

Guidance on Secure Accommodation Orders (s25 Children Act 1989)

Overview

This guidance sets out the legal framework and the role of the Children’s Guardian in applications for Secure Accommodation Orders (SAOs) under s25 of the Children Act 1989. The guidance also covers specific issues Guardians may face when dealing with secure accommodation orders, including separate legal representation, children attending hearings and the approach to be taken when working with older children. At the end of the guidance there are three example case studies covering a straight forward scenario and two scenarios that pose practice dilemmas.

The deprivation of a child’s liberty is one of the most serious powers available to the courts considering a child’s welfare. A decision to make an application for an order under s25 should be made on the basis that this represents the best option to meet the needs of the child.¹

1. Legal Framework

1.1 The legal framework for secure accommodation is set out within section 25 of the Children Act 1989.

1.2 Section 25 (1) and (3) stipulate that:

Section 25(1) –

‘A child who is being looked after by the local authority in England and Wales may not be placed, and, if placed, may not be kept, in secure accommodation in England or Scotland provided for the purpose of restricting liberty unless it appears –

(a) ‘that

- i. he has a history of absconding and is likely to abscond from any other description of accommodation; **and***
- ii. if he absconds, he is likely to suffer significant harm or*

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

Section 25(3) –

‘It shall be the duty of a court hearing an application under this section to determine whether any relevant criteria for keeping a child in secure accommodation are satisfied in his case.’

1.3 Lord Justice Baker in *Re B (Secure Accommodation)* [2019] EWCA Civ 2025 set out a list of questions to be asked in determining whether the relevant criteria under sections 25(1) and (3) are satisfied:

¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/306282/Statutory_guidance_on_court_orders_and_pre-proceedings.pdf [41]

- (1) *Is the child being “looked after” by a local authority, or, alternatively, does he or she fall within one of the other categories specified in regulation 7?*
- (2) *Is the accommodation where the local authority proposes to place the child “secure accommodation”, i.e. is it designed for or have as its primary purpose the restriction of liberty?*
- (3) *Is the court satisfied (a) that (i) the child has a history of absconding and is likely to abscond from any other description of accommodation, and (ii) if he/she absconds, he/she is likely to suffer significant harm or (b) that if kept in any other description of accommodation, he/she is likely to injure himself or other persons?*
- (4) *If the local authority is proposing to place the child in a secure children’s home in England, has the accommodation been approved by the Secretary of State for use as Secure Accommodation? If the local authority is proposing to place the child in a children’s home in Scotland, is the accommodation provided by a service which has been approved by the Scottish Ministers?*
- (5) *Does the proposed order safeguard and promote the child’s welfare?*
- (6) *Is the order proportionate, i.e. do the benefits of the proposed placement outweigh the infringement of rights?*

1.4 The court highlighted that within the s.25 criteria there is the need for a specific evaluation of proportionality and welfare which will include an analysis of the advantages and disadvantages of the local authority’s proposals but *Re M (Secure Accommodation)* [1995] 1FLR 418, CA remains good law in stating that welfare is not the paramount consideration for the Court in s.25 applications. Further as per Butler-Sloss L.J stated within *Re M*:

‘a guardian appointed in a secure accommodation case has to adapt his general duties to the specific requirements of the application before the court. In so far as he is given the opportunity by the court he must endeavour to investigate, report and recommend what he believes is in the best interests of the child.’

1.5 Where the LA have served the application on the parents and the solicitor for the child it may still be fair to allow an application to proceed where the child and their solicitor only have a short time to consult; although in such circumstances it may be preferable to make an interim order and adjourn for a few days to allow the child to respond to the application *Re C (Secure Accommodation Order: Representation)* [2001] 2FLR 169, CA

1.6 Please note secure accommodation outside the statutory scheme (in a placement not approved by the secretary of state) requires authorisation under the Court’s inherent jurisdiction. Deprivation of liberty under the statutory scheme falls to be authorised under s.25.

1.7 Additionally, if the criteria under section 25 is met, the Court must make the Order. A SAO is a permissive Order enabling the Local Authority to deprive a young person of their liberty for a period up to the maximum duration specified in the Order.

1.8 Such Orders can be made for a maximum period of up to 3 months on the initial application and 6 months thereafter in relation to any subsequent periods following

directly on from the initial application.² However, if at any point during the duration of a secure order, the section 25 criteria is no longer met, even though an order for a longer duration exists, the authority to deprive that person of their liberty no longer exists and the young person should be moved to a non-secure setting.

- 1.9** Any secure accommodation order made is subject to review. This review must take place within one month of the placement commencing and then at intervals of no more than three months. It is not intended that these review the child's overall care plan; they are restricted to the specific question about the necessity of a placement in secure accommodation. Where a secure accommodation review concludes the criteria for the child's detention no longer apply, the authority responsible for the child's care should immediately convene a care plan review, chaired by the child's IRO.
- 1.10** The individuals appointed to review the placement must satisfy themselves as to whether or not:
- a) The criteria for keeping the child in secure accommodation continue to apply;
 - b) The placement in such accommodation in a community home continues to be necessary; and
 - c) Any other description of accommodation would be appropriate for him.¹¹
- 1.11** The regulations also specify a number of individuals from whom the review panel should, if practicable, ascertain and take into account the wishes and feelings of. The Guardian can, if still involved in the case, ascertain the views of the child and represent these to the panel.
- 1.12** The duration of a SAO runs from the date of the Order being made rather than the date of placement. In the event that an interim Order is made, the Court must include the duration of the interim Order/s when considering the maximum duration of any Order allowed under that application.
- 1.13** A child under 13 cannot be placed in secure accommodation without the approval of the secretary of state for any duration.
- 1.14** Subject to the above, a child can be placed in secure accommodation for a period of up to 72 hours without a Court Order. This will need to be authorised by an appropriate officer of the Local Authority, who will have needed to be satisfied that the criteria under section 25 is met and is normally used as a holding measure prior to an application being able to be considered by the Court for an Order under section 25. This provision may only be used once in any 28-day period.³
- 1.15** Where a child is remanded or bailed to Local Authority care, that child is looked after. If the Local Authority considers the section 25 criteria (as modified in this specific circumstance by the Children (Secure Accommodation) Regulations 1991, Regulation 6) to be met, it can make an application for a SAO for that child and if the Court agrees the criteria is satisfied, the Court must make such an Order. The modification of Regulation 6 removes the requirement for the young person to be likely to suffer

² Children (Secure Accommodation) Regulations, Regulations 11 and 12

³ Children (Secure Accommodation) Regulations 1994, Regulation 10

significant harm if he absconds making the criteria in these circumstances that either that under:

Section 25(1)

(a) the child is likely to abscond from such other accommodation [than secure accommodation], or

(b) the child is likely to injure himself or other people if he is kept in any such other accommodation [than secure].

AND:

Section 25(3) –

'It shall be the duty of a court hearing an application under this section to determine whether any relevant criteria for keeping a child in secure accommodation are satisfied in his case.'

2. Role of the Guardian in proceedings for Secure Accommodation Orders

2.1 The role of the children's guardian is to provide assistance to the court.⁴ The Guardian is not in a position to oversee the local authority's care plan or perform a standalone welfare role.

2.2 Secure accommodation applications are usually made at very short notice; the appointed Guardian will be required to give a view within a very short space of time. In these cases the Guardian has the following key responsibilities:

- Appoint a solicitor for the child. The solicitor should take instructions from the child if they consider them capable of giving instructions;
- Review the care plan for the child both in the light of how a secure placement will assist, and the future plan for the child following a period of time in a secure placement. It may be appropriate to support the making of a secure accommodation order on an interim basis until the Guardian can review all the relevant material;
- Consider the appropriateness of the proposed placement. If ordered by the court, prepare a report giving the Guardian's professional opinion on whether the criteria is met and the care plan is appropriate;
- Speak and/or meet with the child (usually with their solicitor) and ensure they understand the Guardian's role and the reason for the Guardian's involvement; what the local authority is intending to achieve through the secure placement, and what their views are;
- If the matter proceeds past the first hearing the Guardian should contact the Independent Reviewing Officer.⁵ At the end of our involvement, the usual guidance

⁴ *Birmingham City Council v M* [2008] EWHC 1085 (Fam) [23]

⁵ IRO Handbook (2010) Ch.8

regarding a final letter to the IRO still applies as the IRO will be involved in the secure reviews.

- Ensure that case recording is contemporaneous wherever appropriate and Cafis updates are accurate and complete, in line with the Case Recording and Retention Policy.⁶

2.3 Following the hearing, the court can make an interim order to allow for more information to be provided to the court, or a final order. If a final order is made the role of the Guardian ends; the child can be put in touch with an advocacy service. All Secure Children's Homes have their own advocacy service, so that they may access support and advice.

2.4 Interim orders should not be made with the purpose of keeping the Guardian and children's solicitor engaged in supporting the child.⁷

2.5 If an interim order is made the Guardian will need to consider the best way to discuss with the child their wishes and feelings in advance of any local authority review panel and/or further court dates. This may be through a visit to the unit, or if visiting is impractical, by phone or another video calling means such as Skype.

2.6 On any application to extend the length of time the child spends in secure accommodation, it may be useful to examine the regime and treatment programme/s offered to the child and the child's level of engagement. This will inform the Guardian's professional judgment and recommendation as to whether a further period in secure accommodation is necessary.

3. Risk Analysis

Factors to be considered when making recommendations

3.1 The Guardian will need to examine the local authority evidence and assess this against the criteria for the making of an order to satisfy themselves that the criteria for making an Order under section 25 is met considering the points in paragraphs 1.2 and 1.3 above.

3.2 In the event that the Guardian considers that further information is needed to determine the issues raised in the application or that it would be procedurally unfair to proceed, it may be necessary to support an adjournment and the making of an interim Order to provide an opportunity for these issues to be addressed. However, if the Court has the necessary information before it and it is procedurally fair to proceed, the Court shall make final Orders and the Secure Accommodation proceedings would be concluded. With the conclusion the Guardian's role ceases and the case should be closed.

3.3 Key questions for the Guardian when assessing the risk to the child may be:

- What led to the child absconding?
- Where did the child go? Did s/he return to family members of previous carers?

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/337568/iro_statutory_guidance_iros_and_las_march_2010_tagged.pdf

⁶ https://intranet.cafcass.net/operating_framework/Pages/Policy-and-guidance-index.aspx

⁷ Birmingham City Council v M [2008] EWHC 1085 (Fam) [23]

- Did the child put him/herself, or others, at risk of serious harm when absconding? What specifically did this involve?
- Does the child accept they were being neglected, harmed or made highly vulnerable?
- What potential harm could the child suffer or cause to others if kept in any other form of accommodation?
- Is secure accommodation the only appropriate method for protecting the child?
- Does the local authority have a clear view of the aims of the placement, and how does this fit in with the long-term care plan?
- If an order were to be made, how long should it last?

4. Voice of the child and separate legal representation

Should the child attend the hearing?

4.1 The issue of whether a child should attend the hearing will be a matter of what is in the child's interest and case specific within the context of the child's Article 6 right to a fair hearing. It is not for the child to prove that attendance is in their interests but instead '*an open evaluation of the consequences of attendance or non-attendance in terms of the welfare of the child and the court's ability to manage its proceedings fairly*' *Re K (A Child)*⁸. In *Re K (A Child)* Peter Jackson J identified nine factors to be considered when the court is making a decision regarding the attendance of the child at a hearing for a Secure Accommodation Order:

- The age and level of understanding of the child;
- The nature and strength of the child's wishes;
- The child's emotional and psychological state;
- The effect of influence from others;
- The matters to be discussed;
- The evidence to be given;
- The child's behaviour;
- Practical and logistical considerations;
- The integrity of the proceedings.

4.2 The Guardian will be expected to advise the court, in line with the identified factors above, on whether the child should be present. Practically, given the tight timeframe between applications being made and heard (often no more than 72 hours), it may be that the Local Authority has made arrangements for the young person to attend by phone/video link or in person and that at the hearing the Court seeks the Guardian's recommendations on the level of the child's participation (or otherwise). Children should not be placed into an environment which may place them at risk of further harm;

⁸ *Re K (A Child)* [2011] EWHC 1082

however, this risk must be balanced with giving the opportunity for the child to take part in the proceedings.

Separate representation

- 4.3** Secure accommodation proceedings often raise the question of separate representation of the child from the Guardian due to a competent child's views on the application conflicting with those of the Guardian. Where this occurs, the child should retain the representation of the solicitor. The Guardian will then either be unrepresented or, if the position of the Guardian is distinct from any of the other represented parties, separate legal representation (SLR) may be considered
- 4.4** Where SLR is being considered by the Guardian, this should be discussed with the Service Manager who should then consider the criteria for separate legal representation ([available on the intranet](#)). If they consider it is necessary for the Guardian to be separately represented, an application ([available on the intranet](#)) should be sent to Cafcass Legal.

5. Care and Exit Planning

- 5.1** As stated in 2.1 above, it is not the role of the Guardian in secure accommodation proceedings to provide oversight or scrutiny of local authority care plans. This does not mean the Guardian cannot have input into these plans. The Guardian can, as part of their recommendations to the court, provide a view on whether the proposed exit plan and future care plans are appropriate to meet the needs of the child.
- 5.2** It will be the responsibility of the Guardian to highlight any perceived flaws in the future planning for the child either during the court proceedings or during the review process, if the Guardian remains involved. The Guardian is not, however, in a position to make their own investigations into future placements and should refrain from conducting work to correct perceived deficiencies in the local authority care plan.

6. How does the law apply to older children?

- 6.1** An order cannot be made in relation to a child who is over 16 and who is accommodated under s20(5). If the child is 16 or over they will either need to be subject to a care order before a secure accommodation order is made, or it must be established that they are accommodated pursuant to s20(3).

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Appendix

Annex 1: Case Studies

Case study 1

The Local Authority (in the North of England) has applied for a Secure Accommodation Order pursuant to Section 25 of the Children Act 1989 in relation to M (14). M is subject to a Care Order.

M has repeatedly absconded from his residential placement. M has been and continues to be violent towards staff when in placement and self-harms by cutting. During periods when he has absconded from the placement he has returned to a town in South West England where his paternal family live and has stayed with friends of his older brother. The Local Authority had not realised until after M was located on the first occasion that M was in contact with his older brother. M's brother and his friends have been involved in drug dealing and both violent and petty crime. Whilst M has not been arrested in connection to any offences to date, police intelligence states that he is at risk of grooming by these young men for involvement in their criminal activities. M is tall for his age and very athletic having previously being a keen climber prior to disengaging from all activities following severe bullying at school when he transitioned to secondary school. This bullying primarily focused on verbal taunts from other young people about his mother who was known in the local community to have significant drug misuse issues.

Within the last 2 months, M has absconded on three occasions. The durations of M being missing were one month on the first occasion and one week on each of the other two occasions. On each occasion M was located by the police. On the first occasion this was under the direction of the tipstaff following the Local Authority obtaining Location and Collection Orders due to not having any idea where M was. On the following two occasions, M was located following the Local Authority obtaining Recover Orders specifying the older brother's address and those of three of his brother's associates. On each occasion that M was found M made it clear that he did not want to leave where he was found and that he intended to abscond again.

The current residential placement has given notice and the Local Authority has undertaken a comprehensive placement search. None of the non-secure placements approached have agreed to take him. However, a secure unit in the neighbouring county have offered him a place and this is the nearest secure unit to his home Local Authority.

M has been brought to Court for the first hearing. You have been able to speak to M at Court and he is apathetic about being placed in a secure placement and just wants to move from his current placement as soon as possible but states that he does not care where he is moved to. You support the proposed placement and Order sought in light of the above risk factors and consider that the statutory criteria are clearly met. The Local Authority is seeking a Secure Accommodation Order for a maximum period of 3 months and you support this in light of the current risks and the Local Authority's clear step-down plan to non-secure as soon as the statutory criteria to remain in secure accommodation is no longer met.

Case Study 2

The Local Authority issued an application for a s25 secure accommodation order in respect to S. S is a looked after child subject to a Care Order.

S is a 13-year-old boy considered to be highly vulnerable to exploitation. There are concerns expressed about his mental health however there is no clear assessment of these, nor measures put in place to support any mental health difficulties. Over the last year he has been repeatedly going missing for longer periods of time and has told his current carers on these occasions he cannot return home until he has made enough money. He has been found by police sleeping in cars and public places and on railway tracks and in possession of firearms and drugs. He has not been taking care of himself or talking about what is happening to him.

The LA sought an Order under section 25 with a proposed placement in a secure unit out of the area. The placement is not known to the Guardian but based on the information to hand the court is asked to consider the balance of risk posed in terms of S's vulnerability to exploitation particularly given the mental health concerns for S.

S did not attend court. The appointed Guardian instructed a solicitor and spoke to S by phone; S expressed his firm opposition to being in secure accommodation. S was of the opinion he felt 'safe' in his current placement. Further exploration needs to be carried out given this is at odds with his absconding behaviour.

S's solicitor considered S to have capacity and was competent to instruct and given S was vehemently opposed to moving to the unit S's solicitor felt separate representation could be necessary if the guardian supported this application. There was no support nor opposition to the application from S's family.

The Guardian considers that section 25(1)(a) of the Act is satisfied but when considering section 25(3) relevant criteria, the Guardian is very concerned for S in terms of his vulnerability, his risk of self-harm and the ability of the specific secure unit identified to safeguard S. The Local Authority have said that this is the only secure bed available at the current time and the only alternative to prevent S absconding in the immediate term would for the current placement, as a holding measure, to be permitted to put in place deprivation of liberty (DoL) provisions to prevent him absconding such as 1:1 supervision, retaining his phone and locking the door to the property. The current accommodation has said that they would be willing to do this on a short-term basis until another secure unit has a bed if DoLs was authorised.

Due to the above safeguarding concerns the Guardian does not support a Secure Accommodation Order.

The Local Authority is invited by the Court to amend its application to a deprivation of liberty application (deprivation of liberty guidance can be found [here](#)). The Guardian supports this application, having separated from the child and the Court subsequently grants a DoLs Order for 3 months affording the Local Authority a period to identify another secure unit and make a fresh application.

Case Study 3

The local authority had applied for a Secure Accommodation Order for a 14 year old boy, (B) the local authority cited gang association, substance misuse, violent conduct and serial absconding from his current placement in support of its application. B has a history of mental health concerns and currently receives provision from CAMHS.

Following a review of the evidence, the Guardian felt there was not enough information to form a view as to whether to support the application and the ability of the placement to meet B's mental health needs. An adjournment was granted to allow the local authority to file and serve a psychiatric report on B.

The Guardian consulted with B's parents, his previous placements and allocated social work professionals. The psychiatric report did not consider secure accommodation to be appropriate for B. Considering this and section 25(1) and (3) the Local Authority did not support the making of a Secure Accommodation Order. Neither was the Court satisfied, with reference to the relevant criteria under section 25(3) as expanded upon in *Re B (Secure Accommodation)* [2019] EWCA Civ 2025, that the criteria was met. The application was refused.

Annex 2: What constitutes registered, unregulated and unregistered provision?

What are registered children's homes?

An establishment is a children's home 'if it provides care and accommodation wholly or mainly for children' and if it is a children's home, it must be registered. Semi-independent accommodation (also known as 16+ or supported accommodation) and constantly moving accommodation (for example placements on boats, barges and caravans) are not required to register.

To register, an establishment must meet a series of requirements⁹. In summary, this involves:

- Becoming a registered provider with Ofsted with a registered individual who represents the provider to Ofsted;
- Employing a registered manager who is individually registered with Ofsted;
- Producing a statement of purpose including the information required in Schedule 1 of the 2015 Regulations and a children's guide;
- Complying with numerous policies and procedures as set out in the 2015 Regulations.

Ofsted inspects children's homes at least biannually if they are judged to be inadequate or requires improvement, and at least annually if outstanding or good.

What constitutes unregulated provision?

There are exemptions to the expectation that establishments who care mainly or wholly for children should register as a children's home. This includes when the home has no permanent base or is constantly moving (like a caravan, barge or boat). It also includes supported/semi-independent accommodation for children aged 16 or 17 who need support to live independently rather than needing full-time care. Ofsted do not regulate this type of provision.

Semi-independent accommodation is not subject to any minimum standards in law and the responsibility for determining the suitability of the accommodation falls to the placing local authority. The placements fall under the definition of 'other arrangements' under s22C(d) Children Act 1989 which means that the placing local authority is responsible for the scrutiny and monitoring of the placement rather than any Ofsted registration. The local authority must be satisfied that the accommodation is suitable for the child, having had regard to the matters set out in Schedule 6 to Children Act 1989.

These placements are therefore 'unregulated' – they are not required to comply with the expectations and scrutiny of a children's home – but not 'unregistered', where a children's home fails to register with Ofsted. Unregulated provision is allowed in law whereas unregistered provision is illegal.

Semi-independent accommodation must 'support' rather than 'care' for young people. This line may become blurred when a child is placed in semi-independent accommodation because there are no secure beds and no children's homes that will take them, especially where the High Court is asked to authorise them being deprived of their liberty. Semi-independent accommodation that provides **care** rather than support for a young person should be registered as a children's home. 'Care' is not defined in law but is about the child's vulnerability and level of help they need. Ofsted has produced a checklist to assist providers in distinguishing between semi-independent accommodation and a registered children's home (Annex 3).

⁹ This is under the Care Standards Act 2000, Care Standards Act 2000 (Registration) (England) Regulations 2010 and the Children's Home (England) Regulations 2015 ('the 2015 Regulations').

Unregulated accommodation are examples of 'other arrangements' under s22C(d) Children Act 1989 which means that the placing local authority is responsible for the scrutiny and monitoring of the placement rather than any Ofsted registration. The local authority must be satisfied that the accommodation is suitable for the child, having had regard to the matters set out in Schedule 6 to Children Act 1989.

What constitutes unregistered provision?

Unregistered provision is either a children's home that has not registered with Ofsted or semi-independent accommodation who are providing 'care' rather than 'support' to a young person over 16 years old. Semi-independent accommodation also cannot offer a placement for under 16 year olds without registering as a children's home. These situations would all be illegal, and the provider of the establishment may be liable to prosecution.

Annex 3: Checklist produced by Ofsted to distinguish between semi-independent accommodation and a registered children’s home

Criteria	Yes?	No?
Can young people go out of the establishment without staff permission?	Supported accommodation	Care
Do young people have full control of their own finances?	Supported accommodation	Care
Do young people have control over what they wear and of the resources to buy clothes?	Supported accommodation	Care
Are young people in charge of meeting all of their health needs, including such things as arranging GP or specialist health care appointments? Are young people in full control of their medication?	Supported accommodation (note that young people may ask for advice and help on their health, but if decisions rest with the young person, the establishment is not providing care.)	Care
Do staff have any access to any medical records?	Care	Supported accommodation
Can young people choose to stay away overnight?	Supported accommodation (note that being expected to tell someone if they are going to be away overnight does not indicate providing care, but needing to ask someone’s permission does.)	Care
Is there a sanctions policy that goes beyond house rules and legal sanctions that would be imposed on any adult?	Care	Supported accommodation
If the establishment accommodates both adults and young people, do those under 18 have any different supervision, support, facilities or restrictions?	Care	Supported accommodation
Are there regularly significant periods of time when young people are on the premises with no direct staff supervision?	Supported accommodation	Care
Do staff have any responsibility for aftercare once a young person has left?	Care (note that some supported accommodation services will offer some support to help young people get established in their next accommodation – this is not care.)	Supported accommodation
Does the establishment’s literature promise the provision of care or relate to specific care support provided to all residents?	Care	Supported accommodation
Does the establishment provide or commission a specialist support service, which forms part of the main function of the establishment?	Care	Supported accommodation