

Draft Regulations laid before the Scottish Parliament under section 44A(7) of the Criminal Procedure (Scotland) Act 1995 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2016 No.

CHILDREN AND YOUNG PERSONS

The Secure Accommodation (Scotland)
Amendment Regulations 2016

Made - - - - 2016
Coming into force - - 1st February 2016

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 44A(5) and (6) of the Criminal Procedure (Scotland) Act 1995⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 44A(7) 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 Secure Accommodation (Scotland) Amendment Regulations 2016 and come into force on 1st February 2016.

Application

2. These Regulations apply to a decision mentioned in section 44A(1) of the Criminal Procedure (Scotland) Act 1995 where that decision is made on or after the date on which these Regulations come into force.

Appeal against decision to detain a child in secure accommodation

3. After regulation 11 of the Secure Accommodation (Scotland) Regulations 2013⁽²⁾ insert—

“Appeal against decision to detain a child in secure accommodation

11A.—(1) This regulation applies where an appeal under section 44A (appeal against detention in secure accommodation) of the Criminal Procedure Act is made.

(1) 1995 c.46. Section 44A was inserted by section 91 of the Children and Young People (Scotland) Act 2014 (asp 8).
(2) S.S.I. 2013/205 as amended by S.S.I. 2015/20.

- (2) The appeal must be—
 - (a) made before the expiry of 21 days beginning with the day on which the determination is made under regulation 11(2); and
 - (b) heard and disposed of before the expiry of the period of 3 days beginning on 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) any other person who the sheriff considers may give additional material evidence.
- (5) Before determining the appeal the sheriff must, so far as practicable and taking account of the age and maturity of the child—
 - (a) give the child an opportunity to indicate whether they wish to express any views;
 - (b) if the child wishes to do so, give them an opportunity to express their views; and
 - (c) have regard to any views expressed.
- (6) Without prejudice to the generality of paragraph (5), a child who is aged 12 or over is presumed to be of sufficient age and maturity to form a view for the purposes of that paragraph.
- (7) The sheriff may require any person to give a report to the sheriff for the purpose of assisting the sheriff in determining the appeal.”.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make further provision about appeals against a decision to detain a child in secure accommodation in pursuance of an order made by a sheriff under section 44 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”). Section 44A of the 1995 Act (as inserted by section 91 of the Children and Young People (Scotland) Act 2014) creates a right of appeal against a decision to place a child in secure accommodation, following an order being made by the sheriff under section 44 that the child should be detained in residential accommodation. The Regulations amend the Secure Accommodation (Scotland) Regulations 2013 (“the 2013 Regulations”), which currently allow for the placement of children in secure accommodation in these circumstances.

Regulation 2 provides that the Regulations only apply in relation to decisions to place a child in secure accommodation which were made on or after the Regulations come into force.

Regulation 3 inserts a new regulation 11A into the 2013 Regulations, making further provision about appeals made under section 44A of the 1995 Act, and in particular: the timescales for the making and disposal of an appeal, the hearing of evidence in relation to an appeal, and the obtaining of the child’s views in relation to the appeal.