

2024 No. 211 (C. 17)

CHILDREN AND YOUNG PERSONS

**The Children (Care and Justice) (Scotland) Act 2024
(Commencement No. 1 and Transitional Provision) Regulations
2024**

<i>Made</i>	- - - -	<i>13th August 2024</i>
<i>Laid before the Scottish Parliament</i>		<i>15th August 2024</i>
<i>Coming into force</i>	- -	<i>28th August 2024</i>

The Scottish Ministers make the following Regulations in exercise of the power conferred by section 38(3) of the Children (Care and Justice) (Scotland) Act 2024(a) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Children (Care and Justice) (Scotland) Act 2024 (Commencement No. 1 and Transitional Provision) Regulations 2024 and come into force on 28 August 2024.

(2) In these Regulations—

- (a) “the Act” means the Children (Care and Justice) (Scotland) Act 2024,
- (b) “the 1995 Act” means the Criminal Procedure (Scotland) Act 1995(b),
- (c) “the appropriate local authority” means—
 - (i) where the child usually resides in Scotland, the local authority for the area in which the child usually resides,
 - (ii) in any other case, the local authority for the area in which the offence was committed,
- (d) “child” means a person who is under the age of 18 years,
- (e) “residential establishment” has the meaning given by section 202(1) of the Children’s Hearings (Scotland) Act 2011(c).

Appointed day

2. 28 August 2024 is the day appointed for the coming into force of the following provisions of the Act—

(a) 2024 asp 5. The regulation-making power conferred by section 38(3) of the Children (Care and Justice) (Scotland) Act 2024 includes the power to make transitional provision, and to make different provision for different purposes by virtue of section 38(4).
(b) 1995 c. 46.
(c) 2011 asp 1.

- (a) section 1 (age of referral to children’s hearing), for the purpose of its application to the amendments to the 1995 Act made by sections 18 and 19 of the Act,
- (b) section 12 (meaning of “child”), for the purpose of its application to the amendments to the 1995 Act made by sections 18 and 19 of the Act,
- (c) section 18 (remand and committal of children before trial or sentence),
- (d) section 19 (detention of children on conviction),
- (e) section 21 (meanings of “young offenders institution” and “young offender”),
- (f) section 22 (abolition of remand centres),
- (g) section 23 (duty of local authority to provide residential establishments for detained children),
- (h) section 24 (children detained in secure accommodation to be treated as “looked after” children),
- (i) section 37 (modification of enactments), for the purpose of its application to the modification of the enactments in parts 5, 6 and 7 of the schedule of the Act,
- (j) in the schedule (minor and consequential modifications)—
 - (i) part 5 (criminal procedure: miscellaneous modifications),
 - (ii) part 6 (abolition of remand centres),
 - (iii) part 7 (local authority duties in relation to detained children).

Transitional provision

3.—(1) Subject to paragraph (2), a child who, before the appointed day, is committed to or detained in a prison or young offenders institution—

- (a) under section 51(1)(aa) or (b)(ii) of the 1995 Act (remand and committal of children and young persons)(a), is to be treated for all purposes, on and after the appointed day, as though the child had been committed to the appropriate local authority to be detained in terms of section 51(1)(a)(i) or (ii) of the 1995 Act,
- (b) under section 207(2) of the 1995 Act (detention of young offenders)(b)—
 - (i) on summary conviction, is to be detained, on and after the appointed day, in a residential establishment in such place as the appropriate local authority may, from time to time, consider appropriate,
 - (ii) on conviction on indictment, is to be treated for all purposes, on and after the appointed day, as though the child had been convicted and detained in terms of section 208 of the 1995 Act (detention of children convicted on indictment)(c).

(2) A child to whom paragraph (1) applies can continue to be detained in a prison or young offenders institution provided—

- (a) that steps are being taken for the child to be committed or detained in accordance with paragraph (1), and
- (b) that they are so committed or detained before 31 August 2024.

(a) Sections 51(1)(aa) and (b) are respectively repealed and amended by the Children (Care and Justice) (Scotland) Act 2024 (“the Act”), section 18(2)(a)(ii) and (b).
 (b) Section 207(2) is amended by section 19(4) of the Act.
 (c) Section 208 is amended by section 19(5) of the Act, and see also new section 208A of the Criminal (Procedure)(Scotland) Act 1995 as inserted by section 19(6) of the Act.

(3) Paragraph (1) takes effect despite the provision of any document (including any warrant, interlocutor or extract), which makes reference (in whatever terms) to detention in a prison or young offenders institution.

NATALIE DON

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
13th August 2024

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations (see in particular regulation 2) bring into force on 28 August 2024 (“the appointed day”) sections 1, 12, 18, 19, 21, 22, 23, 24, 37, and parts 5, 6 and 7 of the schedule, of the Children (Care and Justice) (Scotland) Act 2024 (“the Act”). Sections 1 and 12 of the Act are commenced for the purpose of their application to the amendments made to the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) by sections 18 and 19 of the Act. Section 37 is commenced for the purpose of its application to the modification of the enactments in parts 5, 6 and 7 of the schedule of the Act.

Regulation 3(1) makes a transitional provision in relation to the commencement of sections 18 and 19 of the Act as follows (subject to regulation 3(2)):

- Regulation 3(1)(a) makes provision for a child (under the age of 18 years) who is remanded or committed for trial before the appointed day in a prison or young offenders institution. It provides that the child should, on and after the appointed day, be treated as if the child had been committed to the appropriate local authority to be detained in terms of section 51(1)(a)(i) or (ii) of the 1995 Act. Under those provisions of the 1995 Act, a child so committed can be detained in secure accommodation or, as the case may be, in a suitable place of safety chosen by that local authority.
- Regulation 3(1)(b) makes provision for a child who is detained before the appointed day in a prison or young offenders institution following a conviction. In the case of a child so detained following a conviction in summary proceedings, the child should, on and after the appointed day, be detained in a residential establishment in such place as the appropriate local authority may, from time to time, consider appropriate. In the case of a child so detained following conviction on indictment, the child should, on and after the appointed day, be treated for all purposes as if the child had been convicted and detained in terms of section 208 of the 1995 Act. Under section 208 of the 1995 Act, a child can be detained in such place, for example secure accommodation, and on such conditions as the Scottish Ministers may direct.

Regulation 3(2) provides that a child to whom regulation 3(1) applies, can continue to be detained in a prison or young offenders institution, provided (a) that steps are being taken for the child to be committed or detained in accordance with regulation 3(1), and (b) that they are so committed or detained before 31 August 2024.

Regulation 3(3) provides that the transitional provisions in regulation 3(1) apply despite the terms of any court document such as a warrant, interlocutor or extract containing reference in whatever terms to detention in a prison or young offenders institution.

The Bill for the Act received Royal Assent on 4 June 2024. Sections 35, 36, 38 and 39 came into force the following day. Section 33 came into force on 16 July 2024.

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