

CHILDREN AND SOCIAL WORK BILL
House of Commons Report Stage
Tuesday 7 March 2017

Please support a TWO-YEAR SUNSET CLAUSE (New Clause 4)
for secure accommodation changes

SUMMARY

In Commons Committee, Children's Minister Edward Timpson MP tabled amendments that significantly alter Children Act 1989 provisions relating to the placement of looked after children in secure accommodation, by allowing their detention in Scotland. These amendments were introduced into the Bill on 10 January 2017 (Clause 10 and Schedule 1¹).

Lack of places available in secure accommodation in England precipitated these changes to the Children Act 1989 and associated regulations (see paras 10-13 below). During Committee, the Minister said: "I think we all agree that for very specialist placements—particularly knowing the numbers in secure children's homes—it would be impossible to have that type of specialist provision on the doorstep of every local authority, so we need to look in the round at what is available in the wider area, to try to meet those specific needs".²

The Department for Education (DfE) has undertaken no public consultation, including with looked after children and young people; nor has it issued any impact assessment or policy document explaining these changes to the Children Act 1989. Detaining children hundreds of miles from home could severely curtail their meaningful contact with parents and other family members, friends, social workers, independent reviewing officers, independent visitors, advocates and lawyers, as well as cause social isolation and instability in education and healthcare. A court may make a secure accommodation for a period of three months initially; this can be extended for a maximum period of six months at any one time.³

The Scottish Government's Legislative Consent Memorandum indicates there has been no public consultation there either. Under the heading 'financial implications', the document states:

*"There will be no costs to the Scottish Government or public authorities as a result of the amendments. There would only be financial/resource implications if cross-border placements were to cease. **The withdrawal of English placements would lead to a loss of income to one or more of the Scottish units, with the possibility it would force at least one provider into an early and unplanned closure.** [Our emphasis]"⁴*

This suggests that placing children hundreds of miles from home could bolster the financial sustainability of Scottish secure accommodation. We urge the UK Government to invest in specialist provision close to children's families, communities and services in England.

¹ https://www.publications.parliament.uk/pa/bills/cbill/2016-2017/0121/cbill_2016-20170121_en_5.htm#sch1

² 10 January 2017: <https://goo.gl/VghxGs>

³ Regulations 11 and 12, The Children (Secure Accommodation) Regulations 1991.

⁴ <https://www.publications.parliament.uk/pa/bills/cbill/2016-2017/0121/LCM-S05-7.pdf> [para 19]

The Children Act 1989 requires that looked after children from England and Wales who have sufficient understanding may not be placed abroad (including Scotland), without the consent of the child and those with parental responsibility. This is a very longstanding right, dating back to poor law legislation.⁵ The removal of this right cannot be said to be a ‘tidying up’ exercise.

We recognise the legal urgency faced by the courts in safeguarding the welfare of individual children from English local authorities already placed in secure accommodation in Scotland – see recent cases below. However, we are far from convinced that changing primary legislation so that children from England may be detained on welfare grounds in Scotland is an appropriate policy response, since this change interferes with fundamental aspects of children’s welfare, including their contact with family and friends, identity and sense of belonging, and educational stability. There are clear implications for children receiving health care, including therapeutic interventions, where, for example, transfers between Scottish and English providers could exacerbate waiting times or disrupt counselling relationships.

These legal changes are likely to make the protection of children’s human rights even more difficult, since it will be English courts supervising the child’s detention, and professionals based in England who will be responsible for monitoring their individual welfare and progress. Moreover, the requirement for secure accommodation reviews (with an independent element) has been removed for looked after children from England placed in secure accommodation in Scotland, thereby creating inequality of protection. This could be a breach of the child’s human rights.

There has been a **21% reduction in secure accommodation places in England across the past six years, from 293 in 2010 to 232 in 2016**.⁶ Sir Martin Narey’s review of residential care concluded that the reduction in places is “troubling” and he urged the Department for Education “to consider how they might encourage alternative providers from the voluntary and private sector to enter the secure care market”.⁷ The Government accepted this recommendation, together with Narey’s proposal for the creation of a Residential Care Leadership Board.⁸

New Clause 4 would allow time for meaningful consultation with children, families, service providers and professionals about changes to the Children Act 1989. It would give time for the work of the Residential Care Leadership Board to progress, and require the DfE to return to Parliament with its findings, thus allowing robust scrutiny of the case for legislative change and the potential impact on the rights and welfare of very vulnerable looked after children.

Secure accommodation law

1. The Children Act 1989 requires that local authorities avoid the need for children in their area to be placed in secure accommodation.⁹
2. Looked after children (those who are the subject of a care order¹⁰ or are accommodated¹¹) are the only children who can be detained in secure accommodation on welfare grounds.

⁵ See Annex A, child migration – legislative provisions, which formed part of the Health Select Committee’s investigation into the welfare of former British child migrants (published 1998): <https://www.publications.parliament.uk/pa/cm199798/cmselect/cmhealth/755/8052004.htm>

⁶ National Statistics (July 2016) Children accommodated in secure children’s homes: 31 March 2016, available here <https://www.gov.uk/government/statistics/children-accommodated-in-secure-childrens-homes-31-march-2016> (see Table 3).

⁷ Narey, M. (July 2016) Residential care in England. Report of Sir Martin Narey’s independent review of children’s residential care, page 32.

⁸ Department for Education (20 December 2016) Government response to Sir Martin Narey’s Independent review of residential care.

⁹ Paragraph 7(c), Schedule 2, Children Act 1989.

¹⁰ Section 31, Children Act 1989.

The power to deprive looked after children of their liberty may be rescinded by a person with parental responsibility who has the right to remove a child from accommodation, where they have been accommodated under Section 20 of the Act.¹²

3. Section 25 of the Children Act 1989 prescribes the circumstances in which a child looked after by a local authority in England or Wales may be deprived of their liberty by placement in secure accommodation:

(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.

4. Local authorities must appoint at least three persons – with at least one not employed by the local authority – to review the keeping of the child in secure accommodation within one month of the inception of the placement and then at intervals not exceeding three months.¹³ Secure accommodation reviews must consider 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,

and in doing so shall have regard to the welfare of the child whose case is being reviewed.”¹⁴

5. The wishes and feelings of the child, his or her parents and any independent visitor must be taken into account wherever practicable.¹⁵ If the panel believes the criteria for depriving the child’s liberty no longer apply, or another placement would be more appropriate, an urgent review of the child’s care plan must be convened, chaired by his or her independent reviewing officer.¹⁶ It is unlawful for a child to be detained in secure accommodation on welfare grounds, when the Children Act 1989 criteria no longer applies.

Looked after children living abroad

6. The Children Act 1989 prohibits a local authority from placing a looked after child abroad (that is, outside England or Wales) without court authority. This applies to children who are the subject of compulsory supervision orders too. The Act prevents the court from making such an order, unless it is satisfied that—

¹¹ Section 20, Children Act 1989.

¹² Section 25(9), Children Act 1989.

¹³ Regulation 15, The Children (Secure Accommodation) Regulations 1991.

¹⁴ Regulation 16, The Children (Secure Accommodation) Regulations 1991.

¹⁵ Regulation 16, The Children (Secure Accommodation) Regulations 1991.

¹⁶ Department for Education (April 2015) Guide to the children’s homes regulations including the quality standards. Paragraph 1.44.

“(a)living outside England and Wales would be in the child’s best interests;

(b)suitable arrangements have been, or will be, made for his reception and welfare in the country in which he will live;

(c)the child has consented to living in that country; and

(d)every person who has parental responsibility for the child has consented to his living in that country.”¹⁷

7. The child’s consent can be dispensed with where it is deemed he or she does not have sufficient understanding. Parental consent can similarly be discarded where it is believed the parent is unreasonably withholding permission.¹⁸

Government amendments (tabled in December and passed 10 January 2017)

8. Clause 10 and Schedule 1 make the following very significant amendments to the Children Act 1989:

- Change to Section 25 of the Act so that children looked after by English or Welsh local authorities can be detained in secure accommodation in Scotland
- Change to the Children’s Hearings (Scotland) Act 2011 so that secure accommodation orders made in England can be enforced in Scotland, including by arrest of a child who runs away from premises in Scotland
- Removal of the requirement to obtain the child’s and parents’ consent (as far as is practicable) for placement in secure accommodation abroad (that is, outside England and Wales)
- Only Regulations 1 and 10 to 13 of The Children (Secure Accommodation) Regulations 1991 will apply to children from England and Wales detained in Scotland. This means children will lose their right to independent periodic review, a vital safeguard which supports the court authorisation and review process.¹⁹

9. **These changes directly concern children’s right to liberty (Article 5, European Convention on Human Rights), their right to maintain their family relationships (Article 8) and their right to due process (Article 6).**

Placement in secure accommodation in Scotland

10. The legal cases that led to these amendments concluded in October 2016, when the Court of Sessions agreed orders which gave authority to High Court orders permitting the placement of three children in secure accommodation in Scotland. The local authorities looking after these children are Cumbria County Council, Stockport Metropolitan Council and Blackpool Borough Council.
11. In July and September 2016, the President of the High Court Family Division, Sir James Munby, had heard the cases of two children (one looked after by Blackpool Borough Council, the other by Cumbria County Council) who had been placed in secure accommodation without legal authority in Scotland. Sir James Munby explained:

¹⁷ Paragraph 19(1), Schedule 2, Children Act 1989.

¹⁸ Paragraphs 19(3) to 19(5), Schedule 2, Children Act 1989.

¹⁹ Contained in Regulations 15 to 16.

“These particular issues arise because of the shortage of places in secure accommodation units in England, so that local authorities and courts in England, particularly in the north of England, whether on the Northern Circuit or the North-Eastern Circuit, look to making use of available places in secure accommodation units in Scotland. Precise data are not available, but such material (including anecdotal material) as exists suggests that there have been at least five such cases.”²⁰[Our emphasis].

12. Sir James Munby proposed a solution:

*“what now stand revealed are serious lacunae in the law which, I suggested, need urgent attention. If that is so, and I entirely recognise that others may take a different view, then the question rises as to how the problem should be addressed. On one view, **it is the kind of problem which is admirably suited for consideration by a Law Commission – perhaps, given the subject matter, jointly by the Law Commission of England and Wales and the Scottish Law Commission.** That is one possibility. No doubt there are others. But it seems to me that something really does need to be done.”²¹[Our emphasis].*

13. By the time the children’s cases reached the Court of Session, both the UK and Scottish Governments had decided to amend the primary legislation. Lord Drummond in the Court of Sessions noted:

“If it were not for the statements made to us on behalf of the Lord Advocate about proposed legislation, we would have concurred with [Sir James Munby’s] suggestion ... as discussions are in progress between the Scottish and United Kingdom governments about remedying the problem in the legislation, a reference to the Law Commissions should not be necessary.”²²

Research evidence

14. A recent study on the use of secure accommodation commissioned by the DfE, and published shortly after these amendments were tabled, notes: “It was not unusual for children to be placed in faraway secure settings as these were the only ones available. Sending children away meant disrupting their (often fragile) connections with family and other support networks, and with local services. This could add to the stress of what was already an extremely stressful experience for a child, and could make transition back into the community more difficult.”²³ The researchers concluded “it would be helpful” for the legal framework for using secure accommodation for child welfare reasons “to be reviewed”, though this was not in relation to **out-of-country** placements.²⁴
15. Research about demand for ‘welfare beds’ in secure accommodation, commissioned by the DfE, observed in 2012: “The general preference among LAs was to place children as close to home as possible, because it was believed this generally led to better outcomes, although the decision was also influenced by the specific needs of the young person and by where there was a vacancy. Placements nearby were also preferred because they avoided the extra social worker and reviewing officer time associated with travelling to SCHs located a long

²⁰ [2016] EWHC 2271 (Fam) [2].

²¹ [2016] EWHC 2271 (Fam) [74].

²² [2016] CSIH 92 [38].

²³ Hart, D. and La Valle, I. (2016) Local authority use of secure placements. Research report April 2016. Published by DfE 21 December 2016, page 62:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/579128/Local_authority_use_of_secure_placements.pdf

²⁴ Hart, D. and La Valle, I. (2016) Local authority use of secure placements. Research report April 2016. Published by DfE 21 December 2016, page 70.

way from the home authority”.²⁵

16. The Office of Children’s Rights Director held discussions with children in nine secure units in England during 2009. At that time, there were 18 such units in England. There are now 14.²⁶ Children were asked about the best and worst aspects of living in secure accommodation. On the worst, the Children’s Rights Director reported:

“The most usual worst thing we heard about being in a secure unit was the loss of freedom and being locked up. Being in a secure unit stops you from doing things and takes you away from your family and friends.”²⁷

Conclusion

17. These significant legal changes were introduced because of lack of provision in England for extremely vulnerable looked after children.
18. They interfere with children’s human rights: the right to liberty (Article 5, European Convention on Human Rights); the right to maintain family relationships (Article 8); and the right to due process (Article 6).
19. There has been no consultation, including with looked after children and their families.
20. The practice of placing children hundreds of miles from home conflicts with long-established childcare principles.
21. We hope MPs will support New Clause 4.

NEW CLAUSE 4

Mrs Emma Lewell-Buck

Ian Murray

Mr David Anderson

To move the following Clause—

“Placing children in secure accommodation elsewhere in Great Britain

(1)Schedule (Placing children in secure accommodation elsewhere in Great Britain)

ends at the end of the period of two years beginning with the day on which this Act is passed.”

Member’s explanatory statement

This new clause would revoke provisions in the Bill that enable local authorities in England and Wales to place children in secure accommodation in Scotland, and vice versa, two years after the Act comes into force.

Article 39

British Association of Social Workers (BASW)

Children England

National Association of Independent Reviewing Officers (NAIRO)

²⁵ Mooney, A., Statham, J, Knight, A. and Holmes, L. (2012) Understanding the market for secure children’s homes. Summary report. A rapid response study for the Department for Education. Childhood Wellbeing Research Centre, page 9.

²⁶ National Statistics (July 2016) Children accommodated in secure children’s homes: 31 March 2016, available here <https://www.gov.uk/government/statistics/children-accommodated-in-secure-childrens-homes-31-march-2016> (see Table 3).

²⁷ Morgan, R. (2009) Life in secure care. A report by the Children’s Rights Director for England. Ofsted, page 9.