

CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 17 – Other Reforms

Detention of children in secure accommodation

Section 91 – Appeal against detention of child in secure accommodation

268. This section amends the Criminal Procedure (Scotland) Act 1995 (“the CPSA”) to insert a new provision, section 44A. This new section provides that a child or relevant person(s) in relation to the child, or the child and one or more relevant persons jointly or 2 or more relevant persons jointly, may appeal to the sheriff against a local authority decision to detain the child in secure accommodation following an order having been made to detain the child in residential accommodation under section 44 of the CPSA. New section 44A(3) provides that an appeal hearing under this new section cannot be held in open court. New section 44A(4) provides that the sheriff may either confirm the decision to detain the child in secure accommodation or quash the decision and direct the local authority to move the child to residential accommodation which is not secure accommodation instead.
269. New section 44A(5) allows the Scottish Ministers by regulations to make further provisions about appeals. These regulations, which are subject to affirmative procedure, may specify the period within which appeals should be made, make provision about the hearing of evidence during an appeal and provide for appeals to the sheriff principal and Court of Session against the determination of an appeal.
270. “Relevant person” is defined as any person who is a relevant person in relation to the child for the purposes of the Children’s Hearings (Scotland) Act 2011, including any person who is deemed to be a relevant person in relation to the child by virtue of sections 81(3), 160(4)(b) or 164(6) of the 2011 Act.
271. This new procedure reflects appeal rights in the 2011 Act. Section 151 of that Act sets out the ways in which secure accommodation authorisations are implemented where a children’s hearing makes a relevant order or warrant (including a compulsory supervision order) in relation to a child and section 162 of that Act provides for an appeal to the sheriff against a decision to implement a secure accommodation authorisation, including by one or more relevant persons in relation to a child.
272. Secure accommodation in this section has the meaning assigned to it in Part II of the Children (Scotland) Act 1995.

Children's legal aid

Section 92 – Power of Scottish Ministers to modify circumstances in which children's legal aid to be made available

273. This section inserts a new section 28LA into the Legal Aid (Scotland) Act 1986 (“the 1986 Act”). Section 28L of the 1986 Act allows Scottish Ministers to make children's legal aid available by regulations for specified children's hearings under the 2011 Act to specified persons. The purpose of section 28LA is to allow Scottish Ministers to make similar regulations in respect of court proceedings under the 2011 Act. Those regulations would be subject to affirmative procedure.
274. The same tests would apply to similar circumstances whether children's legal aid is provided by means of section 28LA or another section of the Act. In relation to court proceedings, the eligibility tests for a person (other than a child) are whether it is reasonable and whether undue hardship would occur if state-funded representation is not provided. In relation to court proceedings where the person is a child, the eligibility tests are reasonableness, undue hardship, and whether it is in the best interests of that child for children's legal aid to be made available. If the court proceedings are an appeal, the person (whether or not they are a child) must satisfy an additional test of substantial grounds for making or responding to that appeal.

Provision of school meals

Section 93 – Provision of free school lunches

275. This section amends section 53 of the 1980 Act” to (i) impose a duty on education authorities to provide certain pupils (prescribed by regulations) with school lunches free of charge; and (ii) give education authorities the power to provide school lunches free of charge to pupils who satisfy such conditions as the authority thinks fit.
276. Subsections (2) to (5) remove the provisions which currently require authorities to charge for school lunches and remove the current limit on the authority's power to provide only food and drink which is not a school lunch free of charge. Subsection (2) repeals section 53(2) of the 1980 Act with the effect that there is no longer a requirement on education authorities to charge pupils for a school lunch. Instead they have the power to provide school lunches free of charge.
277. Subsection (3) inserts “which the authority are required to provide by virtue of subsection (3)” onto the end of section 53(2A) of the 1980 Act. As section 53(2B) of the 1980 Act gives local authorities the power to provide any food or drink free of charge or charge pupils for any food or drink, including school lunches, the effect of this insertion is to make it clear that subsection (2B) only applies to a school lunch which is not provided pursuant to section 53(3); the provisions which confer eligibility for free school lunches and which the authority is under a duty to provide free of charge.
278. Subsection (4) removes the limitation on authorities as to the time of day when they provide food or drink free of charge from section 53(2C)(b) of the 1980 Act, ensuring that can food or drink can be provided free of charge at any time of the day.
279. Subsection (5) removes reference to subsection (2) from section 53(2D) of the 1980 Act consequential on the repeal of section 53(2) of the 1980 Act by section 93(2) which removes the obligation on authorities to charge for school lunches.
280. The purpose of subsection (6) is to insert a new subsection (3)(c) into section 53 of the 1980 Act. Section 53(3) contains the provisions which confer eligibility for free school lunches which the authority is under a duty to provide free of charge. The effect of the new subsection is to introduce a further enabling power so that the Scottish Ministers may prescribe the description of pupils (whether that be by reference to their yearly

stage of education or such other description) to whom education authorities are obliged to provide free school lunches.

Licensing of child performances

Section 94 – Extension of licensing of child performances to children under 14

281. This section repeals section 38 of the Children and Young Persons Act 1963 (“the 1963 Act”). It has the effect of removing restrictions in that section which limit children under the age of 14 from being granted a performance licence under section 37 of the 1963 Act, except where the child is dancing in a ballet or acting and the part can only be taken by a child of that age, or where the performance is wholly or mainly musical or consists only of opera and ballet.

Wellbeing

Section 95 – Consideration of wellbeing in exercising certain functions

282. This section inserts a new section 23A after section 23 of the Children (Scotland) Act 1995.
283. Subsection (1) of the new section 23A applies where a local authority is exercising a function under or by the virtue of section 17, 22 or 26A of the 1995 Act.
284. Subsection (2) provides that the local authority must have regard to the general principle that their functions in relation to children and young people should be exercised in a way which is designed to promote, safeguard and support their wellbeing.
285. Subsection (3) provides that for the purposes of the previous subsection the local authority is to assess the wellbeing of a child or young person by referring to the extent to which the wellbeing indicators in section 96(2) are or would be satisfied in relation to them.
286. Subsection (4) provides that a local authority is to have regard to the guidance issued under section 96(3) of the Children and Young People (Scotland) Act 2014 when assessing the wellbeing of the child or young person.
287. Subsection (5) defines “the 2014 Act” as the Children and Young People (Scotland) Act 2014.