



Department
for Education

Consultation

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Placing Children on Remand in Secure Accommodation: Consultation on Changes to the Children (Secure Accommodation) Regulations 1991

This consultation seeks views on proposals to make substantial amendments to Regulation 6 of the Children (Secure Accommodation) Regulations 1991 relating to the circumstances in which a local authority can place a child in secure accommodation where that child has been detained by the police under the Police and Criminal Evidence Act 1984 (PACE) or is remanded in custody (refused bail) in the course of criminal or extradition proceedings.

Placing Children on Remand in Secure Accommodation: Consultation on Changes to the Children (Secure Accommodation) Regulations 1991

A Consultation

- To** Children's homes providers or registered managers, police or law enforcement agency, local authorities, youth offending teams, local children's safeguarding boards, voluntary organisations, other government departments
- Issued** 19 November 2012
- Enquiries To** If your enquiry is related to the policy content of the consultation, you can contact the Department's national enquiry line on 0370 000 2288 or email SarChanges.CONCONSULTATION@education.gsi.gov.uk

Contact Details

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If you have a query relating to the consultation process you can contact the CYPFD Team by telephone: 0370 000 2288 or via the Department's ['Contact Us'](#) page.

- 1 Executive summary
 - 1.1 This consultation is on proposals to amend regulations concerning local authority responsibilities for placing 10-17 year olds who are involved with the youth justice system or who are subject to extradition proceedings. Where children aged 12-17 are concerned, the proposals are intended to align the requirements of the Children (Secure Accommodation) Regulations 1991 with the new integrated, more rigorous, remand framework for children that will be introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPOA).
 - 1.2 Given that it is necessary to revise Regulation 6 for 12-17 year olds, it has been necessary to review how this Regulation should apply to 10-11 year old children involved with criminal proceedings. The aim is to bring the approach to placing these very young children on remand in secure accommodation into line with the overall approach to placing

older children, so that this is consistent with the new rigorous approach limiting the use of detention that will be introduced by LASPOA. We are consulting on proposals to revoke Regulation 6 for this group so that, in future, grounds for their detention by local authorities should be aligned with the welfare requirements for the use of secure accommodation that are set out in Section 25 of the Children Act 1989.

- 1.3 These proposals for amendments to the Children (Secure Accommodation) Regulations 1991 only relate to England.

2 Background and context

- 2.1 The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPOA), received royal assent on 1 May 2012 and creates a new framework for remanding children charged with or convicted of a criminal offence or subject to extradition proceedings.
- 2.2 The new remand framework for young people introduced by LASPOA simplifies current arrangements for remand by removing complexities of age and gender that are built into the current remand framework and by introducing a consistent approach for all under 18s who are remanded. In future, as result of LASPOA, local authorities will be required to "look after" all children who are refused bail and are remanded either to local authority accommodation or to youth detention accommodation. This new framework will allow more flexibility in deciding where remanded young people are placed, based on their needs and any risk factors.
- 2.3 The Act introduces a strong steer away from using custody for remanded children and higher threshold criteria for determining which 12-17 year olds require remand in youth detention accommodation.
- 2.4 Section 25 of the Children Act 1989 enables local authorities to apply to a family court to place a looked after child in secure accommodation where it appears 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 that
 - (b) if he is kept in any other description of accommodation he is likely to injure himself or other persons.

These provisions are known as the 'welfare test'.

- 2.5 However Regulation 6(2) of the Children (Secure Accommodation) Regulations 1991 prescribes a 'modified test' that is applied to two

specified categories of children namely:

- 10-16 year old children who are detained by the police under section 38(6) of PACE; and
- 10 -17 year old children who have been remanded to local authority accommodation and who have either (i) been charged with or convicted of a violent or sexual offence or an offence punishable in the case of an adult with imprisonment for 14 years or more or (ii) have a recent history of absconding while remanded to local authority accommodation and are charged with or convicted of an imprisonable offence alleged or found to have been committed while he was so remanded.

2.6 A court makes an order empowering a local authority to detain such a child in the above categories in secure accommodation where it appears that:

(a) the child is likely to abscond from other accommodation; **or**

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

2.7 In considering whether or not to detain the child under this 'modified test', the court has only to satisfy itself that there is a "likelihood of (the child) absconding", rather than taking into account all the issues specified by the 'welfare test'. This might lead to circumstances in which some children might be placed in secure accommodation on less stringent grounds than those required to securely place other children who would be subject to the general welfare test.

3 (a) Detention of children on remand

3.1 LASPOA aims to reduce the use of secure remand for children and introduces two new sets of conditions which, taken together, form a higher threshold to remand to youth detention accommodation. Seventeen year olds, who were previously excluded from youth remand provisions will now be treated in the same way as all other under 18s.

3.2 Under the LASPOA, courts can only remand a child to youth detention accommodation if one of two stringent sets of conditions described in sections 98 or 99 are met.

Under section 98, a child must meet:

- the age condition, i.e. that they are aged at least 12;
- the offence condition i.e. that they have been charged with a

violent or sexual offence or one that if committed by an adult is punishable with imprisonment of 14 years or more;

- the necessity condition i.e. that the court is of the opinion that after considering all the options for remanding the child, including remand in local authority (non-secure) accommodation, only remanding the child in youth detention accommodation would be adequate for the protection of the public from death or serious personal injury occasioned by further offences committed by that child or to prevent the commission by the child of imprisonable offences; and
- the legal representation condition i.e. the child must be legally represented or not represented for specified reasons that are set out in section 98 (6) (a) (b) or (c).

3.3 Section 99 of LASPOA sets out a second set of conditions that the court might apply in order to determine whether a child should be remanded to youth detention accommodation. These focus on the child's history of behaviour whilst on remand. The first "history condition" under which a child may be remanded is if:

(a) the child has a recent history of absconding while subject to a custodial remand, and

(b) the offence(s) is alleged to be, or has been found to have been, committed whilst the child was remanded to local authority accommodation or youth detention accommodation.

3.4 The second history condition is that the offence or offences, together with any other imprisonable offences of which the child has been convicted in any proceedings, amount - or would, if the child were convicted of that offence or those offences, amount - to a recent history of committing imprisonable offences while on bail or subject to a custodial remand.

3.5 The necessity condition, the realistic prospect of custody test and the legal representation condition outlined above must also apply in addition to these "history conditions".

3.6 Sections 98 and 99 of LASPOA, therefore, incorporate a detailed set of threshold criteria that need to be fulfilled before it is possible to remand a child aged 12-17 in youth detention accommodation.

3.7 Regulation 6 needs to be reviewed for a number of reasons. Firstly, to ensure that this Regulation is aligned with the rigorous approach to secure remand developed by LASPOA as outlined above. Secondly, if the existing regulation 6 provisions were retained alongside the LASPOA tests this would have the potential to undermine the original

intention of LASPOA and its strong steer away from remanding children in secure accommodation. **The proposal is therefore to revoke the modified test in Regulation 6 of the Children (Secure Accommodation) Regulations 1991 (described at paragraph 2.5 above) for children aged 12-17 who have been remanded to local authority accommodation and who have been charged with or convicted of offences.**

3.8 Implications for 10-11 year olds

Views are also invited on how revisions to Regulation 6 might apply to 10-11 year olds involved in criminal proceedings. The modified test in Regulation 6(2) for local authority placement of children in secure accommodation applies to 10-11 year olds who have been remanded to local authority accommodation and charged with or convicted of the offences; or who have been detained in a police station under PACE. We are aiming to steer firmly away from using secure accommodation for this group of young children, except where this is necessary to prevent injury or significant harm to themselves or to others.

3.9 There could be a number of circumstances in which the use of secure accommodation for a 10-11 year old child charged with an offence would be a proportionate, appropriate, option. However, given the gravity of the decision to place such a young child in secure accommodation, our view is that any such decision should be restricted to those instances where there is genuinely no other appropriate alternative and where the child or the public would be 'at risk' if the child was not placed in secure accommodation.

3.10 For such young children, therefore, the full 'welfare' test as set out in Section 25 (and described at paragraph 2.4 above) is likely to be more appropriate than the 'modified test' under Regulation 6. There is no clear justification for retaining this test's lower threshold for detaining 10-11 year olds in secure accommodation, when the tests for detaining their older peers will be the stringent ones established by the LASPOA. Comments are invited on this issue. It is our analysis that the full welfare test is likely to be sufficient to allow local authorities to make secure accommodation placements for children involved with the youth justice system where the authority assesses that this is the most appropriate option - either because the child is at risk of injuring themselves or others; or because of the particular vulnerabilities of 10-11 year olds who are likely to abscond.

3.11 **For this reason, the proposal is that the 'modified test' in Regulation 6(2) of the Children (Secure Accommodation) Regulations 1991 should be revoked in relation to 10-11 year olds who are detained under section 38(6) of PACE; or who fall within the categories specified in regulation 6(1)(b) of the Regulations**

[as detailed at paragraph 2.5 above].

Consultation questions - Detention of children on remand

Question 1: Do you agree that the modified test [in Regulation 6(2) of the Children (Secure Accommodation) Regulations 1991] should be revoked for children aged 12-17 who have been remanded by the courts to Local Authority Accommodation?

If you disagree can you please give your reasons?

Question 2: Do you agree with the proposal at paragraph 3.11 to revoke the 'modified test' in Regulation 6 of the Children (Secure Accommodation) Regulations for 10-11 year olds who have been remanded by the courts to local authority accommodation?

Question 3: Do you agree that the application of the welfare test (described at paragraph 2.4) is sufficient to allow these children to be placed in secure accommodation in appropriate circumstances?

If you disagree can you please give your reasons?

- 4 (b) Detention under the Police and Criminal Evidence Act 1984 (PACE)
- 4.1 Under section 38(6) of PACE, the police must move a child aged 12-16 they have detained to local authority accommodation unless this is impracticable, or if there is no secure accommodation available and the alternatives would "be inadequate to protect the public from serious harm.¹ Where no secure accommodation is available, and the serious harm test is met, the child can be kept in police cells.
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- 1 - The definition of serious harm is "protection of members of the public from death or serious personal injury whether physical or psychological"
- 4.2 Where a local authority is asked by the police to place such a child into secure accommodation, and where such accommodation is available, they in turn have to consider whether the criteria laid down in the modified test would apply. **Given the relatively short duration of detention under PACE, this test seems sufficient and the proposal is to retain the current modified test as the test that the local authority must apply in considering whether they should securely detain a 12-16 year old transferred to local authority care under PACE.**
- 4.3 Retaining the 'modified test' for the 12-16 year old cohort of young

people detained under PACE, however, draws into question how Regulation 6 should apply in respect of 10-11 year olds.

- 4.4 Under PACE, if 10-11 year olds charged with any offences do not receive bail before their court appearance the police must transfer them to the care of the local authority unless this is 'impracticable' (for example, because of extreme weather conditions).

We propose that the modified test in Regulation 6 should be revoked for this young group of children. In future, the test for detaining 10-11 year olds in these circumstances should solely be the 'welfare test'[described above at 2.4].

- 4.5 Removing the lower threshold for remand for 10-11 year olds set out in Regulation 6 is consistent with the overall policy that recognises the gravity of detaining very young children and limits detention to cases where there is genuinely no other appropriate alternative².

2 - See for example: Children Act Guidance (volume 5) - Children's Homes: 4.7

- 4.6 We have considered whether there are circumstances when application of the full welfare test would prevent a local authority from appropriately detaining a young child transferred to their care from the police under PACE but have concluded that the full test would in fact enable any 10-11 year old to be detained in secure accommodation where this was the most suitable option. In our view, this group of young children should only be placed in secure accommodation when they meet the full test set out in section 25 (either because they are at risk to themselves or others or because of the particular vulnerabilities of 10-11 year olds who are likely to abscond).
- 4.7 It is the case that many 10-11 year old children refused bail after being charged are not currently placed in LA accommodation under PACE, but remain in police custody pending appearance at court. This is perhaps due to a lack of confidence by the police that the local authority will have sufficiently robust approaches to supervising the child to ensure that they do not abscond or reoffend prior to their court appearance which may in turn influence the police decision as to whether a transfer is 'impracticable' even though PACE Code C (Detention) makes it clear that 'impracticality' concerns only transport and travel requirements. The Code also points out that a lack of secure accommodation does not determine whether transfer would be impractical and that the availability of secure accommodation is only a factor in relation to 12 to 16 year olds. It is possible that dispensing with the 'modified test' for 10-11 year olds could make the police feel more reluctant about transferring young children in their custody to local authority accommodation. We would not want to create any

barriers that might prevent the transfer of very young children from police custody to local authority care whenever this is practicable and we would welcome evidence on the practical implications of what is proposed above at paragraph 4.4.

Consultation questions - Detention under the Police and Criminal Evidence Act (PACE)

Question 4: In line with the analysis in paragraph 4.2, do you agree with the proposal that the modified test in Regulation 6 of the Children (Secure Accommodation) Regulations 1991 should be retained as the test that the local authority must apply in considering whether to securely detain 12-16 year olds transferred to local authority care under section 38(6) of PACE?

If you disagree can you please give your reasons?

Question 5: In line with the analysis at paragraph 4.6, do you agree that the 'modified test' in Regulation 6(2) should be revoked in favour of the 'welfare test' contained in section 25 of the Children Act 1989 for children age 10 to 11 who should be transferred from police detention to local authority care under PACE?

If you disagree can you please give your reasons - e.g. is there a possibility that dispensing with the 'modified test' currently in Regulation 6 might lead to 10-11 year olds being detained in police custody who might otherwise have been transferred to the care of the local authority?

5 How To Respond

- 5.1 You can respond to the consultation by completing the response form and emailing it to SarChanges.CONULTATION@education.gsi.gov.uk or sending it by post to:

FAO Mark Burrows, Department for Education, Sanctuary Buildings, Great Smith Street, Westminster, London, SW1P 3BT

6 Additional Copies

- 6.1 Additional copies are available electronically and can be downloaded from the Department for Education e-consultation website at: <http://www.education.gov.uk/consultations>

7 Plans for making results public

7.1 The results of the consultation and the Department's response will be published on the DfE e-consultation website early in the new year.