
STATUTORY INSTRUMENTS

1991 No. 1505

CHILDREN AND YOUNG PERSONS

The Children (Secure Accommodation) Regulations 1991

Made - - - - *30th June 1991*
Laid before Parliament *8th July 1991*
Coming into force - - *14th October 1991*

The Secretary of State for Health, in exercise of the powers conferred by sections 25(2) and (7) and 104(4) of and paragraphs 4(1) and (2)(d) and (i) of Schedule 4, 7(1) and (2)(f) and (3) of Schedule 5 and 10(1) and (2)(j) and (3) of Schedule 6 to the Children Act 1989(1) and of all other powers enabling him in that behalf hereby makes the following regulations:

Citation and commencement

1. These Regulations may be cited as the Children (Secure Accommodation) Regulations 1991 and shall come into force on 14th October 1991.

Interpretation

2. –

(1) In these Regulations, unless the context otherwise requires–

“the Act” means the Children Act 1989;

“independent visitor” means a person appointed under paragraph 17 of Schedule 2 to the Act;

“secure accommodation” means accommodation which is provided for the purpose of restricting the liberty of children to whom section 25 of the Act (use of accommodation for restricting liberty) applies.

(2) Any reference in these regulations to a numbered regulation shall be construed as a reference to the regulation bearing that number in these 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 approval shall be subject to such terms and conditions as he sees fit.

Placement of a child aged under 13 in secure accommodation in a community home

4. A child under the age of 13 years shall not be placed in secure accommodation in a community home without the prior approval of the Secretary of State to the placement of that child.

Children to whom section 25 of the Act shall not apply

5. –

(1) Section 25 of the Act shall not apply to a child who is detained under any provision of the Mental Health Act 1983(2) or in respect of whom an order has been made under section 53 of the Children and Young Persons Act 1933(3) (punishment of certain grave crimes).

(2) Section 25 of the Act shall not apply to a child–

- (a) to whom section 20(5) of the Act (accommodation of persons over 16 but under 21) applies and who is being accommodated under that section,
- (b) in respect of whom an order has been made under section 43 of the Act (child assessment order) and who is kept away from home pursuant to that order.

Detained and remanded children to whom section 25 of the Act shall have effect subject to modifications

6. –

(1) Subject to regulation 5, section 25 of the Act shall have effect subject to the modification specified in paragraph (2) in relation to children who are being looked after by a local authority(4) and are of the following descriptions–

- (a) children detained under section 38(6) of the Police and Criminal Evidence Act 1984(5) (detained children), and
- (b) children remanded to local authority accommodation under section 23 of the Children and Young Persons Act 1969(6) (remand to local authority accommodation) but only–
 - (i) 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
 - (ii) where the child is charged with or convicted of an offence of violence, or has been previously convicted of an offence of violence.

(2) The modification referred to in paragraph (1) is that, for the words “unless it appears” to the end of subsection (1), 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 other accommodation, or

(2) 1983 c. 20.

(3) 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.

(4) A child who is “looked after by a local authority” is defined in section 22(1) of the Act– See also the definition of “care order” in section 105(1) of and Schedule 14 to the Act.

(5) 1984 c. 60. Section 38(6) was amended by paragraph 53 of Schedule 13 to the Act.

(6) 1969 c. 54. Section 23 was substituted by a new section by paragraph 26 of Schedule 12 to the Act.

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

Children to whom section 25 of the Act shall apply and have effect subject to modifications

7. –

(1) Subject to regulation 5 and paragraphs (2) and (3) of this regulation section 25 of the Act shall apply (in addition to children looked after by a local authority)–

- (a) to children, other than those looked after by a local authority, who are accommodated by health authorities, National Health Service trusts established under section 5 of the National Health Service and Community Care Act 1990(7) or local education authorities, and
- (b) to children, other than those looked after by a local authority, who are accommodated in residential care homes, nursing homes or mental nursing homes.

(2) In relation to the children of a description specified in paragraph (1)(a) section 25 of the Act shall have effect subject to the following modifications–

- (a) for the words “who is being looked after by a local authority” in subsection (1) there shall be substituted the words “who is being provided with accommodation by a health authority, a National Health Service trust established under section 5 of the National Health Service and Community Care Act 1990 or a local education authority”.
- (b) for the words “local authorities” in subsection (2)(c) there shall be substituted the words “health authorities, National Health Service trusts or local education authorities”.

(3) In relation to the children of a description specified in paragraph (1)(b), section 25 of the Act shall have effect subject to the following modifications–

- (a) for the words “who is being looked after by a local authority” in subsection (1) there shall be substituted the words “who is being provided with accommodation in a residential care home, a nursing home or a mental nursing home”; and
- (b) for the words “local authorities” in subsection (2)(c) there shall be substituted the words “persons carrying on residential care homes, nursing homes or mental nursing homes”.

Applications to court

8. Subject to section 101 of the Local Government Act 1972(8), applications to a court under section 25 of the Act in respect of a child shall be made only by the local authority which are looking after that child.

Duty to give information of placement in community homes

9. Where a child is placed in secure accommodation in a community home which is managed by an authority other than that which are looking after him the local authority which manage that accommodation shall inform the authority which are looking after him that he has been placed there, within 12 hours of his being placed there, with a view to obtaining their authority to continue to keep him there if necessary.

Maximum period in secure accommodation without court authority

10. –

(7) 1990 c. 19.
(8) 1972 c. 70.

(1) Subject to paragraphs (2) and (3), the maximum period beyond which a child to whom section 25 of the Act applies may not be kept in secure accommodation without the authority of a court is an aggregate of 72 hours (whether or not consecutive) in any period of 28 consecutive days.

(2) Where authority of a 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 purpose of calculating the maximum period in relation to any subsequent occasion on which the child is placed in such accommodation after the period authorised by court has expired.

(3) Where a child is 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 paragraph (1) expires, and
- (b) the child had, in the 27 days before the day on which he was placed in secure accommodation, been placed and kept in such accommodation for an aggregate of more than 48 hours,

the maximum period does 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 initial period of authorisation by a court

11. Subject to regulations 12 and 13 the maximum period for which a court may authorise a child to whom section 25 of the Act applies to be kept in secure accommodation is three months.

Further periods of authorisation by a court

12. Subject to regulation 13 a court may from time to time authorise a child to whom section 25 of the Act applies to be kept in secure accommodation for a further period not exceeding 6 months at any one time.

Maximum periods of authorisation by court for remanded children

13. –

(1) The maximum period for which a court may from time to time authorise a child who has been remanded to local authority accommodation under section 23 of the Children and Young Persons Act 1969 to be kept in secure accommodation (whether the period is an initial period or a further period) is the period of the remand.

(2) Any period of authorisation in respect of such a child shall not exceed 28 days on any one occasion without further court authorisation.

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

14. Where a child to whom section 25 of the Act applies is kept in secure accommodation in a community home and it is intended that an application will be made to a court to keep the child in that accommodation, the local authority which are looking after the child shall if practicable inform of that intention as soon as possible–

- (a) his parent,
- (b) any person who is not a parent of his but who has parental responsibility for him,
- (c) the child's independent visitor, if one has been appointed, and
- (d) any other person who that local authority consider should be informed.

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

15. Each local authority looking after a child in secure accommodation in a community home shall appoint at least three persons, at least one of whom must not be employed by the local authority by or on behalf of which the child is being looked after, who shall review the keeping of the child in such accommodation for the purposes of securing his welfare within one month of the inception of the placement and then at intervals not exceeding three months where the child continues to be kept in such accommodation.

Review of placement in secure accommodation in a community home

16. –

(1) The persons appointed under regulation 15 to review the keeping of a child in secure accommodation shall satisfy themselves as to whether or not–

- (a) the criteria for keeping the child in secure accommodation continue to apply;
- (b) the placement in such accommodation in a community home continues to be necessary; and
- (c) any other description of accommodation would be appropriate for him,

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 15 the person appointed shall, if practicable, ascertain and take into account the wishes and feelings of–

- (a) the child,
- (b) any parent of his,
- (c) any person not being a parent of his but who has parental responsibility for him,
- (d) any other person who has had the care of the child, whose views the persons appointed consider should be taken into account,
- (e) the child's independent visitor if one has been appointed, and
- (f) the local authority managing the secure accommodation in which the child is placed if that authority are not the authority who are looking after the child.

(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 and the reasons for such outcome.

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

17. 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 of–

- (a) the name, date of birth and sex of that child,
- (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,
- (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 the placement,
- (d) all those informed by virtue of regulation 9, 14 or 16(3) in their application to the child,
- (e) court orders made in respect of the child by virtue of section 25 of the Act,
- (f) reviews undertaken in respect of the child by virtue of regulation 15,

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- (g) 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
- (h) the date and time of his discharge and his address following discharge from secure accommodation

and the Secretary of State may require copies of these records to be sent to him at any time.

Voluntary homes and registered children's homes not to be used for restricting liberty

18. –

(1) The use of accommodation for the purpose of restricting the liberty of children in voluntary homes and registered children's homes is prohibited.

(2) The contravention of, or failure to comply with the provisions of paragraph (1), without reasonable excuse, shall be an offence against these Regulations(9).

Revocation of Secure Accommodation (No. 2) Regulations 1983 and the Amendment Regulations

19. The Secure Accommodation (No. 2) Regulations 1983(10) and the Secure Accommodation (No. 2) (Amendment) Regulations 1986(11) are hereby revoked.

Signed by authority of the Secretary of State for Health.

Virginia Bottomley
Minister of State,
Department of Health

30th June 1991

(9) A person who is guilty of an offence against these Regulations is liable to a fine not exceeding level 4 on the standard scale (paragraph 7(4) of Schedule 5 and paragraph 10(4) of Schedule 6 to the Act).

(10) S.I.1983/1808.

(11) S.I. 1986/1591.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace the Secure Accommodation (No. 2) Regulations 1983 and the Secure Accommodation (No. 2) (Amendment) Regulations 1986 in consequence of the bringing into force of section 25 of the Children Act 1989 and the repeal of section 21A of the Child Care Act 1980 (c. 5) which it replaces. The main changes include the extension of the secure accommodation provisions to children accommodated by health or local education authorities or National Health Service trusts or in residential care, nursing or mental nursing homes. The Regulations also prohibit for the first time the use of voluntary homes and registered children's homes for restricting the liberty of children.

The Regulations provide for approval by the Secretary of State of secure accommodation in community homes (regulation 3); the placement of a child aged under 13 in secure accommodation in community homes (regulation 4); the children to whom section 25 of the Act shall not apply (regulation 5); the modifications subject to which section 25 of the Act shall have effect in relation to detained and remanded children (regulation 6); certain children accommodated by health authorities, National Health Service trusts or local education authorities and in residential care, nursing or mental nursing homes to whom the Act shall apply and have effect subject to modifications (regulation 7); the making of applications to court (regulation 8); the duty to give information of placements in community homes (regulation 9); provision as to the maximum period in accommodation for restricting liberty without court authority (regulation 10); the maximum initial period of authorisation by any court (regulation 11); further periods of authorisation by a court (regulation 12); the maximum periods of authorisation by a court for remanded children (regulation 13); the duty to inform parents and others in relation to children in secure accommodation in a community home (regulation 14); the appointment of persons to review placements in secure accommodation in a community home (regulation 15); the review of placements in secure accommodation in a community home (regulation 16); the records to be kept in respect of a child in secure accommodation in a community home (regulation 17); the prohibition of the use of accommodation for restricting liberty in voluntary homes and registered children's homes and breach thereof (regulation 18); and the revocation of the Secure Accommodation (No. 2) Regulations 1983 and the amendment regulations (regulation 19).