
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2022 No.

**The Cross-border Placements (Effect of Deprivation
of Liberty Orders) (Scotland) Regulations 2022**

Application and modifications of the Act

13.—(1) Despite regulation 3(1), references in the Act to a compulsory supervision order do not include reference to a deprivation of liberty order which has effect as provided for in that regulation, except in the following sections (as modified, including by way of substitution, by this regulation)—

- (a) sections 143 to 148 (implementation of orders), and
- (b) sections 168 to 171 (enforcement of orders).

(2) The following paragraphs provide for further modifications of the Act as it applies, by virtue of a deprivation of liberty order having effect as provided for in regulation 3(1), in relation to such an order.

(3) In section 143 (transfers in cases of urgent necessity)—

- (a) for subsection (1) substitute—

“(1) This section applies where a child is, under the authority of a compulsory supervision order, residing in a residential care setting.”,

- (b) after subsection (2) insert—

“(3) The chief social work officer must, as soon as reasonably practicable after the child is transferred as mentioned in subsection (2), inform the implementation authority of the transfer.

(4) Subsection (5) applies where the child is in another place, having been transferred there under subsection (2).

(5) The compulsory supervision order to which the child is subject applies in relation to that other place as it applies in relation to the residential care setting in which the child was residing prior to the transfer, but only until the earlier of the following occurrences—

- (a) the end of the period of 14 days beginning with the day on which the child was transferred to the other place under subsection (2),
- (b) the end of the day on which the review mentioned in regulation 5(2) (as modified by regulation 12(3)) of the Children’s Hearings (Scotland) Act 2011 (Effect of Deprivation of Liberty Orders) Regulations 2022 takes place.”.

(4) For section 144 substitute—

**“Implementation of compulsory supervision order etc.: general duties of
implementation authority**

144. The implementation authority in relation to a compulsory supervision order must comply with—

- (a) any requirements imposed on it by the order, and

- (b) any undertaking given by the authority in accordance with regulation 7 of the Children’s Hearings (Scotland) Act 2011 (Effect of Deprivation of Liberty Orders) Regulations 2022 in relation to the child who is the subject of the order.”.
- (5) In section 145 (duty where child requires to reside in certain place)—
 - (a) for subsection (1) substitute—
 - “(1) Subsection (2) applies where a child is, under the authority of a compulsory supervision order, residing in a residential care setting.”,
 - (b) in subsection (2), for “accommodation” substitute “setting”.
- (6) For sections 146 to 148 substitute—

“Breach of duties imposed by sections 144 and 145

146.—(1) This section applies where it appears to the Scottish Ministers that the implementation authority is in breach of a duty in relation to the child imposed on the authority under section 144 or 145.

(2) The Scottish Ministers may give the authority a notice in accordance with subsection (3) of an intended application by them to enforce the authority’s duty.

(3) The notice must—

- (a) set out the respects in which the authority is in breach of its duty in relation to the child, and
- (b) state that if the authority does not perform that duty before the expiry of the period of 21 days beginning with the day on which the notice is given, the Scottish Ministers may make an application to enforce the authority’s duty.

Application for order

147.—(1) The Scottish Ministers may apply to the relevant sheriff for an order to enforce the implementation authority’s duty in relation to the child.

(2) The relevant sheriff is a sheriff of the sheriffdom in which the principal office of the receiving local authority (in relation to the child to whom the duty mentioned in subsection (1) applies) is situated.

(3) The Scottish Ministers may not make an application under this section unless—

- (a) the implementation authority has been given a notice under section 146(2), and
- (b) the authority has failed to carry out the duty within the period specified in the notice.

(4) The application is to be made by way of summary application.

Order for enforcement

148.—(1) The sheriff may, on an application by the Scottish Ministers under section 147, make an order requiring the implementation authority that is in breach of a duty imposed under section 144 or 145 to carry out the duty.

(2) Such an order is final.”

(7) In section 168 (enforcement of orders)—

- (a) in subsection (1), for the words from “relevant” to “place” where it first occurs substitute “compulsory supervision order which authorises the deprivation of liberty of the child who is the subject of the order in a residential care setting”,
- (b) omit subsection (3).

- (8) In section 169 (child absconding from place)—
- (a) in subsection (1)—
 - (i) for paragraph (a) substitute—
 - “(a) a child who is the subject of a compulsory supervision order which authorises the deprivation of liberty of the child in a residential care setting resides in that setting (or another place to which the child has been transferred under section 143(2)),”
 - (ii) in paragraph (b), for “place”, in both places it appears, substitute “setting (or other place)”
 - (b) in subsection (2), for “place” substitute “setting (or other place)”
 - (c) omit subsections (5) and (6).
- (9) In section 170 (child absconding from person), omit subsections (5) and (6).
- (10) In section 171 (offences related to absconding)—
- (a) in subsection (1)—
 - (i) for paragraph (a) substitute—
 - “(a) a child who is the subject of a compulsory supervision order which authorises the deprivation of liberty of the child in a residential care setting resides in that setting (or another place to which the child has been transferred under section 143(2)),”
 - (ii) in paragraph (b) omit “or warrant”
 - (b) in subsection (2), for “place” in each of paragraphs (a), (b) and (c), substitute “setting, other place”.
- (11) For section 199 (meaning of “child”) substitute—

“Meaning of “child”

199. In this Act, “child” means a person who is under the age of 18 years.”.

- (12) In section 202(1) (interpretation)—
- (a) for the definition of “implementation authority” substitute—
 - ““implementation authority” means—
 - (a) the local authority (within the meaning of section 105(1) of the Children Act 1989 as it relates to England and Wales) in England or Wales which applied for the order which has effect as if it were a compulsory supervision order by virtue of regulation 3(1) of the Children’s Hearings (Scotland) Act 2011 (Effect of Deprivation of Liberty Orders) Regulations 2022, or, as the case may be,
 - (b) the Health and Social Care trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991 which so applied,”
- (b) for the definition of “chief social work officer” substitute—
 - ““chief social work officer” means an officer appointed in accordance with section 3 of the Social Work (Scotland) Act 1968 by the receiving local authority,”
- (c) at the appropriate place in alphabetical order, insert the following definitions—
 - ““receiving local authority” means the local authority in whose area a child is residing under the authority of a compulsory supervision order which they are subject to by virtue of regulation 3(1) of Children’s Hearings (Scotland) Act 2011 (Effect of Deprivation of Liberty Orders) Regulations 2022,”

““residential care setting” means a residential institution in Scotland which provides day-to-day care for children,”

““residential institution” means an establishment (whether managed by a local authority, a voluntary organisation or any other person) which—

- (a) is not secure accommodation (within the meaning of paragraph (a) of the definition of that term),
- (b) provides residential accommodation for children in order to safeguard or promote their welfare or otherwise to protect or further their interests, and
- (c) is managed by a care service which is registered by Social Care and Social Work Scotland in accordance with Chapter 3 of the Public Services Reform (Scotland) Act 2010.”.