



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART V

#### CHILDREN AND YOUNG PERSONS

#### 44 Detention of children.

- (1) Where a child appears before the sheriff in summary proceedings and pleads guilty to, or is found guilty of, an offence to which this section applies, the sheriff may order that he be detained in residential accommodation provided under Part II of the <sup>M1</sup>Children (Scotland) Act 1995 by the appropriate local authority for such period not exceeding one year as may be specified in the order in such place (in any part of the United Kingdom) as the local authority may, from time to time, consider appropriate.
- (2) This section applies to any offence [<sup>F1</sup>(other than, if the child is under the age of 16 years, an offence under section 9(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) or that section as applied by section 234AA(11) of this Act)] in respect of which it is competent to impose imprisonment on a person of the age of 21 years or more.
- (3) Where a child in respect of whom an order is made under this section is detained by the appropriate local authority, that authority shall have the same powers and duties in respect of the child as they would have if he were subject to a [<sup>F2</sup>compulsory supervision order].
- (4) Where a child in respect of whom an order is made under this section is also subject to a [<sup>F3</sup>compulsory supervision order or interim compulsory supervision order], subject to subsection (6) below, the [<sup>F3</sup>compulsory supervision order or interim compulsory supervision order] shall be of no effect during any period for which he is required to be detained under the order.
- (5) The Secretary of State may, by regulations made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, make such provision as he considers necessary as regards the detention in secure accommodation of children in respect of whom orders have been made under this section.

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*Changes to legislation: Criminal Procedure (Scotland) Act 1995, Section 44 is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (6) Where a child is detained in residential accommodation in pursuance of an order under—
- (a) subsection (1) above, he shall be released from such detention not later than the date by which half the period specified in the order has (following commencement of the detention) elapsed but, without prejudice to subsection (7) below, until the entire such period has so elapsed may be required by the local authority to submit to supervision in accordance with such conditions as they consider appropriate;
  - (b) subsection (1) above or (8) below, the local authority may at any time review his case and may, in consequence of such review and after having regard to the best interests of the child and the need to protect members of the public, release the child—
    - (i) for such period and on such conditions as the local authority consider appropriate; or
    - (ii) unconditionally.
- (7) Where a child released under paragraph (a) or (b)(ii) of subsection (6) above is subject to a [<sup>F3</sup>compulsory supervision order or interim compulsory supervision order], the effect of that [<sup>F4</sup>order] shall commence or, as the case may be, resume upon such release.
- (8) If, while released under paragraph (a) or (b) of subsection (6) above (and before the date on which the entire period mentioned in the said paragraph (a) has, following the commencement of the detention, elapsed), a child commits an offence to which this section applies and (whether before or after that date) pleads guilty to or is found guilty of it a court may, instead of or in addition to making any other order in respect of that plea or finding, order that he be returned to the residential accommodation provided by the authority which released him and that his detention in that accommodation or any other such accommodation provided by that authority shall continue for the whole or any part of the period which—
- (a) begins with the date of the order for his return; and
  - (b) is equal in length to the period between the date on which the new offence was committed and the date on which that entire period elapses.
- (9) An order under subsection (8) above for return to residential accommodation provided by the appropriate local authority—
- (a) shall be taken to be an order for detention in residential accommodation for the purpose of this Act and any appeal; and
  - (b) shall, as the court making that order may direct, either be for a period of detention in residential accommodation before and to be followed by, or to be concurrent with, any period of such detention to be imposed in respect of the new offence (being in either case disregarded in determining the appropriate length of the period so imposed).
- (10) Where a local authority consider it appropriate that a child in respect of whom an order has been made under subsection (1) or (8) above should be detained in a place in any part of the United Kingdom outside Scotland, the order shall be a like authority as in Scotland to the person in charge of the place to restrict the child's liberty to such an extent as that person may consider appropriate having regard to the terms of the order.
- (11) In this section—
- “the appropriate local authority” means—

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- (a) where the child usually resides in Scotland, the local authority for the area in which he usually resides;
  - (b) in any other case, the local authority for the area in which the offence was committed; and
- [<sup>F5</sup>“secure accommodation” means accommodation provided for the purpose of restricting the liberty of children which—
- (a) in Scotland, is provided in a residential establishment approved in accordance with regulations made under section 78(2) of the Public Service Reform (Scotland) Act 2010;
  - (b) in England, is provided in a children’s home within the meaning of the [<sup>F6</sup>Care Standards Act 2000] in respect of which a person is registered under Part 2 of that Act, except that before the coming into force of section 107(2) of the Health and Social Care (Community Health Standards) Act 2003, “secure accommodation” means accommodation in relation to England which—
    - (i) is provided in a children’s home, within the meaning of the [<sup>F6</sup>Care Standards Act 2000], in respect of which a person is registered under Part 2 of that Act; and
    - (ii) is approved by the Secretary of State for the purpose of restricting the liberty of children; and
  - (c) in Wales, is provided in a children’s home within the meaning of the [<sup>F6</sup>Care Standards Act 2000] in respect of which a person is registered under Part 2 of that Act;]

#### Textual Amendments

- F1** Words in s. 44(2) inserted (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 10(2)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1
- F2** Words in s. 44(3) substituted (24.6.2013) by The Children’s Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013/1465), art. 1(2), **Sch. 3 para. 2(a)**
- F3** Words in s. 44(4)(7) substituted (24.6.2013) by The Children’s Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013/1465), art. 1(2), **Sch. 3 para. 2(b)**
- F4** Word in s. 44(7) substituted (24.6.2013) by The Children’s Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013/1465), art. 1(2), **Sch. 3 para. 2(c)**
- F5** Definition in s. 44(11) substituted (24.6.2013) by The Children’s Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013/1465), art. 1(2), **Sch. 3 para. 2(d)**
- F6** Words in s. 44(11) substituted (S.) (30.9.2015) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), **sch. 5 para. 5(2)**; S.S.I. 2015/317, art. 2, sch. and (E.W.N.I) (30.9.2015) by The Children and Young People (Scotland) Act 2014 (Consequential and Saving Provisions) Order 2015 (S.I. 2015/907), arts. 1(4), **3**

#### Modifications etc. (not altering text)

- C1** S. 44 modified (1.4.1997) by S.I. 1996/3255, **art. 13(1)**

#### Marginal Citations

- M1** 1995 c.36.

**Changes to legislation:**

Criminal Procedure (Scotland) Act 1995, Section 44 is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 5A inserted by [2010 asp 13 Sch. 7 para. 26](#)
- s. 13(1B)(1C) inserted by [2006 asp 10 s. 82\(2\)](#)
- s. 13(2)(aa) inserted by [2006 asp 10 s. 82\(3\)\(b\)](#)
- s. 13(3A) inserted by [2006 asp 10 s. 82\(4\)](#)
- s. 13(5)(ba) inserted by [2006 asp 10 s. 82\(5\)\(a\)](#)
- s. 13(6)(a)(iii) and word inserted by [2006 asp 10 s. 82\(6\)\(b\)](#)
- s. 13(8) inserted by [2006 asp 10 s. 82\(7\)](#)
- s. 22(5A) inserted by [2007 asp 6 s. 7\(2\)\(g\)](#)
- s. 22A(1A) inserted by [2023 asp 4 s. 1\(2\)](#)
- s. 23B(1)(1A) substituted for s. 23B(1) by [2023 asp 4 s. 2\(2\)\(a\)](#)
- s. 23B(6A) inserted by [2023 asp 4 s. 1\(3\)\(c\)](#)
- s. 23B(8)-(10) inserted by [2023 asp 4 s. 2\(2\)\(c\)](#)
- s. 23C(1A) inserted by [2023 asp 4 s. 2\(3\)\(b\)](#)
- s. 23C(3) inserted by [2023 asp 4 s. 2\(3\)\(c\)](#)
- s. 24(2C) inserted by [2023 asp 4 s. 4\(4\)](#)
- s. 24(2AA) inserted by [2023 asp 4 s. 4\(2\)](#)
- s. 73A inserted by [2004 asp 3 s. 2\(3\)](#)
- s. 167(7D)(7E) inserted by [2007 asp 17 sch. 4 para. 1\(3\)](#)
- s. 167(7D) words substituted by [2010 asp 13 Sch. 3 para. 16\(2\)](#)
- s. 167(7E) words substituted by [2010 asp 13 Sch. 3 para. 16\(3\)](#)
- s. 194ZA repealed by [2014 asp 18 sch. 3 para. 25](#)
- s. 200A inserted by [2016 asp 1 s. 85](#)
- s. 205A added by [1997 c. 48 s. 1\(1\)](#) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by [2003 asp 7, s. 19\(3\)](#); S.S.I. 2003/288, art. 2, Sch.)
- s. 210ZA inserted by [2023 asp 4 s. 5](#)
- s. 249(4A)-(4D) inserted by [2014 asp 1 s. 24](#)
- s. 271D(4A) inserted by [2019 asp 8 s. 6\(4\)](#)
- s. 271F(2)(aa) inserted by [2019 asp 8 s. 10\(4\)](#)
- s. 271AA inserted by [2019 asp 8 s. 6\(2\)](#)
- s. 271BZD inserted by [2019 asp 8 s. 3\(2\)](#)
- s. 288AB288AC inserted by [2024 asp 1 s. 32\(3\)](#)
- Sch. 5A added by [1997 c. 48 s. 1\(2\)](#) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by [2003 asp 7, s. 19\(3\)](#); S.S.I. 2003/288, art. 2, Sch.)