

STATUTORY INSTRUMENTS

1983 No. 1808

CHILDREN AND YOUNG PERSONS

The Secure Accommodation (No. 2) Regulations 1983

Made - - - 7th December 1983

Laid before Parliament 9th December 1983

Coming into Operation 1st January 1984

The Secretary of State for Social Services in relation to England and the Secretary of State for Wales in relation to Wales in exercise of the powers conferred upon them by sections 21A and 39 of the Child Care Act 1980(a) and of all other powers enabling them in that behalf hereby make the following regulations:—

Citation and commencement

1. These regulations may be cited as the Secure Accommodation (No. 2) Regulations 1983 and shall come into operation on 1st January 1984.

Interpretation

2.—(1) In these regulations, unless the context otherwise requires —

“the 1980 Act” means the Child Care Act 1980;

“responsible authority” means a local authority which arranges for a child to be accommodated by virtue of an enactment specified in the Schedule to these regulations;

“care authority” means a local authority which has in its care a child to whom Part III of the 1980 Act applies by virtue of section 17 of that Act;

“independent visitor” means a person appointed under section 11 of the 1980 Act;

“secure accommodation” means accommodation provided for the purpose of restricting the liberty of children.

(2) Any reference in these regulations to any provisions made by or contained in any enactment or instrument shall, except insofar as the context otherwise requires, be construed as including a reference to any provision which may re-enact or replace it with or without modification.

(3) Any reference in these regulations to a numbered regulation shall be construed as a reference to the regulation bearing that number in these

(a) 1980 c.5. Section 21A, inserted by section 25 of the Criminal Justice Act 1982 (c.48), was substituted by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 2, paragraph 50. Section 39(2) of the 1980 Act was repealed in part by the 1983 Act, Schedule 10. These provisions of the 1983 Act came into operation on 1st January 1984 (see the Health and Social Services and Social Security Adjudications Act 1983 (Commencement No. 1) Order 1983 (S.I. 1983/974)).

regulations, and any reference in a regulation to a numbered paragraph is a reference to the paragraph bearing that number in that regulation.

Approval by Secretary of State of secure accommodation in a community home

3. Accommodation in a community home shall not be used as secure accommodation unless it has been approved by the Secretary of State for such use and in approving such accommodation for use as secure accommodation the Secretary of State may impose such terms and conditions as he sees fit.

Placement of a child aged under 10 in secure accommodation in a community home

4. A child under the age of 10 years shall not be placed by a local authority in secure accommodation in a community home unless that authority has obtained the permission of the Secretary of State prior to such placement.

Children to whom section 21A of the 1980 Act shall apply

5. Section 21A of the 1980 Act (use of accommodation for restricting liberty of children in the care of a local authority), shall apply also to children of a description specified in the Schedule to these regulations.

Children to whom section 21A of the 1980 Act shall not apply

6. Section 21A of the 1980 Act shall not apply to a child to whom the said section would otherwise apply if that child is detained under any provision of the Mental Health Act 1983(a) or if any of the following provisions apply to that child —

- (a) section 53 of the Children and Young Persons Act 1933(b) (punishment of certain grave crimes),
- (b) section 28(4) or section 29(3) of the Children and Young Persons Act 1969(c) (detention of child or young person in place of safety and further detention of arrested child or young person respectively),
- (c) section 72 of the Child Care Act 1980 (accommodation of persons over school age in convenient community home).

Description of children to whom section 21A of the 1980 Act shall have effect subject to modifications

7.—(1) Section 21A(1) of the 1980 Act shall have effect subject to the modifications specified in paragraph (2) in relation to a child committed to the care of a local authority under section 23 of the Children and Young Persons Act 1969 (remand to care of local authority) in the following cases —

- (a) where the child is charged with or convicted of an offence imprisonable in the case of a person aged 21 or over for 14 years or more, or
- (b) where the child is charged with or convicted of an offence of violence, or has been previously convicted of an offence of violence.

(a) 1983 c.20.

(b) 1933 c.12. Section 53(1) was substituted by section 1(5) of the Murder (Abolition of Death Penalty) Act 1965 (c.71). Section 53(2) was amended by the Criminal Justice Act 1948 (c.58) and section 2(1) and Schedule 4 to the Criminal Justice Act 1961 (c.39). Section 53(4) was repealed by the Criminal Justice Act 1967 (c.80), Schedule 7.

(c) 1969 c.54.

(2) In a case to which paragraph (1) applies, for the words “unless it appears” to the end of sub-section (1) of section 21A of the 1980 Act there shall be substituted the following words —

“unless it appears that any accommodation other than that provided for the purpose of restricting liberty is inappropriate because —

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

Applications to juvenile court to be made by local authorities

8. Applications to a juvenile court under section 21A of the 1980 Act shall be made —

- (a) by the care authority, or
- (b) in the case of a child to whom the Schedule to these regulations applies, by the responsible authority.

Duty to give information of placement

9. Where a child is placed in secure accommodation in a community home which is not managed by his care authority or, in the case of a child to whom the Schedule to these regulations applies, by his responsible authority, the local authority which manages that accommodation shall inform his care authority or as the case may be his responsible authority of the placement within 24 hours thereof.

Maximum period in accommodation for restricting liberty without juvenile court authority

10.—(1) Subject to regulation 11, the maximum period beyond which a child to whom these regulations apply may not be kept in secure accommodation without the authority of a juvenile court is 72 hours, whether consecutively or 72 hours in aggregate in any period of 28 consecutive days.

(2) Where authority of a juvenile court to keep a child in secure accommodation has been given, any period during which the child has been kept in such accommodation before the giving of that authority shall be disregarded for the purposes of any further placement in such accommodation after the period authorised by the juvenile court has expired.

Different provision as to maximum period in accommodation for restricting liberty without juvenile court authority

11. Where a child was placed in secure accommodation at any time between 12 midday on the day before and 12 midday on the day after a public holiday or a Sunday, and

- (a) during that period the maximum period specified in regulation 10(1) expires, and
- (b) the child had, in the 27 days before the day on which that placement was made, been placed and kept in such accommodation for an aggregate of more than 48 hours,

the maximum period shall be treated as if it did not expire until 12 midday on the first day, which is not itself a public holiday or a Sunday, after the public holiday or Sunday.

Maximum period of authorisation by a juvenile court

12. Subject to regulations 13 and 14, the maximum period for which a juvenile court may authorise a child to whom these regulations apply to be kept in secure accommodation is three months.

Further periods of authorisation by a juvenile court

13.—(1) Subject to regulation 14, a juvenile court may from time to time authorise a child to whom these regulations apply to be kept in secure accommodation for a further period.

(2) Any period authorised by a juvenile court under this regulation shall not exceed six months.

Maximum periods of authorisation by a juvenile court for remanded children

14. The maximum period for which a juvenile court may from time to time authorise a child who has been remanded and committed to the care of a local authority under section 23 of the Children and Young Persons Act 1969 to be kept in secure accommodation is the period of the remand, so however that any such period of authorisation shall not extend beyond the period of his remand.

Duty to inform parents and others in relation to children in secure accommodation in a community home

15. Where a child to whom these regulations apply is kept in secure accommodation in a community home and it is intended that an application will be made to a juvenile court to keep the child in that accommodation, the child's care authority or, in the case of a child to whom the Schedule to these regulations applies the responsible authority, shall as soon as possible inform the child's parent or guardian, if practicable, and the child's independent visitor, if one has been appointed, of such intention.

Appointment of persons to review placement in secure accommodation in a community home

16. Each local authority shall appoint at least two persons who shall review at intervals not exceeding three months the case of each child to whom these regulations apply where the child continues to be kept in secure accommodation in a community home and either —

- (a) is in the care of that authority, or
- (b) falls to be accommodated by that authority, being the responsible authority.

Review of placement in secure accommodation in a community home

17.—(1) The persons appointed under regulation 16 in addition to satisfying themselves in relation to each case that the criteria for keeping the child in secure accommodation continue to apply, shall satisfy themselves that the placement in such accommodation in a community home continues to be appropriate and in doing so shall have regard to the welfare of the child whose case is being reviewed.

(2) In undertaking the review referred to in regulation 16 the persons appointed shall ascertain and take into account the views of —

- (a) the child, and
- (b) the parent or guardian of the child, if practicable, and

- (c) any other person who has had the care of the child, whose views the persons appointed consider should be taken into account, if practicable, and
- (d) the child's independent visitor, if one has been appointed, and
- (e) the local authority managing the secure accommodation in which the child is placed if that authority is a different authority from that specified in regulation 16(a) or (b).

(3) The local authority shall, if practicable, inform all those whose views are required to be taken into account under paragraph (2) of the outcome of the review.

Records to be kept in respect of a child in secure accommodation in a community home

18. Whenever a child is placed in secure accommodation in a community home the local authority which manages that accommodation shall ensure that a record is kept as to:—

- (a) the name, date of birth and sex of that child, and
- (b) the care order or other statutory provision by virtue of which the child is in the community home and in either case particulars of any other local authority involved with the placement of the child in that home, and
- (c) the date and time of his placement in secure accommodation, the reason for his placement, the name of the officer authorising the placement, and where the child was living before such placement, and
- (d) all those informed by virtue of regulations 9, 15 and 17, court orders made by virtue of section 21A of the 1980 Act and reviews undertaken in respect of the child by virtue of regulation 17, and
- (e) the date and time of his discharge and his residence following discharge from secure accommodation

and these records shall be available for inspection by the Secretary of State who may require that copies of them be sent to him at any time.

Revocation of Secure Accommodation Regulations 1983

19. The Secure Accommodation Regulations 1983(a) are hereby revoked.

Signed by authority of the Secretary of State for Social Services.

Tony Newton,
Parliamentary Under-Secretary of State,
Department of Health and Social Security.

1st December 1983.

Nicholas Edwards,
Secretary of State for Wales.

7th December 1983.

(a) S.I. 1983/652.

SCHEDULE

Regulation 5

CHILDREN TO WHOM SECTION 21A OF THE 1980 ACT SHALL APPLY

Section 21A of the 1980 Act (use of accommodation for restricting liberty of children in the care of a local authority) shall apply also to a child who falls to be accommodated by a local authority by virtue of any of the following enactments —

- (a) section 40 of the Children and Young Persons Act 1933(a) (warrant to search for or remove a child or young person),
- (b) paragraph 6 or 7 of Schedule 5A to the Army Act 1955(b) (reception orders and committal into care),
- (c) paragraph 6 or 7 of Schedule 5A to the Air Force Act 1955(c) (reception orders and committal into care),
- (d) paragraph 6 or 7 of Schedule 4A to the Naval Discipline Act 1957(d) (reception orders and committal into care),
- (e) section 43 of the Adoption Act 1958(e) (removal of protected children from unsuitable surroundings),
- (f) section 10(1) and (4) of the Matrimonial Proceedings (Children) Act 1958(f) (power of court in Scotland in actions of divorce to commit care of child to local authority),
- (g) section 7(4) of the Children Act 1958(g) (removal in Scotland of foster children kept in unsuitable surroundings),
- (h) section 2(1) of the Matrimonial Proceedings (Magistrates' Courts) Act 1960(h) (order by a magistrate's court in matrimonial proceedings),
- (i) section 15 or 74 of the Social Work (Scotland) Act 1968(i) (provisions as to care of children, parent of child in residential establishment under supervision requirement moving from Scotland),
- (j) section 7(2) of the Family Law Reform Act 1969(j) (committal of wards of court to care of local authority),

(a) 1933 c.12. Section 40 was amended by the Children and Young Persons Act 1963 (c.37), Schedule 3, paragraph 11.

(b) 1955 c.18. Schedule 5A was inserted by paragraph 1 of Schedule 4 to the Armed Forces Act 1976 (c.52).

(c) 1955 c.19. Schedule 5A was inserted by paragraph 2 of Schedule 4 to the Armed Forces Act 1976.

(d) 1957 c.53. Schedule 4A was inserted by paragraph 3 of Schedule 4 to the Armed Forces Act 1976.

(e) 1958 c.5 (7 & 8 Eliz. 2). Section 43 was amended by the Statute Law (Repeals) Act 1969 (c.52), Part IV of the Schedule and the Social Work (Scotland) Act 1968 (c.49), Schedule 8, paragraph 40 and the Child Care Act 1980 (c.5), Schedule 4, paragraph 8 and Schedule 5, paragraph 39.

(f) 1958 c.40. Subsection (4) was substituted by the Social Work (Scotland) Act 1968, Schedule 8, paragraph 42.

(g) 1958 c.65. Section 7(4) was amended by the Social Work (Scotland) Act 1968, Schedule 8, paragraph 46 and repealed in respect of England and Wales by the Foster Children Act 1980 (c.6), Schedule 3.

(h) 1960 c.48. This Act was repealed by the Domestic Proceedings and Magistrates' Courts Act 1978 (c.22), Schedule 3, but by virtue of paragraph 3 of Schedule 1 to the 1978 Act orders made under the 1960 Act were not affected.

(i) 1968 c.49. Section 15 was amended by section 73 of the Children Act 1975 (c.72) and paragraph 4 of Schedule 2 to the Health and Social Services and Social Security Adjudications Act 1983 (c.41). Section 74 was amended by the Children and Young Persons Act 1969 (c.54), Schedule 5, paragraph 60 and by Schedule 6.

(j) 1969 c.46. Section 7 was amended by the Courts Act 1971 (c.23), Schedule 11, the Matrimonial Causes Act 1973 (c.18), Schedule 2, paragraph 8 and the Child Care Act 1980, Schedule 5, paragraph 23.

- (k) section 2(5) or (10), 16(3), 25(1), 26(2) or 28(1) of the Children and Young Persons Act 1969(a) (place of safety order, interim order, place of safety for supervised person, transfers between England or Wales and Northern Ireland, transfers between England or Wales and the Channel Islands or Isle of Man, detention of child or young person in place of safety),
- (l) section 43(1) of the Matrimonial Causes Act 1973(b) (power to commit to care of local authority),
- (m) section 2(2)(b), 11(1) or (5) of the Guardianship Act 1973(c) (committal of minor to care of local authority in guardianship proceedings, jurisdiction and orders in Scotland relating to care and custody of children),
- (n) section 17, 36(2) or (3)(a) of the Children Act 1975(d) (care of child on refusal of adoption order, care of child on revocation of custodianship order),
- (o) section 10(1) of the Domestic Proceedings and Magistrates' Courts Act 1978(e) (powers of court to commit children to care of local authority),
- (p) section 12 of the Foster Children Act 1980(f) (removal of foster children kept in unsuitable surroundings).

(a) 1969 c.54. Section 2 was amended by the Magistrates' Courts Act 1980 (c.43), Schedule 7, paragraph 78, the Courts Act 1971, Schedule 9 and section 58(2) of the Criminal Law Act 1977 (c.45). Section 16 was amended by the Magistrates' Courts Act 1980, Schedule 7, paragraph 81, the Courts Act 1971, Schedule 9 and the Criminal Law Act 1977, Schedule 12. Section 25 was amended by S.R. & O. (N.I.) 1973 No. 256 and paragraph 15 of Schedule 2 to the Health and Social Services and Social Security Adjudications Act 1983 (c.41). Section 26 was amended by the Child Care Act 1980, Schedule 5, paragraph 25.

(b) 1973 c.18. Section 43 was amended by the Child Care Act 1980, Schedule 5, paragraph 34.

(c) 1973 c.29. Section 2 was amended by sections 38(2), 44 and 45 of and Schedule 3 to the Domestic Proceedings and Magistrates' Courts Act 1978 (c.22).

(d) 1975 c.72. Section 17 was amended by section 72(1) of the Domestic Proceedings and Magistrates' Courts Act 1978. Section 36 of the 1975 Act is not yet in force.

(e) 1978 c.22. Section 10 was amended by the Child Care Act 1980, Schedule 5, paragraph 42.

(f) 1980 c.6.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations replace the Secure Accommodation Regulations 1983 in consequence of the substitution of section 21A of the Child Care Act 1980 by virtue of paragraph 50 of Schedule 2 to the Health and Social Services and Social Security Adjudications Act 1983. They provide that secure accommodation in community homes must be approved by the Secretary of State and impose requirements in respect of the placing of children in such accommodation.

The Regulations specify in the Schedule the description of children to whom section 21A of the 1980 Act is to apply in addition to those in the care of a local authority to whom the section already applies and also specify the description of children to whom the section is not to apply. They make provision for section 21A to have effect subject to modification of the criteria for placing and keeping children in care in secure accommodation in relation to children committed to the care of a local authority under section 23 of the Children and Young Persons Act 1969 (children remanded or committed for trial).

The Regulations specify 72 hours as the maximum period beyond which a child to whom section 21A applies may not be kept in secure accommodation without the authority of a juvenile court. They specify cases in which this maximum period is extended where it would otherwise expire between 12 midday on the day before and 12 midday on the day after a Sunday or public holiday. They also specify three months as the maximum period for which a juvenile court may authorise a child to be kept in such accommodation and empower a juvenile court from time to time to authorise further periods not exceeding six months. In cases where children are remanded and committed to the care of a local authority under section 23 of the 1969 Act the regulations specify that the maximum period which may be authorised is the remand period. They also specify that applications to juvenile courts under section 21A of the 1980 Act are to be made by local authorities.

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