



Children (Care and Justice) (Scotland) Act 2024

2024 asp 5

PART 4

RESIDENTIAL AND SECURE CARE

26 Meaning of “secure accommodation”

- (1) The 2011 Act is amended as follows.
- (2) In section 202 (interpretation), in subsection (1)—
 - (a) in the definition of “secure accommodation”—
 - (i) in the opening words, “accommodation provided for the purpose of restricting the liberty of children which” is repealed,
 - (ii) for paragraph (a) substitute—
 - “(a) in relation to Scotland, accommodation provided for the purpose of depriving children of their liberty which is provided—
 - (i) in a residential establishment,
 - (ii) by a secure accommodation service,”
 - (iii) in paragraph (b), for “in England,” substitute “in relation to England, accommodation provided for the purpose of restricting the liberty of children which”,
 - (iv) in paragraph (c), for “in Wales,” substitute “in relation to Wales, accommodation provided for the purpose of restricting the liberty of children which”,
 - (b) after the definition of “secure accommodation authorisation” insert—
 - ““secure accommodation service” means a service—
 - (a) which is approved by the Scottish Ministers—
 - (i) under paragraph 6(c) of schedule 12 of the Public Services Reform (Scotland) Act 2010, and
 - (ii) in accordance with regulations made under section 78A of that Act, and

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(b) in respect of which a person is registered under Part 5 of that Act.”.

27 Secure accommodation services

(1) The Public Services Reform (Scotland) Act 2010 (“the 2010 Act”) is amended as follows.

(2) After section 78 insert—

“78A Regulations: approval of secure accommodation services

(1) Regulations may make provision about the approval of secure accommodation services by the Scottish Ministers under paragraph 6(c) of schedule 12.

(2) Regulations under subsection (1) may, in particular, make provision about—

- (a) the making of applications for such approval, including—
 - (i) the categories of applicant who cannot competently make an application,
 - (ii) the form and content of applications,
 - (iii) the information to be provided in connection with applications,
 - (iv) the modification of applications,
- (b) the procedure to be followed by the Scottish Ministers when making decisions on applications, including—
 - (i) the criteria to be applied,
 - (ii) the matters to be taken into account or disregarded,
 - (iii) the notification of decisions,
 - (iv) the giving of reasons for decisions,
- (c) the duration of approvals,
- (d) the attaching of conditions to approvals,
- (e) the variation of any conditions attached to approvals,
- (f) the review of approvals,
- (g) the renewal of approvals,
- (h) the withdrawal of approvals,
- (i) appeals against decisions to—
 - (i) attach conditions to approvals,
 - (ii) vary conditions attached to approvals,
 - (iii) refuse or withdraw approvals.

(3) Regulations under subsection (1) must include provision requiring the Scottish Ministers, before approving a secure accommodation service, to be satisfied that the service will ensure that a child is not placed in the same residential establishment as another child where—

- (a) in proceedings under the Children’s Hearings (Scotland) Act 2011, it has been established that—
 - (i) the child has committed an offence against or in respect of the other child, or

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- (ii) the child has acted or behaved in a way that has had, or is likely to have had, a serious adverse effect on the health, safety or development of the other child, or
 - (b) in criminal proceedings, the child has pled guilty to, or been found guilty of, having committed an offence against or in respect of the other child.”.
- (3) In section 104 (orders and regulations: procedure), in subsection (2), for “or 78” substitute “, 78 or 78A”.
- (4) In schedule 12 (care services: definitions), for paragraph 6 substitute—
 - “6 A “secure accommodation service” is a service which—
 - (a) provides accommodation in a residential establishment for the purpose of depriving children of their liberty,
 - (b) also provides, in such an establishment, appropriate care, education and support—
 - (i) for the purposes of safeguarding and promoting the welfare of the children who are accommodated there, and
 - (ii) that takes account of the effects of trauma which the children may have experienced,
 - (c) is approved by the Scottish Ministers, in accordance with regulations made under section 78A, for those purposes.
 - 6A In paragraph 6(a), “residential establishment” has the meaning given by section 105(1).
 - 6B In paragraph 6(b), “appropriate care, education and support” means the kind of care, education and support required to meet the health, educational and other needs of the children.”.
- (5) The Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 ([S.S.I. 2011/210](#)) are amended as follows.
- (6) In regulation 10 (fitness of premises), paragraph (3) is revoked.

28 Regulation of care services providing residential accommodation to children

- (1) The 2010 Act is amended as follows.
- (2) In section 50 (standards and outcomes)—
 - (a) after subsection (1) insert—

“(1A) The Scottish Ministers may also prepare and publish specific standards and outcomes applicable to the care services mentioned in subsection (1B) in so far as they consist of, or include, providing residential accommodation to children in accordance with arrangements made for cross-border placements.
 - (1B) Those care services are—
 - (a) care home services which are provided wholly or mainly to children,
 - (b) school care accommodation services,
 - (c) secure accommodation services.”,

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- (b) in subsection (2), after “subsection (1)” insert “or (1A)”,
- (c) in subsection (3), after “subsection (1)” insert “or (1A)”,
- (d) in subsection (4), for “subsection (1)” substitute “subsections (1) and (1A)”,
- (e) in subsection (5), for “subsection (1)” substitute “subsections (1) and (1A)”,
- (f) at the end of subsection (7) insert “or (1A).”.

(3) After section 59 insert—

“59A Further provision in relation to registration of certain care services

- (1) This section applies to an application made under section 59(1) for registration of any of the following care services—
 - (a) a care home service which is to be provided wholly or mainly to children,
 - (b) a school care accommodation service,
 - (c) a secure accommodation service.
- (2) In addition to giving the information mentioned in section 59(2), the application must—
 - (a) give such information as may be prescribed about matters relating to cross-border placements,
 - (b) confirm that notice of the application has been given in the prescribed form to the persons mentioned in subsection (3), who are responsible for preparing a children’s services plan in accordance with Part 3 of the Children and Young People (Scotland) Act 2014 (“the 2014 Act”).
- (3) Those persons are—
 - (a) the local authority for each area in which the service is to be provided, and
 - (b) the relevant health board (as defined by section 7(1) of the 2014 Act) for each such area.
- (4) If an application does not include the confirmation required by subsection (2) (b), SCSWIS may not consider the application until such confirmation is given.”.

(4) In section 78 (regulations: care services), after subsection (2) insert—

“(2A) Regulations under subsection (2) may, in particular, impose specific requirements on any of the care services mentioned in subsection (2B) in so far as they consist of, or include, providing residential accommodation to children in accordance with arrangements made for cross-border placements.

(2B) Those care services are—

- (a) care home services which are provided wholly or mainly to children,
- (b) school care accommodation services,
- (c) secure accommodation services.”.

(5) In section 105 (interpretation of Part 5), in subsection (1)—

- (a) in paragraph (c) of the definition of “child”, after “purposes of” insert “sections 50(1A) and (1B), 59A and 78(2A) and (2B) and”.

- (b) after the definition of “condition notice” insert—
- ““cross-border placement” means the placement of a child in a residential establishment in Scotland where—
- (a) the child was, immediately before the placement, resident in England, Wales or Northern Ireland, and
 - (b) the placement is authorised under the law in England and Wales or, as the case may be, in Northern Ireland by virtue of—
 - (i) an order made by a court in England and Wales or in Northern Ireland,
 - (ii) any provision made by or under an Act of Parliament, an Act of Senedd Cymru, or Northern Ireland legislation (as defined by section 98(1) of the Northern Ireland Act 1998), whenever passed or made;”
- (c) after the definition of “relative” insert—
- ““residential establishment” means an establishment (whether managed by a local authority, a voluntary organisation or any other person) which provides residential accommodation for children for the purposes of the Social Work (Scotland) Act 1968, the Children (Scotland) Act 1995, the Criminal Procedure (Scotland) Act 1995 or the Children’s Hearings (Scotland) Act 2011;”.

29 Cross-border placements: effect of orders made outwith Scotland

- (1) The 2011 Act is amended as follows.
- (2) In section 190 (effect of orders made outwith Scotland)—
- (a) in subsection (1), for “as if it were such an order” substitute “in Scotland”,
 - (b) for subsection (2) substitute—
 - “(2) Regulations under subsection (1) may in particular—
 - (a) provide that a non-Scottish order is to have such effect only—
 - (i) in specified circumstances,
 - (ii) for specified purposes,
 - (iii) subject to specified conditions,
 - (b) provide that a non-Scottish order is—
 - (i) to have effect as if it were a compulsory supervision order, or
 - (ii) to have such other effect as may be specified,
 - (c) include provision—
 - (i) requiring specified persons to provide or share specified information,
 - (ii) requiring specified persons to provide, or make arrangements for the provision of, any services which are needed to support a child who is the subject of a non-Scottish order,
 - (iii) requiring specified persons to meet the costs incurred in relation to, or as a consequence of, giving effect to a non-Scottish order in Scotland,

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- (iv) in connection with the safeguarding and promotion of the welfare of a child who is the subject of a non-Scottish order,
- (d) make provision for or in connection with—
 - (i) the monitoring of whether any condition specified by virtue of paragraph (a)(iii) is being met in relation to a non-Scottish order,
 - (ii) the consequences of such a specified condition not being met,
 - (iii) the monitoring of whether any requirement imposed is being complied with in relation to a non-Scottish order (where compliance with the requirement is not a condition specified by virtue of paragraph (a)(iii)),
 - (iv) the consequences of failing to comply with such a requirement.

(2A) Regulations under subsection (1)—

- (a) may modify any enactment in its application by virtue of the regulations to a non-Scottish order, including—
 - (i) the Social Work (Scotland) Act 1968,
 - (ii) the Children (Scotland) Act 1995,
 - (iii) this Act,
- (b) are subject to the affirmative procedure.”.

30 Regulation of cross-border placements

- (1) The Children (Scotland) Act 1995 is amended as follows.
- (2) After section 33 insert—

“33A Regulation of cross-border placements

- (1) The Scottish Ministers may by regulations make provision in relation to cross-border placements.
- (2) Regulations under subsection (1) may in particular include provision—
 - (a) requiring specified persons to provide or share specified information,
 - (b) requiring specified persons to provide, or make arrangements for the provision of, any services which are needed to support a child who is the subject of a cross-border placement,
 - (c) requiring specified persons to meet the costs incurred in relation to, or as a consequence of, a cross-border placement,
 - (d) requiring a cross-border placement to be kept under review,
 - (e) in connection with the safeguarding and promotion of the welfare of a child who is the subject of a cross-border placement.
- (3) Regulations under subsection (1)—
 - (a) may modify any enactment in its application by virtue of the regulations to a cross-border placement, including—
 - (i) the Social Work (Scotland) Act 1968,
 - (ii) this Act,

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- (b) may make any incidental, supplementary, consequential, transitional, transitory or saving provision that the Scottish Ministers consider appropriate for the purposes of, in connection with or for giving full effect to the regulations,
 - (c) are subject to the affirmative procedure.
- (4) In this section, “cross-border placement” means the placement of a child in a residential establishment in Scotland where—
- (a) the child was, immediately before the placement, resident in England, Wales or Northern Ireland, and
 - (b) the placement is authorised under the law in England and Wales or, as the case may be, in Northern Ireland by virtue of—
 - (i) an order made by a court in England and Wales or in Northern Ireland,
 - (ii) any provision made by or under an Act of Parliament, an Act of Senedd Cymru, or Northern Ireland legislation (as defined by section 98(1) of the Northern Ireland Act 1998), whenever passed or made.”.