

**POLICY NOTE TO**  
**THE SECURE ACCOMMODATION (SCOTLAND) REGULATIONS 2013**  
**SSI 2013/XXX**

1. The above instrument is brought forward by the Scottish Ministers in exercise of the powers conferred by (a) sections 152 and 153 of the Children's Hearings (Scotland) Act 2011 (the 2011 Act), (b) section 44(5) of the Criminal Procedure (Scotland) Act 1995 (the 1995 Act) (c) section 75 of the Children (Scotland) Act 1995 (the second 1995 Act) and (d) section 78(2) of the Public Services Reform (Scotland) Act 2010 (the 2010 Act). The instrument is subject to the affirmative procedure in the Scottish Parliament.

2. This instrument is one of a series of statutory instruments to be laid to implement the provisions of the 2011 Act. The purpose of the instrument is to make provision regarding the use of secure accommodation for any child who is being looked after by a local authority or for whom the local authority is responsible under Criminal Procedure legislation.

**Legislative Background**

3. Section 152 of the 2011 Act effectively replicates section 75(1)(a) of the Children (Scotland) Act 1995 and enables Scottish Ministers to make provision in regulations specifying the circumstances in which children may be placed in secure accommodation if a relevant order or warrant is in force in relation to the child and the order or warrant does not include a secure accommodation authorisation. A relevant order or warrant is a compulsory supervision order, an interim compulsory supervision order, a medical examination order, or a warrant to secure attendance. The section also enables regulations to make provision for the procedure to be followed in deciding whether to place a child in secure accommodation; the notification of decisions; the giving of reasons for decisions; the review of decisions and the review of placements by a children's hearing.

4. Section 153 enables Scottish Ministers to make provision by regulations about children placed in secure accommodation under the 2011 Act. Regulations made using this power may include provision imposing requirements on the Principal Reporter and the implementation authority in relation to a compulsory supervision order or an interim compulsory supervision order, on the relevant local authority in relation to medical examination orders or warrants to secure attendance and in connection with the protection of the welfare of children placed in secure accommodation.

5. Section 44 of the 1995 Act makes provision whereby a sheriff can order that a child be detained in residential accommodation where a child pleads or is found guilty of certain offences. Subsection (5) enables the Scottish Ministers to make such provision by regulations as considered necessary in relation to the detention in secure accommodation of children in respect of whom orders have been made under this section.

6. Section 75 of the second 1995 Act enables the Scottish Ministers to make provision, by regulations, regarding the placing of a looked after child in secure accommodation. In particular the regulations may specify the circumstances in which a child may be so placed and may specify different circumstances for different cases or classes of case. Regulations may also make provision to enable a child who has been placed in secure accommodation, or

any relevant person, to require that the child's case be brought before a children's hearing within a shorter period than prescribed in the regulations

7. Section 78 of the 2010 Act gives the Scottish Ministers the power to make regulations imposing any requirements which the Scottish Ministers consider appropriate in relation to care services. Section 47(1) of the 2010 Act provides that in Part 5 of the 2010 Act, "care service" includes a "secure accommodation service" and Schedule 12, paragraph 6, defines "secure accommodation service".

### **Policy objectives**

8. The regulations largely restate previous legislation (the Secure Accommodation (Scotland) Regulations 1996 (SI 1996/3255) (the 1996 Regulations) which remains the preferred policy option. The intention is to ensure that children and young people who are placed in secure accommodation in the absence of a secure accommodation authorisation are entitled to the same level of transparency and robust procedures as those who are placed in secure accommodation in accordance with such an authorisation. These regulations will therefore replace the 1996 Regulations.

### **Consultation**

9. The draft regulations were published on the Consultations section of the Scottish Government web site. Responses were in broad agreement with the principles of the regulations. However, as a result of comments included in those responses, some changes were made to the Regulations for the purpose of clarification.

### **Financial Effects**

10. A Business and Regulatory Impact Assessment (BRIA) has not been completed in relation to this instrument. The Minister for Children and Young People does not consider that a BRIA is necessary as the regulations do not place additional burdens or costs on local authorities, businesses or other stakeholders, nor do they reduce or transfer costs or burdens.

Children, Young People and Social Care Directorate  
April 2013