Children and Young People (Scotland) Act 2014

2014 asp 8

PART 17

OTHER REFORMS

Detention of children in secure accommodation

91 Appeal against detention of child in secure accommodation

After section 44 of the Criminal Procedure (Scotland) Act 1995 insert—

"**44A Appeal against detention in secure accommodation**

(1) A child, or a relevant person in relation to the child, may appeal to the sheriff against a decision by a local authority to detain the child in secure accommodation in pursuance of an order made under section 44 of this Act.

(2) An appeal under subsection (1) may be made jointly by—
  (a) the child and one or more relevant persons in relation to the child; or
  (b) two or more relevant persons in relation to the child.

(3) An appeal must not be held in open court.

(4) The sheriff may determine an appeal by—
  (a) confirming the decision to detain the child in secure accommodation; or
  (b) quashing that decision and directing the local authority to move the child to be detained in residential accommodation which is not secure accommodation.

(5) The Scottish Ministers may by regulations make further provision about appeals under subsection (1).

(6) Regulations under subsection (5) may in particular—
  (a) specify the period within which an appeal may be made;

(b) make provision about the hearing of evidence during an appeal;

(c) provide for appeals to the sheriff principal and Court of Session against the determination of an appeal.

(7) Regulations under subsection (5) are subject to the affirmative procedure.

(8) In this section—

"relevant person", in relation to a child, means any person who is a relevant person in relation to the child for the purposes of the Children's Hearings (Scotland) Act 2011 (including anyone deemed to be a relevant person in relation to the child by virtue of section 81(3), 160(4)(b) or 164(6) of that Act);

"secure accommodation" has the same meaning as in section 44 of this Act.".

Children's legal aid

92 Power of Scottish Ministers to modify circumstances in which children's legal aid to be made available

(1) The Legal Aid (Scotland) Act 1986 is amended as follows.

(2) The title of section 28L becomes "**Power of Scottish Ministers to extend or restrict types of proceedings before children's hearings in which children's legal aid to be available**".

(3) After section 28L, insert—

"**28LA Power of Scottish Ministers to provide for children's legal aid to be available to other persons in relation to court proceedings**

(1) The Scottish Ministers may by regulations modify this Part so as to—

(a) provide that children's legal aid is to be available, in relation to a type of court proceedings under the 2011 Act, to a person to whom it is not available by virtue of section 28D, 28E or 28F,

(b) vary any availability provided by virtue of paragraph (a), or

(c) remove any availability provided by virtue of paragraph (a).

(2) If regulations are made making children's legal aid available to a child, the regulations must include provision requiring the Board to be satisfied that the conditions in subsection (3) are met before children's legal aid is made available.

(3) The conditions are—

(a) that it is in the best interests of the child that children's legal aid be made available,

(b) that it is reasonable in the particular circumstances of the case that the child should receive children's legal aid,

(c) that, after consideration of the disposable income and disposable capital of the child, the expenses of the case cannot be met without undue hardship to the child, and

(d) if the proceedings are an appeal to the sheriff principal or the Court of Session under Part 15 of the 2011 Act, that the child has substantial grounds for making or responding to the appeal.

(4) If regulations are made making children's legal aid available to a person other than a child, the regulations must include provision requiring the Board to be satisfied that the conditions in subsection (5) are met before children's legal aid is made available.

(5) The conditions are—

(a) that it is reasonable in the particular circumstances of the case that the person should receive children's legal aid,

(b) that, after consideration of the disposable income and disposable capital of the person, the expenses of the case cannot be met without undue hardship to the person or the dependants of the person, and

(c) if the proceedings are an appeal to the sheriff principal or the Court of Session under Part 15 of the 2011 Act, that the person has substantial grounds for making or responding to the appeal.".

Provision of school meals

93 Provision of free school lunches

(1) Section 53 of the 1980 Act is amended as follows.

(2) Subsection (2) is repealed.

(3) In subsection (2A), after "lunches" insert "which the authority are required to provide by virtue of subsection (3)".

(4) In subsection (2C)(b), the words "(other than in the middle of the day)" are omitted.

(5) In subsection (2D), the words "(2) or" are omitted.

(6) In subsection (3), after paragraph (b) insert—

"(c) who is in such yearly stage of primary or secondary education, or is of such other description, as the Scottish Ministers may by regulations prescribe.".

Licensing of child performances

94 Extension of licensing of child performances to children under 14

Section 38 of the Children and Young Persons Act 1963 (licences for performances by children under 14 not to be granted except for certain dramatic or musical performances) is repealed.

Wellbeing under 1995 Act

95 Consideration of wellbeing in exercising certain functions

After section 23 of the 1995 Act, insert—

"**23A Sections 17, 22 and 26A: consideration of wellbeing**

(1) This section applies where a local authority is exercising a function under or by virtue of section 17, 22 or 26A of this Act.

(2) The local authority must have regard to the general principle that functions should be exercised in relation to children and young people in a way which is designed to safeguard, support and promote their wellbeing.

(3) For the purpose of subsection (2) above, the local authority is to assess the wellbeing of a child or young person by reference to the extent to which the matters listed in section 96(2) of the 2014 Act are or, as the case may be, would be satisfied in relation to the child or young person.

(4) In assessing the wellbeing of a child or young person as mentioned in subsection (3) above, a local authority is to have regard to the guidance issued under section 96(3) of the 2014 Act.

(5) In this section, "the 2014 Act" means the Children and Young People (Scotland) Act 2014.".