

SECURE ACCOMMODATION PRACTICE NOTE

Statutory and regulatory jurisdiction.

Children Act 1989 (“CA”).

Children’s Secure Accommodation Regulations 1991 (as amended) (“the 1991 Regulations”).

Emergency secure accommodation

Under regulation 10 of the 1991 Regulations, the Director of Safeguarding can approve secure accommodation for up to 72 hours in an emergency, except for children under 13 for whom the local authority needs the permission of the Secretary of State (see below).

A looked after child who meets the statutory criteria under s.25 CA may be placed in secure accommodation for a maximum period of 72 hours in any 28 days period without a secure accommodation order.

If the child has already been in secure accommodation for 48 hours, and the 72 hours would otherwise have expired at 12 noon on a Sunday or bank holiday, the 72 hours are deemed not have expired until 12 noon on the first working day after the Sunday or bank holiday.

Only a court can grant permission for placements beyond 72 hours.

Court order

The only bases for making a secure accommodation order (“SAO”) are under **s.25 CA**.

There are 2 alternative statutory criteria:

(1) Subject to the following provisions of this section, a child who is being looked after by a local authority in England or Wales may not be placed, and, if placed, may not

be kept, in accommodation in England provided for the purpose of restricting liberty (“secure accommodation”) unless it appears—

(a) that—

*(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***

(b) that if he is kept in any other description of accommodation he is likely to injure himself or other persons.

The date of the applicability of the statutory criteria is the date of the hearing, not the date the protective measures were put in place pending the application (**Re B [2019] EWCA Civ 2025**).

The definition of “**a child**” is a person under the age of 18 (s.105 CA). However, the age of the child may have a bearing on whether there is jurisdiction to seek a SAO.

For a child under the age of 13 years, the local authority must seek permission from the Secretary of State for Education. Full guidance on how to seek permission can be found here: [Secure children’s homes: how to place a child aged under 13 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/secure-childrens-homes-how-to-place-a-child-aged-under-13)

A child under 16 who is accommodated voluntarily under s.20 CA can be removed at any time by his parents (or any other person holding parental responsibility), subject to the limitations defined in s20 (e.g. subs. (9)).

However, once a child is 16 the child can request to be accommodated contrary to the wishes of his/her parents, therefore can choose to remain in secure accommodation. On the other hand, the child cannot choose to remove him/herself from secure accommodation, despite being 16 or older, while either authorization for emergency secure accommodation or an order under s.25 is in effect.

A child is “**looked after**” if:

- a) S/he is in the care of the local authority, i.e. subject to either –
 - i. s.20 accommodation; or
 - ii. an interim care order or care order.

- b) S/he is provided with accommodation by the local authority in the exercise of certain statutory functions: ss.22(1) and 105(4) CA.

(Note that s.25 CA also applies to children who are not looked after by a local authority but who nevertheless fall under one of the other categories of children identified in regulation 7 of the 1991 Regulations (e.g. accommodated by health and education welfare authorities)).

“**Secure accommodation**” is accommodation which is provided for ***the purpose of restricting the liberty*** of children to whom s.25 applies – s.25(1); Regulation 2 of the 1991 Regulations.

This is to be narrowly interpreted, that is, "secure accommodation" is **accommodation designed, or having as its primary purpose, for the restriction of liberty**. However, this is not restricted only to accommodation approved by the Secretary of State; premises which are not designed as secure accommodation may become secure accommodation because of the use to which it is put in the particular circumstances of the individual case. This is a question of fact for the court (**Re B**).

This narrow interpretation is important, as the court cannot use its inherent jurisdiction to compel a child to be placed in what is secure accommodation under s.25, but it can use its inherent jurisdiction if it determines as a matter of fact that the accommodation is not designed, or having its primary purpose, for the restriction of liberty, even if there is an element of restriction of liberty.

Accommodation in a children's home (as defined in s.1(2) of the Care Standards Act 2000, that is, an establishment which provides care and accommodation wholly or mainly for children) may not be used as secure accommodation unless approved by the Secretary of State for that purpose (Regulation 3 of the 1991 Regulations).

1. Common Law Criterion

In **Re B** the Court of Appeal ruled that in addition to the express statutory criteria in s.25, there is also a question of whether the proposed placement would safeguard and promote the child's welfare. Although the child's welfare is not the paramount consideration, it is still a consideration of "great importance."

2. Articles 5 and 8 of ECHR

Re B also confirms that the local authority and the court are bound by the ECHR to consider the human rights involved.

Article 5 is the right to liberty and security of person. Article 8 is the right to private and family life.

Even though s.25 is compatible with the ECHR, per se, the local authority must nevertheless carry out its evaluation of proportionality before applying for an order under s.25 and the court must carry out a proportionality analysis before granting such an order.

3. Effect and duration of secure accommodation.

The secure accommodation order only authorises the move to and securing the child within secure accommodation. It is up to the local authority to identify the accommodation and prepare a plan for the child, including getting the child to the accommodation and any support to be implemented while s/he is there.

A secure accommodation order lasts for a maximum of 3 months in the first instance, and thereafter for a maximum of 6 months at a time.

A secure accommodation order is permissive. Therefore, even if the criteria still apply, the local authority can, for example, implement a transition plan for a child to move into long-term alternative accommodation as part of its overall plan for the child.

4. Regulatory reviews.

Regulations 15 and 16 of the 1991 Regulations set out the requirement for Secure Accommodation Reviews. Regulation 15 requires that the placing authority for a child in secure accommodation holds a review within 28 days of the start of the placement and thereafter at intervals not exceeding three months.

The purpose of a Secure Accommodation Review is to consider the following:

- a) Whether the criteria for keeping a child in secure accommodation continue to apply, on the day of the review;
- b) Whether such a placement continues to be necessary; and
- c) Whether or not any other form of accommodation would be appropriate.

Reviews are conducted by a Secure Accommodation Review Panel chaired by an Independent Reviewing Officer (IRO) who is not the current IRO undertaking the child's Looked After Child review meetings.

The Panel also consists of:

- a) A Team Manager or Service Manager who is independent of the social worker and his/her line managers, and the IRO who is chairing the Panel.
- b) An independent advocate.

The Secure Accommodation Panel is responsible for listening to the views of those who attend/contribute, and coming to a decision about whether they believe the criteria for secure accommodation are still met. The Panel cannot come to a decision about whether the child should remain or leave secure accommodation; it can only make a recommendation on this to the Director of Children's Services. However, the local authority would highly likely be found liable in judicial review and a civil claim for significant damages if the Director failed to accept the recommendation.

5. Summary of key issues when giving legal advice.

- a) Secure accommodation is not a long-term care plan for a child. It is a safeguarding measure of last resort.
- b) Once the criteria for secure accommodation no longer apply, the child must be released from secure accommodation.
- c) If the child is under 13, has the permission of the Secretary of State has been obtained?
- d) For cases in which emergency secure accommodation has already been authorised –
 - Who has authorised the emergency secure accommodation?
 - Was the decision made applying the same criteria as an application under s.25 CA and *Re B* (see below)?
 - When was it authorised?
 - How many hours has the child has been kept in emergency secure accommodation and when does the 72-hour time limit expire?
- e) When an application for a secure accommodation order is contemplated, are the criteria laid out in s.25 CA and *Re B* currently met? In particular –
 - Is the child looked after? That is, is the child currently accommodated under s.20 CA or subject to an interim care order or care order? If the parents' agreement to s.20 accommodation is not sufficiently stable, are there are grounds for entering care proceedings?
 - Alternatively, does the child fall within one of the other categories specified in regulation 7 of the 1991 Regulations?
 - Is the accommodation where the local authority proposes to place the child "secure accommodation", that is, is it designed for or have as its primary purpose the restriction of liberty?
 - Does the child
 - (i) have a history of absconding and is likely to abscond from any other description of accommodation, and

- (ii) if he/she absconds, he/she is likely to suffer significant harm or if kept in any other description of accommodation, is the child likely to injure him or herself or other persons?
 - If the local authority is proposing to place the child in a secure children's home has the accommodation been approved by the Secretary of State for use as secure accommodation?
 - Does the proposed order safeguard and promote the child's welfare?
 - Is the order proportionate, i.e. do the benefits of the proposed placement outweigh the infringement of rights?
 - What alternatives to secure accommodation have been considered, and why have they been ruled out?
- f) Are the criteria likely to be met still at the date of the hearing of the proposed secure accommodation order?
- g) What are the immediate and longer-term plans for the child, including –
 - How will the child be transported to court?
 - How will the child be transported to the secure accommodation?
 - What support will be put in place for the child whilst s/he is in secure accommodation (e.g., therapeutic, medical and educational), contact etc.?
 - What is the long-term plan for the child and how with this be achieved?
- h) If secure accommodation is proposed, but no placements are available, is this a case suitable for seeking a declaration of lawfulness of deprivation of the child's liberty (DOLS) in the alternative?

6. Documents required for an application for secure accommodation order.

Prepared by legal:

- a) C1 if it is a stand-alone application, or to accompany a C110a applying for a care order.
- b) C2 if the application is made in existing care proceedings.
- c) In either case, a C20 supplement for secure accommodation.

Prepared by the social worker:

- a) A statement and chronology in support of the application. In the light of *Re B*, the statement should include the plan for the child, to address the issue of how the secure accommodation order will promote and safeguard the welfare of the child.