

Draft Regulations laid before the Scottish Parliament under section 104(2) of the Public Services Reform (Scotland) Act 2010 and section 197(2) of the Children's Hearings (Scotland) Act 2011, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2013 No.

CHILDREN AND YOUNG PERSONS

The Secure Accommodation (Scotland) Regulations 2013

Made - - - - 2013

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 152 and 153 of the Children's Hearings (Scotland) Act 2011(a), section 44(5) of the Criminal Procedure (Scotland) Act 1995(b), section 75 of the Children (Scotland) Act 1995(c) and section 78(2) of the Public Services Reform (Scotland) Act 2010(d) and all other powers enabling them to do so.

In accordance with section 104(2) of the Public Services Reform (Scotland) Act 2010 and section 197(2) of the Children's Hearings (Scotland) Act 2011(e), a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Secure Accommodation (Scotland) Regulations 2013 and come into force on the same day as section 152 (secure accommodation: placement in other circumstances) of the Children's Hearings (Scotland) Act 2011.

Interpretation

2.—(1) In these Regulations—

“the 1996 Regulations” means the Secure Accommodation (Scotland) Regulations 1996(f);

“the 2010 act” means the Public Services Reform (Scotland) Act 2010;

“the 2011 Act” means the Children's Hearings (Scotland) Act 2011;

“Criminal Procedure Act” means the Criminal Procedure (Scotland) Act 1995;

“day” includes a part of a day;

(a) 2011 asp 1.

(b) 1995 c.46. Section 44 was amended by the Antisocial Behaviour etc. (Scotland) Act 2004, asp 8, section 10(2).

(c) 1995 c.36. Section 75 is prospectively amended by the 2011 Act, schedule 5, paragraph 2(8) and schedule 6.

(d) 2010 asp 8.

(e) The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). The Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

(f) S.S.I. 1996/3255.

“head of unit” means the person in charge of the residential establishment containing the secure accommodation who is responsible to the managers of that establishment;

“managers” means—

- (a) in the case of a local authority, those officers having delegated powers under section 56 of the Local Government (Scotland) Act 1973(a) for the management of the residential establishment providing secure accommodation;
- (b) in any other case those who are responsible for management of the residential establishment providing secure accommodation;

“permanence order” means an order made under section 80(1) of the Adoption and Children (Scotland) Act 2007(b);

“relevant date” means the day on which these regulations come into force;

“relevant person” means—

- (a) a relevant person within the meaning of section 200 of the 2011 Act; and
- (b) a person who is to be treated as the child’s relevant person by virtue of a decision under section 81(3), 160(4)(b) or 164(6) of the 2011 Act;

“residential establishment” has the meaning given by paragraph (a) of that definition in section 202(1) of the 2011 Act;

“secure accommodation” means accommodation provided for the purpose of restricting the liberty of children in a residential establishment;

“secure accommodation service” has the meaning given by paragraph 6 of Schedule 12 to the 2010 Act.

(2) Any requirement in these regulations which must be done in writing will be satisfied if made in electronic form which is—

- (a) sent by electronic means; and
- (b) capable of being reproduced in legible form.

Approval of secure accommodation service

3.—(1) No secure accommodation service may be provided unless it has been approved by the Scottish Ministers under paragraph 6(b) of Schedule 12 to the 2010 Act and in accordance with these regulations.

(2) The Scottish Ministers may approve a secure accommodation service which is to provide secure accommodation in a residential establishment on such terms and conditions as they may consider appropriate.

(3) Where immediately before the relevant date accommodation which was provided for the purpose of restricting the liberty of children in residential premises where care services are provided was approved, or treated as if it had been approved by the Scottish Ministers, that accommodation is to be treated for all purposes as a secure accommodation service approved by the Scottish Ministers in accordance with paragraph (1).

Welfare of children in secure accommodation

4. Where a child is in secure accommodation the managers, in consultation with the head of unit, must ensure that the welfare of a child so placed and kept is safeguarded and promoted.

(a) 1973 c.65. Section 56 was amended by the Local Government and Planning (Scotland) Act 1982 (c.43), section 32; the Abolition of Domestic Rates Etc. (Scotland) Act 1987 (c.47), section 28; the Local Government Finance Act 1992 (c.14), Schedule 13, paragraph 35; the Local Government etc. (Scotland) Act 1994 (c.39), Schedule 13, paragraph 92; the Children (Scotland) Act 1995, Schedule 4, paragraph 22; the Fire (Scotland) Act 2005 asp 5, Schedule 4, paragraph 1; the Planning etc. (Scotland) Act 2006 asp 17, section 14(2); and S.S.I. 2010/122, regulation 5.

(b) 2007 asp 4.

Maximum period in secure accommodation

5.—(1) Subject to regulation 10(6) the maximum period during which a child may be kept in secure accommodation without the authority of the children’s hearing or the sheriff is an aggregate of 72 hours (whether or not consecutive) in any period of 28 consecutive days.

(2) Any time accrued, prior to the relevant date, for the purposes of regulation 5 of the 1996 Regulations is deemed to be time accrued for the purposes of this regulation.

Information to be supplied to children’s hearing by a local authority recommending the inclusion of a secure accommodation authorisation

6. A local authority may only submit a report to the children’s hearing which recommends that a secure accommodation authorisation be included in an order or warrant in respect of that child if it is satisfied that one or more of the conditions specified in section 83(6) of the 2011 Act is satisfied.

Placement in secure accommodation of children subject to compulsory supervision orders which do not include a secure accommodation authorisation

7.—(1) A child in relation to whom a compulsory supervision order is in force which does not include a secure accommodation authorisation may only be placed and kept in secure accommodation where the circumstances in paragraph (2) apply.

(2) Those circumstances are—

- (a) that the chief social work officer and the head of unit are satisfied with respect to the child that one or more of the conditions in paragraph (3) is satisfied in respect of the child;
- (b) that the chief social work officer and the head of unit are satisfied that placement in secure accommodation would be in the best interests of the child; and
- (c) that the chief social work officer is satisfied in relation to the placing of the child in the residential establishment providing the secure accommodation, that the placement in that establishment is appropriate to the child’s needs having regard to the residential establishment’s statement of functions and objectives.

(3) The conditions mentioned in paragraph (2)(a) are—

- (a) that the child has previously absconded and is likely to abscond again and, if the child were to abscond, it is likely that the child’s physical, mental or moral welfare would be at risk;
- (b) that the child is likely to engage in self-harming conduct; or
- (c) that the child is likely to cause injury to another person.

(4) Where the child is placed in secure accommodation under paragraph (1) the chief social work officer must—

- (a) immediately, in writing, inform—
 - (i) each relevant person in respect of the child;
 - (ii) the Principal Reporter;
- (b) immediately and in any event not later than 24 hours from the time of the placement (whether or not the child is still held in secure accommodation)—
 - (i) require a review of the compulsory supervision order in relation to the child under section 131 of the 2011 Act; or
 - (ii) inform the Principal Reporter of the need for the Principal Reporter to initiate a review of the compulsory supervision order under section 136 of that Act; and
- (c) inform the Principal Reporter in writing of—
 - (i) the details of the placement and any subsequent placement or release;

- (ii) the reasons why at the time of placement the chief social work officer and head of unit were satisfied with respect to the conditions mentioned in paragraph (2)(a) and the reasons why at the time of writing they continue to be so satisfied or otherwise; and
- (iii) the views of the chief social work officer and the head of unit as to the need or otherwise for the child's detention in secure accommodation.

(5) Where, by virtue of this regulation, a review of the compulsory supervision order is required under section 131 of the 2011 Act or the Principal Reporter is required to initiate a review under section 136 of that Act the children's hearing must be arranged to take place before the expiry of the period of 72 hours beginning with the time of the placement of the child in the secure accommodation.

Placement in secure accommodation of children subject to a relevant order which does not include a secure accommodation authorisation

8.—(1) A child in relation to whom a relevant order is in force which does not include a secure accommodation authorisation may only be placed and kept in secure accommodation where, after the order is made, or granted, as the case may be, the circumstances in paragraph (2) apply.

(2) Those circumstances are—

- (a) that the chief social work officer and the head of unit are satisfied with respect to the child that one or more of the conditions in paragraph (3) is satisfied in respect of the child;
- (b) that the chief social work officer and the head of unit are satisfied that placement in secure accommodation would be in the best interests of the child; and
- (c) that the chief social work officer is satisfied in relation to the placing of the child in the residential establishment providing the secure accommodation, that the placement in that establishment is appropriate to the child's needs having regard to the residential establishment's statement of functions and objectives.

(3) The conditions mentioned in paragraph (2)(a) are—

- (a) that the child has previously absconded and is likely to abscond again and, if the child were to abscond, it is likely that the child's physical, mental or moral welfare would be at risk;
- (b) that the child is likely to engage in self-harming conduct; or
- (c) that the child is likely to cause injury to another person.

(4) A relevant order is—

- (a) an interim compulsory supervision order;
- (b) a medical examination order.

(5) Where the child is placed in secure accommodation under paragraph (1) the chief social work officer must immediately, in writing, inform—

- (a) each relevant person in respect of the child;
- (b) the Principal Reporter.

(6) Where a child has been placed in secure accommodation in accordance with paragraph (1), the Principal Reporter must—

- (a) where an interim compulsory supervision order was made by a children's hearing under section 92 or 120 of the 2011 Act, arrange a children's hearing to take place under section 119 of the 2011 Act before the expiry of the period of 72 hours of the child being placed in secure accommodation;
- (b) where an interim compulsory supervision order was made by a children's hearing under section 93 or 96 of the 2011 Act, arrange a children's hearing to take place under section 96(2) of the 2011 Act before the expiry of the period of 72 hours of the child being placed in secure accommodation;

- (c) where an interim compulsory supervision order was made by a children's hearing under section 96 of the 2011 Act and the children's hearing would be prevented from making a further interim compulsory supervision order by virtue of section 96(4) of the 2011 Act, make an application for an extension or variation of the interim compulsory supervision order under section 98 of the 2011 Act;
- (d) where an interim compulsory supervision order was made by the sheriff under section 98, 99 or 100 of the 2011 Act, apply before the expiry of the period of 72 hours of the child being placed in secure accommodation to the sheriff for a further extension of the interim compulsory supervision order under section 99 of the 2011 Act;
- (e) where the interim compulsory supervision order was made by the sheriff under section 109, 115 or 117 of the 2011 Act, arrange a children's hearing to take place under section 119 of the 2011 Act before the expiry of the period of 72 hours of the child being placed in secure accommodation; or
- (f) where a medical examination order was made by the children's hearing under section 92 or 120 of the 2011 Act, arrange a children's hearing to take place under section 119 of the 2011 Act before the expiry of the period of 72 hours of the child being placed in secure accommodation.

Placement in secure accommodation of looked after children

9.—(1) A child who falls within paragraph (2) may only be placed and kept in secure accommodation where the circumstances in paragraph (3) are satisfied.

(2) A child falls within this paragraph if the child is—

- (a) being provided with accommodation by a local authority under section 25 of the Children (Scotland) Act 1995; or
- (b) subject to a permanence order.

(3) The circumstances are—

- (a) that the chief social work officer and the head of unit are satisfied with respect to the child that one or more of the conditions referred to in paragraph (4) is satisfied and that placement in secure accommodation is in the best interests of the child;
- (b) that the chief social work officer is satisfied in relation to the placing of the child in the residential establishment providing the secure accommodation that the placement in that establishment is appropriate to the child's needs having regard to the residential establishment's statement of functions and objectives.

(4) The conditions are—

- (a) that the child has previously absconded and is likely to abscond again and, if the child were to abscond, it is likely that the child's physical, mental or moral welfare would be at risk;
- (b) that the child is likely to engage in self-harming conduct;
- (c) that the child is likely to cause injury to another person.

(5) On a child being placed in secure accommodation under paragraph (1) the chief social work officer must—

- (a) immediately notify—
 - (i) the child's parents;
 - (ii) each relevant person in respect of the child;
 - (iii) any person other than a relevant person who appears to the chief social work officer to have (or to recently have had) a significant involvement in the upbringing of the child;
 - (iv) the Principal Reporter;

- (b) immediately, and in any event not later than 24 hours from the time of the placement, refer the child's case to the Principal Reporter and provide the Principal Reporter with the information mentioned in paragraph (6).
- (6) The information is—
- (a) details of the placement in secure accommodation including details of any subsequent placement in secure accommodation and release;
 - (b) details of any previous placement in secure accommodation;
 - (c) the reasons why the chief social work officer believes that the child may be in need of compulsory measures of supervision;
 - (d) the reasons why at the time of the placement in secure accommodation the chief social work officer was satisfied that one of the conditions in paragraph (4) was met and the reasons why, at the time of writing, the chief social work officer continues to be so satisfied or otherwise;
 - (e) the views of the chief social work officer and head of unit on whether or not the child should continue to be detained in secure accommodation.

Looked after child placed in secure accommodation: duties of the Principal Reporter and local authority

10.—(1) This regulation applies where the Principal Reporter receives the referral and information from the chief social work officer under regulation 9(5)(b) and (6).

(2) Subject to paragraphs (3) and (4) the Principal Reporter must, within 72 hours of the child's placement in secure accommodation under regulation 9, consider and proceed with the child's case in accordance with sections 66 to 69 of the 2011 Act.

(3) Where the Principal Reporter determines under section 66(2) of the 2011 Act that a children's hearing does not require to be arranged, the Principal Reporter must, within 72 hours of the child's placement in secure accommodation—

- (a) notify the chief social work officer of the determination;
- (b) if the Principal Reporter considers that the child's case should be referred to the local authority with a view to arrangements for advice, guidance and assistance under Chapter 1 of Part II of the Children (Scotland) Act 1995(a), inform the local authority accordingly.

(4) Where the chief social work officer receives notification under paragraph (3)(a) the chief social work officer must remove the child from the secure accommodation immediately and notify the persons mentioned in regulation 9(5)(a).

(5) Subject to paragraph (6) where the Principal Reporter determines under section 66(2) of the 2011 Act that it is necessary for a compulsory supervision order to be made in respect of the child, the Principal Reporter must, within 72 hours of the child's placement under regulation 9, arrange a children's hearing for the purpose of deciding whether a compulsory supervision order should be made in respect of the child.

(6) Where paragraph (5) applies and the Principal Reporter considers that it would not be reasonably practicable to arrange the children's hearing within 72 hours the Principal Reporter will have a further period of 24 hours from the end of the period of 72 hours referred to in paragraph (5) within which to comply with the requirements in paragraph (5).

(a) 1995 c.36.

Child detained under section 44 of the Criminal Procedure Act: use of secure accommodation

11.—(1) This regulation applies where the sheriff makes an order under section 44(1) of the Criminal Procedure Act (detention of children) requiring a child to be detained in a residential establishment provided by a local authority.

(2) The child may be detained in secure accommodation where the chief social work officer of the local authority makes a determination to place the child in secure accommodation where the requirements in paragraph (3) are satisfied.

(3) The requirements are—

(a) to consult and take into account the views of—

- (i) the child, taking into account their age and maturity;
- (ii) each relevant person in respect of the child;
- (iii) the head of unit;

(b) that the chief social work officer is satisfied that—

- (i) placement in secure accommodation would be in the child's best interests;
- (ii) in relation to the placing of the child in the residential establishment providing the secure accommodation the placement in that establishment is appropriate to the child's needs having regard to the residential establishment's statement of functions and objectives; and
- (iii) one or more of the conditions mentioned in paragraph (4) is satisfied in respect of the child.

(4) The conditions are—

- (a) that the child has previously absconded and is likely to abscond again and, if the child were to abscond, it is likely that the child's physical, mental or moral welfare would be at risk;
- (b) that the child is likely to engage in self-harming conduct; or
- (c) that the child is likely to cause injury to another person.

(5) Where the child is detained in secure accommodation under paragraph (2) the child may only be kept in secure accommodation for so long as the head of unit with the agreement of the chief social work officer considers necessary.

(6) Paragraph (5) is subject to regulation 13.

Children otherwise dealt with under the Criminal Procedure Act

12.—(1) Except where paragraph (2) applies, where a child—

- (a) is committed to a local authority under section 51(1)(a)(ii) of the Criminal Procedure Act to be detained in a place of safety chosen by the authority, the child may not be placed or detained in secure accommodation as a place of safety under the section;
- (b) is to be kept in a place of safety under section 43 of the Criminal Procedure Act which is a residential establishment provided by a local authority, the child may not be placed or kept in secure accommodation provided in that establishment;
- (c) is to be detained under section 216(7) of the Criminal Procedure Act, in a place chosen by a local authority, the child may not be placed or kept in secure accommodation.

(2) This paragraph applies where the chief social work officer of the local authority is satisfied that the requirements mentioned in regulation 11(3)(a) and (b) are met.

(3) Where the child is placed in secure accommodation under this regulation the child may only be kept in secure accommodation for so long as the head of unit with the agreement of the chief social work officer considers necessary.

(4) Paragraph (3) is subject to regulation 13.

Review of the use of secure accommodation in connection with children dealt with under the Criminal Procedure Act

13.—(1) The chief social work officer of the appropriate local authority, in consultation with the head of unit, must ensure that, where a child is detained or kept in secure accommodation by virtue of regulation 11 or 12, arrangements are made by them to review the child’s case—

- (a) within 7 days of the child’s placement in secure accommodation (irrespective of whether the child is still being kept or detained in secure accommodation);
- (b) at such times as appear to them to be necessary or appropriate in light of the child’s progress; and
- (c) in any event at intervals of not more than 3 months.

(2) The child may only be kept or detained in secure accommodation where after reviewing the child’s case in accordance with paragraph (1) the chief social work officer and the head of unit are satisfied that doing so is in the best interests of the child.

(3) In conducting a review under paragraph (1) the chief social work officer and the head of unit must—

- (a) have regard to all relevant circumstances including—
 - (i) the requirements mentioned in regulation 11(3)(a) and (b) and the conditions specified in regulation 12(2) and (3);
 - (ii) the views of the child and the opinion of the child’s relevant person; and
- (b) obtain the advice in relation to the detention of the child in secure accommodation of a secure placement review panel set up in accordance with paragraph (4).

(4) A secure placement review panel must be set up by any local authority responsible for the management of a residential establishment providing secure accommodation (failing which the local authority in whose area the establishment is situated) for the purpose of providing advice under paragraph (3)(b) and must consist of at least 3 persons—

- (a) none of whom may be the chief social work officer or the head of unit mentioned in paragraph (1); and
- (b) one of whom must be an independent person who is neither an office holder nor an employee of a local authority or the residential establishment.

(5) The chief social work officer and the head of unit must provide the secure placement review panel with all the relevant facts of the child’s case available to them in order that the secure placement review panel can give informed advice.

(6) In this regulation “appropriate local authority” has the same meaning as in section 44(11) of the Criminal Procedure Act.

Children dealt with under the Criminal Procedure Act on the relevant date

14.—(1) Where, before the relevant date, a child has been placed in secure accommodation under regulation 13 or 14 of the 1996 Regulations and a review under regulation 15 in respect of that child has not, at the relevant date, commenced, that child shall be deemed to have been placed in secure accommodation under regulation 11 (in the case of a child placed under regulation 13) or 12 (in the case of a child placed under regulation 14) of these regulations and, for the purposes of review under regulation 13 of these regulations, the date on which the child was placed in secure accommodation under the 1996 Regulations is deemed to be the date of the child’s placement in secure accommodation under these regulations.

(2) Where, before the relevant date, a child has been placed in secure accommodation under regulation 13 or 14 of the 1996 Regulations and a review under regulation 15 of the 1996 Regulations has, at the relevant date, commenced, the 1996 Regulations shall, for the purposes of the review, continue to apply on and after the relevant date as they would have applied immediately before the relevant date.

(3) When a review mentioned in paragraph (2) is completed and the child continues to be detained in secure accommodation, the child shall be deemed to have been placed in secure accommodation under regulation 11 or 12 of these regulations.

Records to be kept in respect of a child placed in secure accommodation

15.—(1) The managers, in consultation with the head of unit, must ensure that a record is kept with respect to the child's placement in secure accommodation, which must include a record of—

- (a) the child's full name, sex and date of birth;
- (b) the compulsory supervision order, interim compulsory supervision order, medical examination order, warrant to secure attendance or other order or provision by reference to which the placement was made;
- (c) the date and time of the child's placement in secure accommodation, the reasons for this, the names of the persons authorising the placement, and the address at which the child was living before the placement;
- (d) the name and address of each person to whom notice was given of the child's placement by virtue of these Regulations;
- (e) any reviews undertaken with respect to the placement by virtue of section 137 of the 2011 Act;
- (f) the date and time of the child's removal from the secure accommodation and the child's place of residence following removal from the secure accommodation, and the names of the persons authorising that removal.

(2) The managers must continue to keep the records with respect to the placement of children in secure accommodation kept in accordance with the 1996 Regulations.

Revocation

16. The 1996 Regulations^(a) are revoked.

St Andrew's House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

(a) S.I. 1996/3255.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision regarding the use of secure accommodation for children.

Regulation 3 makes provision about the approval of secure accommodation. Regulation 4 places duties on the managers of secure accommodation regarding the welfare of children placed in secure accommodation. A maximum period is set during which a child may be kept in secure accommodation without the authority of a children's hearing or sheriff (regulation 5). Provision is made about the information which a local authority must submit where it makes a recommendation to a children's hearing that a secure accommodation authorisation be included in a relevant order or warrant (regulation 6). Regulations 7 and 8 make provision about placement of children in secure accommodation where they are subject to certain orders which do not include a secure accommodation authorisation. Regulations 9 and 10 make provision about the use of secure accommodation in respect of looked after children. Regulations 11 to 13 make provision about the use of secure accommodation in respect of children dealt with under the Criminal Procedure (Scotland) Act 1995. Regulation 14 makes provision about certain children placed in secure accommodation under the Secure Accommodation (Scotland) Regulations 1996 (S.I. 1996/3255) on the coming into force of these Regulations. Regulation 15 provides for records to be kept with respect to a child's placement in secure accommodation. The Secure Accommodation (Scotland) Regulations 1996 are revoked (regulation 16).

© Crown copyright 2013

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland.

£5.75

S201305108 05/2013 19585

<http://www.legislation.gov.uk/id/sdsi/2013/9780111020463>

ISBN 978-0-11-102046-3



9 780111 020463