

Education & Children's Services

SECURE ACCOMMODATION POLICY & PROCEDURE

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1. Policy Aim

To ensure that the welfare of the child is the paramount consideration when considering whether to make an application for secure accommodation under the Children Act 1989.

2. Relevant Legislation & Cases

Children Act 1989 – Section 25, Schedule 2, para 7 (c)
The Children (Secure Accommodation) Regulations 1991, reg 2(1)
European Convention on Human Rights – Article 5 (1)(d), Article 6(3)
Human Rights Act 1998

Re K (Secure Accommodation Order: Right to Liberty) [2001] 1 FLR 526
Re M (A Child: Secure Accommodation Order) [2001], CA

3. Policy

Some young people exhibit such extreme behavior at points of crisis in their lives that their safety and wellbeing is put at a level of risk that secure accommodation needs to be considered.

Secure accommodation effectively deprives a young person of his or her liberty. Local authorities are required to take reasonable steps to avoid the need for children to be placed in secure accommodation. (Sch. 2, para 7 (c)). Secure accommodation should not be considered unless all other options to ensure the safety and wellbeing of that young person have been tried and it is considered that if a young person is not placed in secure accommodation they would be putting themselves in a position where they could suffer significant harm.

A secure accommodation order may be made in respect of a child who is the subject of a care order or to any other child (providing there is parental consent). If the child is not subject to a care order, section 20(8) applies to secure accommodation in the same manner as it does to any other accommodation for a looked after child.

The criteria for application – Section 25

A secure accommodation order needs to be applied for in a magistrate's court under section 25 of the Children Act 1989 for a child between 14-17 years old. The Local Authority must seek Secretary of State's approval before placing a child under 13 in secure accommodation.

The requirements of section 25 must be met for order to be made by the court.

Section 25, Children Act 1989 states -

- (1) '...a child who is being looked after by a local authority 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 –
 - (a) that –
 - (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.

Consideration also needs to be given to the European Convention of Human Rights. Article 5 of the Convention states that, 'everyone has the right to liberty and security of person'. However, detention can be lawful under the Convention if it is of the detention of a minor for the purpose of educational supervision.

Re K (Secure Accommodation Order: Right to Liberty) [2001] 1 FLR 526 considered whether the right to liberty was breached by the imposition of secure accommodation under the Children Act 1989. The court held that secure accommodation is a lawful exception under the Convention as it provides some education or therapeutic provision.

4. Procedure

Planning process

- a. A social worker with casework responsibility for a young person that they believe should be considered for secure accommodation should consult their line manager. A risk analysis must be undertaken and all alternative means of controlling the extreme behaviour of the young person explored.
- b. The views of the parents and young person must be sought and the options open to the local authority explored with them.

- c. The manager must consult with their line manager and a decision reached as to whether to consider a secure accommodation order.
- d. Legal advice must be sought by the manager or the social worker either by telephone in an emergency situation, or in a legal strategy meeting following agreement from a Tier 3 Manager or above.
- e. If the legal advice is that it is likely that the legal criteria for an application has been met, the manager will seek the department's permission to apply for an order. In emergency situations the decision can be made by the assistant director - Children's services directly. If a secure accommodation application is part of an ongoing plan for a young person, the social worker will make an application to placement panel for the matter to be considered prior to the assistant director's decision.
- f. If the assistant director agrees that an application can be made to court (in emergency situations) they must give written confirmation in a letter that the department will use its power to detain the young person for up to 72 hours before the application is made to the court. A secure unit will not admit a young person without the department's written intention to invoke its powers.
- g. The social worker with the assistance of the family placement team and the Contracts Manager will seek a suitable secure unit and make an application. Units will vary in location and the facilities they offer. Every effort to match the young person to the unit should be made if there is choice available.
- h. If the Local Authority need to seek Secretary of State's approval this should be done following approval from the director of Education Children's Services and the Assistant director of Children's Services. Please call the DCSF on 0207-783-8086 or 0208-783-8084 (or the DCSF public enquiry line on 0870-0002288). For calls after 5:00pm please call the out of hours number on 0207-972-3000. (For guidance on how to apply see the letter to Directors of Children's Services, February 2009)

Application to court

- a. If the decision has been made to seek an application for secure accommodation by the assistant director, the social worker will inform the legal department who will make an application to the court. The social worker will write a statement setting out the reasons for an application giving consideration to:
 - the threshold criteria required by section 25 of the Children Act. This must include information about absconding patterns, what happens when a child absconds, where the child goes and with whom etc.
 - the European Convention on Human Rights
 - the views of the parents and young person if known, and
 - the local authority's plans for this young person.
- b. The young person and his or her parents must be notified of the hearing and the young person must be served with the relevant papers. An application cannot be heard if the young person has not been served.
- c. The court will appoint a Guardian and a solicitor for the young person.

- d. If, after considering the application, the court makes an order for the young person to be placed in secure accommodation, they can be placed, or continue their placement (if they are already accommodated in a unit under the 72 hr powers of the Local Authority).

Reviewing and criteria meetings

- a. The social worker must complete the usual LAC documentation on admission to a secure unit.
- b. Young people in secure accommodation must have a LAC review chaired by an independent reviewing officer within 28 days of admission.
- c. A criteria meeting must be set up within 28 days of admission at the secure accommodation unit to examine whether the young person continues to meet the criteria for holding in secure accommodation. This must be chaired by a senior manager in Children and Families Services and attended by an independent reviewing officer, the child's social worker and manager, and an independent person, such as NCH advocates, (the identified elected member for the panel). The child's guardian, solicitor and parents should also be invited to attend. The review meeting and the criteria meeting can be combined as many of the same issues are explored at both meetings.
- d. Further reviews and criteria meetings should occur within 2 months of the first meeting. If conditions are met the placement continues.

Social work involvement

- a. As the young person in secure accommodation is at a crisis point in their life the social worker must work intensively and regularly with them (ie. meet at least every 2 weeks).
- b. The social worker must keep the young person's parents and Guardian informed of the progress and changes observed in the young person's behaviour.

Renewal of the order

The court may make an order for up to 3 months initially. If the local authority wishes to renew the order and continue holding the young person in secure accommodation they must make a further application to court to renew the order. A further order can be made for up to 6 months.

5. Monitoring and Review

This policy will be reviewed by the Pathways Team for Children in Care and Leaving Care on an annual basis on the date specified on page 1 of this policy, or more frequently to address changes in legislation.

Appendix – Relevant Legislation

Section 25 – Children Act 1989

(1) 'a child who is being looked after by a local authority 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 –

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

...

(4) If a court determines that such criteria are satisfied it shall make an order authorizing the child to be kept in secure accommodation and specifying the maximum period for which he may be so kept.'

Children (Secure Accommodation) Regulations 1991

Secure accommodation is defined in the Children (Secure Accommodation) Regulations as 'accommodation which is provided for the purpose of restricting the liberty of children to whom section 25 of the Act applies'.

The regulations state that section 25 does not to any child who is detained under the Mental Health Act 1983 or those who have been punished for certain serious crimes. It also does not apply to children accommodated under section 20(5) and section 43 of the Children Act 1989.

European Convention on Human Rights

Article 5

1. Everyone has the right to liberty and security of person

No one shall be deprived of his liberty save the following cases ...

...(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority.