

Draft Regulations laid before the Scottish Parliament under section 197(2) of the Children's Hearings (Scotland) Act 2011, for approval by the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2013 No.

CHILDREN AND YOUNG PERSONS

**The Children's Hearings (Scotland) Act 2011
(Implementation of Secure Accommodation
Authorisation) (Scotland) Regulations 2013**

*Made - - - -
Coming into force in accordance with section
regulation 1*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 34, 151(6), 153(1), 162(7) and (8) and 195 of the Children's Hearings (Scotland) Act 2011(1) and all other powers enabling them to do so.

In accordance with section 197(2)(2) of that Act a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013 and come into force on the same day as section 151 (implementation of secure accommodation authorisation) of the Children's Hearings (Scotland) Act 2011.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Children's Hearings (Scotland) Act 2011;

“relevant person” includes a person who is to be treated as the child's relevant person by virtue of a decision under section 81(3) (determination of claim that person be deemed a relevant person), 160(4)(b) (appeal to sheriff against relevant person determination) or 164(6) (appeals to sheriff principal and Court of Session: relevant persons) of the Act.

(1) 2011 asp 1.

(2) The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). The Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

(2) In regulations 4, 6, 7 and 8 “head of unit” has the meaning given by section 151(3) of the Act (implementation of secure accommodation authorisation).

Written communications

3. Any decision or reasons for making a decision or any other type of communication made or given under these Regulations is a formal communication and section 193(2) to (4) applies to them as it does to other formal communications under the Act.

Decision to implement secure accommodation authorisation

4.—(1) This regulation applies where the chief social work officer requires to decide whether to implement a secure accommodation authorisation under section 151(3) of the Act (implementation of secure accommodation authorisation).

(2) Where paragraph (1) applies, the chief social work officer must, comply with the requirements in paragraph (3).

(3) The requirements are—

(a) to consult and take into account the views of—

- (i) the child, taking into account the age and maturity of the child;
- (ii) each relevant person in respect of the child;
- (iii) the head of unit;

(b) to assess—

- (i) whether one or more of the conditions specified in section 83(6) (compulsory supervision order), 87(4) (medical examination order) or 88(3) (warrant to secure attendance), of the Act continue to apply in respect of the child; and
- (ii) whether placement in secure accommodation would be in the child’s best interests; and

(c) to take into account the decision to make the relevant order or warrant referred to in section 151(2) of the Act and the reasons for that decision.

(4) In this regulation, “head of unit” means the person in charge of the residential establishment containing the secure unit in which the child is to be placed.

Notification of decision

5.—(1) Where the chief social work officer carries out the requirements specified in regulation 4 and makes a decision whether to implement the secure accommodation authorisation, the chief social work officer must, within 72 hours of receiving the decision mentioned in regulation 4(3)(c) comply with the requirements at paragraph (2).

(2) The requirements are—

(a) to record—

- (i) the decision of the chief social work officer;
- (ii) the reasons for reaching that decision;
- (iii) the information obtained in carrying out the consultation requirements at regulation 4(3)(a);

(b) to send notice of the decision to—

- (i) the child, where taking account of the child’s age and maturity, the chief social work officer considers that the child is capable of understanding the effect of the decision;

- (ii) each relevant person in respect of the child;
 - (iii) the head of unit;
 - (iv) the Principal Reporter;
 - (c) to send with the notice the reasons for making the decision;
 - (d) to inform the child and each relevant person in respect of the child—
 - (i) of the right to appeal the decision under section 162 of the Act;
 - (ii) where the decision is a decision not to implement the secure accommodation authorisation, that they may require the decision to be reviewed.
- (3) Where the requirements at paragraph (2) are not complied with within 72 hours of receiving the decision as mentioned in paragraph (1), the chief social work officer will be deemed to have made a decision not to implement the secure accommodation authorisation.
- (4) In this regulation, in paragraph (2)(b)(iii) “head of unit” is the head of unit consulted in accordance with regulation 4(3)(a)(iii).

Decision of head of unit under section 151(3)

6.—(1) This regulation applies where the chief social work officer makes a decision to implement a secure accommodation authorisation in accordance with regulation 4 or following a review under regulation 7.

(2) The head of unit must, in coming to a decision on whether to consent to the placement of the child under section 151(3) of the Act, comply with the requirements in paragraph (3)(a) and, having made the decision, comply with the requirements in paragraph (3)(b) and (c).

(3) The requirements are—

- (a) to assess whether placement in secure accommodation within the residential establishment managed by the head of unit would—
 - (i) be appropriate to the child’s needs, having regard to that establishment’s statement of functions and objectives; and
 - (ii) not, in the opinion of the head of unit, be detrimental to other children residing in that unit;
- (b) to record—
 - (i) the decision of the head of unit; and
 - (ii) the reasons for reaching that decision; and
- (c) to send to the chief social work officer, within 48 hours of receiving notification of the chief social work officer’s decision under regulation 5(2)(b)(iii) or 7(4)(d)(iv), the decision and reasons for reaching that decision.

(4) In this regulation, “head of unit” is the head of unit consulted in accordance with regulation 4(3)(a)(iii).

Review of decision not to implement the secure accommodation authorisation

7.—(1) Where the chief social work officer has made a decision not to implement the secure accommodation authorisation, or where regulation 5(3) applies, a person mentioned in paragraph (2) may request a review of that decision.

(2) Those persons are—

- (a) the child; and
- (b) each relevant person in respect of the child.

(3) Where the chief social work officer receives a request for a review under paragraph (1) the chief social work officer must, within 72 hours of receiving the request, carry out a review by complying with the requirements in paragraph (4).

(4) The requirements are—

- (a) to consult and take into account the views of—
 - (i) the child, taking into account the age and maturity of the child;
 - (ii) each relevant person in respect of the child;
 - (iii) the head of unit;
- (b) to assess—
 - (i) whether one or more of the conditions specified in section 83(6), 87(4) or 88(3) of the Act continue to apply in respect of the child; and
 - (ii) the child's needs and whether placement in secure accommodation would be in the child's best interests;
- (c) to record—
 - (i) the information obtained in respect of the review; and
 - (ii) the decision and the reasons for reaching that decision, on whether the child should be placed in secure accommodation;
- (d) to send notice to—
 - (i) the child where, taking account of the child's age and maturity, the chief social work officer considers that the child is capable of understanding the effect of the decision;
 - (ii) each relevant person in respect of the child;
 - (iii) the Principal Reporter;
 - (iv) the head of unit;
- (e) to send with the notice the reasons for making the decision.

(5) A request for a review under paragraph (1) must be made within 72 hours of—

- (a) receiving the notice under regulation 5(2)(b); or
- (b) where regulation 5(3) applies, the expiry of the period mentioned in that paragraph.

Decision of head of unit not to consent

8.—(1) This regulation applies where—

- (a) a child is subject to a relevant order;
- (b) the chief social work officer makes a decision to implement a secure accommodation authorisation in accordance with regulation 4 or following a review under regulation 7; and
- (c) the head of unit makes a decision not to consent to the placement of the child in secure accommodation.

(2) Except where an interim compulsory supervision order or a medical examination order would expire before the end of the period mentioned in paragraph (3), a relevant order is—

- (a) a compulsory supervision order;
- (b) an interim compulsory supervision order;
- (c) a medical examination order.

(3) The chief social work officer must, within 48 hours of receiving notification of the head of unit's decision, require a review of the relevant order by giving notice to the Principal Reporter of the circumstances mentioned in paragraph (1).

Review of relevant order

9.—(1) On receiving notice under regulation 8(3) the Principal Reporter must arrange a children's hearing for the purposes of reviewing the relevant order.

(2) The children's hearing must take place no later than 3 working days after the notice referred to in regulation 8(3) is received.

(3) The children's hearing may vary the compulsory supervision order, interim compulsory supervision order or medical examination order but only by varying or removing the secure accommodation authorisation.

Review of placement in secure accommodation

10.—(1) This regulation applies where a child is placed in secure accommodation following—

- (a) a decision of the chief social work officer in accordance with regulation 4;
- (b) a review under regulation 7; or
- (c) a decision of the sheriff under regulation 13(3)(a) or 14(3)(a).

(2) The chief social work officer must, from time to time review the child's placement in secure accommodation in accordance with the requirements in paragraph (4) and carry out the following mandatory reviews—

- (a) a first review within 7 days of the placement;
- (b) a second review within 1 month from the date of the first review;
- (c) thereafter subsequent reviews within 1 month from the date of the previous review; and
- (d) whenever paragraph (3) applies.

(3) This paragraph applies where a request for a review is made by—

- (a) the child;
- (b) each relevant person in respect of the child.

(4) The requirements are—

- (a) to consult and take into account the views of—
 - (i) the child, taking into account their age and maturity;
 - (ii) each relevant person in respect of the child;
 - (iii) the head of unit;
- (b) to assess—
 - (i) whether one or more of the conditions specified in section 83(6), 87(4) or 88(3) of the Act continue to apply in respect of the child;
 - (ii) the child's needs and how those needs are being met;
 - (iii) whether placement in secure accommodation continues to be in the child's best interests.

(5) Following a review under paragraph (2) the chief social work officer must decide the review and must—

- (a) record—
 - (i) the information obtained in respect of the review;
 - (ii) the chief social work officer's decision, and the reasons for reaching that decision, on whether the child should remain in secure accommodation.

- (b) notify the Principal Reporter and those persons consulted under paragraph (4)(a) of the decision;
- (c) where the chief social work officer makes a decision to remove the child from secure accommodation, notify the child and each relevant person of the right to appeal the decision under section 162 of the Act (appeal to sheriff against decision to implement secure accommodation authorisation).

(6) In this regulation “head of unit” means the person in charge of the residential establishment containing the secure accommodation in which the child is placed.

Appeal against decisions of chief social work officer

11.—(1) This regulation applies where an appeal under section 162 of the Act is made.

(2) The appeal must be—

- (a) made before the expiry of 21 days beginning with the day on which the decision mentioned in section 162(4) of the Act is made;
- (b) heard and disposed of before the expiry of the period of 3 days beginning the day after the day on which the appeal is made.

(3) The sheriff may hear evidence before determining the appeal.

(4) The sheriff may hear evidence from—

- (a) the child;
- (b) each relevant person in respect of the child;
- (c) the chief social work officer;
- (d) the head of unit;
- (e) the Principal Reporter;
- (f) any other person who the sheriff considers may give additional material evidence.

(5) The sheriff may require any person to give a report to the sheriff for the purpose of assisting the sheriff in determining the appeal.

(6) In paragraph (4)(d) “head of unit” means the person in charge of the residential establishment specified in the secure accommodation authorisation included in the relevant order or warrant made in respect of the child.

Appeal against decision to implement a secure accommodation authorisation

12.—(1) This regulation applies where an appeal under section 162 of the Act is made in respect of a decision by the chief social work officer to implement a secure accommodation authorisation.

(2) Where satisfied that the decision is justified, the sheriff must confirm the decision.

(3) In any other case the sheriff may take one or both of the following steps—

- (a) make an order directing the chief social work officer to remove the child from secure accommodation;
- (b) make an order requiring the Principal Reporter to arrange a children’s hearing for any purpose for which a hearing may be arranged under the Act.

Appeal against decision not to implement a secure accommodation authorisation

13.—(1) This regulation applies where an appeal under section 162 of the Act is made in respect of a decision by the chief social work officer not to implement a secure accommodation authorisation.

(2) Where satisfied that the decision is justified, the sheriff—

- (a) must confirm the decision; and
 - (b) may make an order requiring the Principal Reporter to arrange a children's hearing for any purpose for which a hearing may be arranged under the Act.
- (3) In any other case the sheriff may take one or both of the following steps—
- (a) make an order directing the chief social work officer to place the child in secure accommodation;
 - (b) make an order requiring the Principal Reporter to arrange a children's hearing for any purpose for which a hearing may be arranged under the Act.

Appeal against decision to remove a child from secure accommodation

14.—(1) This regulation applies where an appeal under section 162 of the Act is made in respect of a decision by the chief social work officer to remove a child from secure accommodation.

- (2) Where satisfied that the decision is justified, the sheriff—
- (a) must confirm the decision; and
 - (b) may make an order requiring the Principal Reporter to arrange a children's hearing for any purpose for which a hearing may be arranged under the Act.
- (3) In any other case the sheriff may take one or both of the following steps—
- (a) direct the chief social work officer to place the child in secure accommodation and vary the order or warrant which is in effect to include a secure accommodation authorisation; and
 - (b) require the Principal Reporter to arrange a children's hearing for any purpose for which a hearing may be arranged under the Act.

Amendment of the Children's Hearings (Scotland) Act 2011 (Safeguarders: Further Provision) Regulations 2012

15. For regulation 4(4) of the Children's Hearings (Scotland) Act 2011 (Safeguarders: Further Provision) Regulations 2012(3), substitute—

“This paragraph applies where the sheriff makes an order under regulation 12, 13 or 14 of the Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013 requiring the Reporter to arrange a children's hearing for which a hearing can be arranged under the Act.”

St Andrew's House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: *The Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013 No. 212*

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in respect of the decision making process for the implementation of secure accommodation authorisations by the chief social work officer and the removal of children from secure accommodation in addition to the decision of the head of unit whether to consent to the placement of the child in secure accommodation.

The Regulations further provide a process of review of the child's placement in secure accommodation (regulation 10). Regulation 7 allows the child and their relevant person to require a review of a decision made by the chief social work officer not to implement a secure accommodation authorisation.

Where the head of unit decides not to consent to the placement of a child in secure accommodation, regulation 9 requires the case to be brought before the children's hearing for a review of the relevant order.

Regulations 11 to 14 make provision for the appeal to the sheriff under section 162 of the Children's Hearings (Scotland) Act 2011.

Regulation 15 corrects an error in the Children's Hearings (Scotland) Act 2011 (Safeguarders: Further Provision) Regulations 2012.