

Status: This version of this provision is prospective.

Changes to legislation: Children (Care and Justice) (Scotland) Act 2024, Section 19 is up to date with all changes known to be in force on or before 18 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes



Children (Care and Justice) (Scotland) Act 2024

2024 asp 5

PART 2

CRIMINAL JUSTICE AND PROCEDURE

Remand, committal and detention of children

PROSPECTIVE

19 Detention of children on conviction

- (1) The 1995 Act is amended as follows.
- (2) In section 44 (detention of children)—
 - (a) in subsection (1)—
 - (i) for “residential accommodation provided under Part 2 of the Children (Scotland) Act 1995 by the appropriate local authority” substitute “a residential establishment”,
 - (ii) for “the local authority” substitute “the appropriate local authority”,
 - (b) in subsection (5), “made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament” is repealed,
 - (c) after that subsection insert—

“(5A) Regulations under subsection (5) may, in particular, make provision about the circumstances in which such children may remain in secure accommodation despite attaining the age of 18 years (provided that no person may remain in such accommodation after attaining the age of 19 years).

(5B) Regulations under subsection (5) are subject to the affirmative procedure.”,
 - (d) in subsection (6), for “residential accommodation” substitute “a residential establishment”,

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- (e) in subsection (8)—
 - (i) for “accommodation provided by the authority which released him” substitute “establishment from which the child was released”,
 - (ii) for second “accommodation” substitute “establishment”,
 - (iii) for “accommodation provided by that” substitute “establishment chosen by the appropriate local”,
 - (f) in subsection (9)—
 - (i) for “residential accommodation provided” substitute “a residential establishment chosen”,
 - (ii) in each of paragraphs (a) and (b), for “residential accommodation” substitute “a residential establishment”,
 - (g) in subsection (11), for the definition of “secure accommodation” substitute—

““residential establishment” and “secure accommodation” have the meanings given by section 202(1) of the Children’s Hearings (Scotland) Act 2011.”.
- (3) In section 205 (punishment for murder), in subsection (2)—
- (a) for “under the age of 18 years” substitute “a child”,
 - (b) after “place” insert “(in any part of the United Kingdom)”,
 - (c) after “may” insert “, subject to section 208A,”.
- (4) In section 207 (detention of young offenders), in subsection (2), for “16” substitute “18”.
- (5) In section 208 (detention of children convicted on indictment), in subsection (1)—
- (a) after “place” insert “(in any part of the United Kingdom)”,
 - (b) after second “may” insert “, subject to section 208A,”.
- (6) After section 208 insert—

“208A Detention of children under sections 205(2) and 208(1)

- (1) This section applies where a child is sentenced—
 - (a) to be detained without limit of time under section 205(2), or
 - (b) to be detained under section 208(1).
- (2) The Scottish Ministers may not direct under section 205(2) or, as the case may be, 208(1) that a child be detained in a prison or a young offenders institution.
- (3) The Scottish Ministers may direct that a child be detained in secure accommodation.
- (4) The Scottish Ministers may by regulations make provision about the detention in secure accommodation of children to whom this section applies.
- (5) Regulations under subsection (4) may, in particular, make provision about the circumstances in which such children may remain in secure accommodation despite attaining the age of 18 years (provided that no person may remain in such accommodation after attaining the age of 19 years).
- (6) Regulations under subsection (4) are subject to the affirmative procedure.

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- (7) In this section, “secure accommodation” has the meaning given by section 202(1) of the Children’s Hearings (Scotland) Act 2011.”.
- (7) In section 216 (fines: restriction on imprisonment for default), after subsection (7) insert—
- “(8) The Scottish Ministers may by regulations make provision about the detention in secure accommodation of children to whom subsection (7) applies.
- (9) Regulations under subsection (8) may, in particular, make provision about the circumstances in which such children may remain in secure accommodation despite attaining the age of 18 years (provided that no person may remain in such accommodation after attaining the age of 19 years).
- (10) Regulations under subsection (8) are subject to the affirmative procedure.
- (11) In this section, “secure accommodation” has the meaning given by section 202(1) of the Children’s Hearings (Scotland) Act 2011.”.

Commencement Information

- II** S. 19 not in force at Royal Assent, see [s. 38\(3\)](#)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act power to modify conferred by 1995 c. 36, s. 33A (as inserted) by [2024 asp 5 s. 30\(2\)](#)
- Act power to modify conferred by 2010 asp 8, s. 190(2A) (as substituted) by [2024 asp 5 s. 29\(2\)\(b\)](#)