

POLICY NOTE

THE CHILDREN'S HEARINGS (IMPLEMENTATION OF SECURE ACCOMMODATION AUTHORISATION) (SCOTLAND) REGULATIONS 2013

SSI 2013/212

1. The above instrument is brought forward by the Scottish Ministers in exercise of the powers conferred by sections 34, 151, 153 and 162 of the Children's Hearings (Scotland) Act 2011 (the 2011 Act). The instrument is subject to the affirmative procedure in the Scottish Parliament. The date for the commencement of the regulations is 24 June 2013

2. This instrument is one of a series of instruments to be laid to implement the provisions of the 2011 Act. The purpose of the instrument is to make provision in respect of the decision making process for the implementation of secure accommodation authorisations by chief social work officers and the removal of children from secure accommodation in addition to the decision of the head of unit as to whether or not to consent to the placement of the child in secure accommodation.

Legislative Background

3. Section 85 of the 2011 Act defines "secure accommodation authorisation" (SAA). It is an authorisation which enables a child to be placed and kept in secure accommodation within a residential establishment. Where a children's hearing make a compulsory supervision order, interim compulsory supervision order, medical examination order or warrant to secure attendance, the children's hearing may decide to include an SAA in that order or warrant. Certain conditions must be met before an SAA may be included in an order i.e. the risk of absconding and the risk to the child's welfare; that the child is likely to self-harm; or that the child is likely to cause injury to another person.

4. Section 151 makes provision for the implementation of the SAA and applies where a hearing (or sheriff) makes one of the orders/warrant referred to in the preceding paragraph. Subsection (3) provides that the chief social work officer (CSWO) may implement the SAA only with the consent of the person in charge of the residential establishment containing the secure accommodation in which the child will be placed. Subsection (4) provides that the CSWO must remove the child where he considers it unnecessary for the child to be kept there or is required to remove the child by virtue of regulations. Subsection (5) provides that the SAA ceases to have effect once the child is removed from the secure accommodation under subsection (4) and subsection (6) enables the Scottish Ministers to make regulations with regard to the decisions of the CSWO whether to implement the SAA and whether to remove the child from secure accommodation and with regard to the decisions of the head of unit to consent to the implementation of the SAA under subsection (3). Subsection (7) sets out the areas that may, in particular, be covered by regulations. These areas include: the timescales for the decision; the procedures to be followed, the criteria to be applied; matters to be taken into account or disregarded; who must be consulted; and who must consent to a decision. Regulations may also make provision about the notification of decisions, the giving of reasons for decisions, the reviewing of decisions and the review of an order or warrant containing a SAA where the head of unit does not consent.

5. Section 153 enables the Scottish Ministers to make provision by regulations about children placed in secure accommodation under the Act. Such regulations may in particular include provision imposing requirements on the Principal Reporter, the relevant local authority or implementation authority and in relation to protecting the welfare of children placed in secure accommodation under the Act. Requirements may be placed on both the implementation authority in relation to compulsory supervision orders and interim compulsory supervision orders and the relevant local authority in relation to the medical examination orders and warrant to secure attendance.

6. Section 162 applies where a compulsory supervision order, interim compulsory supervision order, medical examination order or a warrant to secure attendance includes a SAA. Subsection (3) provides that the child or their relevant person may appeal to the sheriff against a “relevant decision” in relation to the SAA. Subsection (4) defines “relevant decision” as a decision by the CSWO to implement the SAA, not to implement the authorisation or to remove the child from secure accommodation. Subsection (5) provides that an appeal under subsection (3) may be made jointly by the child and one or more relevant persons in relation to the child, or two or more relevant persons in relation to the child. Subsection (6) makes clear that the appeal hearing is closed to the public and may not be heard in open court.

Policy objective

7. Section 70(9A)(a) of the Children (Scotland) Act 1995 currently provides the principal route under which children can be placed in secure accommodation, by empowering a children’s hearing to specify in a supervision requirement “that the child shall be liable to be placed and kept in secure accommodation in a residential establishment specified....during such period as the person in charge of that establishment, with the agreement of the chief social work officer of the relevant local authority, considers necessary”. The 1995 Act allows a level of local flexibility and discretion, so that professionals can respond quickly to young people’s changing levels of need and risk. In practice this means that professionals may decide to place or not to place children and young people in secure care based on a dynamic risk assessment, i.e. children are reassessed when circumstances change.

8. Stakeholders have collectively agreed that there is merit in bringing more certainty and transparency to the procedure and practice that surrounds the discretion of the chief social work officer and the head of unit. The Regulations are intended to ensure that the flexibility and discretion in the current system is applied in a way which is consistent, open and transparent and embeds good practice.

9. The Regulations make provision in 3 main areas. They set standard requirements in the decision-making process by providing for a review of a decision not to implement an SAA and also making provision about review of the child’s case if the head of unit does not consent. They also require the child’s placement in secure accommodation to be reviewed at regular intervals and they make provision for the appeal to the sheriff under section 162 of the Act against the decisions of the CSWO. The provisions in section 162 are linked to those in sections 151, 152 and 153 and ensure that fairness and transparency can, where necessary, be tested, supporting the best interests of children and the principles of good decision making.. These will bring transparency to the process and will support and enable a process which protects the flexibility of the current system while ensuring any decision made

regarding placement of a child in secure accommodation is fair, transparent and in the best interests of the child.

9. The provisions set standard requirements in respect of the consultation process before a decision is made by the CSWO and the criteria to be applied. There are also notification requirements and strict time limits to avoid prolonged delay between the CH decision and the decision whether or not to implement the SAA to avoid uncertainty. The head of unit's decision whether or not to consent to the placement must also adhere to standard requirements and be made within 48 hours of receiving notification of the decision of the CSWO. Where the CSWO makes a decision not to implement the SAA the child, or their relevant person, may request a review of that decision. These regulated procedures are in addition to appeal rights and are intended to ensure that fair and transparent procedures are brought to the decision making process of the CSWO and head of unit in implementing SAAs.

10. Regulations 11 to 14 make provision in respect of appeals made under section 162 of the Act and ensure that appeals are dealt with in a speedy and effective manner so that children and young people are not held in secure accommodation for longer than necessary.

11. Regulation 15 corrects an error in the Children's Hearings (Scotland) Act 2011 (Safeguarders: Further Provision) Regulations 2012 where these draft regulations were inadvertently referred to as "The Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2012". The regulation also updates the references in regulation 4(4) of the Safeguarders Regulations. The references were to regulations as they appeared in an earlier version of the Implementation of Secure Accommodation Authorisation Regulations.

Consultation

12. The draft regulations were published on the Consultations section of the Scottish Government web site. Responses were in broad agreement with the principles of the regulations. However, as a result of comments included in those responses, some changes were made to the Regulations to clarify their intent and to simplify the review process.

Financial Effects

13. A Business and Regulatory Impact Assessment (BRIA) has not been completed in relation to this instrument. The Minister for Children and Young People does not consider that a BRIA is necessary as the regulations do not place additional burdens or costs on local authorities, businesses or other stakeholders, nor do they reduce or transfer costs or burdens.