



Ministry
of Justice

Plans for Secure College Rules

October 2014



Plans for Secure College Rules

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

October 2014



© Crown copyright 2014

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence v.2. To view this licence visit www.nationalarchives.gov.uk/doc/open-government-licence/version/2/ or email PSI@nationalarchives.gsi.gov.uk

Where third party material has been identified, permission from the respective copyright holder must be sought.

This publication is available at www.gov.uk/government/publications

Any enquiries regarding this publication should be sent to us at securecollegerules@justice.gsi.gov.uk

Print ISBN 9781474111133

Web ISBN 9781474111140

Printed in the UK by the Williams Lea Group on behalf of the Controller of Her Majesty's Stationery Office

ID 02101411 10/14

Printed on paper containing 75% recycled fibre content minimum.

About this consultation

- To:** This consultation is aimed at: existing and potential secure estate operators; youth justice practitioners and service operators; young people in the youth justice system and their families and carers; and those with an interest in the youth secure estate including Parliamentarians and children's rights groups, voluntary and community organisations. We also invite members of the public to respond.
- Duration:** From 16 October 2014 to 27 November 2014
- Enquiries (including requests for the paper in an alternative format) to:** Secure College Rules Consultation
Ministry of Justice
8.19, 102 Petty France
London SW1H 9AJ
Tel: 020 3334 5418
Email: securecollegerules@justice.gsi.gov.uk
- How to respond:** Please give your response by 27 November 2014 at:
<https://consult.justice.gov.uk/digital-communications/plans-for-secure-college-rules>
- Additional ways to feed in your views:** Please send your response by 27 November 2014 to:
Secure College Rules Consultation
Ministry of Justice
8.19, 102 Petty France
London SW1H 9AJ
Email: securecollegerules@justice.gsi.gov.uk

Contents

Foreword	3
Introduction	4
Background	5
The proposals	7
Questionnaire	35
About you	38
Contact details/How to respond	39
Consultation principles	40

Foreword

By Parliamentary Under-Secretary of State, Andrew Selous MP

In January this year we set out our vision for transforming youth custody including plans to create Secure Colleges, a new form of secure educational establishment to place education at the heart of detention. All young people deserve access to a high quality education which will allow them to fulfil their potential. This is all the more important if a young person has set out on the wrong path in life.

Secure Colleges will be a pioneering approach to tackling the stubbornly high reoffending rates in youth custody, moving away from the traditional environment of bars on windows and putting education and training at the forefront. They will equip young offenders with the skills, qualifications and self-discipline they need to turn their back on crime and become productive, hardworking members of society.

We have introduced the legislation to provide Secure Colleges in the Criminal Justice and Courts Bill, and we are working towards opening a Secure College pathfinder in the East Midlands in 2017.

We want Secure College operators to have the flexibility to develop innovative approaches tailored to the needs of the young people detained there and to motivate and inspire young people to turn away from crime. Secure Colleges will also integrate education with a range of other services to meet the wider needs of young people and to keep them safe at all times, while also ensuring that the public is protected.

This consultation invites views on our plans for Secure College Rules. Rules set out the key parameters within which Secure Colleges will have to operate. They cover critical issues such as safeguarding of young people, regime, and the use of force – issues on which it is important that we seek wider views.

Our aim is for Secure Colleges to deliver improved services to educate and care for young people, and tackle offending behaviour. I welcome your contribution to ensuring young people can fulfil their potential and lead a purposeful life on their release.

Introduction

1. This paper sets out for consultation our approach to the Secure College Rules.
2. This consultation will also be available in Welsh at (<https://consult.justice.gov.uk/digital-communications/plans-for-secure-college-rules>).
3. This consultation is conducted in line with the Government's Consultation Principles which can be found at: <https://www.gov.uk/government/publications/consultation-principles-guidance>.
4. We have not completed an Impact Assessment because the Rules would not impact on existing private, public and third sector organisations.
5. Responses are welcomed and encouraged from anyone with an interest in, or views on, the subject covered by this paper.

Background

In February 2013 the Government published a consultation paper, *Transforming Youth Custody: Putting education at the heart of detention*. This set out the Government's vision to transform youth custody to tackle high reoffending rates and high cost, and to place quality education at the centre of efforts to rehabilitate young offenders. The consultation sought views from a wide range of organisations and individuals on how the Government's vision for Secure Colleges should be implemented.

In January 2014 the Government published its response to the *Transforming Youth Custody* consultation outlining its plans to introduce Secure Colleges, a new form of youth detention accommodation with innovative education provision at its core which will equip young offenders with the skills, qualifications and self-discipline they need to turn away from crime. The consultation response confirmed that a purpose-built Secure College Pathfinder would be opened in the East Midlands in 2017. If the Pathfinder proves successful it will inform our vision for the future of the youth custodial estate in England and Wales.

On 5 February 2014 the Criminal Justice and Courts Bill was introduced in Parliament containing provisions which set out the legal framework for Secure Colleges. These provisions include a power for the Secretary of State to make Rules governing the operation of Secure Colleges. The Criminal Justice and Courts Bill is expected to receive Royal Assent before the end of 2014.

This consultation is about the policies which will inform the statutory rules governing Secure Colleges (the "Secure College Rules" or the "Rules").

The purpose of the Rules will be to set out the core parameters within which Secure Colleges will be required to operate to ensure that young people are detained safely and securely, and that their educational and rehabilitative needs are addressed. Rules will cover issues which are so fundamental to the safe and effective operation of a Secure College that the Government believes they must be set out in legislation. The Rules will also address the requirements of section 47 of the Prison Act 1952, (the power in primary legislation to make Secure College Rules).

As well as seeking views on whether the policies which inform these Rules are right, we also invite views on whether we have identified the right areas which need to be covered by Rules.

A competition to identify an operator for the Secure College Pathfinder will commence in early 2015. At this time we will be producing a draft operating specification for the Secure College Pathfinder. Building on the fundamental requirements to be established in the Rules, this draft specification will set out further detail in relation to the regime and services that we will expect operators to deliver at the Secure College Pathfinder. The draft operating specification will be subject to further development and agreement with potential operators as part of that procurement process. No decisions have yet been taken about who will be accommodated in the Secure College Pathfinder.

Throughout this consultation document we have included references to what we anticipate will be in the draft operating specification for the Secure College Pathfinder. This information is provided solely in order to provide consultees with more context on how the Rules are likely to fit with the draft operating specification, and therefore how the Secure College Pathfinder could be run. In many cases the draft operating specification will expand on the requirements established by the Rules.

Our aim is that, while following the requirements set out in the Rules, and complying with the final agreed operating specification for the Secure College Pathfinder, operators will still have sufficient flexibility to innovate and develop operating models which will most effectively educate and rehabilitate the young people in their care.

Indicative drafting of Rules

This document is not consulting on the proposed wording of the Rules themselves. We believe that consulting on the underlying principles rather than detailed drafting will better enable consideration by consultees. We have, however, provided some indicative drafting in respect of Rules on the use of force as we recognise this is a topic of particular interest

The proposals

Secure Colleges: The Context

The **Criminal Justice and Courts Bill** sets out the statutory framework for Secure Colleges. This includes establishing the roles and responsibilities of the **Principal** and the **Monitor**.

The **Principal** will be the head of the Secure College and responsible for its safe operation and running. Every contracted-out Secure College must also have a **Monitor**. The Monitor must be a Crown servant appointed by the Secretary of State. One of the roles of the Monitor is to keep the running of the Secure College under review and report on this to the Secretary of State. Some of the Rules that are outlined throughout this document will bestow additional responsibilities on the Principal and the Monitor.

The purpose of Secure Colleges

This section outlines the principles and objectives that will underpin the running of Secure Colleges.

Purpose and Ethos

The purpose and ethos of a Secure College forms the foundation on which a Secure College is run and the basis for how services are delivered to young people on a day-to-day basis.

Secure Colleges will equip young offenders with the skills they need to stop offending and to become law-abiding members of society. Secure Colleges will put high quality education at the core of a regime which both educates and provides rehabilitative services for young people. From the outset of a young person's sentence Secure Colleges must ensure that they are looking ahead to prepare young people to return to and resettle in their communities. **We propose that there will be a Rule setting out the purpose and ethos that reflects these priorities.**

1. Question: Do you agree that there should be a Rule on the purpose and ethos of a Secure College? If so, do you consider we have captured the right priorities?

Cohorts of offenders, including girls

Although all young people have individual needs, it will be possible to identify groups or cohorts of offenders accommodated in Secure Colleges. Such cohorts could be identified by a variety of characteristics – for example, by gender, age, whether the young person has been sentenced or is a civil detainee, the type of sentence they have received, or whether they have learning difficulties. As young people will often have a range of defining characteristics, meaning that it may not be possible to define them as belonging to only one group or cohort, and as the characteristics of the population of young people in custody may well change over time, we believe that attempting to specify groups or cohorts of young people in the Rules would be counter-productive and would risk

constraining Secure College operators in how they respond to the full range of needs presented by a young person.

The only exception to this approach is in relation to girls where **we propose a Rule to ensure there is separate accommodation for girls and boys**. Furthermore, if they are included in the Secure College Pathfinder, it is currently our intention that the operating specification will require that gender-specific interventions are developed where required.

2. Question: Do you agree there should be a Rule which ensures there is separate accommodation for girls and boys?

Regime

This section outlines a series of proposals on the regime at a Secure College.

Education

Education is at the heart of the Government's vision for Secure Colleges. **We are proposing a Rule on education which would set out a requirement for the Principal to establish a minimum of 30 hours per week of educational activities for young people**. Educational activities may include academic study, such as the development of core skills like literacy and numeracy, vocational training, the development of life skills, and activities to tackle offending behaviour and equip young people with the skills to lead crime-free lives.

We are also proposing Rules that would require an individual learning assessment of each young person upon entry to a Secure College leading to the establishment of an individual learning plan. The assessment should be undertaken with those who will be responsible for supervising the young person in the community following release. The individual learning plan would set out the objectives to be delivered during the young person's sentence. The plan would include the support to be provided by the Secure College and other partners, including Youth Offending Teams. The Plan should be reviewed regularly during a young person's time in the Secure College.

3. Question: Do you agree there should be a Rule that would require the establishment of a minimum of 30 hours per week of educational activities for young people?

4. Question: Do you agree there should be Rules that would require an individual learning assessment of each young person upon entry to a Secure College and the establishment of an individual learning plan?

Beyond these statutory Rules, our wider approach to Secure Colleges reflects our approach to education in England. We want operators to innovate in the delivery of education. The education programme will also include rehabilitative interventions and activity to contribute to a young person's development of life skills, with sufficient flexibility for operators to respond to the individual needs of young people. We also expect that operators will effectively use a range of technologies to enhance the educational offer that they will bring to Secure Colleges.

We expect operators to deliver a broad and balanced curriculum focused on literacy, numeracy, ICT and Personal, Social and Health Education (PSHE) which ensures

learners develop and apply a wide range of skills, in reading, writing, communication and mathematics. We want to encourage operators to utilise freedoms which are available to Academies to personalise learning. This is to ensure that provision within Secure Colleges enable young people to achieve their potential and address any barriers to learning.

Operators will be expected to provide a flexible curriculum which can be tailored to learners of all abilities, including those with Special Educational Needs and Disabilities (SEND). The curriculum offer should include qualifications that are approved by the Department for Education and that are high quality, rigorous and enable progression to a range of study and employment opportunities. Typically this will include GCSE and A Level qualifications; foundation level programmes; recognised vocational programmes to contribute towards 'work readiness'; functional skills; preparation for apprenticeships and ongoing support to help young people apply for apprenticeships or continue appropriate education that will lead to an apprenticeship on release. Operators will also be asked to use a wide range of techniques inside and outside of the formal classroom setting to engage with young people and to encourage learning.

Operators will need to comply with the statutory requirements outlined in the SEND Code of Practice 0–25 Years, relating to children and young people detained in youth custody, which will be commenced from April 2015. Operators will work in partnership with schools and colleges, local authorities, Youth Offending Teams, healthcare providers and other partners to deliver statutory duties in relation to learners with SEND.

When dealing with any young people from Wales, operators will need to take account of and, where necessary, comply with the relevant codes of practice and regulations in order to meet the educational needs of young people who will be re-integrated into the Welsh educational system on release.

Library

We propose a Rule that a library must be provided for young people in Secure Colleges.

5. Question: Do you agree there should be a Rule that requires that a library must be provided in Secure Colleges?

Staffing

A critical success factor for Secure Colleges will be the quality and commitment of staff. The Youth Justice Board has worked with existing youth estate operators to develop training for custodial staff that equips them with the skills and knowledge required to work with young people in custody. **We propose a Rule that requires all custodial staff working in Secure Colleges to have undergone training approved by the Secretary of State.**

6. Question: Do you agree there should be a Rule that requires all custodial staff working in Secure Colleges to have undergone training approved by the Secretary of State?

Our overall approach to education staffing in Secure Colleges will also reflect this Government's approach to education in England. As with Academies, it will be for education operators to determine how best the educational engagement and attainment of

young people in a Secure College can be raised and the staff they will require to achieve this. Since July 2012, mainstream and alternative provision Academies can employ teaching staff without the requirement for them to have Qualified Teaching Status (QTS). We believe it is right to adopt this same approach for Secure Colleges, focusing instead on the educational outcomes that the establishment achieves rather than the staff they employ.

We expect that education staff recruited by operators will reflect the curriculum to be delivered in the Secure College and the distinct needs of the young people within the establishment. We anticipate that this will comprise a balance of teaching staff both with and without Qualified Teacher Status (QTS). Special Education Needs Coordinators in Academies are required to hold QTS, and we will replicate this requirement in Secure Colleges.

Dress code

Establishing a dress code can play a valuable role in contributing to the ethos of an establishment. We want the Principal to have discretion on the dress code for the Secure College. **We therefore propose a Rule that will require Secure Colleges to have a policy on dress code.**

7. Question: Do you agree there should be a Rule requiring each Secure College to have a dress code policy?
--

Healthcare

Since April 2013 NHS England (previously known as the NHS Commissioning Board) has had responsibility for commissioning health services for those in prison and other prescribed detention in England. We intend that health provision, including specialist provision, in the Secure College Pathfinder will be commissioned by NHS England, with reference to the Intercollegiate Healthcare Standards for Children and Young People in Secure Settings issued by the Royal College of Paediatrics and Child Health. NHS England will assess the healthcare needs of young people in Secure Colleges and will commission services, including specialist provision, appropriate to meet the assessed needs.

NHS England is subject to a wide range of statutory duties, and is accountable to the Secretary of State and the public for how well it fulfils these. NHS England holds its providers to account through the normal contractual process. All providers of NHS services have internal systems for monitoring service delivery and have to comply with the requirements of the Care Quality Commission which registers and inspects providers. Comparable healthcare arrangements exist in Wales, through NHS Wales and Healthcare Inspectorate Wales were any future Secure Colleges to be located in Wales.

This means that the Rules are not the right place for placing duties on healthcare staff. Healthcare providers are held to account through the process described above. The role of Secure Colleges in respect of healthcare is to provide an environment where healthcare professionals are able to carry out their duties and responsibilities in relation to the health and care of the young people in the Secure College. **We are therefore proposing to have a Rule to ensure that a young person has safe and timely access to health services in Secure Colleges.**

8. Question: Do you agree there should be a Rule to ensure a young person has safe and timely access to health services in Secure Colleges?

Assessment on arrival and safeguarding

The comprehensive assessment and safeguarding of young people will be central to the delivery of all services in a Secure College. All existing youth secure establishments are required to have a safeguarding and child protection policy in place in line with the current legislative framework. These requirements stem from the Children Acts 1989 and 2004, and are also described in Working Together to Safeguard Children (2013)¹ which states:

Each centre holding those aged under 18 should have in place an annually reviewed safeguarding children policy. The policy is designed to promote and safeguard the welfare of children and should cover issues such as child protection, risk of harm, restraint, recruitment and information sharing. A safeguarding children manager should be appointed and will be responsible for implementation of this policy.'

It is current practice for secure establishments therefore to establish their own operating procedures on safeguarding. Operators' proposed policies on safeguarding would be assessed as part of the evaluation of bids for the Secure College Pathfinder and regularly monitored by the Youth Justice Board and the Monitor.

The Intercollegiate Healthcare Standards for Children and Young People in Secure Settings that will be adopted for Secure Colleges require that a healthcare assessment should take place as soon as reasonably practicable following a young person's entry to the Secure College and in any event no later than two hours after arrival. The healthcare assessment will be undertaken by a healthcare professional. In line with the Rule on healthcare proposed above, **we therefore propose a Rule that will ensure young people have safe and timely access to this healthcare assessment.**

9. Question: Do you agree that there should be a Rule to ensure that Secure Colleges provide safe and timely access to healthcare professionals to undertake a healthcare assessment?

When a young person first enters a Secure College, our policy is that before a young person is locked in a room on their first night they will have been offered food and drink, the option of a shower, and provided with suitable clothing if needed. **We propose a Rule to ensure that these procedures are followed during a young person's first night in custody requirements.**

10. Question: Do you agree that there should be a Rule setting out the facilities to be provided during the first night in custody? If so, what do you consider should be included?

It is our intention that the operating specification for the Pathfinder will set out further requirements regarding safety and welfare. This will include establishing governance arrangements with the Local Safeguarding Children's Board. Operators will also be expected to put in place measures to ensure that risks relating to self-harm and harm from

¹ <https://www.gov.uk/government/publications/working-together-to-safeguard-children>

others are managed during transportation and escorting. This will also include the safe escorting of young people around the Secure College and ensuring the safe mixing of young people in accommodation and communal areas for the appropriate management of gangs, different offence types and, where relevant, of different ages and sexes. These policies will be subject to regular independent scrutiny from the Local Safeguarding Children Board and will be updated as necessary following learning from any safeguarding incidents.

Information on arrival

We are proposing a Rule requiring Secure Colleges to provide a young person with essential information on arrival (for example, how to maintain contact with family and friends, arrangements for sleeping, eating and healthcare). The Principal must take reasonable steps to ensure that young people are provided with the information in a format they can understand.

11. Question: Do you agree there should be a Rule which will ensure that Secure Colleges have to provide a young person with essential information on their arrival? If so, is there particular information it should specify?

Accommodation

We propose a rule that requires all sleeping accommodation to be approved by the Secretary of State. This would ensure that sleeping accommodation meets certain standards for habitation, including those that relate to safety. There will be clear arrangements in the operating specification for the Monitor to check and report that sleeping accommodation continues to meet these standards. **We also propose that there is a Rule requiring that young people are provided with bedding adequate for warmth and health.**

12. Question: Do you agree there should be a Rule requiring sleeping accommodation to be approved by the Secretary of State?

13. Question: Do you agree that there is a Rule requiring that young people are provided with bedding adequate for warmth and health?

The vast majority of young people in the youth secure estate currently have their own bedroom. Our policy is that this remains the case in Secure Colleges but we believe that there should be the option of two young people sharing a room if it is in their best interests to do so and any risks to safety and welfare can be managed. In some cases, sharing a room will provide reassurance to a young person and may be beneficial. In addition, it could help address situations where there is an exceptionally high demand for places and transferring young people to another establishment would potentially cause more harm as it would disrupt their time in custody.

We do not propose a Rule specifying the circumstances in which room sharing may be appropriate but we do **propose a Rule to require that room sharing only occurs following a risk assessment which concludes that it would not be detrimental to the safety and well being of a young person, before any sharing occurs.**

14. Question: Do you agree there should be a rule to require that room sharing only occurs following a risk assessment which concludes that it would not be detrimental to the safety and well being of a young person before any sharing of rooms occurs?

Food

We propose a Rule requiring the Secure Colleges to provide three meals a day, with one meal to include a hot food option. Food should be provided in adequate quantities and make up a healthy and balanced diet. The Rule will require the Secure College to ensure that the food provided takes into the account the cultural, religious and medical needs of all young people in the establishment.

15. Question: Do you agree there should be a Rule on food? If so, do you agree the proposal above sufficiently covers what should be included in such a Rule?

Hygiene

We propose a Rule that every young person should be entitled to have a hot shower once a day.

16. Question: Do you agree there should be a Rule on entitlement to showers?

Visits

It is essential that Secure Colleges support young people in maintaining relationships with their families and other significant people in their lives. In the existing estate, visits can take different forms from sessions of one hour to entire visiting days where parents or carers can undertake activities with young people. We want Secure Colleges to take a flexible approach to visits whilst ensuring a minimum entitlement. **We propose a Rule that will require the Principal to establish a visits scheme in which all young people are entitled to a minimum of one visit per week. Further visits would be determined by the Principal.** This proposal has been informed by existing operational practice. The current minimum statutory entitlement in Young Offender Institutions is 2 visits in every 4 week period, whilst the Secure Training Centre Rules prescribe a minimum of one visit per week.

Personal contact does not only take the form of visits. Young people will wish to keep in contact with family, friends or support services through written communication and phone calls. We want operators to have flexibility in how they manage and make best use of different forms of communication. **We propose a Rule that requires the Principal to establish a policy for personal communications, which would include electronic communication.** The Principal will need to have regard to security considerations in establishing the policy, for example taking into account any court restrictions.

17. Question: Do you agree that there should be a Rule to require the Principal to establish a visits scheme in which all young people are entitled to a minimum of one visit per week?

18. Question: Do you agree that there should be a Rule requiring the Principal to devise a policy for personal communications, which would include electronic communications?

Religious observance

Young people in Secure Colleges must be able to observe and practice in accordance with their religious beliefs and we propose a Rule to reflect this.

19. Question: Do you agree there should be a Rule to ensure young people in Secure College are able to observe and practice in accordance with their religious beliefs?

Resettlement Release

The response to the consultation on Transforming Youth Custody set out an ambition to make more effective use of temporary release as a means of supporting resettlement. Temporary release for resettlement purposes could include enabling young people to access training or education externally, attend interviews, or make visits back to their home community. **We therefore propose a Rule to ensure that young people can be released temporarily in order to support their resettlement.**

In addition to supporting resettlement, other reasons why young people may be released temporarily could include for compassionate release, to receive medical treatment, to participate in court proceedings or assist with police enquiries, to consult with legal advisers and to transfer to other establishments. **We propose a Rule that sets out reasons, not covered by resettlement, that young people may be released temporarily.**

Any temporary release would have to be approved by the Secretary of State or the Youth Justice Board, who would have to be satisfied that there is no unacceptable risk of the young person committing offences or breaching any conditions imposed before giving the approval. There would be a presumption against temporary release where on their current sentence, a young person has previously been granted temporary release and has, during that period of release, committed an offence or tried to abscond.

20. Question: Do you agree there should be a Rule to ensure that a young person can be released temporarily to support their resettlement?

21. Question: Do you agree that there should be a Rule that sets out reasons, not covered by resettlement, that young people may be released temporarily?

Grievances

It is important that young people have an avenue to raise concerns about how they are treated in custody. **We are proposing a Rule that the Secure College Principal must put in place a grievance procedure** which must be approved by the Monitor. This procedure would be in addition to the young person being able to complain to the Monitor.

22. Question: Do you agree there should be a Rule which requires the Principal to put in place a grievance procedure? If so, should this procedure be approved by the Monitor?

Advocacy

We wish to continue the approach followed in the existing youth estate where young people have access to independent persons who act as advocates. **We propose a Rule that will allow the Secretary of State to appoint advocates to assist young people.**

These advocates offer an independent voice to young people in custody to enable them to resolve issues relating to their welfare, care and treatment whilst detained in custody. We envisage advocates assisting young people to resolve difficulties which may include, assistance in making a formal complaint and with a young person's consent, to take up any unresolved matters of concern with the secure establishment or outside agencies such as Youth Offending Teams.

23. Question: Do you agree there should be a Rule which will allow the Secretary of State to appoint advocates to Secure Colleges?

Independent Investigations

We are proposing a Rule that will allow the Secretary of State to appoint an independent person to conduct an investigation into issues of significant concern.

The independent person would be required to report to the Secretary of State and would have access to relevant records in the conduct of that investigation. This provides a further safeguard to ensure the safe and effective operation of a Secure College. This may be useful for example, where a matter needs to be investigated that falls outside the expertise of the Monitor or where the Monitor is involved in the issues to be investigated.

24. Question: Do you agree there should be a Rule to allow the Secretary of State to appoint an independent person to investigate matters of concern?

Inspection of Secure Colleges

Her Majesty's Inspector of Prisons (HMIP) will be under a duty to inspect Secure Colleges and Ofsted will also have inspection powers over Secure Colleges. **We propose that the Rules will make provision for the inspection of Secure Colleges, and will ensure that any body carrying out an inspection may enter any part of a Secure College, conduct an interview with any member of staff or young person held there and examine any records created and held on the premises.** We will be working with Ofsted and HMIP as they establish the framework for inspections of Secure Colleges.

Access to legal advisers

We propose a Rule to ensure Secure Colleges must allow young people to have access to their legal adviser.

Police interviews

We propose a Rule to permit a Police officer, on production of an order by or on behalf of a chief police officer to interview any person at a Secure College provided that person agrees.

Promoting Positive Behaviour

This section outlines a suite of Rules to assist Principals in managing behaviour of young people in Secure Colleges.

A safe and stable environment is essential for a Secure College to achieve its aim of educating and rehabilitating young people. This means managing what will often be extremely challenging behaviour of young people. An effective behaviour management strategy involves, promoting positive behaviour, while responding to inappropriate behaviour in a fair, proportionate and consistent manner that will address the underlying reasons for the behaviour. There are a range of interventions and policies that can make up a behaviour management strategy.

Rewards and sanctions

The existing youth estate has rewards and sanctions schemes that involve young people moving up or down reward levels depending on their behaviour. Consistently good behaviour and engagement is rewarded with access to extra privileges such as additional access to the gym, more free time spent associating with other young people or additional furniture items in their room. Poor behaviour results in moving down levels and so losing privileges. We think this system works well as it provides young people with tangible incentives to behave well and clear consequences when they do not, and we want the approach to be incorporated into Secure Colleges.

We also consider it is an area that provides opportunities for innovation as operators will be able to establish a Rewards and Sanctions scheme that reflects the ethos for the Secure College. **We therefore propose a Rule which will place a duty on the Principal to establish a Rewards and Sanctions scheme which has to be approved by the Secretary of State.** There are some key principles we would expect all Rewards and Sanctions schemes to follow. These are that:

- young people should fully understand the consequences of their actions and only access privileges if they actively engage with their own rehabilitation;
- all rewards and sanctions schemes should offer opportunities for progression and should explicitly identify the expected behaviours at each level;
- the Principal must ensure that a scheme considers the needs of young people who are particularly vulnerable or at risk of suicide or self-harm.

Whereas rewards and sanctions levels should reflect a young person's behaviour over a sustained period of time, we would also want Secure Colleges to be able to administer more immediate rewards and minor sanctions in response to minor incidents or short term episodes of behaviour. This should be covered in the overall Rewards and Sanctions scheme. As a safeguard to ensure schemes treat young people fairly we propose there is a requirement that Rewards and Sanctions schemes are approved and can, if necessary, be either amended or revoked by the Secretary of State. The Secretary of State will need to be satisfied that schemes have well-defined levels or progression and it is clear to

young people the behaviours expected at each level. This check will also ensure the rewards that form part of schemes are proportionate to a custodial environment.

25. Question: Do you agree that a rule should require the Principal to establish a rewards and sanctions scheme, and this scheme should be approved by the Secretary of State?

Our aim is that as far as possible behaviour is managed through the Rewards and Sanctions scheme. However, at the most serious end of sanctions, in some of the current youth custodial estate, young people on certain sentences can have days added to their sentence by Independent Adjudicators. This can act as a deterrent to the most serious challenging behaviour. **We propose a Rule that will establish a procedure for independent adjudications in Secure Colleges.**

Referral to an Independent Adjudicator, is currently rare in the youth estate, and would only occur in exceptional circumstances. As an intermediate step between managing behaviour through the Rewards and Sanctions scheme and referral to an Independent Adjudicator, **we propose a Rule that would enable the Principal to impose sanctions for serious offences in custody.**

We propose to replicate YOI Rule 55 which sets out the offences that can lead to an adjudication in Young Offenders Institutions as the basis for adjudications (whether by the Principal or an Independent Adjudicator) in Secure Colleges. The offences listed include assault, attempting to escape, and possessing unauthorised items. It is important to underline that it is not our policy in the estate now, or in Secure Colleges, that *any* exhibition of the behaviours listed would lead to an adjudication. For example, one of the offences is listed in Young Offender Institution Rule 55 is, '*uses threatening, abusive or insulting words or behaviour*'. This does not mean that any use of abusive words would result in an adjudication. Our policy is that operators should manage challenging behaviour through engaging with young people to address the causes of the behaviour and that the vast majority of behaviour is managed through Rewards and Sanctions. Adjudications provide a route for managing the most serious behaviour. **We welcome views on whether it is appropriate to use the offences listed in Young Offender Institution Rule 55 as the basis for offences under the Rules which could be subject to adjudication.**

As to the sanctions that could be allocated by the Principal in adjudication we propose that there are limited to loss of 'Reward' that features in the Rewards and Sanctions scheme and restricted access to activities (apart from educational activities). These sanctions would be of a more serious nature than minor sanctions that could form part of the Rewards and Sanctions scheme. The sanctions would not include confinement to room or restrictions to external contact (including visits) below the minimum set out elsewhere in the Rules. **We welcome views on whether these are appropriate sanctions for the Principal in an adjudication process to manage serious behaviour.**

We also propose a Rule that reflects the current timescales in Young Offender Institutions for managing adjudications so that offences that can lead to an adjudication are laid as soon as possible and, save in exceptional circumstances, within 48 hours of the offence, and the hearing takes place, save in exceptional circumstances, the following day (other than a Sunday or public holiday).

In order to ensure young people are treated fairly under any adjudications process we **propose a Rule to ensure that any young person charged with an offence under the Rules is given a proper opportunity of presenting his case.** The use of adjudications would form part of the monitoring process of Secure Colleges. As outlined elsewhere in this consultation document there are a range of ways young people can raise concerns about their treatment in custody, either through a grievance procedure or involving independent advocates.

26. Question: Do you agree there should be a Rule that establishes a procedure for independent adjudications in Secure Colleges?

27. Question: Do you agree that there should be a Rule that would enable the Principal to impose sanctions for serious offences in custody?

28. Question: Do you agree it is appropriate to use the offences listed in YOI Rule 55 as the basis for offences under the Rules which could be subject to adjudication?

29. Question: Do you agree with the proposed sanctions available to the Principal in an adjudication process for managing serious behaviour?

30. Question: Do you agree there should be a Rule that follows the timescales used in Young Offenders Institutions for managing adjudications?

31. Question: Do you agree there should be a Rule that any young person charged with an offence under the Rules is given a proper opportunity of presenting his case?

Separation

In some instances, when attempts at de-escalation through verbal communication have failed it may be necessary for staff to remove a young person from an activity or area and return them to their room. It is important to distinguish between instances where a young person is removed from an activity but remains supervised and those circumstances where a young person is 'separated' from the regime and locked in their room. The former scenario is one which we would expect operators to manage as part of their daily regime. For example, the operator may consider that it is in the best interests of a young person to undertake a supervised activity away from peers for a period of time. This section on separation covers the latter instances where a young person is removed from the main regime and locked in their room. We propose that there is a Rule on the key principles and safeguards on the use of separation.

We believe that the decision to separate a child or young person from their peers because of problematic behaviour must be made only on the basis of an assessment that separation represents the best approach to meeting the needs of that young person or is the best way to manage the risks posed to others. This decision must be taken by a senior member of staff.

Separation must not be used as a punishment and its use should take account of the needs of the young person and be proportionate to the associated risks. The young person must always be made aware of the reasons for separation and every effort should be made to assist the young person in addressing the behaviour that led to the separation

in order to facilitate the earliest possible reintegration into the normal regime. The young person must be regularly monitored during separation periods.

Existing youth custody sectors have different approaches to regulating the use of separation and in particular applying time limits. The regulatory framework for Secure Children's Homes (SCHs) does not set a time limit on the use of separation but stipulates that young people must be observed at regular intervals. Secure Training Centre Rules state that a young person cannot be left unaccompanied for longer than 3 hours during the daytime and must be observed every 15 minutes. A time limit can provide a safeguard that separation cannot be used excessively but it can also be arbitrary and not allow for situations to be assessed on a case by case basis. We welcome views on the suitability of a time limit for use of separation

An alternative to a time limit is ensuring there is strict monitoring and reporting on the periods of time that young people are separated for. The Monitor would be responsible for monitoring the periods of time for which young people are separated, and would have an obligation to report on this to the Secretary of State to ensure that separation is used consistently, proportionately and fairly. Our overall aim is that operators identify and implement solutions that will rule out the need for separation.

32. We welcome views on what safeguards should be included in Rules to ensure separation is used appropriately.

Use of force

This section of the consultation document covers the approach to be taken in relation to the use of force (including physical restraint), with indicative Rules on the use of force.

The approach to the use of force on young people understandably attracts more scrutiny than any other aspect of the youth custody regime. Any decision to use force is a serious matter, which is why above all else force must only be used as a last resort, respecting the young person's dignity and physical integrity, and must never be used as punishment.

Experience of managing custodial environments, however, shows that there will inevitably be times when the challenging or problematic behaviour of young people escalates or intensifies to such a degree that physical intervention is necessary – not for reasons of punishment, but in order to keep that young person and others safe. While that is a reality of managing custodial environments, we are committed to ensuring, through the establishment of clear policies, effective monitoring and high quality training, that where force is used, it is used only as a last resort and it is managed in the safest way possible. Force, in every instance where this is possible, should be used in the form of an approved physical restraint technique. In deciding to use force and, if so, the degree of force necessary, the best interests of the young person involved is a primary consideration.

Considerable improvements have been made regarding the use of restraint in recent years. Most notably, a new approach to restraint, 'Minimising and Managing Physical Restraint' (MMPR), has been developed for use in Secure Training Centres and under-18 Young Offender Institutions. MMPR was independently assessed by the Restraint Advisory Board, an expert panel comprising a wide range of professional backgrounds including paediatrics, psychiatry and offender management. The Restraint Advisory Board established a set of principles governing the use of restraint. These principles, which include underlining the need for child-focused restraint processes, and high quality

governance and training, have been adopted by Government and will apply to Secure Colleges.

We recognise that high quality training is essential for safer restraint. This is why, under MMPR, staff are required to attend twice the number of refresher courses per year as they did before MMPR; and why staff are subject to a comprehensive assessment on training courses, where they must be able to demonstrate the required knowledge and comprehension regarding each of the following: behaviour management, the law, medical advice and physical techniques. As its title suggests, MMPR is about avoiding the need to use physical restraint as far as possible. Training is child-focused and focuses on de-escalation skills, as well as the application of physical restraint techniques. MMPR will be used in Secure Colleges. More information on MMPR can be found here <http://www.justice.gov.uk/youth-justice/custody/behaviour-management#restraint>

Circumstances in which the use of force is authorised

There will of course be physical contact between custody officers and young people. We do not consider that everyday physical contact, which does not involve any attempt to control or restrain a young person, such as a pat on the shoulder, constitutes a use of force. Therefore this type of contact is outside the scope of the policy and indicative Rules we are setting out in this document.

The proposals set out below cover any physical contact which is more than minimal and is necessary to control or restrain a young person in some way. This is what we term 'force' for the purposes of this document.

We propose that Rules should set out the circumstances in which use of force is authorised. **We propose that the use of force is authorised in three circumstances: to prevent injury to the young person or others, to prevent escape from custody and to prevent damage to property.**

We also propose that there is a fourth circumstance – which relates to maintaining good order and discipline – in which force may be used but – only through the exercise of, and in accordance with, MMPR, and in the form of restraint techniques specifically approved for application in that circumstance. We go on to describe this more fully below.

As far as is reasonably practicable (and in every case where the force is used for maintaining good order and discipline), any use of force should be through the application of an approved restraint technique, under MMPR. This is because staff will have undergone detailed and extensive training on how to use physical restraint and the techniques used have been risk assessed to minimise risks of harm to young people and staff.

However, there may be situations where it is not possible to apply an approved restraint technique because the need to use force in order to prevent injury to the young person or others, to prevent escape from custody or to prevent damage to property is urgent and does not allow for the situation to be managed through an approved restraint technique. For example, force may be required to hold someone back from suddenly assaulting another young person or member of staff. Staff may also need to use force for personal protection.

33. Question: Do you agree with our proposals for when force can be authorised?

Principles that apply to any use of force

We propose that the following principles are central to the use of any force in Secure Colleges and they are reflected in the indicative rules. These principles would apply to any use of force, whether in the form of an approved restraint technique or otherwise.

- Use of force for reasons of punishment is prohibited
- Use of force intended to cause pain is prohibited unless it is absolutely necessary to protect a young person or others from an immediate risk of serious physical harm (and is prohibited in every case where the force is used for maintaining good order and discipline)
- Force may not be used unless, and to the extent that, it is strictly necessary and is a proportionate response to the situation
- Only the minimum amount of force for the minimum time necessary may be used
- In any use of force, the best interests of the young person against whom the force is used is a primary consideration
- Any use of force must, so far as is reasonably practicable, respect and not diminish the young person's dignity and protect their physical integrity. In practice, this will mean that staff must consider in any situation involving the use of force, what practical steps can be taken to minimise the adverse impact on the dignity and physical integrity of the young person concerned, recognising that in cases of urgency as set out above such practical steps may not always be available or appropriate. By way of example, such practical steps could include moving others from the vicinity of a force incident.
- Any use of force must, as far as is reasonably practicable, be in accordance with methods approved by the Secretary of State (i.e. MMPR) and by staff who have undergone a course of training which has been approved by the Secretary of State (i.e. MMPR), and in every case where the force is used for maintaining good order and discipline.
- No officer may act in a way as to deliberately provoke a young person
- Particulars of every incident in which force is used against a young person must be recorded.

34. Question: Do you agree with the principles that would apply to any use of force? Are there other principles to consider?

Principles that apply to any use of restraint

Above we set out the principles which apply to any use of force. In addition, we propose that the following principles should apply to the use of restraint. All of the principles in the bullets below are already being implemented as part of MMPR. As noted above, as far as is reasonably practicable (and in every case where the force is used for maintaining good order and discipline), no young person is to be physically restrained except in accordance with methods approved by the Secretary of State (i.e. MMPR) and by staff who have undergone a course of training which has been approved by the Secretary of State (i.e. MMPR).

- Use of a physical restraint technique intended to cause pain is prohibited unless it is absolutely necessary to protect a young person or others from an immediate risk of

serious physical harm, but no such techniques may be used for maintaining good order and discipline (as set out further below).

- Use of physical restraint must be carried out in a manner which takes account of the particular physiological characteristics of the young person. For example, staff will consider physical stature and also relevant medical conditions, such as asthma.
- Wherever possible (and in every case where the force is used for maintaining good order and discipline), healthcare staff must be consulted before a restraint takes place. This is because we recognise that any use of restraint carries medical risks and the involvement of healthcare staff is intended to mitigate risks of harm.
- As soon as reasonably practicable following a restraint healthcare staff must be notified that the young person has been physically restrained.
- As soon as reasonably practicable following a restraint the young person must be given the opportunity to discuss the physical restraint and any circumstances connected with it with one or more appropriate members of staff. The young person should be provided with the option of an independent advocate being present.
- The staff involved must also be given the opportunity to take part in a debrief with a member of staff with appropriate MMRP expertise.
- Particulars of every incident in which force is used against a young person must be recorded, and MMRP requires such a record to be completed by staff as soon as is reasonably practicable, and to include statements from staff and any available CCTV footage.
- An appropriate member of staff and, in the case of contracted-out Secure Colleges, the Monitor must review incidents of restraint.
- Any restraint that results in a serious injury or a 'warning sign' must be reviewed by the MMRP National Training Team and an independent adviser with relevant expertise. An example of a 'warning sign' in the current MMRP process is young people reporting difficulty breathing.

We do not propose that all of the above principles will be set out in Rules: some of the principles will be more suitable for inclusion in MMRP documents. As set out in the indicative Rules, MMRP must be always be used as far as is reasonably practicable, and in every case where the force is used for maintaining good order and discipline. This means that, since it is the intention that all these principles will be in MMRP, they will be implemented in Secure Colleges as part of the methods for restraint approved by the Secretary of State.

35. Question: Do you agree with our principles that should apply to the use of physical restraint?

Circumstances in which physical restraint for maintaining a safe and stable environment is also authorised

As noted above, we propose that the use of force will be authorised under the Secure College Rules to prevent injury to the young person or others, to prevent escape from custody and to prevent damage to property, and that, as far as is reasonably practicable, the use of force should be in accordance with MMRP. In addition to these three circumstances, we are also proposing to authorise the use of force in a fourth

circumstance, which stems from the Secure College custody officer's function of ensuring good order and discipline on the part of the persons detained.

"Good order and discipline" (GOAD) is a term used in other legislation, including school legislation. That is why the Criminal Justice and Courts Bill proposes that ensuring good order and discipline on the part of the persons detained in a Secure College should be one of the core functions of a Secure College custody officer.

In the context of Secure Colleges, good order and discipline describes the maintenance of a safe and stable environment when running a secure establishment. Maintaining good order and discipline has an obvious importance in terms of security, but has an additional relevance when we consider educational provision. Put simply, good order enables the establishments to operate to the benefit of all its young people.

We recognise that the reference to 'discipline' in this context may be unhelpful as it could imply that force may be used as a means of punishment. We are clear that any use of force for the purposes of disciplining and punishing is prohibited as set out above.

We are proposing that the Rules will clarify what we mean by good order and discipline. Our proposed policy is that **the use of force to maintain good order and discipline is only authorised where a young person poses a risk to maintaining a safe and stable environment and where there is also a risk to the safety or welfare of the young person against whom the restraint is used, or to the safety or welfare of another young person.**

In this circumstance, force may only be used through the exercise of, and in accordance with, MMPR, and in the form of restraint techniques specifically approved for application in that circumstance. In this circumstance, as in every use of force, the restraint may only be used where and to the extent it is strictly necessary and is a proportionate response to the situation.

In limited situations, and then only as a last resort, we believe that use of an approved restraint – the minimum necessary and for the shortest time possible and subject to strict conditions and safeguards designed to ensure respect for the young person's dignity and physical integrity – may be necessary. In this context, risks to "safety or welfare" goes wider than an identifiable risk of immediate injury. The impact on welfare would need to be more than a minor or trivial impact.

In the remainder of this document we describe the way in which we propose to authorise restraint in the Secure College Rules under the power to use force for the purposes of GOAD as 'maintaining a safe and stable environment'.

Decisions on whether it is necessary and proportionate to use a restraint will be dependent on a number of factors, particular to that situation at that time. Staff are/will be trained only to apply restraint as a last resort and so it would not necessarily be the case that restraint would be used every time scenarios like those set out below arise. However, drawing from operational experience two scenarios that commonly occur in custody are set out below:

Scenario 1

A young person attending a visiting session notices a visitor that they have problems with from outside custody. They start to threaten the visitor verbally. The young person is using

abusive language and they are refusing to move from the visits room. Young people and visitors (including some young family members) are now having their visits interrupted. There is nowhere else within the secure setting for their scheduled visits to take place or for the visitors to be accommodated while they wait. The visitor at whom the abuse is being directed, is becoming agitated, as are their family and the young person they are visiting. The young person who is being abusive and refusing to move is also receiving threats of reprisals from other young people who are having their visits interrupted. The situation threatens to escalate.

In this example, staff would first talk to the abusive young person and consider all possible means of de-escalating the situation. But as a last resort, if it was strictly necessary, this may be a situation where use of a restraint to ensure a safe and stable environment might be authorised, as long as it is carried out with due respect for the young person's dignity and physical integrity. This would be on the basis that, by disrupting the visiting session in this way, the behaviour of the young person is presenting risks to the safety and stability of the secure setting such that the safety of individuals or others is at risk and the use of a restraint is necessary and proportionate.

Scenario 2

A young person is receiving threats and abuse from another young person and as a result of this and other issues with being in custody he is currently considered at high risk due to previous self-harming. Staff are aware and manage the situation during the day. However, the young person is being threatened during the night by an aggressor located in the room next to him. The young person is becoming increasingly distressed.

Staff go to move the young person who has been issuing the abuse to a different room to try and reduce the distress caused to the young person who is at risk of self-harm, but the aggressor refuses to move. Staff do not want to move the other young person as he has done nothing wrong and has a good support network on the unit. Others on the unit are becoming agitated by the continuation of the incident.

In this example, staff will try and mediate with the young people concerned and anti-bullying procedures should be instigated against the aggressor. However, if the young person refuses to change their behaviour and refuses to move to another room, staff will need to move him to protect the welfare of the young person who is suffering the abuse and ensure that young person and others on the unit have safe and stable environment. As a last resort staff will use restraint to move the aggressive young person to alternative accommodation.

We therefore consider that one of the reasons for using force, in the form of an approved physical restraint, should be in order to maintain a safe and stable environment for young people in which the safety and welfare of the young people is protected. We are proposing Rules that reflect this approach. Below we set out our proposals for the additional safeguards that are required before, during and after any use of restraint in these circumstances.

36. Question: Do you agree that our clarification of what is meant by good order and discipline – i.e. maintain a safe and stable environment – in the context of force, accurately reflects the circumstances in which restraint may be required?

How would restraint for maintaining a safe and stable environment be applied in practice?

All of the principles regarding the use of force and use of restraint generally would apply to the use of restraint for maintaining a safe and stable environment. **Furthermore, physical restraint techniques that are pain inducing must not be used for the purpose of maintaining a safe and stable environment.**

Any use of restraint for the purpose of maintaining a safe and stable environment is extremely sensitive and staff will have to balance many different interests in their decision-making. For example, staff will need to take into consideration the potential physical and emotional impact of restraint on the person to be restrained, the physical and emotional impact of the behaviour of that individual on other young people, and judge whether use of restraint could lead to the escalation of an incident. We therefore consider there needs to be a more in-depth process for staff to follow in making an assessment as to whether use of restraint is necessary in these circumstances compared to other reasons for using restraint.

Instances of restraint in these circumstances would be what are known as planned restraints. This means that as there is not an immediate risk of physical harm, (compared to, for example, preventing an assault), staff can assemble the resources to ensure the safest restraint possible. This would include ensuring healthcare staff are consulted before the restraint takes place and can be in attendance. Senior staff would have to be consulted and their approval obtained before any intervention.

In addition, because this will not be a case where there is an immediate risk of serious physical harm to the individual or others, not all approved physical restraint techniques should be available to staff in these circumstances. Techniques that are pain inducing must not be used.

Staff must respond at the lowest level of physical restraint techniques based on a risk assessment of the situation. In this context, consideration will have to be given to ways of minimising the adverse impact on the dignity and physical integrity of the young person by, for example, moving others from the scene or using screens to shield the restraint. As restraint will be planned, staff must consider a range of ways in which to protect the dignity and physical integrity of the young person. Any decision to use restraint for maintaining a safe and stable environment should be subject to a particularly high level of scrutiny. We therefore propose extra safeguards to monitor the use of restraint in these circumstances.

We propose that the following principles and procedures apply to any use of restraint for maintaining a safe and stable environment. We do not consider that every aspect of the process for restraint for maintaining a safe and stable environment is suitable for inclusion in the Secure College Rules. Some of the proposed policy below (such as the decision making process or the practical measures which may contribute towards ensuring respect for the young person's dignity and physical integrity) it is proposed will be covered in the MMPR documents. We have provided further detail on the processes that we consider should apply to restraint for maintaining a safe and stable environment as we recognise this is a sensitive issue.

Before any decision to use restraint for maintaining a safe and stable environment staff must

- Consider whether the young person can safely be left where he is and monitored appropriately.
- Consider if another staff member has a stronger relationship with the young person who may be better placed to manage the situation.
- Call for assistance, informing a senior member of staff and continue to verbally de-escalate (explain implications for rewards and sanctions). Ignore verbal abuse from young person which can be dealt with later through other behaviour management process.
- Consider the potential physical and emotional impact of the restraint on the young person to be restrained.
- Call for healthcare staff and consider if any additional medical risk factors are present.
- Consider the impact of the young person's behaviour on other young people and on whether it is causing clear risks to maintaining a safe and stable environment and whether there are risks to the safety or welfare of young people (for example young people in vicinity are having their regime significantly disrupted, are becoming upset, or could be incited into joining in either with or against the young person who is displaying challenging behaviour).
- Consider whether others can be moved from the scene.
- Use of restraint would only proceed when staff are satisfied they have assembled the resources to ensure the safest use of restraint, the best possible protection of the young person's dignity and physical integrity and a full risk assessment has been conducted considering the implications of proceeding or not with restraint. The resources include the attendance of healthcare staff.
- Use of restraint would have to be authorised by a senior member of staff.
- The senior staff member must consider whether the use of restraint in these circumstances would be a necessary and proportionate response and that the harm likely to be caused by allowing the disruptive behaviour to continue outweighs:
 - (a) any potential harm (both physical and emotional) that might be caused to the young person or others by this limited and controlled use of restraint; and,
 - (b) the risk that the use of restraint by staff will escalate the situation and provoke a more challenging response from the young person which will require higher-level techniques by staff which could impact on the young person or others.

Application of physical restraint for maintaining a safe and stable environment

- Only techniques approved for use in these circumstances may be used. As in any restraint incident, MMPR must be used but the following techniques would not be permitted; Wrist Flexion, Thumb Flexion, Mandibular angle, Head Hold.
- Staff must respond at the lowest level of technique based on the risk assessment of the situation as approved by a senior staff member. This means that although three members of staff will be available as is the case with any planned restraint, the initial contact will be with one or two members of staff depending on the size of the young person and the size of staff. If there is an escalation in challenging behaviour then it may be necessary for the third member of staff to apply a head support, during the

movement of the young person. Use of head support in this scenario is in order to ensure the safest use of what will be lower-level techniques.

- All steps should be taken to respect the dignity and physical integrity of the young person. As the restraint is planned there is more opportunity to consider and put in place such steps compared to use of restraint for other reasons such as preventing harm. Examples, include moving others from the scene or the use of screens. The use of Personal Protective Equipment should be proportionate to the situation. The use of full Personal Protective Equipment may therefore not be used in all incidents.
- The incident will be filmed on a hand held camera (or in some cases body camera) by a staff member who is not part of the three members of staff applying the restraint. Staff who are part of the three man team may also use body cameras. Although we understand that filming of these incidents could be considered to be encroaching on a young person's dignity, we consider there are significant benefits in having a filmed record of an incident. CCTV is not always available or may not be in the correct place, therefore filming ensures there is an accurate record. The record will assist staff and young people in reviewing the incident, including if a complaint is made by the young person. It will enable operators, the Youth Justice Board and MoJ, in addition to independent advice, to review and, where appropriate, learn from incidents and make adjustments to policy or practice if needed.

Restraint situations are very fluid and staff must constantly reassess whether they are taking the correct approach. There may be scenarios where incidents that start as a planned restraint to maintain a safe and stable environment escalate to violence when staff attempt to intervene. In those circumstances, staff will need to re-assess whether the situation can still be managed as a restraint to maintain a safe and stable environment. A greater degree of force may then need to be used in which case the policy on use of force and restraint in order to prevent injury to the young person or others, to prevent escape from custody and to prevent damage to property (set out above) would apply.

Following restraint for maintaining a safe and stable environment

All the post-restraint processes (for example, debriefing) that are set out under principles for restraint would apply following restraint for maintaining a safe and stable environment. As the decision-making process is more complex where the restraint is being used to maintain a safe and stable environment, we propose there are additional safeguards that apply following such incidents. These safeguards must also apply where an incident began as a restraint for maintaining a safe and stable but escalated into a situation where a greater degree of force was necessary.

- The Head of the MMPR National Team will monitor all incidents of restraint for maintaining and safe and stable environment. This will involve not just looking at the restraint itself but also scrutinising the decision making process. This process would involve reviewing CCTV footage, hand held camera footage, reports completed by staff and the outputs from any debriefs. The Head of MMPR will report findings back to the Secure College, the Monitor and the YJB.
- In contracted-out Secure Colleges, the Monitor must approach the young person involved as soon as possible after the incident to offer the opportunity to discuss the restraint.
- We propose that there is an independent panel to assess incidents of restraint for maintaining a safe and stable environment. It is likely this would take place on approximately a quarterly basis. The panel would review available video footage and

supporting documentation and make recommendations to the Monitor and the Youth Justice Board governance structure that oversees the use of restraint.

37. Question: Do you agree with the safeguards that should be applied i) before ii) during and iii) following use of restraint for maintaining a safe and stable environment?

We have provided indicative rules which reflect the proposals, set out above, on the use of force in Secure Colleges. The purpose of these indicative rules is to set out the way in which we envisage that, subject to consultation responses, the use of force would be authorised under the Secure College Rules. As we consider the responses to the consultation, the wording in the indicative rules may evolve.

Use of force

- 1.— (1) *A secure college custody officer, in dealing with a young person, may only use force in the following circumstances—*
 - (a) *to prevent injury to the young person or others;*
 - (b) *to prevent escape from custody;*
 - (c) *to prevent damage to property; or*
 - (d) *to maintain good order and discipline, that is where—*
 - (i) *a young person poses a risk to the maintenance of a safe and stable environment in the secure college; and*
 - (ii) *there is a risk to the safety or welfare of—*
 - (aa) *the young person against whom the force is used; or*
 - (bb) *another young person.*
- (2) *Force must not be used as a means of punishing a young person.*
- (3) *A member of staff must not act in a manner calculated to provoke a young person.*
- (4) *In any use of force, the best interests of the young person against whom the force is used is a primary consideration.*
- (5) *Any use of force must, so far as is reasonably practicable, respect and not diminish the young person's dignity and protect their physical integrity.*
- (6) *Force may not be used against a young person unless and to the extent that it is necessary and proportionate and no more force than is necessary may be used.*
- (7) *Subject to rule 1(8), the use of force intended to cause pain is not authorised unless its use is necessary to protect a person (whether that is the person against whom the force is used or another person) from an immediate risk of serious physical harm.*
- (8) *The use of force intended to cause pain in the circumstance described in rule 1(1)(d) is not authorised.*

- (9) *Subject to rule 1(10), the use of force in the circumstances described in rule 1(1)(a) to (c) must, so far as is reasonably practicable, be through the exercise of, and in accordance with, physical restraint methods approved by the Secretary of State and by staff who have undergone a course of training which has been so approved.*
- (10) *The use of force in the circumstance described in rule 1(1)(d) must only be through the exercise of, and in accordance with, physical restraint methods approved by the Secretary of State for that purpose and by staff who have undergone a course of training which has been so approved.*
- (11) *Particulars of every incident in which force is used against a young person must be recorded.*

Physical restraint

- 2.— (1) *Any application of an approved physical restraint technique must be carried out in a manner which has regard to the physiological characteristics of the young person concerned.*
- (2) *In the circumstances described in rule 1(1)(a) to (c), a member of the healthcare staff—*
 - (a) *must be consulted, wherever possible, before the application of an approved physical restraint technique; and*
 - (b) *must be notified as soon as is reasonably practicable after such application.*
- (3) *In the circumstance described in rule 1(1)(d)—*
 - (a) *only physical restraint techniques approved by the Secretary of State for application in that circumstance may be used;*
 - (b) *the application of an approved physical restraint technique intended to cause pain is not authorised;*
 - (c) *the authorisation of a senior member of staff must be obtained before a physical restraint technique is applied; and*
 - (d) *a member of the healthcare staff must be consulted before, and in attendance during, the application of a physical restraint technique.*
- (4) *Particulars of every incident in which a young person is physically restrained under this rule must be reviewed by an appropriate member of staff and by the Secure College Monitor.*
- (5) *As soon as is reasonably practicable after any incident involving physical restraint under this rule—*
 - (a) *the young person concerned must be offered the opportunity to discuss the incident and any related matter with an appropriate member of staff;*
 - (b) *no such discussion should take part other than in the presence or with the assistance of an independent advocate for the young person, unless the young person expressly so requests; and*

- (c) *in the circumstance described in rule 1(1)(d), the young person concerned must be offered the opportunity to discuss the incident and any related matter with the Secure College Monitor.*

Operational

Searching of individuals in Secure Colleges

Searches are an important way of maintaining the safety and security of a secure establishment. Their purpose is to prevent unauthorised items such as drugs, weapons and other contraband from being brought into an establishment. Searches are also used to prevent the carrying and concealment of these items in custody, including those acquired through bullying. Being searched can be a distressing experience, particularly if the search requires removal of clothing. It is important to strike a careful balance between using searching to ensure the safety and wellbeing of all young people and staff in a Secure College and to safeguard and protect the dignity and rights of those young people who are searched.

All secure establishments in the youth estate currently operate a risk-based approach to searching. This includes the requirement for intelligence to be needed in order to conduct full searching of young people. **We propose a Rule that will set out in detail the circumstances in which different types of searches can be carried out and that this will reflect the current practice of risk-led searches.** We also propose that a distinction is made in the Rules between a 'basic' search and a 'full' search.

Many items can be detected through a 'basic' search. This is a search that may involve asking a person to remove outer garments such as a jacket, shoes, scarf or gloves, and possibly 'patting down' the person to seek to detect concealed items. This form of search would be permitted on the young person's entry into a Secure College and where there is reasonable cause to suspect that a young person is concealing an unauthorised item.

A full search is where a young person is required to remove more than their outer garments. **We propose a Rule that would allow a full search only in certain circumstances.** To ensure that any full search is only carried out where necessary, we are proposing to set clear conditions which must be met before such a search can be performed. A full search would be permissible where there is reasonable cause to suspect that a young person is concealing an item on them which: poses a risk of harm to any person within the College; or is a controlled drug or any other illicit item; or could be used for the purposes of an escape; and a full search would be necessary in order to discover that item.

A full search must be carried out in a way which affords maximum dignity to the young person. Only removal of clothing which is necessary for the purposes of the search would be permitted. Furthermore the full search would be conducted out of sight of any other young person, and only in the presence of two officers, both of the same sex as the young person.

Items can also be detected by using more technology, such as metal detector wands, portals or seats and mobile phone broadcasting equipment.

We are also proposing a Rule so that any person or vehicle entering or leaving a Secure College may be stopped and searched. We also propose a Rule that the

Principal may confiscate any unauthorised item that is found following searches conducted in the Secure College.

38. Question: Do you agree there should be a Rule which will set out in detail the circumstances in which different types of searches can be carried out and reflect current practice of risk-led searches?

39. Question: Do you agree that full searches should only be allowed in the circumstances outlined above?

Prohibited articles

The Principal would need to ensure that the safety and security of an establishment is maintained at all times. Sections 40A–F of the Prison Act 1952 create certain offences of conveying (in a number of ways) certain articles into prisons, Young Offender Institutions, Secure Training Centres and, subject to parliamentary approval, Secure Colleges, without authorisation. The legislation specifies certain articles for the purpose of these offences, such as explosives and firearms, which appear in ‘list A’ and cameras and mobile telephones, which appear in ‘list B’. The legislation also allows Rules to specify additional articles under ‘list C (see section 40A (6) and section 34 (5A)).

The Prison Rules 1999 and the Young Offender Institution Rules 2000 have already made provision for a list C category. **We propose a Rule to replicate this list in respect of Secure Colleges.** In effect this would mean that where a person conveys an item listed below without authorisation into a Secure College, or leaves it somewhere, intending the article to come into the possession of a young person, that person commits a criminal offence. The items are tobacco, money, clothing, food, drink, letters, paper, books, tools; and information technology equipment.

The articles in this list range from those which are sometimes used to conceal contraband (such as books), those that may be used to aid an escape or plan to commit offences (such as information technology equipments) and those which if possessed by a person can lead to injury for acquisition of that article (such as money). Information technology would also include various types of computers and gaming consoles.

40. Question: Do you agree there should be a Rule setting out a list C of prohibited articles for Secure Colleges?

Communications

We propose that Rules will set out a framework for the interception and termination of communications between young people and individuals outside a Secure College. Under these Rules it will be permitted to intercept or terminate communications if it is necessary to do so for one for the following reasons:

- interests of national security;
- prevention, detection, investigation or prosecution of crime;
- interests of public safety;
- securing or maintaining security or order in the college;
- protection of health or morals;

- protection of the rights and freedoms of any person (written communications only)

The interception or termination will only be permitted to the extent that it is proportionate to what is sought to be achieved by it. The Principal will have to follow any directions given by the Secretary of State in carrying out the interception or termination.

Additional and specific safeguards are proposed in respect of confidential and legal communications. The interception of that correspondence would only be permitted if the Principal is satisfied that the purpose of the communication is the furtherance of a criminal purpose. The same would apply to confidential and legal privileged telephone calls and also apply to any legal privileged material.

41. Question: Do you agree that Rules should set out a framework for the interception and termination of communications between young people and individuals outside a Secure College?

Data disclosure and retention

We propose that Rules create a framework on the disclosure and retention of information gathered as a result of intercepting communication and from CCTV footage of visits.

Under these proposals, unless there is consent from all relevant parties, disclosure of intercepted material and CCTV footage to anyone other than Secure College employees and certain officials will only be permitted if it is necessary on one of the following grounds, and then only to the extent that is proportionate to meet that aim:

- interests of national security;
- prevention, detection, investigation or prosecution of crime;
- interests of public safety;
- securing or maintaining security or order in the Secure College;
- protection of health or morals;
- protection of the rights and freedoms of any person

We also propose a Rule to prevent the retention of intercepted material or CCTV footage of visits beyond three months, unless it can be justified on one of the grounds listed above. Even then the proposal is that the retention of such material will only be permitted to the extent that it is necessary to meet the aim of the retention.

42. Question: Do you agree there should be a Rule to create a framework on the disclosure and retention of information gathered as a result of intercepting communication and from CCTV footage of visits?

43. Question: Do you agree there should be a Rule to prevent the retention of intercepted material or CCTV footage of visits beyond three months, unless it can be justified on one of the grounds listed above?

Personal property

We propose a Rule that ensures personal possessions are kept securely, their condition maintained, and are available upon the young person's release from custody or for attendance at court where necessary.

Civil detainees and unconvicted young people

In the existing custody system, civil detainees and unconvicted young people have been classed separately to those with a criminal conviction, and have been treated in a different way as a result. Secure Colleges will need to reflect relevant established distinctions for civil detainees and unconvicted young people.

We therefore propose Rules so that civil detainees and unconvicted young people:

- are not required to share sleeping accommodation with convicted young people;
- may have as many visits, send and receive as many written communications and make or receive as many phone calls as they wish as long as they agree to pay any expenses incurred and subject to any conditions set out by the Secretary of State. We propose the Principal would be permitted to impose limitations or conditions on this privilege, subject to approval by the Secretary of State, to ensure the proper running of the Secure College. For example, Principal may decide to impose conditions that these privileges do not interfere with the ability of young people to attend their education classes.
- may request, at their own expense, that their own doctor or dentist treat them;
- may wear their own clothes.

44. Question: Do agree with the proposed Rules in relation to the different treatment of unconvicted young people and civil detainees?

Alcohol and tobacco

We propose a Rule to ban alcohol and tobacco on any part of a Secure College or its grounds. **It will apply to young people, custody officers, other Secure College staff and visitors.** We also propose a Rule to prohibit smoking on Secure College premises.

Equalities²

Individuals who share certain protected characteristics are overrepresented among young people in custody when compared to young people of the same age in the general population. As a result, the proposed rules will affect a higher proportion of those in

² In considering our duty under the Equalities Act 2010, we have given due regard to the need to: eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010; advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and foster good relations between different groups (those who share a relevant protected characteristic and those who do not).

Paying 'due regard' needs to be considered against the nine "protected characteristics" under the EA Act – namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

custody who share these protected characteristics when compared to the proportion with these characteristics in the general population.

However, in our view the impact of the plans for Rules is not disproportionate and is a reasonable means to achieve a legitimate aim. The Secure College Rules will set out core requirements which providers will have to meet so as to ensure that needs of young people, and in particular their educational, health, welfare and safety needs are met. We are satisfied that our approach to the Rules will not discriminate indirectly on the basis of any protected characteristic and will result in no less favourable treatment of any group with a protected characteristic.

We will be updating our assessments once we have considered all relevant responses to this consultation.

45. We would welcome any relevant information to further inform our analysis and better understand the potential equalities impacts of the proposals.

Questionnaire

1. Do you agree that there should be a Rule on the purpose and ethos of a Secure College? If so, do you consider we have captured the right priorities?
2. Do you agree there should be a Rule which ensures there is separate accommodation for girls and boys?
3. Do you agree there should be a Rule that would require the establishment of a minimum of 30 hours per week of educational activities for young people?
4. Do you agree there should be Rules that would require an individual learning assessment of each young person upon entry to a Secure College and the establishment of an individual learning plan?
5. Do you agree there should be a rule that requires that a library must be provided in Secure Colleges?
6. Do you agree there should be a Rule that requires all custodial staff working in Secure Colleges to have undergone training approved by the Secretary of State?
7. Do you agree there should be a Rule requiring each Secure College to have a dress code policy?
8. Do you agree there should be a Rule to ensure a young person has safe and timely access to health services in Secure Colleges?
9. Do you agree that there should be a Rule to ensure that Secure Colleges provide safe and timely access to healthcare professionals to undertake a healthcare assessment?
10. Do you agree that there should be a Rule setting out the facilities to be provided during the first night in custody? If so, what do you consider should be included?
11. Do you agree there should be a Rule which will ensure that Secure Colleges have to provide a young person with essential information on their arrival? If so, is there particular information it should specify?
12. Do you agree there should be a rule requiring sleeping accommodation to be approved by the Secretary of State?
13. Do you agree that there is a Rule requiring that young people are provided with bedding adequate for warmth and health?
14. Do you agree there should be a rule to require that room sharing only occurs following a risk assessment which concludes that it would not be detrimental to the safety and well-being of a young person before any sharing of rooms occurs?
15. Do you agree there should be a Rule on food? If so, do you agree the proposal above sufficiently covers what should be included in such a Rule?
16. Do you agree there should be Rules on entitlement to showers?

Plans for Secure College Rules

17. Do you agree that there should be a Rule to require the Principal to establish a visits scheme in which all young people are entitled to a minimum of one visit per week?
18. Do you agree that there should be a Rule requiring the Principal to devise a policy for personal communications, which would include electronic communications?
19. Do you agree there should be a Rule to ensure young people in Secure College are able to observe and practice in accordance with their religious beliefs?
20. Do you agree there should be a Rule to ensure that a young person can be released temporarily to support their resettlement?
21. Do you agree that there should be a Rule that sets out reasons, not covered by resettlement, that young people may be released temporarily?
22. Do you agree there should be a Rule which requires the Principal to put in place a grievance procedure? If so, should this procedure be approved by the Monitor?
23. Do you agree there should be a Rule which will allow the Secretary of State to appoint advocates to Secure Colleges?
24. Do you agree there should be a Rule to allow the Secretary of State to appoint an independent person to investigate matters of concern?
25. Do you agree that a rule should require the Principal to establish a rewards and sanctions scheme, and this scheme should be approved by the Secretary of State?
26. Do you agree there should be a Rule that establishes a procedure for independent adjudications in Secure Colleges?
27. Do you agree that there should be a Rule that would enable the Principal to impose sanctions for serious offences in custody?
28. Do you agree it is appropriate to use the offences listed in YOI Rule 55 as the basis for offences under the Rules which could be subject to adjudication?
29. Do you agree with the proposed sanctions available to the Principal in an adjudication process for managing serious behaviour?
30. Do you agree there should be a Rule that follows the timescales used in Young Offenders Institutions for managing adjudications?
31. Do you agree there should be a Rule that any young person charged with an offence under the Rules is given a proper opportunity of presenting his case?
32. We welcome views on what safeguards should be included in Rules to ensure separation is used appropriately.
33. Do you agree with our proposals for when force can be authorised?
34. Do you agree with the principles that would apply to any use of force? Are there other principles to consider?
35. Do you agree with our principles that should apply to the use of physical restraint?

36. Do you agree that our clarification of what is meant by good order and discipline – i.e. maintain a safe and stable environment – in the context of force, accurately reflects the circumstances in which restraint may be required?
37. Do you agree with the safeguards that should be applied i) before ii) during and iii) following use of restraint for maintaining a safe and stable environment?
38. Do you agree there should be a Rule which will set out in detail the circumstances in which different types of searches can be carried out and reflect current practice of risk-led searches?
39. Do you agree that full searches should only be allowed in the circumstances outlined above?
40. Do you agree there should be a Rule setting out a list C of prohibited articles for Secure Colleges?
41. Do you agree that Rules should set out a framework for the interception and termination of communications between young people and individuals outside a Secure College?
42. Do you agree there should be a Rule to create a framework on the disclosure and retention of information gathered as a result of intercepting communication and from CCTV footage of visits?
43. Do you agree there should be a Rule to prevent the retention of intercepted material or CCTV footage of visits beyond three months, unless it can be justified on one of the grounds listed above?
44. Do agree with the proposed Rules in relation to the different treatment of unconvicted young people and civil detainees?
45. We would welcome any relevant information to further inform our analysis and better understand the potential equalities impacts of the proposals.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please give your response by 27 November 2014 at: <https://consult.justice.gov.uk/digital-communications/plans-for-secure-college-rules>

Other ways to respond:

Secure College Rules Team

Ministry of Justice

8.19

102 Petty France

London SW1H 9AJ

Tel: 020 3334 5418

Email: securecollegerules@justice.gsi.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>

ISBN 978-1-4741-1113-3



9 781474 111133