

RRC

Secure Accommodation Review Good Practice Guidelines

(Local Authorities & Independent Persons)

July 2017

Introduction

These guidelines are aimed primarily at Independent Persons involved in secure accommodation reviews. They refer to young people held in secure accommodation for welfare reasons under Section 25 of the Children Act 1989.

The aim of the guidelines is to support best practice in reviewing secure placements, ensuring young people's rights are maintained and enabling their needs to be met.

The guidelines summarise the legal framework for secure accommodation review. They outline the roles of the Independent Person and the Chair of the Panel. They summarise good practice on reviews, including ensuring that young people and families are involved as fully as possible and that the young person has an opportunity to have their voice heard in the decision-making process.

Sources for the guidelines include input from care experienced young people and experienced independent persons, published statistics, research and reports (see Bibliography.)

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1. The legal framework

Key Legislation and Guidance

[Children Act 1989](#)

[Children \(Secure Accommodation\) Regulations 1991 \(as amended\)¹](#)

[Statutory guidance on court orders and pre-proceedings 2014](#)

[The Children's Homes \(England\) Regulations 2015](#)

[Guide to Children's Homes Regulations and Quality Standards 2015](#)

[IRO Handbook 2010](#)

[Social Service and Well-being \(Wales\) Act 2014](#)

[Children \(Secure Accommodation\) \(Wales\) Regulations 2015](#)

[The Children and Social Work Act 2017](#)

Summary of key legal points

Secure Accommodation Order

Section 25 Children Act 1989:

A court order which restricts the liberty of a child who:

- has a history of absconding and is likely to abscond from any other description of accommodation; **and**
 - if s/he absconds is likely to suffer significant harm
- or**
- if kept in any other description of accommodation, is likely to injure him/herself or other persons.

It is unlawful to restrict the liberty of a child in a secure children's home unless one of the criteria in Section 25(1) is met, no matter how short the period of restriction. (Para. 1.9, Annex B, *Guide to the Children's Homes Regulations including the Quality Standards 2015.*)

Para 1.6, Annex B of the 2015 Guide states: Restricting the liberty of children is a serious step which should only be taken where it is necessary and where other alternatives have been considered. This does not mean that all other alternatives must have been tried.

¹ The amendment refers to use of secure accommodation for young people on remand.

Age and Care Status

Children (Secure Accommodation Regulations) 1991, Reg. 4:

A child under the age of 13 must not be placed in secure accommodation in a children's home without the prior approval of the Secretary of State.

Children (Secure Accommodation Regulations) 1991, Reg. 5:

A secure accommodation order cannot be made in relation to a child over 16 who has been accommodated under section 20(5) of the Act; or in relation to a child detained under any provision of the Mental Health Act 1983.

However a child over the age of 16 *who is subject to a care order* can be made subject to a secure accommodation order under section 25: see *Hershman & McFarlane, Children Law and Practice, Vol 2, paras F [398]-[399]*.

Young people aged seventeen

The court has made an order with regard to a 17 year old (who was accommodated) under the court's inherent jurisdiction given the extraordinary circumstances of that case. See *Re B (Secure Accommodation: Inherent Jurisdiction) [2013]*. The judge accepted that the inherent jurisdiction of the High Court is theoretically limitless and in circumstances where the statutory code under section 25 is satisfied in relation to a 17-year old child (with the exception of the requirement that the child is looked after by the local authority), it is open to the court to exercise its inherent jurisdiction to direct that a child be detained in secure accommodation.

Timescales

An order can be made for a maximum of 3 months on initial application (Reg 11) and further period of up to 6 months (Reg 12). Court applications can follow an admission to secure accommodation without Court authority for up to 72 hours (Reg 10.)

Placement of young people from England in units in Scotland

Children and Social Work Act 2017 Schedule 1, Section 10

This amends the Children Act 1989 to permit placement of young people from England and Wales in secure units in Scotland and vice versa.

When the criteria no longer apply

Annex B, Guide to the Children's Homes Regulations including the Quality Standards 2015 states:

When a local authority accepts the recommendations of the SAR panel that the criteria for the restriction of liberty no longer apply, it is unlawful for the placement in secure accommodation to continue. The LA must urgently convene a statutory review chaired by the young person's IRO.

The review should decide how the young person's needs will be met in a non-secure setting and plan how this move can happen in a way that is least disruptive to the young person.

Statutory guidance stresses the importance of forward planning. If there is a possibility of the SAR deciding the criteria are no longer met, contingency arrangements should already be in place.

2. The Secure Accommodation Review

The Purpose of the Review

Reg 16(1)² requires the persons appointed to satisfy themselves, in respect of each case they review, that:

- the criteria for keeping a child in secure accommodation continue to apply, **and**
- such a placement continues to be necessary, and whether or not any other description of accommodation would be appropriate for him and in doing so they must have regard for the welfare of the child.

Annex B, Guide to the Children's Homes Regulations including the Quality Standards 2015:

Para 1.41, The purpose of these meetings is only to review the issue of whether or not the conditions for detaining the child in secure accommodation still apply. 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 IRO.

Children Act Welfare Checklist:

In making a decision about a young person's welfare, consideration should be given to:

- The wishes and feelings of the young person (with due regard given to his/her age and level of understanding);
- The physical, emotional and educational needs of the young person;
- The effect on the young person of any changes in his circumstances;
- The young person's age, gender, background and other relevant factors such as race, culture, language and religion.

NB 1.12, Annex B of the 2015 Guide states that the welfare of the young person is not the paramount consideration and although it remains relevant, section 1 of the 1989 Act does not apply.

The arrangements for the Review (Regulation 15)

- The first review must happen within 1 month of being detained and thereafter at intervals not exceeding 3 months (*NB within 15 working days for children looked after by Welsh local authorities*)
- They must be arranged by the responsible authority for the young person, not the authority where the Secure Unit is located
- These reviews are quite separate from Looked After Child reviews.

The Panel

Reviews must be undertaken by at least 3 people one of whom **MUST** be independent (not a member or officer of the local authority) (Reg 15)³

It is not good practice for anyone who has had direct involvement in the placing of the young person to sit on the panel (social worker, SW manager, secure home staff.)

It is good practice for Panel members to be appropriately trained and accountable.

3 The Wales Regulations just specify three people.

The young person's allocated Independent Reviewing Officer should not sit on the panel (IRO Handbook para 4.14.) but *NB see guidance to IRO's in Wales*

Contributors

Regulation 16(2) states that the panel "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 young person, whose views the persons appointed consider should be taken into account
- e) the young person'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 is not the authority who are looking after the child."

Other persons who may be asked to present a report or whose views may be sought include:

- Staff on the unit
- Social worker
- Psychiatrist/psychologist
- Education staff
- Young person's IRO.
- Young person's guardian where court proceedings are pending.

The Decision

Annex B, Guide to the Children's Homes Regulations including the Quality Standards 2015: Paragraphs:

1.43 The decision as to whether the criteria are no longer met is for the local authority to make giving careful consideration to the recommendations of the panel.

1.44 If the review panel recommends that the criteria for restricting the child's liberty no longer apply, or that the placement is no longer necessary, or another type of placement would be appropriate, then the local authority must urgently convene a statutory review of the child's care plan, chaired by their IRO.³⁴ The

review should consider how the child's needs will be met in a non-secure setting and plan how this move will be managed so that it takes place in a way that is least disruptive to the child concerned.

- 1.45 All the parties should be informed, if 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 to carry forward the plan for the child's care.

3. Role of the Independent Person

The main role of the Independent Person (IP) is to be an active member of the decision making panel which decides whether or not the criteria for keeping a young person in secure accommodation continue to apply. Specifically the IP should do the following:

- Liaise with relevant professionals to obtain up to date information about the young person and plans made by the local authority for his/her needs.
- Read background information prior to the review.
- Meet with the young person in advance of the meeting (if the young person is willing) in order to
 - explain their role and emphasise their independence from the local authority
 - ensure the young person is aware that he/she is not their advocate, but will ensure their views will be known in the meeting
 - encourage the young person to raise any concerns about the placement which can be discussed at the meeting
 - discuss their experience of their placement in secure accommodation and whether they feel their needs could be best met elsewhere.
- Ensure that all panel members are fully informed of the role of the IP and that it is distinct from that of an Advocate.
- Ensure the young persons' understanding of the purpose of the review and that their views are heard at the meeting.
- Alongside other panel members consider the criteria and whether or not other accommodation is appropriate and in doing so have due regard for the child's welfare.
- To maintain an independent stance and challenge any decisions you feel are inconsistent with good practice and relevant guidance and regulations.
- To work in line with RRC policies and procedures.
- To ensure that any concerns regarding the panel are fed back to RRC's Service Manager who will in discussion with the Independent Person decide if these need to be raised formally with the Local Authority.

4. Role of Panel Chair

The secure accommodation panel should be chaired by a person independent of the care planning of the young person including line managers and the IRO. Given the need to focus on section 25 Children Act 1989 criteria issues, the chair should also be independent of any resource allocation role to ensure there are no conflicts of interest.

The chair of the panel is responsible for ensuring that the review process takes place in accordance with relevant guidance and regulations and the particular local authorities agreed policies. In addition prior to the review the chair can (but will not always) liaise with the social worker to ensure the following is undertaken:

- The social workers report for the review outlines why the young person was originally placed in a secure setting, demonstrating the criteria was met and the extent to which it is felt the criteria may still be met or if any other accommodation would be appropriate.
- All relevant reports are circulated to all panel members and parties in good time before the review.
- Liaise with the secure unit to check appropriate arrangements are in place for the review to take place, including attendance of relevant staff.
- The young person and parents/carers are clear about the purpose of the SAR and the young person has adequate support to prepare for the meeting (an advocate if desired).

During the review it is good practice for the Chair to:

- Set out the purpose and structure of the panel and review meeting and make it clear that it is distinct from a LAC review.
- To be sensitive to the young person's needs, ensuring they have opportunities to speak and offer breaks/time out if necessary.
- Give sufficient time for full consideration of all relevant information.
- Ensure the panel removes itself to consider the criteria in private, away from the rest of those attending the meeting.

- Ensure the criteria for the secure accommodation order is considered in full by the panel who will ascertain from the evidence:
 - whether or not the criteria for restricting the young person's liberty continues to be met
 - the placement in the current unit continues to be appropriate
 - whether there is any other placement that would be appropriate
- To provide immediate feedback on the panel's decision to the young person and those present at the review.
- Where appropriate set a date for a follow up review

5. SAR Panels – Good Practice

All local authorities should have in place guidelines on conducting secure accommodation review panels. Whilst these may vary we recommend that the following areas are always covered in the planning and holding of a review:

Timescales

As soon as a secure order is granted planning for the first review should commence. The first review must happen within one month from the date the order is obtained. The Local Authority should have a robust monitoring system in place to ensure timescales for convening reviews are achieved.

Liaison with the Secure Children's Home

The meeting convenor should contact the secure unit the young person has been placed in to discuss practical arrangements, such as room availability and to establish if they have any specific arrangements regarding secure reviews (some units may only hold reviews on certain days of the week). Reviews should always be held in the unit the young person is residing in to ensure they are able to attend.

Appointing a Panel

The convenor should identify 3 panel members, starting with a Chair. The second panel member is often a manager within a different Social Work team to ensure that no one who has participated in the placement decision is on the panel. In England the Independent Person must not be a member or officer of the local authority. It is not appropriate for unit staff to act as panel members. Where possible every effort

should be made to retain the same panel for follow up reviews for purposes of consistency.

Date of Panel

The date and time should be agreed in discussion with panel members, the social worker, the young person, their parents/carers and the Secure Children's home.

Invitations

Only contributors who will be submitting reports and or whose attendance is considered essential should be invited to attend. Secure reviews are often attended by large numbers of professionals and this can be overwhelming for the young person and their carers. The Chair or another nominated officer from the Local Authority will take responsibility for sending out invitations.

Reports

Relevant reports should be circulated to all parties ideally at least one week in advance of the meeting to allow for sufficient time to seek additional information if required, deal with queries and prepare for the meeting. It is vital that any new information is shared with the young person and their parents/carers before and **not** during the meeting.

Supporting the young person

The young person should always be encouraged and supported to attend the review and participate in a manner of their choice. A designated person should be identified to prepare them for the meeting (their Social worker or their Key Worker). For practical reasons this is often their keyworker in the unit. It is essential to ensure that efforts have been made to explain why the review is happening, the criteria that will be considered and the process. In addition the young person should be supported to prepare a submission for the meeting with issues they would like considered.

The young person should also be offered the option of an Advocate, who can attend the review with them or on their behalf if they wish, as well as assist them in preparing a contribution to the meeting. To avoid any confusion the differences between an Advocate and an Independent Person should be emphasised to the young person. Given the number of professionals who often attend a review meeting a young person may prefer to present their contribution to just the panel. It is important that they are offered this option.

The young person should be made aware of the availability of the complaints procedure if they are dissatisfied with any aspect of the process.

Throughout the review the Chair should ensure that all professionals avoid the use of jargon and speak in plain English to support the young person's involvement in the meeting along with their parents/carers. During the review a break in proceedings should be offered if the young person wishes.

The Review

The Chair will normally introduce the Panel and attendees to each other, explain the role of the Panel and outline the structure of the meeting. The Chair will make it clear that the purpose of the Review is to consider whether the criteria for placing the young person in secure accommodation, continues to be met. The Chair will also explain that in order to make this decision based on evidence, questions may be put to any of the parties present to obtain the necessary information.

It is advisable that the young person and their parents/carers are made aware that whatever the Panel recommend, discharge from the secure unit may not take place immediately (*see note below)

Although this is a formal meeting, it is important that the tone and pace employed is family friendly and inclusive.

The Decision

The Panel should remove themselves from the larger meeting to deliberate their decision about the criteria in private. Once a decision has been reached, the Chair will give the Panel's recommendation. In some instances it may be easier for the young person to be advised of the outcome separately, by their Keyworker. Feedback as to how a decision was arrived at should be provided.

The Chair should explain what will happen next, including scheduling a follow up review where appropriate.

Arrangements should be made for the Keyworker or Advocate to check in with the young person after the meeting and see if they need any additional support.

***Note** that the panel decision represents a recommendation to the local authority (a final decision may be taken by the head of service.) *Regulation 15 of the Children (Secure Accommodation) Regulations 1991* states: 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.

A local authority that decided not to follow the Panel's recommendation would be open to legal challenge to justify its decision.

6. Good practice in discharge from secure accommodation

The 2015 Guide (Annex B) Para 1.42 states: Forward planning for children detained on welfare grounds is essential. Whilst the child is detained, the placing authority will need to consider how placement in an “open” setting might meet the child’s needs in future. This should mean that, where there is the possibility of a review panel recommending that the criteria for detaining the child no longer apply, contingencies are already in place. Clearly there are potentially damaging consequences if a child who has recently met the section 25 criteria is released into unsuitable accommodation unable to provide the necessary support for them to manage the transition back into the community.

Admission and Discharge from Secure Accommodation: Ofsted 2010

This Ofsted report found that good discharge arrangements were vital for successful transition and that where “young people were placed a long distance from their home...these young people were unlikely to have the same level of support as those who were placed locally, on either admission or discharge from the secure setting. This adversely affected plans for successful transfer and reintegration into the community.”

The report recommends:

Local authorities responsible for placing children and young people within the secure estate should:

- ensure that young people who are entitled to support under the Children (Leaving Care) Act 2000 receive the services they require during their placement within a secure establishment
- ensure that young people moving out of secure settings have a guaranteed education or training place arranged for them
- ensure that firm discharge plans, based on the assessed need of the individual young person, are in place sufficiently early to enable transitional work with any new placement or facilities.

Suggested Secure Accommodation Review Agenda

1. Introductions and role of panel
2. Reminder of purpose of review and criteria for SAO
3. Social Work report
4. Secure Children's Home report
5. Information/reports from other professionals as appropriate
6. Views of young person
7. Views of family
8. Views of any other carers
9. Views of Guardian
10. Panel
 - a) Which (if any) criteria continue to apply?
 - b) Does the placement continue to be necessary?
 - c) Reasons for decision
 - d) Recommendations
11. Actions for next review
12. Date of next review.

Bibliography

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Life in Secure Care; CRAE/Ofsted 2009
Local Authority Use of secure Placements; DfE 2016
Residential Care in England; Narey/DfE 2016
Understanding the Market for Secure Children's Homes; CWRC/DfE 2011

Referrals for Independent Person (independent panel member)

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