

POLICY NOTE

THE SECURE ACCOMMODATION (SCOTLAND) AMENDMENT REGULATIONS 2016

SSI 2016/45

1. The above instrument (“the Amendment Regulations”) is made in exercise of the powers conferred by section 44A(5) and (6) of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) as inserted by section 91 of the Children and Young People (Scotland) Act 2014. The instrument is subject to affirmative procedure. The purpose of the Amendment Regulations is to make provision about appeals against a decision to detain a child in secure accommodation following an order made by a sheriff under section 44 of the 1995 Act.

Legislative Background

2. Section 44 of the 1995 Act makes provision whereby a sheriff, in summary proceedings, can order that a child be detained in residential accommodation where a child pleads guilty to, or is found guilty of, certain offences. New section 44A creates a right of appeal against a decision to place a child in secure accommodation following an order being made by a sheriff under section 44 that the child should be detained in residential accommodation.

3. The Secure Accommodation (Scotland) Regulations 2013 (“the 2013 Regulations”) make provision regarding the use of secure accommodation for children. In particular they make provision for the placement of children in secure accommodation where they are subject to a relevant order of a children’s hearing (i.e. a compulsory supervision order, an interim compulsory supervision order or a medical examination order) which does not contain a secure accommodation authorisation (SAA).

Policy objectives

4. In terms of the Children’s Hearings (Scotland) Act 2011 (“the 2011 Act”), an SAA enables a child to be placed and kept in secure accommodation within a specified residential establishment. An SAA is made by a children’s hearing and may only be made in conjunction with a relevant order. The Children’s Hearings (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013 (“the 2013 SAA Regulations”) make provision in respect of the decision making process for the implementation of an SAA by a chief social worker. The regulations also make provision for an appeal to the sheriff against the decision of a chief social worker.

5. However, section 44 of the 1995 Act does not make any specific provision for detaining a child in secure accommodation so there is no equivalent to a hearing’s SAA. When making an order under section 44 the sheriff is, therefore, granting authority for the child to be detained in residential accommodation, not to be kept in secure accommodation. It is for the local authority to determine where the child should reside. In terms of regulation 11 of the 2013 Regulations a local authority chief social work officer may place the child in secure accommodation only if specific criteria are met i.e. the risk of absconding and the risk to the child’s welfare; that the child is likely to self-harm; or that the child is likely to cause injury to another person.

6. When an order under section 44 is made, the general appeal right under section 175 of the 1995 Act applies. Any such appeal is made by application for a stated case (section 176). Although the placement of a child in secure accommodation is subject to a review process (regulation 13), the decision by a chief social work officer to actually place the child in secure accommodation was not previously subject to any appeal process. This apparent anomaly has been corrected by way of new section 44A. Regulation 3 inserts a new regulation 11A into the 2013 Regulations providing further details about appeals made under section 44A of the 1995 Act, in particular, the timescales for the making and disposal of an appeal and the hearing of evidence in relation to the appeal. This replicates, as far as practicable, the process which is in place for the placement of children in secure accommodation following a decision by a chief social work officer to implement an SAA (regulation 11 of the 2013 SAA Regulations).

Consultation

7. As indicated above, the Amendment Regulations are intended to create an appeal process which is similar to that which operates in relation to children who are placed in secure accommodation following implementation of an SAA. Regulation 11A is therefore based on regulation 11 of the 2013 SAA Regulations. These regulations were published in draft form on the Consultations section of the Scottish Government web site. Responses were in broad agreement with the principles of the draft regulations. However, as a result of comments included in those responses, some changes were made to the regulations to clarify their intent and to simplify the process. The Amendment Regulations were sent to Directors of Social Work/Chief Social Work Officers, CoSLA, Social Work Scotland, Scotland Excel (as manager of the secure care contract) and the heads of each secure unit and no adverse comments were received.

Financial Effects

8. 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, business or other stakeholders, nor do they reduce or transfer costs or burdens.

**Scottish Government
Children and Families Directorate
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