) in respect of one group of looked after children that is for detained children under section 41(6) of the Police Powers and Procedures Act 1998.

35 Regulation 3 modifies the criteria in section 27(1) to be applied to this group of children. They may not be placed, and, if placed, may not be kept, in accommodation provided for the purpose of restricting liberty ("secure accommodation")

"unless it appears that any other accommodation than secure accommodation is inappropriate because:

- a. the child is likely to abscond from such other accommodation, or
- b. the child is likely to injure himself or other people if he is kept in any such other accommodation."

This is the only circumstance where a child not already looked after may be placed in secure accommodation. In accordance with the Police Powers and Procedures Act 1998 it is lawful for the Department to detain a child where Section 41(6) applies. This creates the rather unusual situation that a looked after child must comply with the criteria above to be secured but another child need not be the subject of any criteria. In practice, however, as the discretion is with the Department (it is "lawful" to detain not compulsory) the same criteria will be applied as for a looked after child.

### **Maximum period of restriction of liberty without court authority**

- 36 Regulation 4 places the limit on the maximum period a child, to whom section 27 of the Act applies, may have his or her liberty restricted without the authority of the court. The maximum period is 72 hours, either consecutively or in aggregate, in any period of 28 consecutive days.
- 37 This provision is somewhat relaxed to allow for the difficulties which may face the Department, or other agencies, trying to arrange for an application to be heard at short notice, when the 72-hour period is due to expire late on a Saturday, on a Sunday or public holiday.
- 38 The limited extension of the 72 hours rule is intended to cater for the emergency placement of a child in secure accommodation at a time when:
- a. the greater part of the 72 hour period has already been used up, and
  - b. it is unlikely that an application can be heard by a court before the time limit expires.
- 39 When a court has authorised that a child may be kept in secure accommodation, Regulation 4 provides that any time which he or she has been kept in security before the authority was given shall be disregarded for the purposes of calculating the maximum period of 72 hours in relation to any subsequent occasion on which the child is placed in secure accommodation after the period authorised by the court has expired.
- 40 The practical effect of this regulation is that the 28 day period mentioned in Regulation 4 restarts when the authority given by the court expires. This is intended to cater for a situation where:
- a. the readmission of a child to security is regarded as an emergency,
  - b. his or her liberty has already been restricted for up to 72 hours during the preceding 28 days, and
  - c. a court has authorised a secure placement for a period of less than 28 days.

### **PROVIDING ASSISTANCE TO THE CHILD**

- 41 Staff working in accommodation which restricts liberty and field social workers must prepare the child adequately for court hearings, taking account of his or her age and understanding.
- 42 The child's entitlement to apply for legal aid should be carefully explained.

See paragraph 44

- 43 Staff may need guidance on:

- a. preparing reports, and
- b. providing the court with precise evidence of the way in which the child's behaviour meets the statutory criteria for placing or keeping him or her in secure accommodation.

### **Legal representation**

- 44 Under the Act a court will not make an order authorising secure accommodation if the child is not legally represented. The only exception to this is when the child, having been informed of his or her right to apply for legal aid and had an opportunity to do so, has refused or failed to apply. In practice, a child with the leave of Court, is made a party to the proceedings when the matter is first called to Court.
- 45 Children and young people should be encouraged to appoint a legal representative and helped to make arrangements. This should include:
- a. providing him or her with details of advocates, and
  - b. assistance in making contact with the chosen advocate,
  - c. information about legal aid.

### **COURT REPORTS**

- 46 The Court may request Probation to produce a report.

### **COURT'S POWERS IN CONSIDERING SECURE ACCOMMODATION APPLICATIONS**

- 47 The purpose of applying for an order giving authority to keep the child in secure accommodation is to satisfy the court that the criteria set out in section 27 are met.
- 48 If the court is satisfied, having regard to the provisions of section 1 of the Act (the welfare of the child is paramount) it must make an order.
- 49 The order is permissive, that is to say:
- a. it enables but does not oblige the Department to continue the placement for the full duration of the order, and
  - b. it does not empower the Department, or whoever else makes the application, to continue the placement if the criteria under which the order was made cease to apply.
- 50 The regulations provide that the maximum period a court may authorise a child to be kept in secure accommodation is three months where no previous order is in force and 6 months in any other case.
- 51 When the Department believes his or her placement in secure accommodation should continue beyond the period specified in the initial order, a further application must be made to the court following

the procedures outlined above.

- 52 The maximum period a court may authorise restriction of liberty for children remanded to accommodation provided the Department with a security requirement under the Act is the period of the remand, whether this is the initial period or a further period.

### **INTERIM ORDERS**

- 53 If the court adjourns consideration of an application, it may make an interim order authorising the child to be kept in secure accommodation during the period of the adjournment.
- 54 An interim order will be made only if the court is not yet in a position to determine whether or not the criteria in section 27(1) have been met.
- 55 If the court adjourns the hearing of an application and does not make an interim order, the child may not be placed in secure accommodation during the adjournment unless his or her circumstances change, in which case the usual procedures will apply.

### **RECORDS**

- 56 The regulations set out the records to be kept in relation to a child in secure accommodation which are:
- a. the name, date of birth and sex of that child,
  - b. the care order or other order, if any, by reason of which the Department is looking after him,
  - c. particulars of any other agency involved with the placement of the child,
  - d. the date and time he was placed in secure accommodation,
  - e. the authority for keeping him there,
  - f. the reason for keeping him there,
  - g. the name of the officer placing him there,
  - h. where the child was living before he was placed there,
  - i. the names and addresses of:
    - i. any parent of the child,
    - ii. any person, not being a parent of his, who has parental responsibility for him, and
    - iii. the child's independent visitor, if one has been appointed,
  - j. the names and addresses of:
    - i. all those informed under regulation 6 of the place of the child in secure accommodation, and

	<ul style="list-style-type: none"><li>ii. all those consulted under regulation 7(3) in the course of a review in relation to him,</li><li>k. every order under section 27(1) of the Act relating to keeping the child in secure accommodation,</li><li>l. every review undertaken in relation to him under regulation 7,</li><li>m. the date and time of any occasion on which the child is locked on his own in any room in the secure accommodation, other than his bedroom during usual bedtime hours, the name of the person authorising this action, the reason for it and the date on which and time at which the child ceases to be locked in that room, and</li><li>n. the date and time of his discharge from secure accommodation and his address following discharge.</li></ul>
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