



Health and Social Services and Social Security Adjudications Act 1983

1983 CHAPTER 41

PART II

CHILDREN AND YOUNG PERSONS

4 Abolition of regional plans for accommodation for children

- (1) The following section shall be substituted for sections 31 to 34 of the Child Care Act 1980—

“31 Arrangements for provision of homes for children.

- (1) A local authority shall make such arrangements as they consider appropriate for securing that homes (in this Act referred to as "community homes") are available for the accommodation and maintenance of children in their care and for purposes connected with the welfare of children, whether in their care or not and, without prejudice to section 101(5) of the Local Government Act 1972, may do so jointly with one or more other local authorities.
- (2) In making such arrangements, a local authority shall have regard to the need for ensuring the availability of accommodation of different descriptions and suitable for different purposes and the requirements of different descriptions of children.
- (3) A community home may be—
- a home provided, managed, equipped and maintained by a local authority ; or
 - a home provided by a voluntary organisation but in respect of which a local authority and the voluntary organisation propose that, in accordance with an instrument of management, the management, equipment and maintenance of the home shall be the responsibility either of the local authority or of the voluntary organisation.

- (4) Where a local authority are to be responsible for the management of a community home provided by a voluntary organisation, the authority shall designate the home as a controlled community home.
 - (5) Where a voluntary organisation are to be responsible for the management of a community home provided by the organisation, the local authority shall designate the home as an assisted community home.”.
- (2) A voluntary home designated as a controlled or assisted community home in accordance with a regional plan approved by the Secretary of State under the Child Care Act 1980 shall be deemed to have been designated as such a home by the local authority named in the instrument of management made for the home under section 35 of that Act.

5 Closure of controlled or assisted community home

The following section shall be inserted after section 43 of the Child Care Act 1980—

“43A Closure by local authority of controlled or assisted community home.

- (1) The local authority specified in the instrument of management for a controlled or assisted community home may give the Secretary of State and the voluntary organisation by which the home is provided not less than two years' notice in writing of their intention to withdraw their designation of the home as a controlled or assisted community home.
- (2) A notice under subsection (1) above shall specify the date on which the designation is to be withdrawn.
- (3) Where—
 - (a) a notice is given under subsection (1) above in respect of a controlled or assisted community home; and
 - (b) the body of managers for the home give notice in writing to the Secretary of State that they are unable or unwilling to continue as managers until the date specified ; and
 - (c) their notice is not withdrawn,
 the Secretary of State may by order revoke the instrument of management from such date earlier than that specified under subsection (2) above as may be specified in the order.
- (4) Before making an order under subsection (3) above the Secretary of State shall consult the local authority and the voluntary organisation.
- (5) Where a notice has been given under subsection (1) above and is not withdrawn, the instrument of management for the home shall cease to have effect on the relevant date and accordingly the home shall cease to be a controlled or assisted community home on that date.
- (6) In subsection (5) above " the relevant date" means the date specified in the notice under subsection (1) above or the earlier date specified in the order under subsection (3) above.”.

6 Access to children in care-England and Wales

- (1) The enactments specified in Schedule 1 to this Act shall have effect subject to the amendments there specified, being amendments concerning access to children in the care of local authorities and voluntary organisations.

7 Access to children in care-Scotland

- (1) In section 16 of the Social Work (Scotland) Act 1968 (assumption of parental rights and powers), in subsection (5)—
 - (a) the words from " unless " to " resolution " where it third occurs shall be left out; and
 - (b) for the words " that person's whereabouts " there shall be substituted the words " the whereabouts of the person whose parental rights and powers have under the resolution vested in the local authority or in the voluntary organisation as the case may be ".
- (2) The following sections shall be inserted in the said Act of 1968 after section 17 of that Act—

“17A Termination of access to child subject to resolution under section 16.

- (1) A local authority or voluntary organisation may not terminate arrangements for access to a child who is the subject of a resolution under section 16 of this Act by his parent or guardian or refuse to make such arrangements unless they have first given the parent or guardian notice of termination or refusal in a form prescribed by order made by the Secretary of State.
- (2) A notice under this section shall contain a statement that the parent or guardian has a right to apply to the sheriff for an order under section 17B of this Act.
- (3) A notice terminating access shall state that access will be terminated as from the date of service of the notice.
- (4) A local authority or voluntary organisation are not to be taken to terminate arrangements for access for the purposes of this section in a case where they propose to substitute new arrangements for access for existing arrangements.
- (5) A local authority or voluntary organisation are not to be taken to refuse to make arrangements for access for the purposes of this section in a case where they postpone access for such reasonable period as appears to them to be necessary to enable them to consider what arrangements for access (if any) are to be made.
- (6) A notice under this section may be served on a parent or guardian either by delivering it to him or by leaving it at his proper address or by sending it by post.
- (7) For the purposes of this section, and of section 7 of the Interpretation Act 1978 in its application to this section, the proper address of a person shall be his last known address.

17B Access Orders.

- (1) A parent or guardian on whom a notice under section 17A of this Act is served may apply by way of summary application to the sheriff (in the case of a local authority, the sheriff having jurisdiction in their area) for an order under this section (hereinafter referred to as an "access order").
- (2) An access order shall be an order requiring the authority or organisation to allow the child's parent or guardian access to the child subject to such conditions as the order may specify with regard to commencement, frequency, duration or place of access or to any other matter for which it appears to the sheriff that provision ought to be made in connection with the requirement to allow access.
- (3) Where an access order has been made—
 - (a) the parent or guardian named in the order; or
 - (b) the local authority or voluntary organisationmay apply by way of summary application to the sheriff for the variation or discharge of the order.

17C Emergency order.

- (1) The sheriff may make an order under this subsection where he is satisfied that continued access to a child by his parent or guardian in accordance with the terms of an access order will put the child's welfare seriously at risk.
- (2) Subject to subsection (3) below, an order under subsection (1) of this section shall be an order suspending the operation of the access order for 7 days beginning with the date of the order under subsection (1) of this section, or for such shorter period beginning with that date as may be specified in that order.
- (3) If during the period for which the operation of the access order is suspended the local authority or voluntary organisation make an application for its variation or discharge to the sheriff, its operation shall be suspended until the date on which the application to vary or discharge it is determined or abandoned.

17D Safeguarding of interest of child.

—A court to which an application for an access order or any other application under section 17B or 17C of this Act or any appeal relating thereto is made shall regard the welfare of the child as the first and paramount consideration in determining the matter.

17E Code of practice.

- (1) The Secretary of State shall prepare, and from time to time revise, a code of practice with regard to access to children who are in care or who are subject to a supervision requirement under section 44 of this Act.
- (2) Before preparing the code or making any alteration in it the Secretary of State shall consult such bodies as appear to him to be concerned.

Status: This is the original version (as it was originally enacted).

- (3) The Secretary of State shall lay copies of the code and of any alteration in the code before Parliament; and if either House of Parliament passes a resolution requiring the code or any alteration in it to be withdrawn the Secretary of State shall withdraw the code or alteration and, where he withdraws the code, shall prepare a code in substitution for the one which is withdrawn.
 - (4) No resolution shall be passed by either House of Parliament under subsection (3) above in respect of a code or alteration after the expiration of the period of forty days beginning with the day on which a copy of the code or alteration was laid before that House; but for the purposes of this subsection no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
 - (5) The Secretary of State shall publish the code as for the time being in force.”.
- (3) In section 18A of the Act (safeguarding of interests of child), in subsection (1), after the words " 16A(3) " there shall be inserted the words " , 17B, 17C ".

8 Secure accommodation for children in Scotland

- (1) In section 32 of the Social Work (Scotland) Act 1968 (requisite conditions for compulsory measures of care for children), in subsection (2) there shall be inserted at the end—
 - “(i) he is in the care of a local authority and his behaviour is such that special measures are needed for his adequate care and control.”.
- (2) In section 59A of the said Act of 1968 (grants in respect of secure accommodation for children), subsection (3) shall be left out.
- (3) In section 60 of that Act (control of residential establishments), in subsection (1)—
 - (a) after paragraph (b) there shall be inserted the following paragraph—
 - “(bb) for the granting of approval by the Secretary of State for the provision and use of accommodation in residential establishments as secure accommodation ;”
 - (b) after paragraph (e) there shall be inserted the following paragraph—
 - “(ee) for prescribing the minimum age below which a child's liberty shall not be restricted in secure accommodation except with the Secretary of State's consent;”
 - (c) after paragraph (f), after the words " classes of establishments " there shall be inserted the words " , different classes of accommodation in residential and other establishments ".
- (4) After section 58 of that Act there shall be inserted the following sections—

“58A Residence in secure accommodation.

- (1) A child who is made subject to a supervision requirement under this Act may not be placed or kept in secure accommodation, except under the provisions of this Act.

Status: This is the original version (as it was originally enacted).

- (2) In this Act, " secure accommodation " means accommodation provided in a residential establishment in accordance with regulations made under section 60(1) of this Act for the purpose of restricting the liberty of children.
- (3) Where a children's hearing decide, in accordance with section 44 of this Act, that a child is in need of compulsory measures of care, and they are satisfied that either—
- (a) he has a history of absconding, and—
 - (i) he is likely to abscond unless he is kept in secure accommodation ; and
 - (ii) if he absconds, it is likely that his physical, mental or moral welfare will be at risk; or
 - (b) he is likely to injure himself or other persons unless he is kept in secure accommodation,
- they may make it a condition of a supervision requirement under subsection (1)(b) of the said section 44 that the child shall be liable to be placed and kept in secure accommodation in the named residential establishment at such times as the person in charge of that establishment, with the agreement of the director of social work of the local authority required to give effect to the supervision requirement, considers it necessary that he do so.
- (4) The Secretary of State shall have power by regulations to make provision with respect to the placing in secure accommodation of any child—
- (a) who is subject to a supervision requirement imposed under section 44 of this Act but not subject to a condition imposed under subsection (3) of this section; or
 - (b) who is not subject to such a supervision requirement but who is being cared for by a local authority or voluntary organisation in pursuance of such enactments as may be specified in the regulations,
- and such regulations shall specify the circumstances which require to pertain before a child may be so placed under regulations made under this subsection and may specify different circumstances for different cases or classes of case.

58B Time limits on keeping without reference to children's hearing.

- (1) The Secretary of State shall by regulations prescribe—
- (a) the maximum period during which a child may be kept under this Act in secure accommodation without the authority of a children's hearing or of the sheriff ;
 - (b) the period within which the case of a child placed under this Act in secure accommodation shall be referred to the reporter and different periods may be prescribed in respect of different cases or classes of case.
- (2) The Secretary of State shall by regulations make provision to enable a child who has been placed in secure accommodation under section 58(A)(4) of this Act or his parent to require that the child's case be brought before a children's hearing within a shorter period than would otherwise apply under regulations made under subsection (1)(a) of this section.

Status: This is the original version (as it was originally enacted).

- (3) Where, in any case, a child's hearing direct the reporter to make application to the sheriff for a finding under section 42(2)(c) of this Act (finding that grounds for referral are established), they shall have power, if they are satisfied with regard to the criteria specified in paragraph (a) or (b) of section 58A(3) of this Act, to authorise the detention or, as the case may be, further detention of the child in secure accommodation in a named residential establishment, pending the determination of the case in accordance with section 42(5) or (6) of this Act.

58C Review of secure accommodation condition.

- (1) A condition imposed under section 58A(3) of this Act, requiring a child to reside in secure accommodation, shall be subject to review by a children's hearing at such time as the local authority recommends and otherwise at such times and in accordance with such provisions as the Secretary of State shall by regulations prescribe.
- (2) A condition to which this section applies shall be reviewed when the supervision requirement is being reviewed, and may be reviewed separately from that review.
- (3) A condition to which this section applies shall cease to have effect at the expiry of the period of three months after it was made, unless it has been reviewed and the condition has been ordered to continue.
- (4) A condition which is continued on review shall cease to have effect at the expiry of the period of—
 - (a) nine months after it is first reviewed;
 - (b) twelve months after the second or any subsequent review, unless it has been reviewed and the condition has been ordered to continue.
- (5) Sections 44 and 48(5) of this Act shall apply to the review of conditions made under section 58A(3) of this Act as they apply to the review of supervision requirements.
- (6) The Secretary of State may from time to time make regulations to vary the periods specified in this section.

58D Sheriff's power to direct condition to cease to have effect.

Where under section 49(5) of this Act (appeal against decision of children's hearing) the sheriff is satisfied in a case in which there is in force a condition under section 58A(3) of this Act that the decision of the children's hearing is not justified in all the circumstances of the case he shall direct that the condition shall cease to have effect.

58E Warrants to detain in secure accommodation.

- (1) Where the sheriff or a children's hearing issues a warrant under any of sections 37, 40 and 42 of this Act (detention in a place of safety), he or they may, if satisfied with regard to the criteria specified in paragraph (a) or (b) of section 58A(3) of this Act, authorise the detention or, as the case may be,

further detention of the child in secure accommodation in a named residential establishment.

- (2) For the purposes of this section, the Secretary of State may make regulations amending, varying or disapplying any of the criteria specified in the said paragraphs (a) and (b) of section 58A(3) of this Act except in relation to a warrant under section 37 of this Act.

58F Procedures for placing in secure accommodation.

- (1) The Secretary of State may by regulations make provision for the procedures to be applied in the placing of children in secure accommodation, and without prejudice to the foregoing generality may make provision for the referral of cases to a children's hearing for review.
- (2) Regulations under this section may specify the duties of the reporter in relation to the placing of children in secure accommodation.
- (3) Regulations under this section may make provision for the parent of a child being informed of the placing of the child in secure accommodation.

58G Transitional provisions.

Regulations made under sections 58A to 58F of this Act may include such transitional provisions as the Secretary of State may consider necessary, including provisions varying the application of any provision in those sections for a transitional period, either generally, or in relation to specified classes of cases.”.

9 Miscellaneous amendments of enactments relating to children and young persons

Schedule 2 to this Act (which contains amendments relating to children and young persons) shall have effect.