

**Explanatory Memorandum to The Children (Secure Accommodation) (Wales)  
(Amendment) Regulations 2016**

This Explanatory Memorandum has been prepared by the Department for Health and Social Services and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

**Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Children (Secure Accommodation) (Wales) (Amendment) Regulations 2016.

Mark Drakeford  
Minister for Health and Social Services

2 February 2016

## **Part 1 – OVERVIEW**

### **1. Description**

The Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”) brings together local authorities’ duties and functions in relation to improving the well-being of people who need care and support and carers who need support in a single Act. The Act provides the statutory framework to deliver the Welsh Government’s commitment to integrate social services to support people of all ages, and support people as part of families and communities.

Section 119 of the Act deals with those occasions when a child who is being looked after by a local authority in Wales (or a local authority in England) needs to be placed in secure accommodation in Wales. Such a placement may only be made where the child has a history of absconding or is likely to abscond from any other type of accommodation and is likely to suffer significant harm if he or she absconds, or where the child is likely to injure himself or herself if kept in any other type of accommodation.

Section 119 (2) makes provision for regulations specifying maximum periods beyond which a child may not be kept in secure accommodation without the authority of the court, and specifying the maximum period for which the court may authorise a child to be kept in such accommodation; empowering the courts to authorise further periods in such accommodation; and providing that only local authorities may make such applications.

Section 119 (7) makes provision for regulations that specify any descriptions of children to which these provisions do not apply or apply with modifications, and other provisions which determine whether or not a child may be placed or kept in such accommodation.

Local authorities in Wales also have the power to place looked after children in secure accommodation in England under section 25 of the Children Act 1989. The Children Act contains the same test as section 119 of the 2014 Act.

These Regulations amend the Children Secure Accommodation (Wales) Regulations 2015 (“the Principal Regulations”), and come into force at the same time on 6 April 2016.

### **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

No specific matters identified.

### **3. Legislative background**

The powers enabling these regulations to be made are contained within Part 6, section 119(2) and (7) of the Social Services and Well-being (Wales) Act 2014. They draw on powers in 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 in relation to the requirements

on local authorities who place children in secure accommodation and section 22(8)(b) and section 118(7) of the Care Standards Act as regards the requirements imposed on persons who provide or manage secure accommodation settings.

This statutory instrument is subject to the affirmative procedure.

The regulations will come into force on 6 April 2016.

### Current legislation

The existing powers to place or keep children in secure accommodation are contained in section 25 of the Children Act 1989. The relevant regulations are the Children (Secure Accommodation) Regulations 1991 ('the 1991 Regulations'), as amended (e.g. by The Children (Secure Accommodation) (Amendment) (Wales) Regulations 2006 and The Children (Secure Accommodation) (Amendment) (Wales) Regulations 2013).

The Children (Secure Accommodation) (Wales) Regulations 2015, which come into force on 6 April 2016, will revoke the Children (Secure Accommodation) (Amendment) (Wales) Regulations 2006 and the Children (Secure Accommodation) (Amendment) (Wales) Regulations 2013. The following Regulations are also disapplied in relation to Wales:

- the Children (Secure Accommodation) Regulations 1991
- the Children (Secure Accommodation) (Amendment) Regulations 1992
- the Children (Secure Accommodation) (Amendment) Regulations 1995.

The existing guidance is The Children Act 1989 Guidance and Regulations, Volume 1: Court Orders (March 2008), chapter 5: Secure Accommodation Orders. This is statutory guidance issued under section 7 of the Local Authority Social Services Act 1970, and will be replaced by the code of practice under Part 6 of the 2014 Act.

Guidance on the placement of a child aged under 13 in a secure children's home was issued in December 2011 in the form of a letter to local authorities. This reminded local authorities of the circumstances in which they needed prior Welsh Government approval, the procedures to be followed, and who to contact. This relates to regulation 4 of the 1991 regulations. This guidance will be replaced by the code of practice under Part 6 of the 2014 Act. The code of practice comes into force on 6 April 2016.

### Proposed Legislation

The statutory framework will consist of three main elements: the Act itself, Regulations made under the Act, and codes of practice / statutory guidance. These three elements work together to form the framework within which social services will operate from April 2016.

The Act will ensure that all children who are looked after or accommodated by their local authority, including those placed in secure accommodation, receive (as a minimum) the same standards of care and support as they currently experience under the Children Act 1989. The Regulations made under Part 6 of the Act, and the code of practice relating to it will replicate the current framework, but will place this within the

context of the new Act, with its emphasis on safeguarding and promoting the well-being of children and young people.

#### **4. Purpose and intended effect of the legislation**

The purpose of these Regulations is to amend the following parts of the principal regulations (i.e. the Children (Secure Accommodation) (Wales) Regulations 2015):

- Regulations 1, 2, 9 and 12

The amendments to these regulations ensure that the requirements imposed on Welsh local authorities in relation to placements in secure accommodation apply regardless of whether they place children in Wales or in England. The amendments to regulation 1 amend the definition of “secure accommodation” so that where the words are used they refer to accommodation whether in Wales or England unless the contrary is indicated.

The amendments therefore ensure that the following requirements apply when a local authority in Wales places a child in secure accommodation in England under section 25 of the Children Act 1989: requirement where a child is detained without court authority (regulation 3), duty to inform parents of the intention to apply to a court for a secure accommodation order (regulation 5), duty only to place in a registered home (regulation 8), appointment of persons to review panel (regulation 10), reviews of placements (regulation 11), and requirement to get Welsh Minister’s approval to place a child under 13 in secure accommodation (regulation 13).

The amendments to regulations 2, 9 and 12 insert words to make clear that in those regulations the references to “secure accommodation” are limited to Wales. This is because these regulations deal with requirements that apply territorially either in relation to a placement of a child in secure accommodation in Wales (regulation 2) or to the provider of a secure children’s home in Wales.

- Regulation 14

The amendment to this regulation removes the prohibition on local authorities applying to court for authority to place 16 and 17 year olds in secure accommodation where the 16 and 17 year olds are accommodated under section 76 of the Social Services and Well-being (Wales) Act 2014.

The intention is to respond to recent case law which clarified the law in this area. The recent case law has clarified that although the current Children (Secure Accommodation) Regulations 1991 do expressly preclude local authorities from placing accommodation 16 and 17 year olds in secure accommodation in a narrow set of circumstances, more generally there is nothing to prevent a local authority from placing a 16/17 year old in secure accommodation. The Children (Secure Accommodation) (Wales) Regulations 2015 which are due to come into force on 6 April 2015 currently create a general prohibition against applications for 16 and 17 year olds when they are in care on a voluntary basis. This amendment will reflect the current law as it has now been clarified and will allow local authorities a more straightforward route to applying for such placements where they consider this necessary to safeguard and promote the well-being of the young people concerned.

- Regulation 15

The amendment to this regulation is made to reflect a recent amendment made to the effect of section 38 of the Police and Criminal Evidence Act 1984 so that the obligation on a custody officer in section 38(6) to move arrested juveniles to local authority accommodation has now been extended to children under 18 years of age. Regulation 15 sets out a modified test (i.e. a lower threshold) for placing children transferred under section 38(6) in secure accommodation. The modification is that the local authority does not need to prove that the child has a history of absconding. At present, regulation 15 applies this only to children aged 12 to 16 years. This amendment ensures that the lower threshold also applies to 17 year olds.

- Regulation 7

This regulation stipulates the maximum period of authorisation to keep in secure accommodation a child who has been remanded to local authority accommodation under section 91(3) of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012. The regulation states that this will be for the period of the remand. However, the 1991 Regulations (which the 2015 Regulations replace) say that the maximum period of authorisation in these cases is 28 days. The intention of this amendment is to maintain the requirement on the local authority to require further authorisation from the court if the period of remand is longer than 28 days.

The intended effect of these Regulations is to make minor adjustments to the framework for placing looked after children in secure accommodation created under the Social Services and Well-being (Wales) Act 2014, putting safeguards in place to ensure that such placements are made in the best interests of the child, and that there are suitable checks and balances to ensure that no child is placed in such accommodation without due process.

## **5. Consultation**

The Children (Secure Accommodation) (Wales) Regulations 2015 and the code of practice relating to Part 6 were consulted upon for a 12 week period between 8 May and 31 July 2015. The Regulations were considered by the Legislative and Constitutional Affairs Committee, which found no issues to report. The Regulations were subject to the affirmative procedure, and a plenary debate was held in the National Assembly for Wales on 2 December 2015, when the Regulations were passed without comment.

## **Regulatory Impact Assessment**

We have considered the criteria in the Welsh Minister's Code of Practice on carrying out regulatory impact assessments and have concluded that it is not necessary to carry out an assessment for these amending regulations. The regulatory impact assessment which was undertaken for the Children (Secure Accommodation) (Wales) Regulations 2015 assesses the impact of the regulatory framework put in place for secure accommodation in Wales under the Social Services and Well-being (Wales) Act 2014. These amendments are largely technical in nature and will not have a major policy impact. They clarify the territorial scope of the regulations to cover placements in secure accommodation in England, make a technical amendment to accommodate changes to the Police and Criminal Evidence (PACE) Act, remove a disapplication in

respect of 16 and 17 year olds, and reinstate a maximum period of authorisation for remanded young people in line with the current regulations.