
STATUTORY INSTRUMENTS

1996 No. 3255 (S.245)

**CHILDREN AND YOUNG PERSONS
RESIDENTIAL AND OTHER
ESTABLISHMENTS, SCOTLAND**

The Secure Accommodation (Scotland) Regulations 1996

Made - - - - *18th December 1996*
Laid before Parliament *31st December 1996*
Coming into force - - *1st April 1997*

The Secretary of State, in exercise of the powers conferred on him by section 60(1) of the Social Work (Scotland) Act 1968(1), section 75 of the Children (Scotland) Act 1995(2), and section 44(5) of the Criminal Procedure (Scotland) Act 1995(3), and of all other powers enabling him in that behalf, and after consulting the Council on Tribunals, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Secure Accommodation (Scotland) Regulations 1996 and shall come into force on 1st April 1997.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—
“the Act” means the Children (Scotland) Act 1995;
“the 1968 Act” means the Social Work (Scotland) Act 1968;
“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995;
“the 1996 Regulations” means the Residential Establishments-Child Care (Scotland) Regulations 1996(4);
“the appropriate local authority” has the meaning given to that term in section 44(11) of the 1995 Act;

(1) 1968 c. 49; section 60(1) was amended by section 8(3) of the Health and Social Services and Social Security Adjudications Act 1983 (c. 41).
(2) 1995 c. 36.
(3) 1995 c. 46.
(4) S.I.1996/3256.

“children’s hearing” has the meaning given to that term by section 93(1) of the Act;

“day” includes a part of a day;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(5);

“managers” means–

- (a) in the case of a local authority, those officers having delegated powers under section 56 of the Local Government (Scotland) Act 1973(6) for the management of the residential establishment providing secure accommodation;
- (b) in any other case those who are responsible for management of the residential establishment providing secure accommodation;

“parent” has the meaning given to that term by section 15(1) of the Act and also includes any person who is not a parent of the child but who has parental responsibilities;

“person in charge” means the person in charge of a residential establishment providing secure accommodation who is responsible to the managers of that establishment;

“Principal Reporter” has the meaning given to that term by section 93(1) of the Act;

“relevant person” has the meaning given to that term by the meaning in section 93(2)(b) of the Act;

“residential establishment” has the meaning given to that term by section 93(1) of the Act;

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

“supervision requirement” has the meaning given to that term by section 93(1) of the Act.

(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) In these Regulations any reference to a numbered regulation is to the regulation in these Regulations bearing that number and any reference in a regulation to a numbered paragraph is to the paragraph of that regulation bearing that number.

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.—(1) Subject to paragraph (2), the managers in consultation with the person in charge shall ensure that the welfare of a child placed and kept in such accommodation is safeguarded and promoted and that the child receives such provision for his education, development and control as is conducive to his best interests.

(2) For the purposes of paragraph (1) the managers and person in charge shall comply with such requirements of Part II of the 1996 Regulations as apply to them and the establishments for which they are responsible.

(5) 1994 c. 39; section 2 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 232.

(6) 1973 c. 65; section 56 was amended by the Local Government and Planning (Scotland) Act 1982 (c. 43), section 32, the Abolition of Domestic Rates Etc. (Scotland) Act 1987 (c. 47), section 28, the Local Government Finance Act 1992 (c. 14), Schedule 13, paragraph 35, the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 92, and the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 22.

Maximum period in secure accommodation under the Act without authority

5. Subject to the provisions of regulation 8 the maximum period during which a child may be kept under the Act or the 1995 Act in secure accommodation without the authority of a children's hearing, or, as the case may be, of the sheriff, is an aggregate of 72 hours (whether or not consecutive) in any period of 28 consecutive days.

Children subject to certain supervision requirements - interim placement

6.—(1) A child who is subject to a supervision requirement imposed under section 70 of the Act, but not subject to a condition imposed under subsection (9) of that section that he be liable to be placed and kept in secure accommodation, may not be placed in secure accommodation unless the chief social work officer of the local authority required to give effect to the supervision requirement and the person in charge are satisfied—

(a) that the criteria specified in paragraph (a) or (b) of section 70(10) of the Act are satisfied with respect to the child; and

(b) that it is in the child's best interests that he be placed and kept in secure accommodation, and the chief social work officer shall, in addition, satisfy himself, in relation to the placing of the child in the residential establishment providing the secure accommodation, that the placement in that establishment is appropriate to the child's needs having regard to its statement of functions and objectives.

(2) On a child being placed in secure accommodation under paragraph (1), the chief social work officer of the local authority shall—

(a) forthwith in writing inform any relevant person in relation to the child and the Principal Reporter accordingly, and shall, in addition, so inform the child (in a manner appropriate to his age and understanding); and

(b) forthwith, and in any event not later than 24 hours from the time of that placement (whether or not the child is still held in secure accommodation) refer the case to the Principal Reporter and inform him in writing of—

(i) the details of that placement and any subsequent placement or release;

(ii) the reasons why at the time of placement the chief social work officer and the person in charge were satisfied with respect to the matters referred to and mentioned in paragraph (1) of this regulation and the reasons why at the time of writing they continue to be so satisfied or otherwise; and

(iii) the views of the chief social work officer and the person in charge as to the need or otherwise for the child's detention in secure accommodation;

(3) On receipt by the Principal Reporter of the referral and information under paragraph (2)(b), he shall arrange for a review of the child's case by a children's hearing under section 73(8) of the Act which shall apply as if the reference to a transfer under section 72(2) of the Act included a reference to a placement under this regulation.

(4) The review of the child's case referred to in paragraph (3) shall take place no later than 72 hours from the time of the placement of the child in secure accommodation.

Children looked after by local authority under Part II of the Act - interim placement

7.—(1) A child who is being looked after by a local authority under chapters 1 or 4 of Part II of the Act may not be placed in secure accommodation unless the chief social work officer of the authority looking after the child and the person in charge are each satisfied with respect to the same matters as to which regulation 6(1) requires them to be satisfied and that the child may be in need of compulsory measures of supervision under Part II of the Act.

(2) On a child being placed in secure accommodation under paragraph (1), the chief social work officer of the local authority shall—

- (a) forthwith, in writing, inform any relevant person in relation to the child and the Principal Reporter accordingly;
- (b) forthwith and in any event not later than 24 hours from the time of that placement (whether or not the child is still held in secure accommodation) refer the child's case to the Principal Reporter and inform him in writing of—
 - (i) the details of that placement and any subsequent placement or release;
 - (ii) the reasons why at the time of placement the chief social work officer and the person in charge had cause to believe that the child may be in need of compulsory measures of supervision under Part II of the Act and the reasons why at the time of writing they still have such cause or otherwise;
 - (iii) the reasons why at the time of placement the chief social work officer and the person in charge were satisfied with respect to the matters referred to and mentioned in regulation 6(1) of these Regulations and the reasons why at the time of writing they continue to be so satisfied or otherwise; and
 - (iv) the views of the chief social work officer and the person in charge as to the need or otherwise for the child's detention in secure accommodation.

8.—(1) On receipt by the Principal Reporter of the referral and information under regulation 7(2) (b) and within 72 hours of the time of the child's placement in secure accommodation under regulation 7, the Principal Reporter shall consider and proceed, subject to paragraphs (2), (3) and (4), with the child's case in accordance with section 56 of the Act.

(2) Where the Principal Reporter decides under section 56(4) of the Act that a children's hearing does not require to be arranged—

- (a) he shall, within those 72 hours, inform the local authority accordingly and that authority shall thereupon arrange for the child's discharge (if not already discharged) forthwith from secure accommodation and for any relevant person (not already informed) to be informed of his discharge; and
- (b) if he considers 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 Chapter 1 of Part II of the Act (support for children and their families), he shall, within these 72 hours, inform the authority accordingly.

(3) Subject to paragraph (4), where under section 56(6) of the Act, it appears to the Principal Reporter that the child is in need of compulsory measures of supervision the Principal Reporter shall arrange for a children's hearing to consider the child's case within 72 hours of the time of the child's placement in secure accommodation under regulation 7, and section 56(6) and (7) shall have effect accordingly.

(4) Notwithstanding the provisions of paragraph (3), the Principal Reporter shall have a further period of 24 hours in addition to the 72 hours referred to in paragraph (3), to fulfil his obligation thereunder if it is not reasonably practicable for him to arrange the hearing to convene within the 72 hours or for him within the 72 hours to state the grounds for referral.

Secure accommodation as a place of safety under the Act

9.—(1) In cases (other than those in which a children's hearing or court has previously authorised detention in secure accommodation as a condition of a warrant or order) where—

- (a) further to a warrant issued or continued by a children's hearing under section 45(4) or (5), 63(5), 66(1) or (5), 69(4) or (7) of the Act or an order or warrant issued by the sheriff

under 67(1), 68(6) or 68(10) of the Act, a child is taken to and kept in a place of safety provided by a local authority; and

- (b) subsequent to the issue of such a warrant or order the chief social work officer of the local authority and the person in charge are satisfied with respect to the same matters referred to in regulation 6(1),

the child may, subject to the following provisions of this regulation, be placed and kept in secure accommodation; and where the child is so placed, the Principal Reporter and any relevant person shall be informed in writing forthwith of this.

(2) Where a child has been placed in secure accommodation in accordance with paragraph (1), the Principal Reporter shall—

- (a) where a warrant in respect of the child has been issued under sections 45(4) or 45(5) of the Act, arrange under section 65 of the Act a children’s hearing to consider the child’s case;
- (b) where a warrant in respect of the child has been issued under sections 63(5) or 66(1) or 66(5) of the Act, arrange under section 66(5) of the Act a children’s hearing to consider the child’s case within 72 hours of the child being placed in secure accommodation;
- (c) where a warrant in respect of the child has been issued under sections 69(4) or 69(7) of the Act, arrange under section 69(1) of the Act a children’s hearing to consider the child’s case within 72 hours of the child being placed in secure accommodation;
- (d) where an order in respect of the child has been granted under sections 68(6) or 68(10) of the Act, arrange under sections 66(1) (notwithstanding a warrant under section 68(6) having been issued previously) or 69(1) respectively of the Act a children’s hearing to consider the child’s case within 72 hours of the child being placed in secure accommodation; and
- (e) where a warrant has been issued in respect of the child under section 67(1) of the Act, apply within 72 hours of the child being placed in secure accommodation to the sheriff for a warrant under section 67(1) in respect of the child.

Information provided to a children’s hearing by a local authority in relation to the use of secure accommodation

10. A local authority may submit a report in writing to the children’s hearing recommending that a child be placed in a named residential establishment providing secure accommodation subject to a condition or order that he is liable to be kept in secure accommodation only if they are satisfied that the matters referred to in regulation 6(1)(a) and (b) are met.

Review of supervision requirement

11.—(1) Where a children’s hearing imposes or continues a condition under section 70(9) of the Act, either on the making of a supervision requirement under section 70(1) of the Act or the continuation of a supervision requirement under section 73(9)(e) of that Act, the Principal Reporter shall arrange a review of the supervision requirement under section 73(8) within 3 months of the condition under section 70(9) being made or continued.

(2) A review held under regulation 12(1) shall be considered a review held for the purposes of paragraph (1).

12.—(1) A child subject to a supervision requirement with a condition imposed under section 70(9) of the Act or any relevant person may, in writing, require the Principal Reporter to make arrangements under section 73 of the Act to have the supervision requirement reviewed by a children’s hearing if in the preceding 6 weeks the child has not been placed in secure accommodation by virtue of that condition.

(2) Where a notice is given to the Principal Reporter by a child or any relevant person under paragraph (1), the Principal Reporter shall arrange a children's hearing within 21 days of the receipt by him of the notice.

Child detained under section 44 of Criminal Procedure (Scotland) Act 1995: use of secure accommodation

13.—(1) A child who is detained in residential accommodation provided by a local authority in accordance with an order under section 44 of the 1995 Act may be detained in secure accommodation only where the chief social work officer of the appropriate local authority and the person in charge of the residential establishment providing that secure accommodation are satisfied with respect to the same matters as to which regulation 6 requires them to be satisfied.

(2) Where paragraph (1) applies, the child shall be placed and subject to regulation 15 kept in secure accommodation only at such time and for so long as the person in charge with the agreement of the chief social work officer considers necessary.

Children otherwise dealt with under the Criminal Procedure (Scotland) Act 1995

14.—(1) Where a child—

- (a) is committed to a local authority under section 51(1)(a)(ii) or 51(4)(b) of the 1995 Act to be detained in a place of safety chosen by the authority, 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 kept in a place of safety under section 43 of the 1995 Act 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 216(7) of the 1995 Act, in a place chosen by a local authority, he may not, in pursuance thereof, be placed in secure accommodation,

unless the chief social work officer of the authority and the person in charge are each satisfied with respect to the same matters as to which regulation 6 requires them to be satisfied in relation to the child.

(2) Where paragraph (1) applies, the child shall be placed and subject to regulation 15 kept in secure accommodation only at such time and for so long as the person in charge with the agreement of the chief social work officer considers necessary.

Review of the use of secure accommodation

15.—(1) The chief social work officer of the appropriate local authority, in consultation with the person in charge, shall ensure that, where a child is detained in secure accommodation by virtue of regulations 13 or 14, arrangements are made by them to review the case of such a child—

- (a) within 7 days of the child's placement in secure accommodation (whether or not the child is still held in secure accommodation);
- (b) at such times as appear to them necessary or appropriate in the light of the child's progress; and
- (c) in any event at intervals of not more than 3 months;

and the child shall be detained in secure accommodation only where, upon such review, the chief social work officer and the person in charge are satisfied that it is in the best interests of the child.

(2) In conducting such a review the chief social work officer and the person in charge shall have regard to all relevant circumstances including—

- (a) the matters specified at regulation 6(1); and

(b) where practicable, the views of the child and the opinion of his parents.

(3) In conducting such a review the chief social work officer and the person in charge shall obtain the advice in relation to the detention of the child in secure accommodation of a secure placement review panel, which shall be set up by any local authority responsible for the management of a residential establishment providing secure accommodation (failing which the local authority in whose area the establishment is situated) and consist of at least 3 persons—

- (a) none of whom may be the chief social work officer or the person in charge; and
- (b) one of whom must be an independent person who is neither an office holder nor an employee of a local authority or the residential establishment.

(4) The chief social work officer and the person in charge shall provide the secure placement review panel with all the relevant facts of the child's case available to them in order that the secure placement review panel can give informed advice.

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

16. The managers, in consultation with the person in charge, shall ensure that a record is kept with respect to the child's placement in such accommodation, which shall include a record of—

- (a) the child's full name, sex, and date of birth;
- (b) the supervision requirement, order 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 this, 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 these Regulations of the child's placement;
- (e) reviews undertaken with respect to the placement by virtue of section 73 of the Act;
- (f) the date and time of his discharge, and his place of residence following discharge from secure accommodation, and the names of the persons authorising that discharge.

St Andrew's House,
Edinburgh
18th December 1996

James Douglas-Hamilton
Minister of State, Scottish Office

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are concerned with the use of secure accommodation for any child who is being looked after by a local authority or for whom the local authority is responsible under Criminal Procedure legislation. They will replace the four sets of secure accommodation regulations which are extant.

The main changes introduced by these Regulations are a reduction of the maximum period during which a child may be kept in secure accommodation without the authority of a children's hearing or a sheriff from 7 days to 72 hours and a corresponding shorter period within which a children's hearing shall be convened to consider the child's case. They make provision for the establishment of a Secure Placement Review Panel by local authorities responsible for secure accommodation to review the case of any child detained in secure accommodation by local authorities by virtue of the Criminal Procedure (Scotland) Act 1995.