

Social Services and Well-being (Wales) Act 2014



Llywodraeth Cymru
Welsh Government

Part 6 Code of Practice (Looked After and Accommodated Children)
Revision of Chapter 7: Secure Accommodation (draft for consultation)



7. Secure Accommodation

Children accommodated in secure children's homes

707. Secure children's homes have an important role to play amongst the range of residential services and facilities provided by local authorities, and can sometimes be the most appropriate or the only way of responding to a child's needs. While the decision to place a child in secure accommodation must never be taken lightly, a secure placement can be a positive intervention for the child.

708. Restricting the liberty of a child is a serious step which should only be taken where it is necessary and where other alternatives have been considered. The decision to place a child in a secure children's home must be made on the basis that it is the best option to meet the particular needs of the child, and the placement should be part of the local authority's overall plan for the child's welfare. Secure placements, once made, should only continue for as long as they remain appropriate to meet the needs of the child.

709. A looked after child may be placed in a secure children's home by a local authority only on certain specified grounds and (subject to a maximum 72 hour period pre-application) only after obtaining a secure accommodation order from the courts. Where the child is less than 13 years of age, approval is also required from the Welsh Ministers. These placements are made under section 119 of the Act if placing the child in Wales, or under section 25 of the Children Act 1989 if placing the child in England or (exceptionally) in Scotland. These are usually known as 'welfare placements', to distinguish them from placements made through the youth justice system.

710. Children and young people may be placed in secure children's homes by the youth justice system if they are subject to a Detention Training Order under the Crime and Disorder Act 1998, or if they receive a custodial sentence under The Powers of the Criminal Courts (Sentencing) Act 2000, sections 90-92. Children who are refused bail by the court and are remanded to secure children's homes must be treated by local authorities as looked after children (see section 104 of the Legal Aid Sentencing and Punishment of Offenders Act 2012).

711. The key principles underpinning section 119 of the Act and The Children (Secure Accommodation) (Wales) Regulations 2015 are set out in Article 37(b) of the United Nations Convention on the Rights of the Child, which states that:

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

712. This chapter should be read in conjunction with the code of practice on Part 11 of the Act, which covers the provision of care and support for those children and young people who have been convicted of an offence and who are serving their sentence within the secure estate.

Secure placements

713. A looked after child can only be placed or kept in secure accommodation if it appears either that:

- the child has a history of absconding and is likely to abscond from any other description of accommodation, and is likely to suffer significant harm if they do; or
- the child is likely to injure him/herself or other people if kept in any other description of accommodation.

714. It is unlawful to restrict the liberty of a child in a secure children's home unless one of the above criteria is met, no matter how short the period of restriction. 72 hours is the maximum period that a looked after child can be kept in secure accommodation without the authority of the court. In these circumstances a local authority must clearly record the reasons why it believes the grounds for placement in secure accommodation are met, the purpose of the placement, and the reasons why it considers that the placement is necessary. A copy of this record must be provided to the child and other relevant persons.

715. Only accommodation in a children's home which has been registered for use as secure accommodation by the Welsh Ministers shall be used for placements for looked after children under section 119 of the Act. If the placement is in England the setting must be one which is registered as a secure children's home, and in Scotland a setting in relation to which the provider is registered for a secure accommodation service.

716. The framework governing such placements has been put in place to meet the following objectives:

- to protect children and young people from unnecessary and inappropriate placement in secure children's homes
- to ensure that administrative decisions taken by local authorities or other agencies are scrutinised and endorsed by the court

- to ensure that any placements are only for so long as is necessary and appropriate.

717. Decisions to place a child in secure accommodation should always be authorised by a nominated senior manager of the local authority's children's services department.

718. When an application is made to the court for a secure accommodation order, it is the responsibility of that court to safeguard the rights of the child by satisfying itself that the criteria for keeping a child in secure accommodation are met. The court is required to make an order for the duration as it considers appropriate up to the maximum prescribed by the regulations (see regulations 6 and 7 of the Children (Secure Accommodation) (Wales) Regulations 2015). If, after making an order for secure accommodation, the criteria for keeping the child in secure accommodation cease to apply, then the local authority must plan and implement a change of placement to an open setting as soon as possible following a statutory review of their care plan.

Placements of children under age 13

719. Local authorities must obtain the approval of the Welsh Ministers before placing a child under the age of 13 in a secure children's home. The Welsh Ministers may make the approval subject to such terms and conditions as they see fit. Approval is not required for the placement of children and young people aged 13 and over, but local authorities must still also obtain the necessary court orders. Without ministerial approval the local authority will not be able to go to court to seek a secure accommodation order. If the child is still under the age of 13 when the period of approval ends, and the local authority wishes to extend the placement, the local authority must seek further approval from the Welsh Ministers.

720. The process for seeking approval from the Welsh Ministers is set out below:

Step 1: Contact the Welsh Government

Calls should be made before 5pm, and preferably as early in the day as possible. Early notification of a possible application is helpful, even if a final placement decision has not yet been made. If a local authority needs to make an emergency placement after 5pm they should phone the Welsh Government out of hours number.

Step 2: Provide initial details by telephone

The local authority will be asked to provide:

- the name and date of birth of the child concerned

- a verbal summary of the reasons for the secure placement
- confirmation of whether a bed in a secure children's home has been identified and is available
- confirmation of whether the child is currently with the local authority or missing from care (having absconded)
- details of when the local authority is intending to go to court to seek a secure order
- details of what alternatives to a placement in a secure children's home have been considered and why these were rejected.

Step 3: Submit written paperwork by e-mail

The local authority will be asked to provide:

- a full written history/chronology of the child
- a contemporary care plan that covers the period of the secure placement, including the aims and objectives of the placement and (where possible) the exit strategy from secure accommodation
- agreement in writing at Assistant Director / Head of Service level or above, seeking the approval of the Welsh Ministers.

If the authority is seeking a secure placement out of hours it may not be possible to submit the relevant paperwork. Greater detail will be taken during the initial telephone discussion and the local authority's representative will be required to provide verbal assurance that the Assistant Director or above has agreed to the secure placement.

Step 4: Consideration of the application

The Welsh Government official will discuss the information provided with the Care and Social Services Inspectorate Wales (CSSIW). It is possible that a representative of CSSIW will contact the authority to discuss the case further.

Step 5: Notification of the decision

Where an application is approved, a letter and certificate will be issued to the local authority on the same day via email. The signed, hard copy of the documents will be posted to the Assistant Director or equivalent that supported the application on behalf of the local authority.

Where applications are made out of hours, the approval letter and certificate will not be issued until the next working day. Verbal agreement will be given over the telephone.

Maximum period in secure accommodation without court authority

721. The Children (Secure Accommodation) (Wales) Regulations 2015 place a limit on the maximum period that a child placed under section 119 may be kept in

secure accommodation without the authority of the court. Regulations made under section 25 of the Children Act 1989¹ establish the same limit for a placement in England. This maximum period is 72 hours, either consecutively or in aggregate, in any period of 28 consecutive days.

722. The 72 hour maximum period should allow sufficient time for the local authority to prepare an application, have it lodged with the court and then served on all those who are entitled to service so as to proceed with an effective hearing. It is important to note that the 72 hour period is set to allow adequate time to ensure that all the steps are in place for a court to be able to fairly consider the merits of the application. It allows all the parties involved, including the child, their parents and independent visitors (where appropriate), to be notified about the intention to seek an order authorising placement in secure accommodation, to seek legal advice and representation. In particular, it gives the child, their parents and legal representatives sufficient time to understand the case being put by the local authority and to prepare their own case, so as to be in a position to challenge any evidence upon which the local authority relies.

723. It should also be stressed that 72 hours is the maximum period, and that local authorities should always make applications to the courts at the earliest possible time, and request hearings before the court at the earliest time available, which also affords those representing the child and the child's parents adequate time to consider the reasons for the local authority's application and the grounds on which it is based.

724. There are special provisions where the 72 hour period expires late on a Saturday or Sunday, or on a public holiday. These are that, 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
- the child had, in the 27 days before the day on which the latest placement in secure accommodation began, already been placed in secure accommodation for an aggregate of more than 48 hours, and
- during that time the maximum period of 72 hours would otherwise expire

then the maximum period is extended until 12 midday on the first day which is not a public holiday or a Sunday.

725. This limited extension of the 72 hour rule is intended to cater for emergencies only. Local authorities must do everything possible to bring forward applications in those cases where the 72 hour period would expire on a day when courts do not normally sit.

¹ The Children (Secure Accommodation) Regulations 1991

726. Where a court has authorised a child to be kept in secure accommodation, any time during which that child was kept in such accommodation before the court's authorisation was given shall be disregarded for the purposes of calculating the maximum period of any subsequent occasion in which the child is placed in such accommodation after the period authorised by the court has expired. The practical effect of this regulation is that the 28 day period will restart on the expiry of any court order. This is intended to meet the case of a child who may need to be readmitted to secure accommodation as an emergency, and where:

- during the previous 28 days the child has had his liberty restricted for up to 72 hours, and
- a court has authorised such a placement for a period of less than 28 days.

Applications to court

727. For looked after children, applications to court under section 119 of the Act may only be made by the local authority which is looking after the child. This includes local authorities in England who decide to place a looked after child in secure accommodation in Wales.

728. Where the intention is to place a child in a children's home providing secure accommodation in England or in Scotland, the application will need to be made to the court under section 25 of the Children Act 1989. Courts in Wales can hear applications under section 119 of the Act or section 25 of the Children Act 1989.

729. Where a local authority intends to make an application to a court, it must, as far as is reasonably practicable, notify as soon as possible:

- the child's parent or any person with parental responsibility
- the child's independent visitor
- any other person the local authority considers should be informed.

730. This applies both to court applications after the first 72 hour period and to renewed applications to keep a child in secure accommodation beyond the initial period authorised by a court.

731. A local authority must take care to prepare children adequately for the court hearing, bearing in mind the age and understanding of the child. The child's entitlement to funding for legal proceedings should be carefully explained to the child and the child's parents. Staff may require some guidance on the preparation of reports and on the need to ensure that the court is provided with precise evidence of the way in which it is considered that the child meets the statutory criteria for placing or keeping them in secure accommodation.

732. Under section 119(6) of the Act, a court is unable to exercise its powers to authorise a period of secure accommodation under section 119 if the child is not legally represented in court unless the child, having been informed of his right to apply for representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service and having had an opportunity to do so, has refused or failed to apply. The same requirement applies to applications to place a child in secure accommodation in England (or Scotland) made under s.25 of the Children Act 1989. Children should be encouraged to appoint a legal representative in such proceedings, and be given every assistance to make such arrangements. The provision about funding for such proceedings is contained in 'The Funding Code' made under the Access to Justice Act 1999. The Funding Code is the set of rules used to determine which cases will be funded through civil legal aid.

733. Proceedings under section 119 of the Act, like proceedings under section 25 of the Children Act 1989, are specified proceedings for the purposes of section 41 (6) of the Children Act 1989. The court is therefore required to appoint an officer of the service (a CAFCASS Cymru officer, known as a Children's Guardian) for the child unless it is of the opinion that it is unnecessary to do so in order to safeguard the child's interests. The officer shall be appointed according to the rules of the court and is under a duty to safeguard the interests of the child in the manner prescribed in the rules. The officer will appoint a solicitor for the child. This is an important provision designed to ensure that the well-being of the child being provided with secure accommodation is protected adequately.

Duration of secure accommodation orders

734. The maximum initial period a court may authorise a looked after child to be kept in secure accommodation is three months. This applies to section 119 and section 25 placements.

735. Where the local authority looking after the child (or other authority or person as appropriate) believes the child's placement in secure accommodation should continue beyond the period specified in the initial court order, a further application must be made to the court. The Children (Secure Accommodation) (Wales) Regulations 2015 enable a court to authorise a child to be kept in secure accommodation for a further period of up to six months at any one time. Again this limit applies to applications both under section 119 and section 25.

736. The maximum period for which a court may authorise a child who has been remanded to local authority accommodation under section 91(3) of the Legal Aid,

Sentencing and Punishment of Offenders Act 2012 to be kept in secure accommodation is the period of the remand. This applies whether the period is the initial remand period or a further period.

737. Where 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 (section 119(5) of the Act and section 25(5) of the Children Act 1989). If the court adjourns consideration of an application and does not make an interim order, the child may not be placed in secure accommodation during the period of the adjournment unless their circumstances subsequently change, when the normal procedures will apply.

Duty to give information of placement

738. When a child is placed in a secure children's home which is provided by a person other than the local authority which is looking after the child, the registered person in the children's home must inform the child's own local authority of the placement within 12 hours of the placement beginning. The registered person will usually be the registered manager or registered provider of the children's home.

739. The local authority looking after the child must then confirm to the registered person:

- its authorisation for the child to be held in secure accommodation
- the period of authorisation, and
- details of any order made by a court authorising the placement.

740. Notifications should preferably be made by telephone as soon as possible after the placement begins, and it is essential that secure accommodation providers are aware of how to contact local authorities out of normal office hours (for example, weekends and public holidays). Where notification is made by email, then the provider must make sure that they receive acknowledgement of this from a senior representative of the local authority within 12 hours.

Review of placements

741. The Children (Secure Accommodation) (Wales) Regulations 2015 require each local authority which decides to place a child in secure accommodation to appoint at least three people to review the decision within one month of the start of the placement. At least one of these should be neither a member nor an officer of the local authority. Further reviews must take place at monthly intervals while the placement continues.

742. It should be noted that the responsibility for undertaking the reviews rests solely with the local authority looking after the child and not with the local authority managing the secure children's home, where different.

743. The Regulations require the appointed persons to consider:

- whether the criteria for keeping the child in secure accommodation continue to apply
- whether the placement in the secure children's home continues to be necessary, or
- whether any other description of accommodation would better meet the child's needs.

744. In doing so they must have regard to the welfare of the child whose case is being reviewed.

745. In undertaking these reviews, the appointed persons must, as far as is reasonably practicable, ascertain and take into account the wishes and feelings of:

- the child
- any parent of the child
- any other person who has parental responsibility for the child
- any other person who has had the care of the child, whose views the appointed persons consider should be taken into account
- the child's independent visitor where one has been appointed
- the person, organisation or local authority managing the secure accommodation in which the child is placed, if not managed by the local authority looking after the child.

746. The appointed persons must make a recommendation to the local authority as to whether the placement of the child in secure accommodation should continue. It should be noted that the purpose of these reviews is limited to reviewing the issue of whether or not the conditions for detaining the child in secure accommodation still apply, and whether in the appointed persons' opinion any other description of accommodation would better meet the child's needs. The secure accommodation review is not a substitute for, and does not replace, the statutory review of the child's overall care plan, which must be chaired by the child's Independent Reviewing Officer.

747. If the review panel concludes that the criteria for restricting the child's liberty no longer applies, or that the placement is no longer necessary or another type of placement would be appropriate, then the local authority must convene a statutory review of the child's care plan, chaired by their Independent Reviewing Officer, to

consider developing alternative options for the child and plan any move to an alternative placement.

748. All the parties whose views were taken into account should be informed, so far as is reasonably practicable, of the outcome of the secure accommodation review, the reasons for the outcome and what actions, if any, the local authority proposes to take in the light of the review and the recommendation.

749. Whatever the reason for the placement in secure accommodation, and however long its duration, the local authority must put in place clear plans for when the child leaves secure accommodation, to ensure continuity of care and of education and, where necessary of, any specialist intervention or support when the child leaves the home.

Records

750. The Children (Secure Accommodation) (Wales) Regulations require each person, organisation or local authority responsible for the management of the secure children's home in Wales to keep records which include:

- the name, date of birth and sex of the child
- details of the care order or other statutory provision under which the child is placed in the home
- details of the local authority involved with the placement of the child, and the name of the authorising officer
- the date and time of the start of the placement
- the reason for the placement
- where the child was living before the placement
- the names and relevant details of persons informed under Regulations
- details of any court orders made in respect of the child under section 119 of the Act
- reviews undertaken under regulation 9
- the date and time of any periods when the child is locked in their own in any room other than their bedroom during usual bedtime hours, the name of the person authorising this action, the reason for it and the date and time on which the child ceases to be locked in that room
- details of any occasions when the child has been restrained, including the date and time, a brief description of the technique used, the reason for it and the name of the persons authorising and undertaking this action
- the date and time of the child's discharge and their address following discharge from the secure accommodation.

751. The Welsh Ministers may require copies of these records to be sent to them at any time.

Appeals

752. Section 94 of the Children Act 1989 makes provision for appeals to the Court against decisions to authorise, or refusal to authorise, applications for secure accommodation. Where such an appeal is against an authorisation, a child's placement in secure accommodation may continue during consideration of the appeal. Where a court has refused to authorise a placement in secure accommodation, and the local authority looking after the child, or other authority or appropriate person is appealing against that decision, the child must not be detained or placed in secure accommodation during consideration of the appeal.

Children to whom section 119 does not apply

753. The Children (Secure Accommodation) (Wales) Regulations 2015 specify that section 119 does not apply to a child:

- who is detained under any provision of the Mental Health Act 1983 or in respect of whom an order has been made under section 90 or 91 of the Powers of the Criminal Courts (Sentencing) Act 2000 (detention at Her Majesty's pleasure or for a specified period)
- who is the subject of a Child Assessment Order made under section 43 of the Children Act 1989, and who is kept away from home as a result of that order
- who is remanded to youth detention accommodation and is treated as looked after by virtue of section 104(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Children detained under the Police and Criminal Evidence Act 1984

754. The criteria for placing a child in secure accommodation under section 119 of the Act is modified in respect of children aged 12 to 17 who are looked after by a local authority and who are being detained under section 38(6) of the Police and Criminal Evidence Act 1984. This modification means that a child to whom this applies may not be placed or kept in secure accommodation unless it appears any accommodation other than secure accommodation is inappropriate because:

- the child is likely to abscond from such other accommodation, or
- the child is likely to injure themselves or other people if kept in any such other accommodation.

Children to whom section 119 applies subject to modifications

755. The Children (Secure Accommodation) (Wales) Regulations 2015 specify other categories of children to whom section 119 applies, in addition to children who are looked after by a Welsh or English local authority. The effect of this regulation is that the criteria set out in section 119 (1)(a) and (b) must be satisfied in the case of these categories of children also. In other words, the regulation extends to these children the same safeguards as for other children covered by section 119, so that no child is placed in accommodation in Wales for the purpose of restricting their liberty without the appropriate safeguards being in place.

756. These other categories are children (other than those looked after by a Welsh or English local authority) who are accommodated in Wales:

- by the following health bodies: Local Health Boards, NHS Trusts
- by local authorities in the exercise of their education functions, or
- who are accommodated in care homes or independent hospitals.

757. Applications to the court for a secure accommodation order in respect of these children must be made by the health body arranging the accommodation, the local authority in the exercise of its education functions. In the case of a child accommodated in a care home or independent hospital, applications to the court will be made by the body which provides the establishment in question.