



Department  
for Education

# **Children Act 1989 guidance and regulations - volume 5: children's homes**

**Statutory guidance for local authorities**

**October 2013**

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# Summary

## About this guidance

This is statutory guidance from the Department for Education. It provides guidance to local authorities in England and their staff, about their functions under Parts 3 and 6-8 of the Children Act 1989.

It is issued as guidance under section 7 of the Local Authority Social Services Act 1970 which requires local authorities in exercising their social services functions, to act under the general guidance of the Secretary of State. Local authorities should comply with this guidance when exercising these functions, unless local circumstances indicate exceptional reasons that justify a variation.

## What legislation does this guidance refer to?

- Parts 3 and 6-8 of the Children Act 1989
- Care Standards Act 2000
- Section 10 of the Children Act 2004

## Who is this guidance for?

This guidance is for:

- children's services social workers;
- frontline managers with particular responsibilities in relation to looked after children;
- lead members in local authorities;
- directors of children's services;
- managers of services for looked after children;
- commissioners of services for looked after children;
- virtual head teachers, independent reviewing officers (IROs) and other professionals with responsibilities in relation to looked after children.

It will also be relevant to:

- children's services partner agencies as set out under section 10 of the Children Act 2004;
- registered providers and managers of children's residential care, including private, voluntary and public sector providers;
- children who are in residential care and their families.

It gives guidance to providers of children's homes about their responsibilities under the Care Standards Act 2000. Local authorities in acting as commissioners of places in children's homes should be aware of and take note of the requirements on those providers under this legislation and reflect it in their commissioning standards and contract specifications. This guidance assists them to do this.

## **Key points**

This guidance provides a framework for practice for providers of children's homes including secure children's homes and is based on the importance of safeguarding and promoting the welfare of individual children. It is not intended to be a prescriptive guide to good practice but to set out the essential matters that must be taken into account and provided for by those commissioning placements in and providing children's homes so that they can deliver a responsive and quality service for some of our most vulnerable children. Local authorities responsible for the placement of looked after children should use this guidance to inform their commissioning practice when they work to identify a suitable children's home placement for individual children. The relationship between legislation, statutory guidance and practice guidance is set out in Annex A.

# Chapter 1: Introduction

## Purpose of this guidance

- 1.1. Any good parent wants to make sure their children enjoy good emotional and physical health, an excellent education and a wide range of opportunities to enjoy their childhood so that they have every chance to grow up into successful, well rounded and mature adults. Local authorities are responsible for making this happen for the children they look after. This guidance contains the requirements set out by Government to support local authorities who are responsible for working with children's homes providers so that the children they look after are given the best possible care and support.
- 1.2. These requirements support the local authority in its primary duty, provided for in section 22(3) of the Children Act 1989, to safeguard and promote the welfare of looked after children. This includes a particular duty to promote the child's educational achievement and in acting as good corporate parents to enable each looked after child to achieve their full potential. Under section 22, local authorities should ensure that in commissioning services from providers of children's homes they comply with their responsibilities under that Act.
- 1.3. The guidance takes into account the requirements under the Care Standards Act 2000, in particular the Children's Homes Regulations 2001 (as amended). It should be read in conjunction with the National Minimum Standards (NMS) 2011 issued by the Secretary of State under that Act which are taken into account by Her Majesty's Chief Inspector of Education, Children's Services and Skills ("HMCI") in the regulation and inspection of children's homes. The text refers to the relevant part of the Children's Homes Regulations 2001 and the relevant NMS.
- 1.4. This guidance is one of a suite of revised volumes of Regulations and Guidance to the Children Act 1989 and supersedes the version of Volume 4 – Residential Care issued in 1991. It should be read in conjunction with these other volumes of guidance and is cross-referenced where appropriate.
  - Volume 1 - Court Orders
  - Volume 2 - Care Planning, Placement and Case Review
  - Volume 3 - Planning Transition to Adulthood for Care Leavers

- 1.5. The guidance should also be used in conjunction with Working Together to Safeguard Children 2010<sup>1</sup>, which is a volume of statutory guidance dealing with what local authorities and other agencies are required to do under section 11 of the Children Act 2004 to ensure children are properly safeguarded and protected.
- 1.6. The guidance has been informed by the views of children and young people in care who have given their views on how they should be cared for and the standards which should be in place for looked after children and young people<sup>2</sup>.

## Key Principles and Values

- 1.7. A children's home should provide a positive, supportive and caring living environment. Staff must be trained and supported to create and maintain such an environment. The best outcomes are achieved when the children and young people are cared for by well trained, supportive and actively engaged adults, with whom they can develop appropriate attachments and make positive relationships. Children and young people need good adult role models, and the freedom and space to develop their coping strategies, approaches to relationships and strong respect for other individuals.
- 1.8. Providers of children's homes must have in place a clear, comprehensive and detailed Statement of Purpose that sets out the culture, ethos, values and principles of the home and which clearly describes the model of care they provide and the services they can deliver.
- 1.9. Providers of children's homes must only accept children and young people where they know they can meet their assessed needs. These needs will be detailed in the child's care plan that is drawn up by the local authority responsible for their care; should a local authority attempt to place a child in a children's home without there being an up to date and, comprehensive care plan for that child, the home's registered manager should challenge the authority. It is essential that each home fully understands the commitment that must be made to the child before accepting a placement. This is essential in order to avoid any future disruption and instability in the plan for the child's future.
- 1.10. The ethos and work of a children's home must be one of commitment to safeguarding and promoting the welfare of each individual child. The home must offer each child or young person in the home personal support which is designed to respond to their individual needs, and which takes into account

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<sup>1</sup> [Working Together to Safeguard Children – A guide to inter-agency working to safeguard and promote the welfare of children](#), DfE, 2013.

<sup>2</sup> Ofsted 2010 Children's Messages on Care: A report by the Children's Rights Director for England.



their wishes and feelings. Children should not simply be treated as members of a group.

- 1.11. The NMS are also based on these key principles and should be considered by local authorities in commissioning placements in children's homes, whether these are provided in-house or by the independent sector.
- 1.12. Both the NMS and the Care Planning Guidance along with the Care Planning, Placement and Case Review Regulations 2010 reflect the intentions and principles of the Children Act 1989 that parents should be constructively encouraged and supported to exercise their responsibility for their child's welfare.
- 1.13. The principle of establishing a child's wishes and feelings is central to the Children Act 1989, which provides that these should always be established and taken into account by local authorities when taking decisions in respect of looked after children (section 22(5)). Volume 2 sets out in detail the local authority's responsibilities with regard to seeking and taking into account a child's wishes and feelings when they are looked after.
- 1.14. The principles of listening to the child and taking their views into account when planning their care applies to all children. This must include children and young people with disabilities, special educational needs or with other complex needs. The child's responsible authority in working in partnership with the registered manager of a children's home and their staff is required to make every effort to ensure that children are provided with the support they need to communicate their wishes and feelings and are able to participate as fully as possible in planning their care.

## **Corporate Parenting**

- 1.15. The responsibility of local authorities in improving outcomes and actively promoting the life chances of children they look after is referred to as 'corporate parenting' as the responsibility for this task must be shared by the whole local authority. The role of the corporate parent is to act as an involved and committed parent for each child they look after and to take action by speaking out on their behalf, arranging for appropriate services to meet their needs, standing up for them and representing them as needed, to ensure they grow up to achieve their potential.
- 1.16. Corporate parents cannot do this without the full co-operation and support of a range of other agencies which provide services to children and their families, such as schools, the NHS, and youth services. All partners share responsibility for ensuring looked after children are not further disadvantaged by the situation

they live in, and that they are given every possible form of support to ensure they grow up as well rounded, mature adults.

- 1.17. Providers of children's homes must ensure that the welfare, safety and individual needs of looked after children are central to the care provided, so that each looked after child is treated as an individual and given personal support tailored to their individual needs fully taking into account their wishes and feelings.

## **The role of children's homes**

- 1.18. A significant proportion of looked after children placed by local authorities in children's homes are teenagers. This reflects the differing needs of older children, as well as the fact that many older children and young people have said they would prefer to live in a children's home.
- 1.19. Living in a children's home should be a positive experience for children and young people. A short stay in a children's home can provide the spring board needed to enable children to return to a more familial environment either in foster care or with their birth or extended family. For some, it provides the very specific specialist care needed before they can live easily in another family or community setting. For others, the home provides the stability and support they need to prepare them for transition to the responsibilities of adulthood.
- 1.20. Children's homes fulfil a range of purposes designed to meet the different needs of those children and young people who are assessed as needing a residential care placement. Some provide accommodation for a particular period with the aim of achieving a specific outcome (e.g. preparation for family placement) and others have a role in providing long term support for children and young people who have had particularly distressing life experiences which have impacted severely on their emotional, behavioural and mental health. For some children they provide short breaks which are needed to help support them and their family.
- 1.21. The liberty of children may be restricted in a secure children's home (see Chapter 4) provided the specific criteria (set out in section 25 of the Children Act 1989) are met. For some children, a placement in secure accommodation will be the best way of protecting them and will represent a positive choice for the child.
- 1.22. In order to meet the range of assessed needs of the children who live in children's homes there are a number of different models of care, from larger homes designed with routines to meet the needs of teenagers, to homes

providing therapeutic provision for children with complex needs, to one-bedded homes.

- 1.23. It is essential that residential care is seen as part of the overall network of services for children and is used in a planned way when it is in the child's best interests. Residential care is, and will remain, a vital resource for looked after children.

## Definitions

1.24. In this guidance:

- "the 1989 Act" means the Children Act 1989;
- "the 2000 Act" means the Care Standards Act 2000;
- "the 2004 Act" means the Children Act 2004;
- "the 2008 Act" means the Children and Young Persons Act 2008;
- "child" means a person under the age of 18;
- "children's home is defined in section 1 of the 2000 Act. Essentially, an establishment is a children's home if it provides care and accommodation wholly or mainly for children (section 1(2) [and see paragraph 1.26;]. Section 1 also sets out what is not a children's home.
- Regulation 3 of the Children's Homes Regulations, also provides that:
  - where the placement of a looked after child is with their parent, a relative or a foster parent, this does not constitute a children's home;
  - hospitals or residential family centres are not children's homes;
  - schools are not children's homes (although this is subject to section 1(6) of the 2000 Act which says that a school is a children's home if accommodation is provided for a child / children for more than 295 days in a year);
- "care planning" refers to the requirements on the local authority to assess the needs of each looked after child and to then prepare a care plan that must be kept under review. These requirements are set out in the Care Planning, Placement and Case Review (England) Regulations 2010 and

related guidance (Volume 2 – Care Planning, Placement and Case Review of the Children Act 1989 statutory guidance<sup>3</sup>.)

- “NMS” means the National Minimum Standards;
- "parent" in relation to a child, includes any person who has parental responsibility for the child;
- “parental responsibility” means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property;
- “pathway plan” is defined in regulation 43 of the Care Planning, Placement and Case Review Regulations 2010 which refers to the plan that should record the actions the responsible authority, their partners (including the registered manager and staff of a children’s home) and the young person must take to prepare that young person so that they make a successful transition to adulthood (the pathway plan will incorporate the child’s care plan);
- “personal education plan” or “PEP” means that part of a looked after child’s care plan which records the arrangements made by the local authority to meet the child’s needs in relation to education and training;
- “registered provider”, in relation to a children’s home, means any person who is registered under Part 2 of the 2000 Act as the person carrying on that home;
- “responsible individual”, in relation to a children’s home means, where the person carrying on the children’s home is an organisation, the individual notified to HMCI as the person who is a director, manager, secretary or other officer of the organisation and is responsible for supervising the management of the children’s home;
- “registered manager” in relation to a children’s home, means a person who is registered under Part 2 of the 2000 Act as the manager of that home;
- “the Regulations” means the Children’s Homes Regulations 2001 and a reference to particular regulation/Schedule means that regulation/Schedule in the Regulations;
- "responsible authority" means, in relation to a child, the local authority responsible for the child's placement;

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<sup>3</sup> [Volume 2 – Care Planning, Placement and Case Review of the Children Act 1989](#) is available from the DfE website.

- “short break care” is a series of short-term placements where no single episode lasts for more than 17 days, and the accommodation is provided for not more than 75 days in a year. The definition of a short break does not apply in the case of a child subject to a care order;
- “supported accommodation” - a range of residential supported accommodation services can provide suitable placements for looked after young people aged 16 and over and for care leavers. Whilst this type of accommodation may wholly or mainly accommodate young people under 18, it will not necessarily be a “children’s home”. (See Annex B which has information about the factors that need to be taken into consideration by HMCI in making a judgement about whether an establishment providing accommodation for young people should be registered as a children’s home.)

1.25. “A looked after child” is defined in section 22 of the 1989 Act. A child is looked after by a local authority if he/she is in their care by reason of a) a care order or b) being provided with accommodation by the local authority under section 20 of the 1989 Act for a continuous period of more than 24 hours with the agreement of the parents, or with the child’s agreement where he/she is aged 16 or over; (c) children who are placed away from home under an emergency protection order, where they are accommodated by or on behalf of the local authority, are looked after. So too are those children on remand to local authority accommodation or under supervision with a residence requirement requiring them to live in local authority accommodation and those children in police protection or arrested and at the request of the police accommodated by the local authority (section 21 of the 1989 Act). Children will become looked after under section 21 of the Children Act if they are remanded by the youth court.

## Chapter 2: Ensuring the best for children and young people

- 2.1. Prior to making any placement, the local authority as “corporate parent” for a looked after child and as the commissioner of services must be sure that the children’s home has the capacity and staff expertise to meet the individual child’s assessed needs.
- 2.2. The local authority will need to take into account the home’s Statement of Purpose in reaching its decision about the suitability of the placement for the child concerned. In arriving at this decision on behalf of each looked after child, the local authority will also have to take into account the ages and the range of needs of the other children and young people living in the home. The *Care Planning Guidance* sets out in detail the duties and responsibilities of the local authority with regard to placements.
- 2.3. Emergency admissions must not be made unless the home’s Statement of Purpose explicitly specifies that the home has the capacity to support children admitted at very short notice.
- 2.4. The registered manager and the registered provider need to ensure that there are procedures in place for introducing children and young people into the home, whether they are planned arrivals or are placed in an emergency. This information needs to be included in the home’s Statement of Purpose.
- 2.5. Any changes to the placement of a looked after child should be planned, as far as reasonably practicable. Children and young people should not move to another placement unless this move follows the statutory review process for a looked after child that results in a recommendation that a move to another placement would meet the child’s needs - including needs for stable care and continuity in education. Review recommendations must take the child’s wishes and feelings into account.
- 2.6. If, for some reason, the registered provider has to move a looked after child out of the home to any other accommodation in an emergency without informing the child’s authority then the authority must be informed of this within one working day. A statutory review of the child’s care plan must be convened as soon as possible whenever a child is moved in an emergency.
- 2.7. If a child or young person is moved out of their placement temporarily, they should be treated as if they are still living at the children’s home in which they were initially placed and their placement cannot be terminated without the agreement of the responsible authority. This agreement should follow the review process outlined above. Where children must be moved, consideration

should be given as to how to allow them to maintain appropriate links with their previous placement.

## Contact with family and friends

- 2.8. Children and young people who are looked after are, for a variety of reasons, often living away from their family, community and friends. For the majority of these children and young people it is in their best interests to sustain, reinforce or create links with their birth family and wider support networks. Information about local authority responsibilities for maintaining continuing family contact for looked after children, are set out in the Care Planning Guidance.
- 2.9. In assessing the suitability of a children's home placement for an individual child one factor that the local authority will need to take into consideration is the home's capacity to support contact with the child's family. The responsible authority must consider how contact with the child's family will be maintained whenever they commission a children's home placement and the authority should discuss this with the home's registered manager. This will be particularly important if a child is to be placed at any distance from home.
- 2.10. Regulation 15 places a responsibility on the children's home to promote contact between children and their parents, relatives and friends. Much of this contact may be informal, but it should always be in line with the contact arrangements agreed in the child's care and placement plans (and any court orders that might be in place).**[Standard 9] In no circumstances must children's home staff use restriction of family contact as a sanction to manage the child's behaviour. (Regulation 17 (2) (c )(i))**
- 2.11. Children should have access to facilities such as a private phone line, post and email at reasonable times. (Regulation 15(4))
- 2.12. The registered manager and children's home staff need to be clear about what degree of decision making is delegated to them in relation to contact and what decisions can only be made by the responsible local authority. Where children's home staff are satisfied that restriction of contact is necessary because of the need to ensure that the child is safeguarded and their welfare promoted, then they should take the appropriate action. Staff may need to act at very short notice to alter contact arrangements. Any variation in contact at the initiative of children's home staff must always be recorded. As far as possible, the responsible authority should be informed when a children's home is considering restricting contact with a child. In any event, full details of the actions taken by the children's home staff to limit contact must be communicated to the authority within 24 hours of the action taking place. (Regulation 15). Where a child is the subject of a care order, specific duties are

placed on the local authority in relation to the refusal of contact, departure from the terms of an order under section 34 of the 1989 Act and notification, variation or supervision of contact arrangements made under a section 34 order<sup>4</sup>.

- 2.13. Statutory guidance has been given covering decision making about overnight stays for looked after children with friends<sup>5</sup>. That guidance sets out guiding principles which should be followed by those responsible for making decisions, what should be agreed through the care and placement plans and best practice in applying considered professional judgements.
- 2.14. The guidance makes it clear that there is no statutory duty for Criminal Records Bureau (CRB) checks to be carried out on adults in a private household where a looked after child may stay overnight, and that CRB checks should not normally be sought as a precondition of an overnight stay. Decisions on overnight stays should in most circumstances be delegated to staff, and arrangements for such decisions written into the placement plan (see *Care Planning Guidance*). Looked after children should as far as possible be granted the same permissions to take part in normal and acceptable age appropriate peer activities as would reasonably be granted by the parents of their peers. [Standard 7.5] Only where there are exceptional reasons should the permission of the responsible authority be required or restrictions placed on overnight stays.

## Statement of Purpose

- 2.15. Children's homes must have a Statement of Purpose that sets out the home's overall ethos, values and principles, which play a core part in promoting children's safety and welfare. It should be child focussed and able to demonstrate how the care offered to each child by the home will address their social, emotional, educational and behavioural needs. It must set out details of the home's aims and objectives and the services and facilities provided. Regulation 4 and Schedule 1 and Standard 13 set out the information that needs to be included in the Statement of Purpose. This must be regularly kept under review and revised whenever necessary. Any revisions must be notified to HMCI within 28 days. (Regulation 5)
- 2.16. Regulation 4(1) and Schedule 1 require that a children's home's Statement of Purpose must include details of the home's underlying ethos and theoretical approach, whether this is based on a therapeutic model involving any specific therapeutic techniques used in the home. Information should be included about

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<sup>4</sup> See Care Planning Guidance: Ch.3 and Regulation 8 of Care Planning, Placement and Case Review Regulations.

<sup>5</sup> Department of Health and Department for Education and Skills (2004), Guidance on the delegation of decisions on "overnight stays" for looked after children, DH Publications.



the supervision, training and development of employees. Any terms used to describe the home's therapeutic model must be in plain English, so that all agencies responsible for the child are able to understand how the preferred therapeutic approach supports the child to achieve the objectives set out in their care plan.

- 2.17. Local authorities should assure themselves that the children's homes where they place children will deliver the services to children that correspond to the ethos and interventions specified by the home in their Statement of Purpose.
- 2.18. As well as the Statement of Purpose the children's home must also have in place a suitable 'Children's Guide' to the home (Regulation 4), that is given to children and young people when the plan for a placement is being considered. This should be age appropriate, accessible and set out a summary of the Statement of Purpose and the home's complaints procedure. It will be good practice for the guide to include details about how to access an advocate, so that each child is provided with support from an adult if they wish to complain or make a representation about the care offered to them by the home. The guide must be produced in a format that is appropriate to the communication needs of the children placed in the home – e.g. in Braille or on audio-disc where necessary.

## Welfare

- 2.19. In commissioning places in children's homes, the local authority must be fully satisfied that the service they are commissioning is able to respond effectively to the child's needs and promote the child's welfare. This requires the local authority to be clear about the care which is required by the child and able to identify clearly what they expect in terms of the standards of care to be provided. Commissioning requires local authorities acting as corporate parents to have established well defined principles setting out what in their view constitutes good quality care and how the authority will measure this so that it can understand how the children's home placement chosen for each child will promote their welfare.
- 2.20. Regulation 11 requires that the registered person must have arrangements in place to ensure that the home is conducted in a way that promotes the welfare of children accommodated there and offers the care, education, supervision and, where appropriate, treatment that each child needs. For each child, these arrangements should be set out in the placement plan agreed between the placing authority and the home. [Standard 2] (Regulation 12 and 12A) [See definition of placing authority in regulation 2(1).] The placing authority and the registered person must keep this plan under review.

- 2.21. Promoting each child's welfare will require that the home environment encourages an ethos that respects each child's dignity and privacy. Children's home staff must demonstrate respect for the children in their care. In addition, the home's environment must allow children their own private space, places to keep their own belongings, do their homework, see friends and family, manage personal issues (hygiene and health matters) and feel safe. Where children live in a group environment it is particularly important that they can spend time away from other group members.
- 2.22. Standard 10 of the NMS (Regulation 31) sets out expectations in relation to the fitness of the premises used as a children's home so that it offers a comfortable homely environment.

## **Location of premises**

- 2.23. Where providers are considering establishing new children's homes it will be important that they take into account the location of similar services in the area. Concentrations of homes within relatively compact geographical areas may affect the capacity of local services to offer an appropriate response to the needs of vulnerable looked after children, often from other areas, who depend on children's homes for their support. [See also Standard 3.22 about the importance of homes having agreed procedures and guidance about police involvement with the home.]

## **Children's wishes and feelings – involving and listening to children**

- 2.24. The registered manager of a children's home must make arrangements to ensure that the views and wishes of children accommodated in children's homes are taken into account in relation to decisions about the daily life of the home. The home's Statement of Purpose should set out how the home will involve children and young people in its management.(see also [Standard 1]) In some instances, individual children may express views about what they want, that are not always in their best interests or which may conflict with the views of other children in the home. In such circumstances, as would be the case within a 'family home', the responsible adults will have to reach a reasonable view about the best way forward in the interests of all. The reasons for reaching any decision will need to be carefully explained to the children concerned.
- 2.25. Where children and young people do not have English as their first language then careful arrangements should be made so they are enabled to be provided with appropriate communication support. Similarly where children with disabilities have specific communication needs the registered manager in

consultation with the child's responsible authority, should make sure that arrangements are in place to support their communication to enable them to make their views known about the running of their home.

- 2.26. Any child placed in a children's home must be given the opportunity to participate in and shape the overall ethos, nature and routine of the home they live in. Children and young people in residential care should be given information, appropriate explanations, and choices about daily life in the home and the wider plan for their care. This requires skilled and confident staff able to communicate easily and understand the importance of listening to, involving and responding to the children and young people they care for.
- 2.27. The views of the child or young person's family, their social worker, and their Independent Reviewing Officer (IRO)<sup>6</sup> about the child's routines and how the home contributes to their overall care plan must also be taken into account by the registered manager and their staff. These views should be sought regularly and used to support continual improvement in the quality of care provided by the home.
- 2.28. To ensure that children have opportunities to communicate their views with appropriate adults they must have access to suitable facilities within the home enabling them to discuss any aspect of their life with key individuals including, where appropriate, family members and other significant adults in their life such as their social worker, independent visitor, or IRO. (Regulation 15) They should also be supported to communicate in ways appropriate to their age and understanding. These may include letters, communication via electronic media or, where the child has additional communication needs, with the use of suitable aids and equipment. (Regulation 15(5))

## **Complaints, representations, rights and advocacy**

- 2.29. Looked after children and young people may feel they have been treated unjustly or that their views, wishes and feelings have been ignored and not respected. Their concerns may be minor and easily resolved through a conversation with staff members, or be more significant and require a more formal response.
- 2.30. Regulation 24 requires that the registered manager has a written and easily accessible policy and procedure in place so that children and young people are able to make representations and complaints about the care provided by the home generally or about their treatment by individual staff.

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<sup>6</sup> See The Care Planning Guidance – Chapter 4 and the IRO Handbook.

- 2.31. Section 26 of the 1989 Act requires local authorities to set up a complaints and representation procedure for considering complaints made by looked after children. Section 26 of the Act enables the Secretary of State to make regulations governing complaints by children and young people. The 1989 Act Representations Procedure (England) Regulations 2006 are the relevant Regulations and detailed statutory guidance was published in 2006<sup>7</sup>. These set out the statutory framework for local authorities for responding to young people's complaints and concerns and whenever necessary ensuring that they are supported to access advocacy services in order that they are able to make their views known during the agency's complaints and representation process.
- 2.32. Registered managers and their staff should be familiar with the complaints procedures of the local authorities that have placed children in the home. Depending on the child's wishes, children's home's staff may support children whilst they make a formal complaint or representation; sometimes residential staff may be required to arrange advocacy support for the child. Staff should develop constructive personal relationships with the children in their care so that they understand how each child makes their opinions known and be clear when this constitutes a complaint. It will be particularly important that all staff possess an appropriate range of communication skills, so that they can assist children who cannot easily communicate their views.

## **Identity and diversity, respect and individuality**

- 2.33. Many looked after children have low self-worth and a poor sense of their own identity. Many come from families and environments that are subject to discrimination and marginalisation. They may have complex family backgrounds, or come from minority ethnic groups. Asylum seekers and refugees may face discrimination by virtue of their culture, ethnicity or faith. In addition some looked after children will have a disability and will be accommodated by specialist children's homes for children with disabilities.
- 2.34. Regulation 11 requires the registered person to ensure that the home is run in a manner which respects the privacy and dignity of the children who are accommodated there.
- 2.35. Standard 2 requires that full attention is paid to individual children's gender, faith, ethnic origin, cultural and linguistic background, sexual orientation and any disability they might have. This must be central to and integrated into every aspect of care, support and daily life, so that children have the support they need to feel pride in their identity and heritage. It will be necessary for children's home staff to work in partnership with children's social workers. The duties of

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<sup>7</sup> Department for Children, Schools and Families (2006) Getting the Best from Complaints; Social Care Complaints and Representations for Children, Young People and Others

the responsible authority to have regard to the cultural, linguistic and religious needs of the children they look after are clearly set out in the *Care Planning Guidance*.

- 2.36. Children's home staff should take every step to make sure that individual children and young people are not subject to discrimination, marginalisation or ridicule from their peers by virtue of their gender, religion, ethnic origin, cultural background, linguistic background, nationality, disability or sexual orientation.
- 2.37. Staff need to be informed, trained and confident to be able to understand and respond to a child's gender, religion, ethnic origin, cultural background, linguistic background, nationality, disability or sexual orientation, and be able to recognise when it will be necessary to request external professional advice and support so that they fully understand the full range of any child's identity needs and can respond to these in the most appropriate way. They also need to be able to balance the individual needs, wishes and preferences of one child or young person with those of the group as a whole.
- 2.38. Regulation 19 requires that staff are sensitive to matters of religion. As far as practicable, every child placed in a children's home should be offered the support they need so that they are able to attend services, receive instruction and observe any requirement of their religious persuasion.

## Daily routine

- 2.39. The daily routine of a children's home should provide the opportunity to promote every aspect of each child's welfare – to encourage their emotional and social development, self-esteem and sense of belonging. Staff must engage positively with children and create the everyday opportunities for them to develop appropriate relationships with peers and adults.
- 2.40. Regulation 13 requires children's homes to offer children a varied diet by providing regular meals that are in line with their cultural, racial, faith based or ethnic requirements. Meal times, and the negotiation involved in the shopping, choosing and preparing of food, provide opportunities for staff to model positive behaviours with children and in this way enable staff and children to build constructive relationships with each other.
- 2.41. Regulation 14 likewise requires that children's home's staff should meet children's reasonable preferences in relation to their clothing, footwear and personal necessities. The registered person, working with the responsible authority and where appropriate the child's family, should ensure that every child has sufficient good quality clothing to meet their needs. Cultural, racial,

faith based or ethnic expectations about their clothing or diet should be met and supported wherever possible.

- 2.42. The home should provide a personal allowance that is age appropriate and sufficient to meet a child's basic needs. Children should be encouraged to exercise choice and independence in clothes, personal items, toiletries etc. By supporting the child in this way, the children's home is offering children a valuable opportunity to learn important life skills and to develop personal responsibility and independence.

## Achieving good health for looked after children

- 2.43. The responsible authority must make sure that all looked after children are provided with appropriate good quality health care. The health of looked after children must be assessed at regular intervals and the child's care plan must include an individual health plan setting out the approach that the local authority will follow to meet the full range of the child's health needs. Details of the local authority's responsibilities for the health of looked after children are set out in the *Care Planning Guidance*.
- 2.44. Information about the statutory obligations and duties on local authorities and Clinical Commissioning Groups (CCGs) to support and promote the health of looked after children is also set out in Statutory Guidance on Promoting the Health and Wellbeing of Looked After Children<sup>8</sup>.
- 2.45. When they first become looked after, children may be in poor health and may not have had their immunisations or received any dental treatment for some time. Many looked after children will have experienced neglect and abuse resulting in poor emotional health. It is essential, therefore, that children are enabled to live in a healthy environment that promotes their health and wellbeing and provides them with all necessary services to respond to their needs. (Regulation 20) [Standard 6]
- 2.46. The health of children and young people in children's homes is very important if they are to grow into mature, stable well balanced adults. Attention must be paid to both their physical and emotional health. Children's home staff, supported by health professionals and the child's social worker, are responsible for the day to day health of children placed with them. The specific responsibilities of the registered provider should be set out in the child's health plan (included in their care plan) and in the child's placement plan.

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<sup>8</sup> Department for Children, Schools and Families and Department of Health (2009), [Statutory Guidance on Promoting the Health and Wellbeing of Looked After Children](#).

- 2.47. Providers of children's homes need to be explicit in their written material about how they offer high quality health care and to ensure any contracts for the provision of services includes information about how the home will respond to each child's health needs.
- 2.48. Regulation 20 requires that the registered person needs to ensure that the children and young people they care for are a registered patient with a general medical practitioner, have access to a dentist and other treatments and services that they may require and are provided with any aids or equipment required by particular health needs or disability. These responsibilities should be undertaken in conjunction with the child's social worker.
- 2.49. Standard 6 requires that where children have specific health needs or conditions, they should be supported to manage these and avoid any potential embarrassments or difficulties. When a child or young person needs additional assistance to promote their health, children's home staff should work with the child's social worker so that they have proper and immediate access to any other specialist medical, psychological or psychiatric support required. (The health services required in these circumstances should be identified in the child's individual health assessment and set out in their individual health plan.)
- 2.50. Registered providers need to ensure that their staff have the relevant skills and knowledge to be able to meet the health needs of children and young people, administer basic first aid and minor illness treatment, provide advice and support and where necessary meet specific individual health needs arising from a disability, chronic condition or other complex needs. At least one person on duty in a children's home must have a suitable first aid qualification.
- 2.51. Regulation 21 requires the registered person to ensure that they make suitable arrangements to manage, dispose of and administer any medication. These are fundamentally the same sorts of arrangements as a good parent would make but are subject to additional safeguards.
- 2.52. Whilst the first principle should be that children and young people (even young children with specific long term conditions) are supported to keep and administer their own medication, care must be taken to ensure they are responsible enough to do so or will be able to do so with adequate support.
- 2.53. First aid boxes must be provided, as must appropriate locked storage for medication. Proper care must be taken to ensure prescribed medicines are only administered to the individual for whom they are prescribed, and records should be kept of the administration of all medication. Medicines should be administered in line with an agreed (and medically approved) protocol.

- 2.54. Each child or young person must have on their home file prior written permission from a person with parental responsibility for staff to administer first aid and non-prescription medication. This needs to be arranged by the child or young person's social worker, involving where possible the child's family and children's home staff. Records should be kept of the administration of all medication which includes occasions when prescribed medication is refused.
- 2.55. Wherever possible, the child's family should be involved in supporting their health needs, as well as in providing permission for treatment.
- 2.56. The registered person must also ensure that any health care professionals employed, retained or otherwise referred to by the staff have appropriate professional qualifications, are accessing continuing professional development and are using properly accredited and professionally validated treatment methods.
- 2.57. Staff need good supervision to support them in dealing with health related issues. This is particularly important in relation to any specific models of therapy or treatment used within the home by healthcare professionals and/or other staff advised by health care professionals. [Standard 6]
- 2.58. As well as identifying and responding to specific health needs, registered providers should ensure that each child is given good advice, support and guidance as necessary on good health and personal care to enhance, inform and supplement that provided by their school through Personal, Health and Social Education (PHSE). This advice should cover alcohol and illegal substance abuse, smoking, sex and relationships, sexually transmitted diseases (including HIV), and protecting oneself from infections such as hepatitis.
- 2.59. In cases where children are receiving short break care in a children's home, responsibility for their health care remains with their parents, but staff will be responsible for maintaining a child's ongoing health treatment during a short break and for obtaining treatment for the child in an emergency.

## **Positive behaviour and taking risks - health and safety**

- 2.60. Regulation 23 requires that the registered person ensure that any activities in which children participate are, so far as reasonably practicable, free from avoidable risks. Children's home staff should take reasonable precautions and make informed professional judgements about when to allow a child or young person to take a particular risk or follow a particular course of action.
- 2.61. Making choices, taking risks and learning from mistakes is part of growing up and it is essential to provide looked after children with the opportunities to take



risks if they are to develop the skills needed to mature into well rounded confident adults. Like all other young people, looked after children need to be supported to 'learn through doing'. Whilst it is normal for staff, like parents, to want to avoid unnecessary risks, excessive caution is unhelpful. Children and young people need to have the opportunity to take risks proportionate to their age. They need to be encouraged to make friends, participate in sports and outdoor activities, to stay overnight with friends as appropriate and explore the world they live in.

- 2.62. When the choices a child makes are poor or the risks unacceptable, it will be the responsibility of children's home staff to assist them to understand and manage their own behaviour differently.
- 2.63. Regulation 23 applies equally to the home environment. Providers need to exercise the same sensible precautions about the home that a parent would. Providers of children's homes should try to ensure that the children are able to live in a homely environment, that allows a certain degree of freedom and where the rules regarding a safe environment are implemented sensibly, taking into account the age and purpose of the home, and does not unnecessarily prevent children from taking part in everyday activities, for example, preparing meals or assisting with household chores.
- 2.64. Like a reasonable parent, the registered person needs to ensure that, within reason, hazards are removed or avoided. Whilst the responsible person has to comply with the requirements of the Health and Safety at Work Act 1974, this should not conflict with providing a homely environment for the children and young people. As noted, children should be given the opportunity to cook for themselves and to be involved in household maintenance with appropriate supervision.

## Safeguarding

- 2.65. Children placed in children's homes must be enabled to feel safe and be safe. They need to understand how to protect themselves, feel protected and be protected from significant harm. [Standard 4]
- 2.66. The duties and responsibilities of the local authority with regard to safeguarding children and young people are set out clearly in the statutory guidance, *Working Together to Safeguard Children*<sup>9</sup>.
- 2.67. The specific responsibilities of the child's social worker acting on behalf of the authority, for safeguarding children and young people who are looked after are set out in the *Care Planning Guidance*. Regulation 16 requires that the

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<sup>9</sup> Department for Education (2013), [Working Together to Safeguard Children](#).

registered person must put in place and implement, review and regularly amend a clear written policy that is well understood by all staff and which sets out how the home will safeguard all children and young people from abuse and neglect. This should include access to procedures and advice in relation to e-safety. This policy must be available to children, young people and their families as well as to all home staff, whatever their role. The registered person must make sure that all staff are familiar with the policy and understand how to put it into practice.

2.68. The policy must set out clearly:

- the procedure staff should follow in the event of any allegation or disclosure;
- the requirement for staff to refer promptly any concerns about the welfare or safety of a child to the registered person, or an officer from the local authority in which the home is situated, a police officer or to HMCI;
- the need to liaise and co-operate with any local authority making child protection enquiries about a child or young person living at the home; and
- any measures that may need to be considered in order to protect children and young people in the home following an allegation.

2.69. The Regulations also set out the requirements that children's homes must have in place to manage allegations against staff (Regulation 24) and safe recruitment and employment. (Regulations 25 – 27)

2.70. Regulation 30 and Schedule 5 require registered persons to notify local authorities, HMCI and other services about serious incidents such as the instigation and outcomes of any child protection enquiry involving a child accommodated in the home.

2.71. Each home's safeguarding policy should reflect the requirements of the Local Safeguarding Children's Board (LSCB) of the area in which the home is situated. Access to the LSCB's procedures and Working Together<sup>10</sup> should be easily available to all staff.

## **A safeguarding culture and ethos**

2.72. To safeguard children in the home the registered person must ensure that the staff place a strong value on making positive relationships with children and young people that generates a culture of openness and trust and also ensure that staff are aware of and alert for any signs that might indicate a child is in any

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<sup>10</sup> Department for Education (2013), [Working Together to Safeguard Children](#).

way at risk of harm. This should develop an ethos that encourages children and young people to feel confident about themselves and be able to tell someone they trust if they have concerns or worries. Where children and young people are listened to, respected and involved in the development of the home's ethos and culture and in decisions about the way the home is run on a day to day basis, the conditions that might lead to an individual in the home abusing their position are less likely to arise. This is enhanced by an appropriate level of staff supervision.

- 2.73. Children and young people must be given information about how to report concerns and about help lines such as ChildLine<sup>11</sup>. They should be able to make private telephone calls, or contact a range of relevant websites in order to seek advice and help.
- 2.74. As a minimum, children's home staff must be trained, to the basic level of the LSCB's training programme and should know what constitutes appropriate safe care practice.
- 2.75. Regulation 16 requires that the registered person shall prepare and implement a written policy intended to safeguard the children from abuse or neglect and which sets out the procedure to be followed in the event of an allegation of abuse or neglect.

## **Notification of serious incidents**

- 2.76. The policy must also set out the requirement to notify HMCI and the child's responsible authority of any serious incident. If any 'notifiable event' takes place the registered person shall, without delay, notify the appropriate people listed in (Schedule 5) (Regulation 30).

## **Children missing from the children's home**

- 2.77. The care provided should ensure that children and young people feel secure and safe living within the home and minimise the risk that children and young people will go missing.
- 2.78. If there is a risk that a child or young person may run away or go missing staff should do their best to help them understand the risks and dangers involved and make them aware of how to seek help. Staff should know when to try to prevent a child or young person leaving the home and should do so through negotiation with the child in question. Staff in children's homes that are not

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<sup>11</sup> 0800 1111: [www.childline.org.uk](http://www.childline.org.uk)

approved as secure children's homes should not try to restrain the child or young person simply to stop them from leaving the home.

- 2.79. Regulation 16 and Standard 5 require that if a child does go missing, the home's staff should work with the police and the child's responsible authority to do all they can to locate them. When they return they should be offered a positive warm response. Children's home staff will need to have well developed interpersonal skills and be familiar with the missing from care policies of the local authority where the home is located and with the policies of placing authorities. They must also fully understand the home's own missing from care policies and procedures and understand their responsibilities for making these policies work.
- 2.80. Every LSCB together with the relevant local authority and police force must have in place a locally agreed 'Runaway and Missing from Home and Care' (RMFHC) protocol<sup>12</sup>. Where there is a possibility that a looked after child will run away and go missing from a children's home placement, then the child's care plan, along with the placement plan, should include a strategy to minimise this risk.
- 2.81. The registered person must prepare and implement, as required, a procedure to be followed when any child is missing from the home, having regard to any relevant local authority or police protocols. They must ensure they are familiar with and can comply with the RMFHC protocols of the local authority within which the home is located and with the RMFHC protocol of each local authority commissioning services from them.
- 2.82. Written records need to be kept by the home detailing all individual incidents when children go missing from the home. This information should be shared with the placing authority and, where appropriate, with the child's parents.
- 2.83. Where young people run away persistently or engage in other risky behaviours, such as frequently being absent from the home to associate with inappropriate adults, the registered manager, in consultation with the child's responsible authority should convene a multi-agency risk management meeting. The purpose of this will be to develop a strategy for managing the risks faced by the young person. This strategy should be recorded in detail in their care plan and the placement plan must be revised so that it includes the actions to be taken by the children's home to contribute to the strategy and manage the risk.

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<sup>12</sup> Department for Children, Schools and Families (2009), [Statutory guidance on children who run away and go missing from home or care](#).

## Bullying

- 2.84. Staff should protect children and young people from significant harm, including abuse, accidents, bullying or negative attitudes. The culture of the home should reinforce a clear expectation that any form of bullying is totally unacceptable and must not occur. Regulation 16(4) requires children's homes to have in place a clear policy for preventing bullying in the home by anyone living (or working) there. This must set out the home's procedures for dealing with allegations of bullying and its arrangements for staff training, so that staff have the skills they need to intervene and reduce bullying behaviours by young people in their care. [Standard 3.12]

## Behaviour management

- 2.85. Standard 3.22 requires that children's homes develop constructive relationships with the police in their area. Homes should agree with their local police force procedures and guidance on police involvement with the home to reduce unnecessary police involvement in managing behaviour. Children should not be charged with offences resulting from behaviour which would not lead to police involvement if it occurred in a family home.
- 2.86. Caring for children in a residential setting is very rewarding but at times this work can be challenging. Therefore, it is vital that staff have a sound understanding of child development and how children react to crises and traumatic experiences in their lives. It is essential that all staff have access to supervision, support and training to develop the skills and competences necessary to understand children's behaviour and intervene constructively so that children have the right kind of support to develop positive behaviour.
- 2.87. The capacity and competence of staff to build constructive warm relationships with children that actively promote positive behaviour provides the foundation for managing any negative behaviour. Staff need to be able to respond to each child or young person's individual behaviour and to be skilled at diffusing difficult situations to avoid them from escalating. Staff should be supported to develop the skills they will need to manage conflict so they are confident in being able to maintain constructive dialogues and react appropriately when confronted. Staff supervision must enable staff to reflect and act upon how their own feelings and behaviour may be affected by the behaviour of the children they care for.[Standard 3.9]
- 2.88. The child's placement plan must set out any specific strategies that have been agreed to reduce the incidences of any negative behaviour exhibited by the child. Sanctions for poor behaviour need to be clear, reasonable and not

excessive. Staff must be trained to understand how to respond effectively to very challenging behaviour.

- 2.89. Regulation 17B and Standard 3 require each home to prepare and implement a 'behaviour management policy'. This should set out the measures to promote positive behaviour and the measures of control, restraint and discipline which may be used in the home. Sanctions for poor behaviour should not be punitive but should be restorative in nature, so that children are helped to recognise the impact of their behaviour on others. The home's behaviour management policy must be understood and applied at all times by staff and kept under regular review. Regulation 17(2) details those sanctions that are prohibited.
- 2.90. The behaviour management policy should inform how staff are deployed. Regulation 25 requires children's homes to employ a sufficient number of suitably qualified, competent and experienced persons. Where the children's homes' staff have identified concerns about children's behaviour, perhaps following incidents requiring police involvement, the registered manager should ensure that there are an adequate number of suitably skilled staff on duty to be able to respond effectively to prevent future incidents.
- 2.91. If staff in the home resort to any measure of control or discipline or restraint, it is essential that this is carefully recorded within 24 hours by the staff involved with full details in a record<sup>13</sup> kept for this purpose. It is also good practice for the child involved to record their perception of the incident. Where necessary, the child should be helped to access support from an advocate so that they are able to do this.
- 2.92. The purpose of this record keeping is so the registered person and staff can review behaviour and respond promptly where any worrying issues or trends emerge. The review should provide the opportunity for amending behaviour management practice to ensure that this offers a response that is effective and also sensitive to the needs of all the young people in the home's care.
- 2.93. It is also good practice to use this information to inform discussions with the child's social worker and their IRO, as the child's placement plan may need to be changed. The views of the child should also be taken into account. The approach to behaviour management for any individual child should be based on a thorough and systematic appraisal of the evidence about what types of interventions have been effective in the past at changing and improving the child's behaviour. It should include details of de-escalation and diversion tactics

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<sup>13</sup> This could be an electronic record, but this must be accessible to all who have a need to see this including the young people to whom the record refers. All records must be in formats that can not be tampered with after the event – e.g. bound numbered records or electronic entries that are then "barred" so that they cannot be amended at a later date.

that should be followed to minimise the possibility of the child needing to be restrained.

- 2.94. When the local authority assesses whether a placement in a particular home is suitable for an individual child, it will need to take into account the home's approach to control, discipline and restraint and how the approach of the home supports young people in developing positive behaviour.

## Use of restraint

- 2.95. In December 2004, the Children's Rights Director published – Children's Views of Restraint [This was reviewed and reissued in 2012]<sup>14</sup>. The report stressed:

- the importance of all children's homes having genuinely predictive strategies in place to avoid the use of restraint;
- the need for any means of physically intervening with a child to be based on their specific individual personal needs; and
- the importance of staff being competent to deliver physical intervention in such a way that children are not hurt.

- 2.96. Physical interventions to restrain or protect children and young people can only be justified within a context in which children are offered positive care that meets their individual needs and respects their personal integrity. Any technique for restraining a child should never be intended to inflict pain.

- 2.97. In some cases, behaviour necessitating the use of physical restraint may be due to a child's impairment or disability. If children have a disability or a special educational need, it is essential that staff identify and utilise existing behaviour management plans or techniques which may have been developed by the child's school, family or by child psychology or other services.

- 2.98. Regulation 17A requires that restraint must only be used for the purpose of:

- preventing injury to any person, including the child being restrained;
- preventing serious damage to the property of any person including the child being restrained, and
- preventing absconding from a secure children's home;
- and then only when no alternative method of preventing the event is available.

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<sup>14</sup> Ofsted ['Children's views on restraint'](#) (2012).

2.99. The measure of restraint must be proportionate and no more force than is necessary should be used. This will be the minimum amount of force necessary to avert injury or serious damage to property applied for the shortest possible time.

2.100. Any attempt to restrain a child or young person carries risks. These include causing serious physical injury, psychological trauma or emotional disturbance. Children's home's staff will need to take into account:

- the age and understanding of the child;
- the size of the child;
- the relevance of any disability, health problem or medication to the behaviour in question and the action which might be taken as a result;
- the relative risks of not intervening;
- the child's previously sought views on strategies that they considered might de-escalate or calm a situation;
- the method of restraint which would be appropriate in the specific circumstances;
- the impact of the restraint on the carer's future relationship with the child.

2.101. Children's home staff must operate within a clear, unambiguous policy about the use of restraint and how this fits within the homes behaviour management policy, be trained to apply the policy and know exactly when to do so. This will include training in those restraint techniques approved to be used in the home. In no circumstances will it be acceptable for a staff member to restrain a child in their care as any kind of disciplinary measure in order to enforce compliance with a sanction or instructions.

2.102. Before being expected to use any specific method of restraint, staff will need to demonstrate that they fully understand the risks associated with the technique concerned. For example any techniques that may interfere with breathing are likely to present an unacceptable risk and should never be used. Holding a child by the neck carries a risk of suffocation or restricting blood flow to the brain, as well as a risk of spinal injury and on no account should neck holds be used as a way of restraining children or young people. So called "nose distraction" technique will inflict pain and is not proportionate, as it will involve unnecessary force. These techniques, therefore, are unacceptable and should never be used on children in any children's homes, including in secure children's homes.



- 2.103. Following an incident where a child has been restrained, staff must be able to call on medical assistance for the child as required. Compliance with NMS (3.16) requires that any child or young person who has been restrained must be given the opportunity to be medically checked afterwards and encouraged to accept this. All the staff and children who have witnessed the restraint, or been involved in any way, should be given the opportunity to be debriefed about the incident to inform the strategy needed to prevent any recurrence.
- 2.104. Children's home staff are responsible for ensuring that they give children the opportunity to be listened to; any child who has been restrained should be given the opportunity to be debriefed by a responsible adult who had not been involved in the restraint incident and to talk through their experience within 24 hours. Children should be encouraged to add their views and comments to the record. Children must be offered the opportunity to have access to an advocate to help them with this (see 2.93).
- 2.105. Where a young person is remanded or detained in a secure children's home the criteria set out in Regulation 17A also apply. In this case the use of restraint may also be justified if it is essential to prevent a child from absconding from the home. But the management routines of a secure children's home should usually prove sufficient to minimise the possibility of young people being able to abscond successfully.
- 2.106. Annex C includes further information that may be helpful..

## Single separation

- 2.107. Standard 23.13, which only applies to children detained in secure children's homes, requires that children are only placed in single separation<sup>15</sup> when necessary to prevent injury to any person (including the child who is being restrained) or to prevent serious damage to the property of any person (including the child who is being restrained). When children have been placed in single separation, they should be observed at regular intervals. A record must be kept of each occasion a child placed in a secure children's home is kept in single separation. Children should be offered the opportunity to read the record and to add their own comments. One purpose of record keeping will be to identify trends affecting the child's behaviour to minimise the use of this behaviour management strategy.

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<sup>15</sup> Single Separation has been defined in Secure Accommodation Network Good Practice Guidance The use of Single Separation in Secure Children's Homes (England and Wales) (March 2005) as 'the confining of a young person in his/her room or an area as a means of control and without the young person's permission or agreement without a member of staff being present and with the door locked in order to prevent exit or to further restrict their liberty in excess of that permission already granted by a court under Section 25 Children Act 1989, Section 100 Powers of Criminal Courts (Sentencing) Act 2000 or Section 90-92 Powers of Criminal Courts (Sentencing) Act 2000.

## Restriction of liberty

- 2.108. Restricting the liberty of children is a serious step and a child's liberty can only be restricted in a children's home approved by the Secretary of State as a secure children's home. It is unacceptable for a home that is not approved by the Secretary of State to lock a child in for the purposes of detention.
- 2.109. The use of double or high door handles or the locking of outside doors, or doors to hazardous areas, may be acceptable as a safety measure and/or as a security precaution. Where it is necessary to adjust the environment of the home so that it is safe and secure, then decisions about the use of locks should be based on a careful risk assessment that allows children as much freedom as possible, consistent with the need to keep them safe.
- 2.110. "Semi-secure" children's homes have no basis in law<sup>16</sup>. An establishment is either using its premises for the purpose of providing care in a setting which restricts the liberty of a child and has been approved by the Secretary of State as a secure children's home or it is not. Placing authorities, parents or even young people themselves cannot give their own consents for a child to have their liberty restricted. Therapy and behaviour management do not provide a reasonable excuse for restricting the liberty of a child in a children's home which is not approved as secure accommodation.

## Electronic monitoring

- 2.111. Children's home staff should take steps to be reasonably aware of the activities of each child in the home and where they are expected to be at any time. Monitoring devices should only be used for the purpose of safeguarding and promoting the welfare of the child concerned. Regulation 22 sets out the requirements that must be followed where surveillance is used for safeguarding or welfare reasons in children's homes that are not secure children's homes.
- 2.112. The exception to this will be where children are subject to electronic monitoring through the criminal justice system. In these circumstances the home must cooperate with any requirements of the child's sentence supervision.
- 2.113. Where surveillance is used in secure children's homes that the home must have a written policy on the use of CCTV in communal areas, including how this technology will be used to safeguard children and protect staff. CCTV is able to record any use of restraint, episodes of bullying, or incidents leading to a

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<sup>16</sup> See letter of March 2007 from the chief inspector of the Commission for Social Care Inspection (then the inspectorate for children's homes) to Directors of Children's Services regarding the legal position on the restriction of liberty in children's homes  
<http://www.education.gov.uk/childrenandyoungpeople/families/childrenincare/childrenshomes/a0065676/secure-childrens-homes>

significant allegation by a young person against another young person. CCTV records should be reviewed by representatives of the authority responsible for the establishment so that any necessary action can be taken to minimise the use of restraint in future and generally to prevent the recurrence of incidents that disrupt the stability of the children accommodated in the home.

## **Educational achievement for looked after children**

- 2.114. Whilst some looked after children do well educationally, many continue to face poor experiences of education and as a result are at risk of much lower educational attainment than their peers.
- 2.115. As corporate parents, local authorities must demonstrate the strongest possible commitment to helping every looked after child, wherever they are placed, to achieve the highest possible educational standards. This includes supporting their aspirations so that they have all the help necessary to progress into further and higher education.
- 2.116. The 1989 Act, as amended by the 2004 Act, places a duty on local authorities to promote the educational achievement of looked after children. This duty is explained in statutory guidance<sup>17</sup>.
- 2.117. The local authority must pay particular attention to the educational implications of any decision about the welfare of a looked after child. For example, placement decisions must take into account the child's school and wider educational needs. Wherever possible, the local authority should preserve continuity in the child's education, by enabling them to remain at their school. When commissioning a placement in a children's home the authority must establish how the registered provider will support the child's educational needs so that they are given every opportunity to reach their potential.
- 2.118. The child or young person's care plan will, through their Personal Education Plan (PEP), identify arrangements for their education and related support so they have access to the full range of educational services. It will include commitments listed in any other education plans such as an individual education plan (IEP) or a statement of special educational needs.
- 2.119. The responsible authority must ensure that the child's placement plan sets out the responsibilities of the children's home registered manager and their staff for meeting the child's assessed educational needs and supporting their achievement (see Care Planning Guidance). The home's registered manager

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<sup>17</sup> Department for Children, Schools and Families (2010) [Promoting the Educational Achievement of Looked After Children: statutory guidance for local authorities](#).

should have a copy of the PEP, where this has been produced as a separate document from the education module of the child's care plan.

## **The education responsibilities of the provider of the children's home**

- 2.120. Regulation 18 requires the registered person actively to promote the educational achievement of all children placed in the children's home. One of the primary tasks of children's home staff will be to make every effort to enable looked after children to attend school regularly. Staff must maintain regular contact with schools and actively work with the school and the child's authority in order to overcome any problems that prevent the child from receiving high quality education. Where children placed in a home are not participating in education, because they have been excluded or are not on a school roll for some other reason, the registered provider and children's home staff must work closely with the authority responsible for the child's care so that they are supported and enabled to resume full time education. [Standard 8]
- 2.121. Regulation 18 requires the registered provider or manager to ensure that homes provide suitable facilities and personal support to children so that they have any help necessary for completion of homework. The ethos of the home must emphasise the value of private study and reading support. Children should have easy and regular access to a computer to support their education. The home's routine must be arranged so that there is no barrier to children making use of all the home's educational resources.
- 2.122. Children's home's staff must be provided with information and training so that they fully understand the particular challenges faced by looked after children in fulfilling their maximum educational potential. Staff must understand their responsibilities for enabling children to overcome educational barriers. They will need to possess sufficient understanding of the education system to act as advocate for or on behalf of a child who may be experiencing difficulties in their educational setting.
- 2.123. Children's home staff need to know, for every child in their care, what level of decision making has been delegated to them in relation to the child's education, such as whether or not they are authorised to sign permission slips for school trips and activities. These delegations should be recorded in the child's placement plan.

## The education responsibilities of the school for children living in children's homes

2.124. The governing bodies of all maintained schools are required to appoint a designated teacher to promote the educational achievement of looked after children who are on the school roll<sup>18</sup>. The role of the designated teacher is set out in statutory guidance<sup>19</sup>. The designated teacher will ensure that there is a central point of initial contact within the school in relation to the education of looked after children and that the school works closely with staff in children's homes, social workers and other professionals to promote the child's educational achievement. This includes making sure that school policies, such as timekeeping, homework and parents' meetings, are communicated to staff with the home, and working to ensure that PEPs fully meets children's education needs.

## Children above compulsory school age

2.125. Regulation 18(3) provides that the registered person must assist with and give effect to the arrangements for the education, training and employment of any child who no longer has to receive full time education. [Standard 8.9]

2.126. A PEP should be maintained for all children above school age at school or college. Where young people are being provided with support as care leavers the PEP will be an important part of the young person's pathway plan. This will identify the home's role in supporting young people so they can succeed in further or higher education, training or employment. The pathway plan may need to cover funding accommodation for the young person to return to during vacations if they are being educated away from the area in which the children's home is located.

## Children receiving short breaks

2.127. Regulation 44 specifies that the duty to promote educational achievement does not apply to children receiving short breaks, as in those cases the responsibility will rest with the parent.

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<sup>18</sup> The Designated Teacher (Looked After Pupils etc) (England) Regulations 2009.

<sup>19</sup> [The role and responsibilities of the designated teacher for looked after children: Statutory guidance for school governing bodies](#), DCSF 2009.

## Leisure activity

- 2.128. Looked after children, like all children, need access to a wide range of positive activities so they are able to enjoy and achieve success (regulation 18(2)). The registered person is required to enable children to take part in activities such as sports, gym, cubs and scouts, drama groups, youth clubs and volunteering. The activities from which children will derive enjoyment and satisfaction will vary with the individual, but such experiences will be important in giving children a personal sense of achievement. (Regulation 18(2)) [Standard 7]
- 2.129. Wherever possible the authority should give children and young people permission to get involved in the same, age appropriate, activities as all their peers. Many of these opportunities will be provided through the schools the children and young people attend, including out of school clubs and activities. Regulation 18 requires that children's home staff should ensure that the routine of the home is organised to support the children's participation in these activities.
- 2.130. The registered person and the staff at the home should recognise the wide range of personal achievements of looked after children, and celebrate individually and collectively these achievements.

## Promoting independence and the transition to adulthood

- 2.131. Children and young people should be cared for in a way which helps them to reach their potential and achieve economic wellbeing. As young people approach adulthood, children's home staff should increasingly help to prepare them for moving into further and higher education, training, and employment. The routine of the home should help to develop young people's financial skills, capability and knowledge. One of the ways in which some local authorities demonstrate their corporate parenting responsibility is by ensuring that looked after children have savings accounts in the same way that any good parent will save for their child. Children's home staff may have an important role in assisting children to understand what is involved in managing such an account.
- 2.132. Residential care should offer young people opportunities to learn the skills that they need to develop and build their self-esteem and personal identity so they are prepared for life as confident independent adults.

2.133. Children should be supported to understand how to:

- manage the practicalities of a home and their personal care;
- understand the nature of positive social and sexual relationships; and
- develop socially aware responsible behaviour.

2.134. Standard 12 emphasises the key role for children's homes in supporting the authority in preparing looked after children to make their transition to adulthood. They are also responsible for liaising with the authority and their IRO about the readiness or otherwise of the young person to move on, and for acting as advocate if appropriate, for and on the young person's behalf.

2.135. The 1989 Act, sets out the local authority's duties in relation to supporting young people through the transition to adulthood. The Care Leavers (England) Regulations 2010 set out how the authority must meet its statutory responsibilities to care leavers. These Regulations are supported by revised statutory guidance, *Planning Transition to Adulthood for Care Leavers*<sup>20</sup>. Local authorities have responsibilities to respond like any reasonable parent, so that looked after children and young people have the support they need to prepare them for greater independence so that they are able to make a successful transition to adulthood.

2.136. From the age of 16 looked after children must be allocated a personal adviser by their responsible authority to act as a focal point for planning the transition to adulthood. Children should be encouraged to develop the skills and resilience they will need to achieve their aspirations. Children's home staff should work closely with the young person's social worker and personal adviser and the young person themselves to contribute to the development of the pathway plan and carry out any tasks agreed as part of this plan. The professional responsible for developing the pathway plan with each young person must in turn consult with the staff of their children's home.

2.137. No young person under 18 should have to leave a stable placement in which they are making steady progress before they feel ready to do so<sup>21</sup>. When they do leave the children's home it will usually be appropriate for the staff to remain in contact with the young person for a period of time and to offer appropriate support, as a good parent would. This will reduce any understandable feelings of isolation and help the young person to feel valued.

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<sup>20</sup> [Planning transition to adulthood for care leavers](#), DfE (2010)

<sup>21</sup> See Vol. 3 *Planning Transition to Adulthood for Care Leavers* – 7.23.

## Chapter 3: Governance, systems and processes

### Commissioning and placement

- 3.1. Commissioning is the process for deciding how to use the total resource available for children, young people and parents, families and carers in order to improve outcomes for children and young people in the most efficient, effective, equitable and sustainable way.
- 3.2. All placement decisions are subject to the duty set out in section 22(3) of the Children Act that the placement is the most appropriate way to safeguard and promote the child's welfare. Placement decisions must be underpinned by an up to date assessment of the child's needs and family circumstances. Sections 22C(7) to (11) set out the criteria to be applied by the authority in determining whether a placement is suitable for a child. The placement criteria are important because most children benefit from being placed with relatives, friends or with others connected with them; by being near their own homes; by continuing to attend the same school; by living with their siblings and by placement in accommodation which is appropriate for any special needs. However, not all these factors are always beneficial for all children; moreover some will have a greater priority than others at different times in children's lives. In determining the weight to be given to the range of factors, the authority will need to ask how far a particular placement will meet the needs of an individual child, given the child's previous history and current circumstances, including the circumstances of their family.
- 3.3. The local authority, following the Children and Young Persons Act 2008 (which amended the 1989 Act), is required to provide a looked after child with accommodation within the local authority's area unless that is not practically possible<sup>22</sup> (section 22C(9)). The local authority is also required under section 22G<sup>23</sup> to take steps to secure, so far as is reasonably practicable, sufficient accommodation for looked after children in their local authority area<sup>24</sup>.
- 3.4. These requirements are intended to ensure that the majority of looked after children are looked after in, or close to, their own families, schools and communities. However, for some children there will be good reasons, including the need to ensure that they are properly safeguarded, for them to be placed at a distance from the authority responsible for their care.

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<sup>22</sup> Section 23 of the Act as amended by the Children and Young Person's Act 2008, which substitutes section 23 with sections 22A-22F.

<sup>23</sup> Section 9 of the Children and Young Person's Act 2008 inserted section 22G into the Children Act 1989.

<sup>24</sup> Department for Children, Schools and Families (2010), [Statutory Guidance on Sufficiency: Securing Sufficient Accommodation for Looked After Children](#).



- 3.5. A number of specified factors must be taken into account when decisions are made to place a child out of the area of the authority responsible for their care. Unless the child is placed with a foster carer approved by the authority or with a connected person, the placement must be approved by a senior officer who has been nominated by the authority. The nominated officer must ensure that:
- the child's wishes and feelings have been ascertained;
  - the placement is the most appropriate placement for the child and will meet the child's needs as set out in their care plan;
  - the parents' wishes and feelings have been ascertained where the child is provided with accommodation and (where possible and appropriate) where s/he is subject of a care order;
  - the local authority for the area in which the child is to be placed has been notified; and
  - the IRO has been consulted<sup>25</sup>.

## Governance

### Fitness of responsible persons

- 3.6. Children's homes must be provided and managed by a 'registered person'. 'The registered person' is the 'registered provider' or the 'registered manager' of the home (Regulation 2). The registered provider (or if the registered provider is an organisation the responsible individual) is not fit to provide and manage a children's home unless they are of good character and integrity, physically and mentally fit and has provided full and satisfactory information to HMCI. (Regulation 6) Schedule 2 lists the information required by HMCI in respect of persons seeking to carry on, manage or work at a children's home. The registered provider must appoint a registered manager (Regulation 7) to manage the children's home if they do not intend to be in full time day to day charge of that home, they do not fulfil the criteria set out in Regulation 8 or the registered person is an organisation or a partnership. If the home also has a responsible individual they must also meet the fitness requirements.
- 3.7. Standard 14 sets out the requirements for the responsible person to ensure that the registered provider and manager have appropriate knowledge relating to looked after children. This includes any required professional and managerial qualifications. Whether a provider meets these standards is taken into account by HMCI when inspecting a children's home.

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<sup>25</sup> For more detail, refer to *Care Planning Guidance* Ch. 3.

- 3.8. When the registered provider, if he is in day to day charge of the home, or registered manager propose to be absent from the home for a continuous period of 28 days or more, they should notify HMCI in writing. (Regulation 37) The registered provider must also notify HMCI of a range of other changes to the running of the home, including the death of the registered person or manager. (Regulations 38 and 40)

## Financial viability

- 3.9. It is important to be satisfied that a provider is financially viable, sound and stable. This is necessary to ensure any children and young people living in the home are not subject to unexpected and potentially distressing moves resulting from the provider suddenly ceasing to trade. Regulation 36 sets out the requirements that the registered provider has to fulfil to demonstrate their financial viability. Regulation 39 requires the receiver, liquidator or trustee in bankruptcy to notify HMCI as soon as they are appointed.
- 3.10. Local authorities that commission places from the registered provider must be satisfied as to the home's financial viability. There are limits to the degree of disclosure a local authority can seek, but it is important that they satisfy themselves that the publicly available information demonstrates that the provider is financially sound.
- 3.11. Where a home goes into receivership, any person temporarily responsible must operate the service in the best interests of children and young people living there in accordance with the regulations and, as far as possible, the NMS.

## Proper oversight

- 3.12. Regulation 33 requires the registered provider to have quality assurance arrangements in place. As a minimum, these will involve visiting the home at least once a month, either announced or unannounced in order to observe the care provided, the practice of the staff, inspect compliance with regulations, systems and processes and the quality of the environment. One important focus for these visits will be to scrutinise how the home is supporting children to enjoy and achieve. The person making the visits will wish to be satisfied that the home has an effective approach to behaviour management. Visits should routinely examine records of restraint and logs of missing person's reports, to check that the home provides stable, safe and secure care.
- 3.13. The visit must wherever possible include private interviews with children and young people living at the home (and if appropriate their parents, relatives or carers). Where English is not their primary language, the visitor should have access to appropriate translation support. Staff employed at the home must

also be interviewed privately. A written report on the conduct of the home must be prepared after the visit and made available to HMCI, the registered manager, and anyone else with responsibility for the management of the home.

- 3.14. Regulation 34 requires the registered person to have a system in place which allows them to monitor the matters set out in Schedule 6 (e.g. complaints and behaviour management), in order to improve the quality of the care provided. This will enable the provider to identify any trends and issues of concern so that all those involved in running and working in the home can continually improve the quality of care they are providing. It will be good practice for these reports to be completed at six monthly intervals and a copy of every report should be sent to HMCI within 28 days of completion.
- 3.15. A copy of the Children's Homes Regulations and the NMS should be available permanently to staff, children and young people, and their parents, carers and families.

## **The Workforce**

### **Number of staff**

- 3.16. Regulation 25 and Standard 17 require that the registered person ensures that there are enough suitably qualified and experienced staff to meet the needs of the children and young people placed there. Children's home staff need to be able to demonstrate the competences necessary to meet the requirements, as set out in the home's Statement of Purpose, to safeguard and promote the health, welfare and safety of the children accommodated.

### **Training and support**

- 3.17. The authority must ensure that each looked after child has a named social worker who has the responsibility to act as their key worker, and who is suitably trained and supported to do so.
- 3.18. Regulation 27(4) sets out the requirements of the registered person to ensure that all staff working in the children's home receive appropriate training, supervision and appraisal and are able to obtain further appropriate qualifications. It is important that, as part of this, staff receive high quality and appropriate training to a recognised professional standard, proper induction, quality learning, continuous professional development and skills based training as part of a comprehensive training programme.

- 3.19. Social workers and other specialist professional staff employed or contracted to the home must be suitably qualified, with a recognised and current qualification and professional registration where necessary.
- 3.20. Managers of children's homes are responsible for maintaining good employment practice. They must have systems in place so that all home staff are supervised and supported to provide each child with the high quality care that they will need.

## **Systems and processes**

### **Effective management**

- 3.21. Standard 21 requires that the home is managed efficiently and is effective in meeting its Statement of Purpose.
- 3.22. Managers are expected to monitor constantly the welfare of the children and young people, through observation, engagement with staff and the children and young people, their parents, carers, family and friends, listening and responding to views, review, inspection, and good quality assurance systems.
- 3.23. To support this, managers need to ensure there are effective procedures in place for monitoring and controlling how the home is run, the services it provides to children and its care practice. The manager must ensure all the staff working at the home can consistently follow the home's policies and procedures and action is taken to deal with any issues that arise.
- 3.24. It is vital that everyone working at the home understands their roles and responsibilities and what they can and cannot do and decide upon on their own initiative. They need to know who they are accountable to and what tasks and responsibilities are delegated to them. There must be clear arrangements in place to maintain the effective management of the home when the registered manager is absent, off duty or on leave.

### **Policies, procedures and records**

- 3.25. Regulations 28 and 29 set out the record keeping requirements in children's homes. These are straightforward and very specific. All children's case records must be maintained, be kept up to date and kept securely whilst they remain in the home. Records must be kept in a permanent form, signed and dated by the author and may be kept electronically provided that this information can be easily reproduced in a legible form. [Standard 22.] Schedule 3 sets out the minimum requirements for the content of the records. Children's records must

not be disclosed to anyone except those individuals authorised to have access, or under a court order.

- 3.26. Staff must also be familiar with information sharing requirements and have access to the LSCB's information sharing policy and procedures.
- 3.27. There are detailed requirements in Schedule 4 about the records, in addition to children's case records, which must be kept by the registered person.
- 3.28. It is important that staff are familiar with the home's policies on record keeping, trained to maintain them and to understand the need to be careful, objective, and clear when making records.

## Chapter 4: Secure children's homes

- 4.1. Secure children's homes, like other children's homes, must comply with the Children's Homes Regulations 2001. Secure children's homes are also subject to the Children (Secure Accommodation) Regulations 1991 ("the 1991 Regulations"). The 1991 regulations also apply to groups of children placed in secure accommodation as a result of criminal proceedings.
- 4.2. Young people may be placed in secure children's homes by the youth justice system if they are subject to a Detention Training Order (Crime and Disorder Act 1998) or if they receive a custodial sentence. (The Powers of the Criminal Courts (Sentencing) Act 2000, sections 90-92). Children placed in secure children's homes will be looked after if they are remanded (Legal Aid Sentencing and Punishment of Offenders Act 2012)<sup>26</sup>, detained under section 38(6) (Police and Criminal Evidence Act 1984) or subject to a welfare placement under section 25 (Children Act 1989).
- 4.3. This chapter is primarily concerned with 'welfare placements' made under section 25 of the 1989 Act. Under section 25 the court may make an order authorising a child to be placed in secure accommodation where certain criteria are met. Where a child is under 13, permission is also required from the Secretary of State (further detail about this can be found below).
- 4.4. A children's home which has been approved by the Secretary of State under Regulation 3 of the 1991 Regulations can provide secure accommodation. In granting his approval the Secretary of State may impose such terms and conditions as he considers appropriate.

### The role of secure children's homes

- 4.5. Local authorities have a duty under the 1989 Act (Schedule 2, paragraph 7(c)) to take reasonable steps to avoid the need for children within their area to be placed in secure accommodation and consideration should be given to the range of alternative facilities and services available locally, identifying any gaps in such provision and how these might best be met. Decisions to place a child in secure accommodation should be authorised by a nominated senior manager of the local authority's children's services department.

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<sup>26</sup> As a result of the coming into effect of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPOA), children in criminal proceedings who are refused bail by the court and are remanded, either to local authority accommodation or to youth detention accommodation, which could be a secure children's homes, will become looked after.

- 4.6. Secure children's homes do have an important role to play amongst the range of residential services and facilities provided by local authorities. The safety and security of the premises, the skills and enhanced levels of staffing available, and the specialist programmes which can be provided mean that a placement in a secure children's home may 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.
- 4.7. 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. This does not mean that all other alternatives must have been tried but where a child's liberty is restricted under section 25 of the 1989 Act, it is vital that the decision is made on the basis that it is the best option to meet the particular needs of the child. The placement of a child in a secure children's home should, wherever practicable, arise as part of the local authority's overall plan for the child's welfare.
- 4.8. Secure placements, once made, should only continue for as long as they remain appropriate to meet the needs of the child. Clear plans need to be in place 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.

## General principles

- 4.9. All children placed in secure children's homes under section 25 of the 1989 Act are looked after children. In making arrangements for the child whilst they are placed in such accommodation, a local authority must have regard to its duties under section 22 of the 1989 Act. These requirements are set out in the *Care Planning Guidance*.

## Criteria on welfare grounds: section 25 of the Children Act 1989

- 4.10. Section 25 of the 1989 Act sets out the criteria that must be met before a looked after child can be placed and, if placed, kept in secure accommodation. It also enables the Secretary of State to make regulations governing the associated court processes (the "1991 regulations") and makes further provision about applications, authorisations, appeals and legal representation.
- 4.11. Section 25(1) provides that a child may not be placed in secure accommodation unless:

- he has a history of absconding and is likely to abscond from any other description of accommodation; and
- if he absconds he is likely to suffer significant harm; or
- that if he is kept in any other description of accommodation he is likely to injure himself or other persons.

In this context “harm” has the same meaning as in section 31(9) of the 1989 Act and the question of whether harm is significant shall be determined in accordance with section 31(2) of the 1989 Act.

- 4.12. 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.
- 4.13. The purpose of the statutory framework governing the placing of looked after children being looked after by local authorities or accommodated by other agencies in secure children’s homes is to:
- protect them from unnecessary and inappropriate placement in secure children’s homes;
  - ensure that administrative decisions taken by local authorities or other agencies are scrutinised and endorsed by the court, and
  - ensure that any placements are only for so long as is necessary and appropriate.
- 4.14. 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 such maximum duration (within the terms of the 1991 Regulations) as it considers appropriate. If, after making an order for secure accommodation, the criteria for keeping the child in secure accommodation cease to apply, then plans must be made to place the child in an open setting as soon as possible following a statutory review of their care plan.
- 4.15. In the case of *Re M*<sup>27</sup> the court held that the welfare of the child, although part of the relevant criteria that the court had to consider on an application by a local authority for secure accommodation under section 25 of the Act, was not the paramount consideration, since the requirements in section 1 did not apply to such an application. In deciding whether to restrict the liberty of a child under

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<sup>27</sup> *Re M (Secure Accommodation Order)* (CA) (1995) 3 All ER 407.



section 25, the local authority had to have regard to its duty under section 22(3) to safeguard and promote the welfare of a child whom it was looking after; but the power under section 25(1)(b) to hold a child in secure accommodation if he was likely to injure himself or others, was potentially inconsistent with the concept of the child's welfare being paramount. Because restricting a child's liberty is such a serious matter, proceedings under section 25 have been specified under the Rules of Court as requiring the appointment of a legal representative, except where the court does not consider this is necessary to protect the welfare of the child.

## Placements of children aged under 13

- 4.16. Local authorities must obtain the approval of the Secretary of State before placing a child under the age of 13 in a secure children's home<sup>28</sup>. The Secretary of State's 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.
- 4.17. Once a child's secure placement ends, if a new secure placement is to be made while that child remains under the age of 13, the local authority must again seek the approval of the Secretary of State for that placement. However, if the local authority wish to extend the original secure placement (i.e. where there is no break in the secure placement) further Secretary of State approval is not necessary.

## Secretary of State approval process for under 13s

- 4.18. The process for seeking this approval is set out on the following page. Detailed guidance is available on the Department for Education website<sup>29</sup>:

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<sup>28</sup> See regulation 4 of the Children (Secure Accommodation) Regulations 1991 (SI 1191/1505), amended by SIs 1992/2117 and 1995/1398).

<sup>29</sup> [Information on placement of under 13s in secure children's homes.](#)

## **Step 1: Contact the Department for Education (DfE) Details are shown below**

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 DfE out of hours number (see below), and request to speak to the Children in Care Duty Officer.

**DfE public enquiry line** 0370 000 2288

### **Out of hours contact**

If calling after 5pm call this number and ask to speak to the Children in Care Duty Officer.

0207 340 7057

## **Step 2: Provide initial details to the DfE official over the 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 to DfE by email**

Following phone contact with the DfE the 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. The care plan should include the aims and objectives of the secure placement and, where possible, the prospective exit strategy from secure accommodation.

- agreement in writing at Assistant Director level or above seeking the approval of the Secretary of State.

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 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 DfE official will then discuss the information provided with Ofsted. It is possible that a representative of Ofsted may contact the authority to discuss the case further.

#### **Step 5: The DfE will advise the local authority of the Secretary of State's 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**

- 4.19. Regulation 10(1) of the 1991 Regulations places a limit on the maximum period that a child to whom section 25 of the Act applies, may be kept in secure accommodation without the authority of the court. This maximum period is 72 hours, either consecutively or in aggregate, in any period of 28 consecutive days.<sup>30</sup>
- 4.20. Some relaxation of this provision is provided by regulation 10(3) to meet the difficulties which may be faced by local authorities and other agencies in arranging for applications to be heard at short notice, in circumstances where the 72 hours period expires late on Saturday, a Sunday or public holiday. Regulation 10(3) therefore provides that where a child is placed 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, and:

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<sup>30</sup> Whilst a local authority can detain a child in secure accommodation for 72 hours without the authority of the court, they will still first need to obtain approval from the Secretary of State to make the placement.

- during that period the maximum period of 72 hours expires; and
- in the 27 days before the day on which he was placed in secure accommodation, has been placed and kept in secure accommodation for an aggregate of more than 48 hours.

Then, the maximum period (of 72 hours) shall be treated as if it did not expire until 12 midday on the first working day after the public holiday or Sunday.

- 4.21. This limited extension of the 72 hour rule is intended to cater for the emergency placement of a child in secure accommodation at a time when both the major proportion of that 72 hours has already been used up and it is unlikely to be possible to arrange for an application to be heard by a court before the 72 hours limit expires. An application must be brought before the court within the 72 hour period if it is intended the placement should continue beyond that period. It will be especially important to bring forward applications in those cases where the 72 hour period would expire on a day when courts do not normally sit.
- 4.22. Regulation 10(2) provides that 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 in Regulation 10(1) 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

- 4.23. Staff working in a secure children's home, social workers and youth justice staff should be aware of the need to prepare children adequately for the court hearing and, in this respect, particular regard should be paid to the age and understanding of the child. The child's entitlement to funding for legal proceedings (see paragraph 4.24 below) should be carefully explained. Staff themselves 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.

4.24. A court is unable to exercise its powers to authorise a period of secure accommodation under section 25 of the 1989 Act 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 and having had an opportunity to do so, has refused or failed to apply (section 25(6)). Children should be encouraged to appoint a legal representative in such proceedings and given every assistance to make such arrangements. The provision of 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<sup>31</sup>.

## **Court powers in considering secure accommodation applications**

4.25. Proceedings under section 25 are specified proceedings for the purposes of section 41 (6) of the 1989 Act. The court is therefore required to appoint an officer of the service (a CAFCASS officer) 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 be under a duty to safeguard the interests of the child in the manner prescribed in such rules. This is an important provision designed to ensure that the welfare of the child being provided with secure accommodation is protected adequately.

## **Duration of secure accommodation orders**

4.26. Regulation 11 of the 1991 Regulations provides that, subject to regulation 12 and 13, the maximum period a court may authorise a child to be kept in secure accommodation is three months.

4.27. 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.

4.28. Regulation 12 of the 1991 Regulations enables a court to authorise a child to whom section 25 of the 1989 Act applies to be kept in secure accommodation for a further period of up to six months at any one time.

4.29. Regulation 13 requires that the maximum period for which a court may authorise a child who has been remanded to local authority accommodation

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<sup>31</sup> [Access to Justice Act 1999 – The Funding Code.](#)

under section 23 of the Children and Young Persons Act 1969 to be kept in secure accommodation is the period of the remand. Any period of authorisation in respect of such a child shall not exceed 28 days on any one occasion without further court authorisation.

- 4.30. 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 25(5)). An interim order will be made only where the court is not in a position to decide whether the criteria in section 25(1), or the provisions of regulation 6 of the 1991 Regulations in respect of certain remanded children, have been met. 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 his circumstances subsequently change, when the normal procedures will apply.
- 4.31. Where a child is accommodated in a secure children's home and it is intended to seek the authority of the court to continue the placement, regulation 14 of the 1991 Regulations places a duty on the local authority looking after the child, wherever practicable and soon as possible, to notify the child's parents, any person not a parent but who has parental responsibility for the child, the child's independent visitor, if one has been appointed, and any other person who the local authority consider should be informed, of this intention. This regulation applies both to court applications after the first 72 hour period (Regulation 10) and to applications to keep a child in secure accommodation beyond a period authorised by a court.

## Appeals

- 4.32. Section 94 of the 1989 Act 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.

## **Secure accommodation provided by health and local authorities for education purposes**

- 4.33. The section 25 safeguards have also been extended to children, other than those looked after by local authorities, who are accommodated in independent hospitals or care homes (regulation 7(1) (a) (b) of the 1991 Regulations).
- 4.34. Under section 85 of the 1989 Act, where a child is provided with accommodation by any health or local authorities for at least three months, there is a requirement to notify the appropriate officer in the responsible authority of the case. It is recommended that the local authority should be notified about the use of secure accommodation in relation to a child, irrespective of whether or not the child has been accommodated for three months or more.

## **Children to whom section 25 does not apply**

- 4.35. Regulation 5 of the 1991 Regulations describes various groups of children to whom section 25 of the 1989 Act does not apply. Two categories of children are excluded from these provisions:
- children 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);
  - children aged 16 or over but under 21 provided with accommodation in a community home under section 20(5) of the 1989 Act, and children subject to a child assessment order under section 43 of the 1989 Act.

## **Children detained under section 38 (6) Police and Criminal Evidence Act 1984**

- 4.36. Regulation 6 of the 1991 Regulations provides that section 25 of the 1989 Act applies with modifications to.
- children detained under section 38(6) of the Police and Criminal Evidence Act 1984 (detained children);
- 4.37. For these children the criteria in section 25(1) of the 1989 Act are modified so that the children may not be placed, and if placed, may not be kept in secure accommodation unless it appears that any accommodation other than that provided for the purpose of restricting liberty is inappropriate because:

- the child is likely to abscond from such other accommodation; or
- the child is likely to injure himself or other people if he is kept in any such other accommodation.

## Notifications

- 4.38. Regulation 9 of the 1991 Regulations requires that when a child is placed in secure accommodation which is not managed by the authority looking after him, the person, organisation or authority which manages the accommodation must notify the authority responsible for the child within 12 hours of the placement. Notification might usually be made by the registered manager or registered provider of the establishment where the child is being detained. The purpose of the requirement is to enable the managing authority to obtain the agreement of the authority responsible for the child to continue the placement and, if necessary, to allow the responsible authority to consider initiating the process of seeking the authority of the court for the child's continuing detention. Notifications should preferably be made by telephone as soon as possible after placement, and it is essential that secure accommodation providers are aware of how to contact responsible authorities out of normal office hours (e.g. 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 responsible authority within 12 hours.

## Secure accommodation reviews

- 4.39. Regulations 15 and 16 of the 1991 Regulations deal with the review by local authorities of the placements of children they are looking after in secure accommodation. Regulation 15 requires each local authority responsible for the placement of a child in secure accommodation to appoint at least three people, at least one of whom is neither a member nor an officer of the local authority, to review whether there is a continuing need for the child to remain in secure accommodation. The initial secure accommodation review meeting must be held within one month of the start of the placement and thereafter reviews must take place at intervals not exceeding three months.
- 4.40. 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.



- 4.41. Regulation 16(1) requires the persons appointed under regulation 15 to satisfy themselves, with regard to each case they review, as to whether or not:
- the criteria for keeping the child in secure accommodation continue to apply;
  - the placement in the secure children's home continues to be necessary; and
  - any other description of accommodation would be appropriate for him;
  - and in doing so they must have regard to the welfare of the child whose case is being reviewed.
- 4.42. Regulations 16(2) and (3) require the persons appointed to undertake the review to ascertain and take account of, as far as is practicable, the wishes and feelings of:
- the child;
  - any parent of the child;
  - any person not being a parent of the child but who has parental responsibility for him;
  - any other person who has had the care of the child, whose views the persons appointed consider should be taken into account;
  - the child's independent visitor where one has been appointed; and
  - 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.
- 4.43. 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.
- 4.44. 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 IRO<sup>32</sup>, so that careful consideration can be given to developing alternative options for the child and to

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<sup>32</sup> Cf [The IRO Handbook](#) 4.13-4.15.

planning any move to an alternative placement, so that it takes place in a way that is least disruptive to the child concerned.

- 4.45. 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.

## Records

- 4.46. Regulation 17 of the 1991 Regulations requires each person, organisation or local authority responsible for the management of the secure children's home to keep records giving details of:
- the name, date of birth and sex of the child;
  - details of the care order or other statutory provision under which the child is in the home and details of any local authority involved with the placement;
  - the date and time of the placement, the reason for the placement and the name of the officer authorising the placement and where the child was living before the placement;
  - persons informed under regulations 9, 14 or 16(3) of the 1991 Regulations;
  - court orders made under section 25 of the 1989 Act;
  - reviews undertaken under regulation 15 of the 1989 Regulations;
  - the date and time of any occasion when the child is locked in his own room in the children's home other than during his 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; and
  - the date and time of his discharge and his address following the discharge from the secure children's home.
- 4.47. The Secretary of State may require copies of these records to be sent to him at any time.

## Key Definitions

### Regulations

- 5.1. These are also referred to as 'secondary legislation'. Regulations are made under specific powers under a specific piece of legislation and generally set out detailed requirements. They are introduced after the legislation has been passed and laid before parliament, and come into force on a specific date. They have the same status as the legislation under which they are made and contain legal requirements.
- 5.2. Those responsible for a specific establishment must meet all the regulations relating to that establishment.
- 5.3. For those providers who are registered to provide the establishment, breaches are punishable in law and regulations often contain offence provisions.

### National minimum standards

- 5.4. These set out and describe the minimum standards that govern the state's expectations about how a specific service should be provided. They describe physical standards, the level of quality of service and the way in which systems and processes should be organised. They sometimes also describe the way in which the staff providing the service should behave and what qualifications they should have. The national minimum standards are made under section 23 of the 2000 Act and complement the Children's Homes Regulations 2001 and they help to flesh out the regulatory requirement. They are a minimum standard for providers, commissioners and users to judge the quality of a service. Inspectors must take them into account and use them as descriptors when judging whether providers are compliant with regulations. Lack of compliance may be taken into account when deciding whether to register a provider, impose conditions or remove registration.
- 5.5. Those subject to them and their staff may use the standards in the self-assessment of their services, to provide a basis for the induction and training of staff and as guidance on what is required when setting up a specific service.

### Statutory guidance

- 5.6. This is guidance issued by the Government under section 7 of the Local Authority Social Services Act 1970, which requires local authorities, in exercising their social services functions, to act under the general guidance of the Secretary of State. Local authorities must comply with this guidance when

exercising these functions, unless local circumstances indicate exceptional reasons that justify a variation from them. If the latter is the case there should be clear records locally establishing what advice was sought and what the local circumstances that create exceptional circumstances are.

- 5.7. They should be seen as what a local authority 'must do' over and above their compliance with primary and secondary legislation, when they are delivering (or commissioning) specific functions or services relating to the specific type of statutory guidance.

## **Non statutory government guidance**

- 5.8. This is guidance which is provided by the Government to advise and assist local authorities and service providers to ensure they deliver services that are of a high quality. They allow for some flexibility of approach so that local circumstances can be taken into account when providing services.
- 5.9. It is intended to give useful advice and to answer the many questions that people have about how to interpret particular regulations or statutory guidance and how they should be applied.
- 5.10. Government practice guidance is also used to convey the policy intent of Government, so that the Government's desired outcomes can be understood and achieved for a specific service.
- 5.11. It is usually developed by the government on the basis of advice from stakeholders in the specific field the guidance relates to, as well as legal advice. They often use information from practice in the sector that is regarded as being of good quality, from evaluated or 'evidence based' practice and from research evidence.

## **Practice guidance**

- 5.12. This is guidance produced by a wide range of organisations, agencies or professionals in a specific field to help those providing services to develop effective services that are both compliant and which deliver high quality outcomes for children, young people, their parents and carers.
- 5.13. This sort of guidance takes a very wide range of formats and styles and is designed for a wide range of purposes. It is sometimes based on research, or on evidence based practice.

## Annex A: Relationship between legislation, guidance, standards and other material

The relationship between legislation, regulations, statutory guidance, and national standards is set out in the model below.

<p><b>Overarching Primary legislation</b> (must do)</p>		
<p><b>Secondary Legislation</b> Statutory regulations (must do)</p>		
<p><b>Statutory Guidance (including local authority circulars)</b> (must be complied with unless exceptional local reasons justify a variation)</p>		
<p>Volumes of Departmental and other government practice guidance (advisory 'may do' material)</p>	<p>Volumes of good practice guidance (sector led) (available for practitioners to access or use as they wish)</p>	<p>National Minimum Standards and Inspection Framework (inform inspection and regulation of children homes and secure children's homes)</p>

## Annex B: Supported accommodation

Registration as a children's home is likely to be appropriate where establishments offer "care" to young people. On the other hand, if young people living in an establishment are generally expected to be independent and be fully responsible for their daily routines then it may be appropriate for the establishment to operate as supported accommodation.

The information below describes the factors that will need to be taken into account in determining whether an establishment enables independent living for looked after children or care leavers and is supported accommodation, rather than a children's home.

### **Can young people go out of the establishment without staff permission?**

Where young people remain in the care of staff, whether the young people are in or out of the establishment, and therefore are expected to ask permission to leave the establishment, that indicates that care is provided.

### **Do young people have full control of their own finances?**

Where staff have any control or responsibility for a young person's finances this is an indicator that care is provided.

### **Do young people have control over what they wear and of the resources to buy clothes?**

Where staff have any control or responsibility to provide what children wear or to buy their clothes this is an indicator that care is provided.

### **Are young people in charge of meeting all of their health needs, including such things as arranging GP or specialist health care appointments? Do staff control any young person's medication?**

Young people may ask for advice and help about their health but if decisions about health care rest with the young person this may indicate that they are living independently rather than being cared for. On the other hand, where staff are responsible for managing arrangements for meeting young people's health needs this is an indicator that care is provided.

### **Do staff have any access to medical records?**

Where staff have access to a young person's medical records this is an indicator that care is provided.

### **Can young people choose to stay away overnight?**

If young people are free to decide for themselves that they may stay overnight then this is an indication that they are functioning independently. If staff are responsible for deciding whether it is appropriate for a young person to stay out overnight then this would be an indication that care is being provided.. Being expected to tell someone if they are going to

be away overnight does not indicate provision of care, but needing to ask someone's permission does.

**Is there a sanctions policy which goes beyond house rules and legal sanctions that would be imposed on any adult?**

Where an establishment has and implements a formal or informal sanctions policy as described above this is an indicator that care is provided.

**If the establishment accommodates both adults and young people, do those under 18 have any different supervision, support, facilities or restrictions?**

Where an establishment accommodates both adults and young people and there are significant differences in the levels of support and supervision these two groups receive this is an indicator that care is being provided for those under 18.

**Are there regularly times when young people are on the premises with no direct staff supervision?**

Where young people are expected to spend a significant amount of their time on their own, without staff supervision, then this would suggest that though perhaps they are being offered some support, they are largely operating independently and are not being offered care.

**Do staff have any responsibility for aftercare once a young person has left?**

Where staff have any responsibility for aftercare once a young person has left a placement, this may indicate that that care is being provided. Though some supported accommodation services will offer some support to help young people get established in their next accommodation.

**Does the establishment's available literature promise provision of care, or relate to specific care support provided to all residents rather than give general information about services young people can choose whether they use or not?**

Where the establishment's literature demonstrates an expectation that residents will be provided with care or use specific care support services, this is an indicator that both care and accommodation are provided.

**Does the home provide or commission a specialist support which forms part of the primary function of the establishment for a significant number of young people?**

Where there is a specialist support service which forms part of the primary function of the establishment this is an indicator that care is provided.

## Annex C: Further information

### Physical intervention and restraint in children's homes

#### Independent Reports

Children's Rights Director - [Children's Views on Restraint](#) (2004); reissue (2012)

D. Hart and S.Howell – [Report on the Use of Physical Intervention across Children's Services](#) (NCB 2004)

Peter Smallridge and Andrew Williamson - [Independent Review of Restraint in Juvenile Secure Settings](#) (2008).

[Government response to the independent review of the use of restraint](#) (2008)





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