

CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 17 – Other Reforms

Detention of children in secure accommodation

Section 91 – Appeal against detention of child in secure accommodation

268. This section amends the Criminal Procedure (Scotland) Act 1995 (“the CPSA”) to insert a new provision, section 44A. This new section provides that a child or relevant person(s) in relation to the child, or the child and one or more relevant persons jointly or 2 or more relevant persons jointly, may appeal to the sheriff against a local authority decision to detain the child in secure accommodation following an order having been made to detain the child in residential accommodation under section 44 of the CPSA. New section 44A(3) provides that an appeal hearing under this new section cannot be held in open court. New section 44A(4) provides that the sheriff may either confirm the decision to detain the child in secure accommodation or quash the decision and direct the local authority to move the child to residential accommodation which is not secure accommodation instead.
269. New section 44A(5) allows the Scottish Ministers by regulations to make further provisions about appeals. These regulations, which are subject to affirmative procedure, may specify the period within which appeals should be made, make provision about the hearing of evidence during an appeal and provide for appeals to the sheriff principal and Court of Session against the determination of an appeal.
270. “Relevant person” is defined as any person who is a relevant person in relation to the child for the purposes of the Children’s Hearings (Scotland) Act 2011, including any person who is deemed to be a relevant person in relation to the child by virtue of sections 81(3), 160(4)(b) or 164(6) of the 2011 Act.
271. This new procedure reflects appeal rights in the 2011 Act. Section 151 of that Act sets out the ways in which secure accommodation authorisations are implemented where a children’s hearing makes a relevant order or warrant (including a compulsory supervision order) in relation to a child and section 162 of that Act provides for an appeal to the sheriff against a decision to implement a secure accommodation authorisation, including by one or more relevant persons in relation to a child.
272. Secure accommodation in this section has the meaning assigned to it in Part II of the Children (Scotland) Act 1995.