

*Draft Regulations laid before the National Assembly for Wales under section 196(6) of the Social Services and Well-being (Wales) Act 2014, for approval by resolution of the National Assembly for Wales.*

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DRAFT WELSH STATUTORY  
INSTRUMENTS

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**2015 No. (W.)**

**SOCIAL CARE, CHILDREN  
AND YOUNG PERSONS,  
WALES**

**The Children (Secure  
Accommodation) (Wales)  
Regulations 2015**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations impose requirements in relation to the placement of children in secure accommodation.

Regulation 2 sets the maximum period which a local authority can hold a child in secure accommodation without authorisation from a court. Regulation 3 imposes procedural requirements on the local authority in relation to such arrangements.

Regulation 4 imposes restrictions on who may apply to a court for authorisation to hold a child in secure accommodation. Regulation 5 requires local authorities to notify certain people when making such an application and regulations 6 and 7 set the maximum periods which a court may authorise.

Regulation 8 prevents a local authority from placing a child in secure accommodation anywhere other than a children's home registered for that purpose. Regulations 9, 10 and 11 deal with the requirements for notification of such a placement and the requirements local authorities to make arrangements to review secure placements. The persons reviewing a placement must make a recommendation to the local authority about whether the placement should continue. Regulation 12 sets out the records which must be maintained in relation to secure placements.

Regulations 13 to 16 deal with how section 119 of the Social Services and Well-being (Wales) Act 2014 (“the Act) applies to particular groups of children. Regulation 13 requires local authorities to have the approval of the Welsh Ministers before placing a child under the age of 13 in secure accommodation. Regulation 14 identifies certain categories of children to whom section 119 of the Act does not apply and section 15 identifies certain children in relation to whom the test set out in section 119 is modified. Section 16 provides for persons other than local authorities who are looking after children to make applications to hold a child in secure accommodation and for modification of the provisions of section 119 to fit those circumstances.

Regulations 17, 18 and 19 deal with consequential and incidental amendments to regulations which have application in relation to Wales prior to the coming into force of these Regulations.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained by contacting the Health and Social Services Group, Welsh Government, Cathays Park, Cardiff CF10 3NQ.

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*Made*

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*Coming into force*

*6 April 2016*

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The Welsh Ministers, in exercise of the powers conferred by section 104(4)(c), paragraph 4(1) of Schedule 4, paragraph 7 of Schedule 5 and paragraph 10 of Schedule 6 to the Children Act 1989<sup>(1)</sup> section 22(8)(b) and section 118(7) of the Care Standards Act 2000<sup>(2)</sup>, sections 87, 119(2) and (7) and 196(2) of the Social Services and Well-being (Wales) Act 2014<sup>(3)</sup> make the following Regulations.

In accordance with section 196(6) of the Social Services and Well-being (Wales) Act 2014, a draft of

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(1) 1989 c. 41.

(2) 2000 c. 14.

(3) 2014 anaw 4.

this instrument was laid before and approved by a resolution of the National Assembly for Wales.

### **Title, commencement, interpretation and application**

1.—(1) The title of these Regulations is the Children (Secure Accommodation) (Wales) Regulations 2015.

(2) These Regulations come into force on 6 April 2016.

(3) These Regulations apply in relation to Wales.

(4) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Social Services and Well-being (Wales) Act 2014;

“independent visitor” (“*ymwelydd annibynnol*”) means a person appointed by a local authority under section 98 of the Act;

“local authority” (“*awdurdod lleol*”) means a Welsh local authority unless the contrary is indicated;

“secure accommodation” (“*llety diogel*”) means accommodation in Wales which is provided for the purpose of restricting the liberty of children to whom section 119 of the Act applies.

(5) In these Regulations a reference to a children’s home being registered, or to a person registered in respect of a children’s home, is a reference to registration under Part 2 of the Care Standards Act 2000.

### Maximum Period Without Court Authorisation

#### **Maximum period in secure accommodation without court authorisation**

2.—(1) Subject to paragraph (2) and (3), the maximum period beyond which a local authority may not keep a child in secure accommodation without the authority of the court is an aggregate of 72 hours (whether or not consecutive) in any period of 28 days.

(2) Where—

- (a) a child is kept 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,
- (b) during that time the maximum period of 72 hours would otherwise expire, and
- (c) the child has in the 27 days before the day on which the latest period in secure accommodation began, already been kept in

secure accommodation for an aggregate of more than 48 hours,

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

(3) Where a court gives authority for a child to be held in secure accommodation, any period during which the child was kept in secure accommodation prior to that period of authorisation shall be disregarded in calculating the maximum period in relation to any subsequent periods in secure accommodation after the court-authorized period has expired.

### **Requirement where child detained without court authority**

**3.—**(1) Before a local authority places a child in secure accommodation without court authority it must first create a written record setting out—

- (a) the reasons why it believes the grounds under section 119(1) of the Act are met;
- (b) the purpose of the placement; and
- (c) the reasons why it considers that the placement is necessary.

(2) The local authority must provide a copy of that record to—

- (a) the child and any person providing legal representation to the child;
- (b) the child's parents;
- (c) any person who is not a parent but has parental responsibility for the child;
- (d) the child's independent visitor, if one has been appointed; and
- (e) any other person who that local authority considers should be informed.

### **Court Authorisation**

#### **Applications to court**

**4.—**(1) Applications to court under section 119 of the Act may only be made by the local authority (including an English local authority) which is looking after the child (subject to the power of a local authority to arrange for its functions to be carried out by another person under section 101 of the Local Government Act 1972(1) or sections 14 to 20 of the Local Government Act 2000(2)).

(2) But where regulation 16 of these Regulations applies to modify section 119 of the Act so that it applies in relation to children other than those being

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(1) 1972 c. 70.

(2) 2000 c. 22.

looked after by a local authority, then applications to court can be made by the Local Health Board, NHS Trust or local authority in the exercise of education functions which is providing accommodation for a child and to whom section 119 of the Act applies.

#### **Duty to inform parents and others of intention to place child in secure accommodation**

5. Where a local authority intends to apply to a court to place a child whom it is looking after in secure accommodation, it must, as far as is reasonably practicable, notify, as soon as possible—

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

#### **Maximum periods of authorisation by the court**

6.—(1) Subject to paragraph (2), where a child has been made the subject of an application under section 119 of the Act, the maximum initial period for which a court may authorise the child to be kept in secure accommodation is three months.

(2) Where a child is subject to an application to extend the period in secure accommodation under section 119 of the Act the maximum further period which a court may authorise at any one time is 6 months.

#### **Maximum period of authorisation for remanded children**

7.—(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 91(3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012<sup>(1)</sup> to be kept in secure accommodation (whether the period is the initial period or a further period) is the period of the remand.

(2) The reference to "local authority" in paragraph (1) includes an English local authority.

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(1) 2012 c. 10.

## Requirements in relation to placements in secure accommodation

### **Placement in a children's home which is registered**

8. A local authority may only place a child in secure accommodation in a home which is registered as a children's home providing accommodation for the purpose of restricting liberty<sup>(1)</sup>.

### **Duty to give information of placement in secure accommodation**

9.—(1) Where a child is placed in secure accommodation in a children's home which is provided by a person other than the local authority which is looking after the child, the person registered in respect of the children's home must inform the local authority which is looking after the child that the child has been placed there within 12 hours of the placement beginning.

(2) The local authority looking after the child must then confirm to the registered person—

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

### **Appointment of persons to review placements**

10. A local authority which decides to place a child in secure accommodation must appoint at least 3 persons to review the decision within 15 working days of the start of the placement and then at intervals not exceeding three months where the placement in secure accommodation continues.

### **Reviews of placement in secure accommodation**

11.—(1) The persons appointed under regulation 10 must consider, having regard to the welfare of the child in question—

- (a) whether the criteria for keeping the child in secure accommodation continue to apply;
- (b) whether the placement in secure accommodation continues to be necessary or whether any other description of accommodation would better meet the child's needs.

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(1) See section 4(8)(a) of the Care Standards Act 2000 which sets out the types of establishment which are required to register under Part 2 of that Act.

(2) In undertaking a review of the placement, the persons appointed must, so far as is reasonably practicable, ascertain and take into account the wishes and feelings of—

- (a) the child;
- (b) the child's parents;
- (c) any person not being a parent but who has parental responsibility for the child;
- (d) any other person who has had 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;
- (f) the person managing the secure accommodation in which the child is placed.

(3) The persons appointed must make a recommendation to the local authority about whether the placement of that child in secure accommodation should continue.

(4) The local authority must, as far as is reasonably practicable, inform all those whose views are required to be taken into account under paragraph (2) of the recommendation made by the review and of what action, if any, it proposes to take in the light of the recommendation.

#### **Records to be kept in respect of a child in secure accommodation in a children's home**

12. When a child is placed in secure accommodation in a children's home the persons who are registered in respect of the children's home must maintain a record for that child which includes—

- (a) the name, date of birth and sex of that child;
- (b) details of the care order or other statutory provision by virtue of which the child is placed in the children's home;
- (c) details of the local authority placing the child and the name of the authorising officer;
- (d) the date and time of the start of the placement in secure accommodation;
- (e) the reason for the placement;
- (f) the address of the place where the child was living before the placement;
- (g) the names and relevant details of the persons informed by virtue of regulation 5 of the child's placement;
- (h) details of any court orders made in respect of the child under section 119;
- (i) details of reviews undertaken under regulation 11;

- (j) the date and time of any periods when the child is locked on his own in any room 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
- (k) the date and time of the child's discharge and the child's address following discharge from secure accommodation.

#### Application of section 119 to particular categories of children

#### **Placement of a child aged under 13 in secure accommodation**

**13.**—(1) A local authority may not place a child under the age of 13 years in secure accommodation without the prior approval of the Welsh Ministers in relation to the placement of that child.

(2) The Welsh Ministers may make the approval subject to such terms and conditions as they see fit.

#### **Children to whom section 119 does not apply**

**14.** Section 119 does not apply to a child—

- (a) who is detained under any provision of the Mental Health Act 1983<sup>(1)</sup> 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<sup>(2)</sup> (detention at Her Majesty's Pleasure or for specified period);
- (b) who is the subject of a child assessment order made under section 43 of the Children Act 1989<sup>(3)</sup> and who is kept away from home pursuant to that order;
- (c) who is aged 16 or 17 and is accommodated under section 76 of the Act;
- (d) 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<sup>(4)</sup>.

#### **Detained children to whom section 119 applies subject to modifications: children detained under the Police and Criminal Evidence Act 1984**

**15.**—(1) Section 119 of the Act has effect subject to the modification specified in paragraph (2) in relation

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(1) 1983 c. 20.  
(2) 2000 c. 6.  
(3) 1989 c. 41.  
(4) 2012 c. 10.

to children who are being looked after by a local authority and are aged between 12 and 16 and are detained under section 38(6) of the Police and Criminal Evidence Act 1984<sup>(1)</sup> (detained children).

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

### **Children to whom section 119 has effect subject to modifications**

**16.**—(1) Subject to regulation 7 and paragraphs (2) and (3) of this regulation section 119 of the Act applies, in addition to children looked after by local authorities (including English local authorities)—

- (a) to children, other than those looked after by a local authority (including an English local authority), who are accommodated by—
  - (i) Local Health Boards;
  - (ii) National Health Service Trusts (“NHS Trusts”);
  - (iii) local authorities in the exercise of education functions;
- (b) to children, other than those looked after by a local authority, who are accommodated in care homes or independent hospitals.

(2) In relation to children specified in paragraph (1)(a), section 119 has effect subject to the following modifications—

- (a) in subsection (1) replace the phrase “who is being looked after by a local authority or a local authority in England” with “who is being provided with accommodation by a Local Health Board, an NHS Trust or a local authority in the exercise of education functions”;
- (b) in subsection (2)(c) replace the phrase “by a local authority” with “by a Local Health Board, an NHS Trust or a local authority in the exercise of education functions”.

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(1) 1984 c.60.

(3) In relation to the children specified in paragraph (1)(b), section 119 of the Act has effect subject to the following modifications—

- (a) in subsection (1) replace the words “who is being looked after by a local authority or a local authority in England” with the words “who is being provided with accommodation in a care home or an independent hospital”; and
- (b) in subsection (2)(c) replace the phrase “by a local authority” with the words “by a person carrying on a care home or an independent hospital”.

### **Disapplication of the Children (Secure Accommodation) Regulations 1991 to Wales**

17. Insert into the Children (Secure Accommodation) Regulations 1991(1) the following regulation after regulation 1—

#### **“Disapplication to Wales**

1A.—(1) These Regulations do not apply—

- (a) in relation to the placement of a looked after child by a Welsh local authority;
- (b) in relation to the provider of a children’s home in Wales;
- (c) in relation to an application to a court for authority to place a child in secure accommodation in Wales.

(2) In relation to cases to which paragraph (1) applies refer to section 119 of the Social Services and Wellbeing (Wales) Act 2014 and the Children (Secure Accommodation) (Wales) Regulations 2015.”

### **Revocations**

18. The following Regulations are revoked—

- (a) the Children (Secure Accommodation) (Amendment) (Wales) Regulations 2006(2);
- (b) the Children (Secure Accommodation) (Amendment) (Wales) Regulations 2013(3).

### **Disapplication of Regulations in relation to Wales**

19. The following Regulations are disapplied in relation to Wales—

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(1) S.I. 1991/1505.  
(2) S.I. 2006/2986 (W. 276).  
(3) S.I. 2013/663 (W. 76).

- (a) the Children (Secure Accommodation) (No. 2) Regulations 1991<sup>(1)</sup>;
- (b) the Children (Secure Accommodation) (Amendment) Regulations 1992<sup>(2)</sup>;
- (c) the Children (Secure Accommodation) (Amendment) Regulations 1995<sup>(3)</sup>.

Minister for Health and Social Services, one of the  
Welsh Ministers

Date

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<sup>(1)</sup> S.I. 1991/2034.  
<sup>(2)</sup> S.I. 1992/211.  
<sup>(3)</sup> S.I. 1995/1398.