

1983 No. 1912 (S. 179)

CHILDREN AND YOUNG PERSONS

RESIDENTIAL AND OTHER ESTABLISHMENTS,
SCOTLAND

The Secure Accommodation (Scotland) Regulations 1983

Made - - - - 19th December 1983

Laid before Parliament 21st December 1983

Coming into Operation 30th January 1984

In exercise of the powers conferred on me by sections 58A(4), 58B(1) and (2), 58C(1), 58F, 58G, 60(1) and 95(3) of the Social Work (Scotland) Act 1968(a) and of all other powers enabling me in that behalf, and after consulting the Council on Tribunals, I hereby make the following regulations:—

Citation and commencement

1. These regulations may be cited as the Secure Accommodation (Scotland) Regulations 1983 and shall come into operation on 30th January 1984.

Interpretation

2.—(1) In these regulations, unless the content otherwise requires—

“the 1968 Act” means the Social Work (Scotland) Act 1968;

“the 1975 Act” means the Criminal Procedure (Scotland) Act 1975(b);

“child” has the meaning assigned by section 30(1) of the 1968 Act (c);

“children’s hearing” has the meaning assigned by section 34(1) of the 1968 Act;

“day” includes a part of a day;

“lawful day” means a day other than a Sunday or public holiday;

“parent” has the meaning assigned by section 94(1), as read with section 30(2), of the 1968 Act(d);

(a) 1968 c.49; sections 58A(4), 58B(1) and (2), 58C(1), 58F and 58G were inserted by section 8(4), and section 60(1) was amended by section 8(3), of the Health and Social Services and Social Security Adjudications Act 1983 (c.41).

(b) 1975 c.21.

(c) Section 30(1) was amended by the Education (Scotland) Act 1969 (c.49), Schedule 2, Part II, paragraph 5.

(d) Section 94(1) was amended by the Children Act 1975 (c.72), Schedule 4, Part 1.

“local authority” means a regional or islands council;

“reporter” means an officer of the local authority appointed under section 36(1) of the 1968 Act(a);

“residential establishment” has the meaning assigned by section 94(1) of the 1968 Act;

“secure accommodation” means accommodation provided in a residential establishment for the purpose of restricting the liberty of children.

(2) In the calculation of the periods of 48 hours and 72 hours mentioned in these regulations, Sundays and public holidays shall be excluded.

(3) Any reference in these regulations to any provision of an enactment shall, except insofar as the context otherwise requires, be construed as including a reference to any provision which may re-enact or replace it with or without modification.

Approval by the Secretary of State of secure accommodation

3. Accommodation shall not be provided and used in residential establishments as secure accommodation unless it has been approved by the Secretary of State, on such terms and conditions as he thinks fit, for such provision and use.

Welfare of children in secure accommodation

4. The person in charge of a residential establishment providing secure accommodation shall ensure that a child placed and kept in such accommodation receives care appropriate to his needs.

Maximum period in secure accommodation under the 1968 Act without authority

5. The maximum period during which a child may be kept under the 1968 Act in secure accommodation without the authority of a children’s hearing, or, as the case may be, of the sheriff, is 7 days, whether consecutively or 7 days in aggregate in any period of 28 consecutive days.

Children subject to certain supervision requirements—interim detention

6.—(1) A child who is subject to a supervision requirement imposed under section 44 of the 1968 Act, but not subject to a condition imposed under section 58A(3) of that Act(b), may not be placed in secure accommodation unless the director of social work of the local authority required to give effect to the supervision requirement and the person in charge of the residential establishment providing the secure accommodation are satisfied—

(a) Section 36(1) was amended by the Local Government (Scotland) Act 1973 (c.65), Schedule 29.

(b) Section 58A(3) was inserted into the 1968 Act by section 8(4) of the Health and Social Services and Social Security Adjudications Act 1983 (c.41).

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- (a) that the criteria specified in paragraph (a) or (b) of section 58A(3) of the 1968 Act pertain with respect to the child; and
 - (b) that it is in the child's best interests that he be placed in secure accommodation.
- (2) On a child being placed in secure accommodation in accordance with paragraph (1) above, the director of social work shall—
- (a) forthwith in writing inform the child's parent and the reporter accordingly, and shall, in addition, so inform the child (in a manner appropriate to his age and understanding) and his parent of the right under regulation 10 below to require that the child's case be brought before a children's hearing within a shorter period than would otherwise apply by virtue of regulation 5 above; and
 - (b) not later than 48 hours from the time of that placement refer the child's case to the reporter and inform the reporter in writing of—
 - (i) that placement;
 - (ii) the reasons by reference to which the director of social work and that person in charge are satisfied with respect to the matters referred to and mentioned at paragraph (1)(a) and (b) above.
- (3) On receipt by the reporter of the referral and information under paragraph (2)(b) above, he shall arrange for a review of the child's case by a children's hearing under section 44(7) of the 1968 Act(a) which shall apply as if the reference to a transfer under section 44(6) of the 1968 Act included a reference to a placement under this regulation.

Children in care under Part II of the 1968 Act—interim detention

7.—(1) A child who is in care under Part II of the 1968 Act may not be placed in secure accommodation unless the director of social work of the local authority in whose care the child is, or, where the child is in the care of a voluntary organisation, in whose area the child is being cared for, and the person in charge of the residential establishment providing the secure accommodation are satisfied with respect to the matters referred to and mentioned at regulation 6(1)(a) and (b) above in relation to the child.

- (2) On a child being placed in secure accommodation under paragraph (1) above, the director of social work of the local authority shall—
- (a) forthwith, in writing, inform the child's parent and the reporter accordingly, and in addition so inform the child (in a manner appropriate to his age and understanding) and his parent of the right under regulation 10 below to require that the child's case be brought before a children's hearing within a shorter period than would otherwise apply by virtue of regulation 5 above; and
 - (b) not later than 48 hours from the time of that placement, refer the child's case to the reporter and inform the reporter in writing of—
 - (i) that placement;
 - (ii) the reasons which give the director of social work and that person

(a) 1968 c.49.

- in charge cause to believe that the child may be in need of compulsory measures of care under Part III of the 1968 Act;
- (iii) the reasons by reference to which the director of social work and that person in charge are satisfied with respect to the matters referred to and mentioned at regulation 6(1)(a) and (b) above; and
 - (iv) the views of the director of social work and that person in charge as to the need for the child's placement in secure accommodation to extend beyond a period of 72 hours from the time of the child being so placed.

8.—(1) On receipt by the reporter of the referral and information under regulation 7(2)(b) above and within 72 hours of the time of the child's placement in secure accommodation under regulation 7 above, the reporter shall consider and proceed, subject to paragraphs (2) and (3) hereof, with the child's case in accordance with sections 38 and 39 of the 1968 Act.

(2) Where the reporter decides—

- (a) under section 39(1) of that Act, that no further action on the child's case is required; or
- (b) under section 39(2) of that Act, that the proper course is to refer the child's case to the local authority with a view to arrangements for advice, guidance and assistance under Part II of that Act,

he shall, within those 72 hours, inform the local authority accordingly and that authority shall thereupon arrange for the child's release forthwith from secure accommodation and for the child's parent to be informed of his release.

(3) Where under section 39(3) of that Act, it appears to the reporter that the child is in need of compulsory measures of care the reporter shall arrange for a children's hearing to sit and consider the child's case within the period of 7 days, whether consecutive, or as the case may be, in aggregate, mentioned in regulation 5 above, and section 39(3) and (4) shall have effect accordingly.

Children cared for under other enactments—interim detention

9.—(1) Regulations 5, 7 and 8 shall apply to a child being cared for by a local authority by virtue of any of the enactments specified in paragraph (2) below, as they apply in relation to a child in care under Part II of the 1968 Act.

(2) The enactments specified for the purposes of paragraph (1) above are—

- (a) Section 43 of the Adoption Act 1958(a);
- (b) Section 10(1) and (4) of the Matrimonial Proceedings (Children) Act 1958(b);

(a) 1958 c.5; section 43 was amended by the Social Work (Scotland) Act 1968 (c.49), Schedule 1, paragraph 40.

(b) 1958 c.40; subsection (4) was substituted by the Social Work (Scotland) Act 1968, Schedule 8, paragraph 42.

- (c) Section 7(4) of the Children Act 1958(a);
- (d) Section 11(1) and (5) of the Guardianship Act 1973(b);
- (e) Section 17 of the Children Act 1975(c).

Right to require shorter period

10. A child placed in secure accommodation under regulation 6, 7 or 9 above, or his parent, may in writing require that the reporter, where he is to bring the child's case before a children's hearing, do so within a shorter period than the 7 days specified in regulation 5 above.

Procedural

11. An authorisation by a children's hearing under section 58B(3) of the 1968 Act(d) with respect to detention of a child in secure accommodation shall be by warrant for a period not exceeding 21 days.

Review of secure accommodation condition

12. Subject to the provisions of section 58C of the 1968 Act, where—

- (a) a condition imposed under section 58A(3) of the 1968 Act with respect to a child's residence in secure accommodation has been in effect for more than 3 months; but
- (b) the child has not been placed in secure accommodation by virtue thereof throughout a period of 3 months immediately preceding the written requirement after mentioned,

the child or his parent may, in writing, require the reporter under section 48(5) of the 1968 Act to have the condition reviewed by a children's hearing within 7 days of receipt by the reporter of that written requirement.

Children cared for under the 1975 Act

13. Where a child—

- (a) is committed to a local authority under section 23, 24 or 297 of the 1975 Act(e), he may not, in pursuance thereof, be placed or detained in secure accommodation as a place of safety under the section;
- (b) is to be detained under section 296 of that Act in a place of safety which is a residential establishment provided by a local authority, he may not, in pursuance thereof, be placed in secure accommodation provided in that establishment; or
- (c) is to be detained under section 406 of that Act, in a place chosen by a

(a) 1958 c.65; section 7(4) was substituted by the Health and Social Services and Social Security Adjudications Act 1983(c.41), Schedule 2, paragraph 2.

(b) 1973 c.29.

(c) 1975 c.72.

(d) Section 58B(3) was inserted into the 1968 Act by the Health and Social Services and Social Security Adjudications Act 1983, section 8(4).

(e) 1975 c.21.

local authority, he may not, in pursuance thereof, be placed in secure accommodation,

unless the director of social work of the authority and the person in charge of the residential establishment providing the secure accommodation are satisfied with respect to the matters referred to and mentioned at regulation 6(1)(a) and (b) above in relation to the child.

Secure accommodation as a place of safety under the 1968 Act

14.—(1) Where under section 37(2) of the 1968 Act(a), a child has been taken to, or has taken refuge in, a place of safety which is a residential establishment provided by a local authority, he may not be detained in any secure accommodation provided in that establishment unless the director of social work of that authority and the person in charge of that establishment are satisfied with respect to the matters referred to and mentioned at regulation 6(1)(a) and (b) above in relation to the child; and the child's parent shall forthwith be informed accordingly.

(2) Where the reporter, on being informed under the said section 37(2) of a child's detention in secure accommodation under paragraph (1) above, considers that the child may be in need of compulsory measures of care, he shall, notwithstanding the provisions of the said section 37, arrange a children's hearing to sit to consider the child's case not later than in the course of the first lawful day, or, where to do so would not be in the child's own interest, of the second lawful day, after the commencement of the child's detention.

15.—(1) Where—

- (a) under a warrant under section 37(4), (5) or (5A) or 40(4), (7), (8) or (8A) of the 1968 Act(b) (but not under section 58E(c) of that Act) a child is detained in a place of safety, which is a residential establishment provided by a local authority; and
- (b) subsequent to the issue of such a warrant it appears to the satisfaction of the director of social work of the local authority and the person in charge of the residential establishment that—
 - (i) the criteria specified in paragraph (a) or (b) of section 58A(3) of the 1968 Act pertain with respect to the child; and
 - (ii) it is necessary in the child's own interest that he be detained in secure accommodation,

the child may, subject to the following provisions of this regulation, be detained in secure accommodation; and the reporter and the child's parent shall forthwith be informed accordingly.

(2) Where—

- (a) a child is detained under paragraph (1) above in secure accommodation; and

(a) 1968 c.49; section 37(2) was substituted by the Children Act 1975 (c.72), section 83(b).

(b) Section 37(5) was amended by the Children Act 1975, section 83(c); section 37(5A) was inserted by section 83(d) of that Act; section 40(7) and (8) was substituted by section 40(a) and (b) of that Act; section 40(8A) was inserted by section 40(c) of that Act.

(c) Section 58E was inserted into the 1968 Act by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), section 8(4).

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(b) the warrant mentioned in that paragraph was issued under the said section 37(4) or, as the case may be, 40(4) or (7), of the 1968 Act,

the reporter shall, notwithstanding the period of detention authorised under the said section 37 or 40, arrange a children's hearing to sit to consider the child's case under—

- (i) section 40(6) of the 1968 Act, in a case where the warrant mentioned above was under section 40(4) of that Act; or
- (ii) section 37(5) or 40(8) of that Act, in a case where the warrant mentioned above was respectively under section 37(4) or 40(7) of that Act,

and the reporter shall arrange the hearing to sit not later than in the course of the first lawful day, or, where to do so would not be in the child's own interest, of the second lawful day, after the child's detention.

(3) Where—

- (a) a child is detained under paragraph (1) above in secure accommodation; and
- (b) the warrant mentioned in that paragraph was issued under section 37(5) or (5A) or 40(8) or (8A) of the 1968 Act,

the reporter shall, notwithstanding the period of detention authorised under the said section 37 or 40 forthwith apply to the sheriff for a warrant,

- (i) under section 37(5A) or 40(8A) of that Act, in a case where the warrant mentioned above was respectively under section 37(5) or 40(8) of that Act, if it appears to the reporter that the requirements of paragraphs (a) and (b) of that section 37(5A) or 40(8A), as the case may be, are met; or
- (ii) under section 37(5B) or 40(8B) of that Act (a), in a case where the warrant mentioned above was respectively under section 37(5A) or 40(8A), if it appears to the reporter that cause may be shown under that section 37(5B) or 40(8B), as the case may be.

(4) Where it does not appear to the reporter under paragraph (3) above that the requirements there referred to are met, or that cause may be shown, the child shall forthwith be released from the secure accommodation and the reporter shall inform the child's parent accordingly.

(5) Paragraph (4) above is without prejudice to the provisions of a warrant under the said section 37 or 40 otherwise authorising the child's detention in a place of safety.

Records to be kept in respect of a child in secure accommodation

16.—(1) The person in charge of the residential establishment providing the secure accommodation in which a child is placed, shall ensure that a record is kept with respect to the child's placement in such accommodation, which shall include a record of—

(a) Section 37(5B) was inserted into the 1968 Act by section 83(d), and section 40(8B) by section 84(c), of the Children Act 1975 (c.72).

- (a) the child's full name, sex, and date of birth;
- (b) the supervision requirement or other provision by reference to which the placement was made;
- (c) the date and time of his placement in secure accommodation, the reasons for, and the names of the persons authorising, the placement, and the address at which the child was living before the placement;
- (d) the name and address of each person to whom notice was given by virtue of regulation 6(2), 7(2), 9, 14 or 15 above of the child's placement;
- (e) reviews undertaken with respect to the placement by virtue of section 48 or 58C of the 1968 Act or regulation 12 above;
- (f) the date and time of his release, and his place of residence following release from secure accommodation, and the names of the persons authorising that release.

(2) These records shall be available for inspection by the Secretary of State who may require that copies of them be sent to him.

Transitional

17. Where, on the day before these regulations come into operation, accommodation has been provided for the purpose of restricting the liberty of children, it may continue to be used for that purpose for a period of 14 days after that day of coming into operation notwithstanding that during that period it has not been approved as secure accommodation by the Secretary of State under regulation 3 above.

18. In relation to children subject to a supervision requirement under section 44(1)(b) of the 1968 Act and whose liberty is, on the day these regulations come into operation, being restricted in accommodation to which regulation 17 above applies, these regulations shall have effect as from 14 days after that day.

Revocation

19. Rules 33 and 34 of the Approved Schools (Scotland) Rules 1961(a) are hereby revoked.

George Younger,
One of Her Majesty's
Principal Secretaries of State.

New St Andrew's House,
Edinburgh.
19th December 1983.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These regulations are concerned with the provision and use in Scotland of secure accommodation for restricting the liberty of children. They are consequential to the new sections 58A to 58G which section 8 of the Health and Social Services and Social Security Adjudications Act 1983 inserted into the Social Work (Scotland) Act 1968.

Before accommodation may be used to restrict a child's liberty it must be approved by the Secretary of State (regulation 3) and the child may not be detained there for longer than 7 days in total without the authority of a children's hearing or sheriff (regulation 5).

Regulation 6 sets out the standards which are to apply before a child subject to a supervision requirement, but without a condition authorising placement in secure accommodation, may be placed there until his case is reviewed by a children's hearing, and sets out the procedure to be followed. It requires that within 48 hours of the child being so placed, his case is to be referred to the reporter of the children's hearing and that within 7 days of that placement, the hearing are to review the case.

Regulations 7 and 8 make provision for the interim placement in secure accommodation of children in care under Part II of the Social Work (Scotland) Act 1968. They apply similar standards to those for children already under supervision, require that the reporter decide within 72 hours of that interim placement whether to refer the child's case to a hearing, and require the child's immediate release from secure accommodation where the reporter decides not to refer.

Where he does refer the case to the hearing, they must consider it within 7 days of the child being placed in the secure accommodation. Regulation 9 applies the provision to children in care under other enactments.

A child and his parents have the right to require that the hearing consider a case sooner than the 7 days prescribed (regulation 10) and to have a condition relating to secure accommodation comprised in a supervision requirement reviewed in specific circumstances (regulation 12).

Other matters relating to a child's placement in secure accommodation are covered by regulation 4 (welfare of child), 11 (warrants) and 16 (records in secure accommodation).

Regulations 13 to 15 deal with children being cared for by local authorities in secure accommodation under committal from courts under the Criminal Procedure (Scotland) Act 1975 or by virtue of place of safety warrants under the Social Work (Scotland) Act 1968.

Regulations 17 to 19 contain transitional and revocation provisions.

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