

Draft Regulations laid before the Scottish Parliament under section 197(2) of the Children's Hearings (Scotland) Act 2011, for approval by the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2013 No.

CHILDREN AND YOUNG PERSONS

The Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013

*Made - - - -
Coming into force in accordance with section
regulation 1*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 34, 151(6), 153(1), 162(7) and (8) and 195 of the Children's Hearings (Scotland) Act 2011⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 197(2)⁽²⁾ 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 Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013 and come into force on the same day as section 151 (implementation of secure accommodation authorisation) of the Children's Hearings (Scotland) Act 2011.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Children's Hearings (Scotland) Act 2011;

“relevant person” includes a person who is to be treated as the child's relevant person by virtue of a decision under section 81(3) (determination of claim that person be deemed a relevant person), 160(4)(b) (appeal to sheriff against relevant person determination) or 164(6) (appeals to sheriff principal and Court of Session: relevant persons) of the Act.

(1) 2011 asp 1.

(2) The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). The Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

(2) In regulations 4, 6, 7 and 8 “head of unit” has the meaning given by section 151(3) of the Act (implementation of secure accommodation authorisation).

Written communications

3. Any decision or reasons for making a decision or any other type of communication made or given under these Regulations is a formal communication and section 193(2) to (4) applies to them as it does to other formal communications under the Act.

Decision to implement secure accommodation authorisation

4.—(1) This regulation applies where the chief social work officer requires to decide whether to implement a secure accommodation authorisation under section 151(3) of the Act (implementation of secure accommodation authorisation).

(2) Where paragraph (1) applies, the chief social work officer must, comply with the requirements in paragraph (3).

(3) The requirements are—

(a) to consult and take into account the views of—

- (i) the child, taking into account the age and maturity of the child;
- (ii) each relevant person in respect of the child;
- (iii) the head of unit;

(b) to assess—

- (i) whether one or more of the conditions specified in section 83(6) (compulsory supervision order), 87(4) (medical examination order) or 88(3) (warrant to secure attendance), of the Act continue to apply in respect of the child; and
- (ii) whether placement in secure accommodation would be in the child's best interests; and

(c) to take into account the decision to make the relevant order or warrant referred to in section 151(2) of the Act and the reasons for that decision.

(4) In this regulation, “head of unit” means the person in charge of the residential establishment containing the secure unit in which the child is to be placed.

Notification of decision

5.—(1) Where the chief social work officer carries out the requirements specified in regulation 4 and makes a decision whether to implement the secure accommodation authorisation, the chief social work officer must, within 72 hours of receiving the decision mentioned in regulation 4(3)(c) comply with the requirements at paragraph (2).

(2) The requirements are—

(a) to record—

- (i) the decision of the chief social work officer;
- (ii) the reasons for reaching that decision;
- (iii) the information obtained in carrying out the consultation requirements at regulation 4(3)(a);

(b) to send notice of the decision to—

- (i) the child, where taking account of the child's age and maturity, the chief social work officer considers that the child is capable of understanding the effect of the decision;

- (ii) each relevant person in respect of the child;
- (iii) the head of unit;
- (iv) the Principal Reporter;
- (c) to send with the notice the reasons for making the decision;
- (d) to inform the child and each relevant person in respect of the child—
 - (i) of the right to appeal the decision under section 162 of the Act;
 - (ii) where the decision is a decision not to implement the secure accommodation authorisation, that they may require the decision to be reviewed.
- (3) Where the requirements at paragraph (2) are not complied with within 72 hours of receiving the decision as mentioned in paragraph (1), the chief social work officer will be deemed to have made a decision not to implement the secure accommodation authorisation.
- (4) In this regulation, in paragraph (2)(b)(iii) “head of unit” is the head of unit consulted in accordance with regulation 4(3)(a)(iii).

Decision of head of unit under section 151(3)

6.—(1) This regulation applies where the chief social work officer makes a decision to implement a secure accommodation authorisation in accordance with regulation 4 or following a review under regulation 7.

(2) The head of unit must, in coming to a decision on whether to consent to the placement of the child under section 151(3) of the Act, comply with the requirements in paragraph (3)(a) and, having made the decision, comply with the requirements in paragraph (3)(b) and (c).

(3) The requirements are—

- (a) to assess whether placement in secure accommodation within the residential establishment managed by the head of unit would—
 - (i) be appropriate to the child’s needs, having regard to that establishment’s statement of functions and objectives; and
 - (ii) not, in the opinion of the head of unit, be detrimental to other children residing in that unit;
- (b) to record—
 - (i) the decision of the head of unit; and
 - (ii) the reasons for reaching that decision; and
- (c) to send to the chief social work officer, within 48 hours of receiving notification of the chief social work officer’s decision under regulation 5(2)(b)(iii) or 7(4)(d)(iv), the decision and reasons for reaching that decision.

(4) In this regulation, “head of unit” is the head of unit consulted in accordance with regulation 4(3)(a)(iii).

Review of decision not to implement the secure accommodation authorisation

7.—(1) Where the chief social work officer has made a decision not to implement the secure accommodation authorisation, or where regulation 5(3) applies, a person mentioned in paragraph (2) may request a review of that decision.

(2) Those persons are—

- (a) the child; and
- (b) each relevant person in respect of the child.

(3) Where the chief social work officer receives a request for a review under paragraph (1) the chief social work officer must, within 72 hours of receiving the request, carry out a review by complying with the requirements in paragraph (4).

(4) The requirements are—

- (a) to consult and take into account the views of—
 - (i) the child, taking into account the age and maturity of the child;
 - (ii) each relevant person in respect of the child;
 - (iii) the head of unit;
 - (b) to assess—
 - (i) whether one or more of the conditions specified in section 83(6), 87(4) or 88(3) of the Act continue to apply in respect of the child; and
 - (ii) the child's needs and whether placement in secure accommodation would be in the child's best interests;
 - (c) to record—
 - (i) the information obtained in respect of the review; and
 - (ii) the decision and the reasons for reaching that decision, on whether the child should be placed in secure accommodation;
 - (d) to send notice to—
 - (i) the child where, taking account of the child's age and maturity, the chief social work officer considers that the child is capable of understanding the effect of the decision;
 - (ii) each relevant person in respect of the child;
 - (iii) the Principal Reporter;
 - (iv) the head of unit;
 - (e) to send with the notice the reasons for making the decision.
- (5) A request for a review under paragraph (1) must be made within 72 hours of—
- (a) receiving the notice under regulation 5(2)(b); or
 - (b) where regulation 5(3) applies, the expiry of the period mentioned in that paragraph.

Decision of head of unit not to consent

8.—(1) This regulation applies where—

- (a) a child is subject to a relevant order;
- (b) the chief social work officer makes a decision to implement a secure accommodation authorisation in accordance with regulation 4 or following a review under regulation 7; and
- (c) the head of unit makes a decision not to consent to the placement of the child in secure accommodation.

(2) Except where an interim compulsory supervision order or a medical examination order would expire before the end of the period mentioned in paragraph (3), a relevant order is—

- (a) a compulsory supervision order;
- (b) an interim compulsory supervision order;
- (c) a medical examination order.

(3) The chief social work officer must, within 48 hours of receiving notification of the head of unit's decision, require a review of the relevant order by giving notice to the Principal Reporter of the circumstances mentioned in paragraph (1).