

## Routes into Secure Care - Updated Information Sheet

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*"Depriving a child of their liberty infringes on one of their most fundamental human rights and impinges on associated rights to freedom of association and family life"* (Scottish Government, 2013, p.3). Under Article 37 of the UNCRC *"...no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child ....shall be used only as a measure of last resort and for the shortest appropriate period of time"*. The need to uphold these rights is of extreme importance given the recent incorporation of UNCRC into Scots law. Applied to secure care, this means that all professionals must understand the different legal routes into secure care. This information sheet highlights those routes. Please note this document has been updated in reflection of the parts of the Children (Care and Justice) (Scotland) Act 2024 (legislation.gov.uk) that have commenced and will require further update once fully commenced. This information should be supplemented with seeking legal advice on a case-by-case basis.

There are a range of routes by which a child can be placed in secure care.

**Children's Hearings System (CHS):** A relevant order or warrant made by a Children's Hearing or Sheriff may include a secure accommodation authorisation enabling the child to be placed and kept in secure accommodation. The relevant orders are:

- A compulsory supervision order (CSO), including an interim variation of the order
- An interim compulsory supervision order (ICSO)
- A medical examination order (MEO)
- A warrant to secure attendance

The secure accommodation authorisation can be made if one or more of the following conditions under s.83(6), 87(4) or 88(3) of the Children's Hearings (Scotland) Act 2011 are met:

(a) that the child has previously absconded and is likely to abscond again and, if the child were to abscond, it is likely that the child's physical, mental or moral welfare would be at risk

(b) that the child is likely to engage in self-harming conduct

(c) that the child is likely to cause injury to another person; *and*

having considered the other options available (including a movement restriction condition) that it is necessary to include a secure accommodation authorisation in the order.

Once an authorisation is made, the Chief Social Work Officer (CSWO) for the implementing authority is responsible for deciding to implement the order, as per The Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013 and accompanying Guidance. Implementation requires the placement of the child into a secure care centre, and can only be with the agreement of both the CSWO and Head of Unit in one of the centres who must be satisfied that the respective requirements<sup>[1]</sup> are met. A CSWO may decide not to implement the warrant or order if they deem that the conditions are not met. In such situations, the CSWO will notify the Principal Reporter, and a further Hearing will be convened to review the order.

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[1] Regulation 4 The Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013 specifies the considerations that must be satisfied for the CSWO and regulation 6 for the Head of Unit

Powers of the CSWO: In specific circumstances, the CSWO may authorise placement of a looked after child in secure accommodation under the Secure Accommodation (Scotland) Regulations 2013. These circumstances are where a child is subject to a relevant order made by a Children's Hearing or Sheriff without a secure accommodation authorisation[2]; where a child is subject to a permanence order[3]; or is being provided with accommodation by a local authority under s.25 of the Children (Scotland) Act 1995[4]. Under section 25 a local authority can provide accommodation for any child within their area if they consider that to do so would safeguard or promote the welfare of the child.

In each of these situations the CSWO must immediately inform the Principal Reporter[5] of the placement. Where the child is subject to a relevant order, the Principal Reporter must arrange a children's hearing within 72 hours. Where the child is subject to a permanence order or is accommodated under s.25, the Principal Reporter must decide whether a children's hearing requires to be arranged, and on what grounds, within 72 hours. If the decision is to arrange a children's hearing then it must take place within 72 hours (with an additional 24 hours being permitted where it is not practicable to arrange the children's hearing within the 72 hours). If the decision is that a children's hearing is not required the CSWO must remove the child from secure accommodation. Where a children's hearing is convened, the hearing can make an order with a secure accommodation authorisation attached. If the CSWO makes a decision to implement the secure accommodation authorisation then the child is required to remain in secure care. The child's continuing presence in secure care would be subject to the review requirements in the Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013.

In all of the above situations, the local authority is responsible for arranging, funding and managing the placement of children in secure accommodation.

**As an alternative to police custody:** Where a child is aged under 18, and under s.22 Criminal Justice (Scotland) Act 2016 is to be kept in a place of safety until they can be brought to court. The place of safety must not be a police station unless an appropriate constable certifies that an alternative would be impracticable, unsafe, or inadvisable due to the person's state of health (physical or mental). Secure accommodation can be used as a place of safety[6] with the agreement of the CSWO. The child may only be kept in secure accommodation for so long as the CSWO and head of unit considers necessary[7]. The local authority is responsible for arranging and funding the placement. The decision of what should happen with the child's case will be made by the Procurator Fiscal or the Reporter, depending on who deals with the child's case. Further guidance can be found [here](#).

**Court:** Children under the age of 18 can no longer be remanded or sentenced to a Young Offender Institution (YOI).

**Remand:** Under s.51 Criminal Procedure (Scotland) Act 1995, in cases of remand the child will be committed to the local authority to be detained either in secure accommodation, if the court requires this, or a place of safety to be determined by the local authority, which could include secure accommodation[8]. Further information on the latter is currently under development.

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[2] Regulations 7 and 8 of Secure Accommodation (Scotland) Regulations 2013 apply

[3] Regulation 9 of Secure Accommodation (Scotland) Regulations 2013 applies

[4] Regulation 9 of Secure Accommodation (Scotland) Regulations 2013 applies

[5] Regulation 10 of Secure Accommodation (Scotland) Regulations 2013 has more information on the responsibilities of the Principal Reporter

[6] Under regulation 12 Secure Accommodation (Scotland) Regulations 2013 if the requirements under regulation 11(3)(a) and (b) are met

[7] Where a decision is made not to prosecute the child, the Principal Reporter needs to be informed under s.53 of the Criminal Justice (Scotland) Act 2016, who will then direct that the child can either be released from the place of safety or requires to remain until a determination is made by the Reporter as per s.65 Children's Hearings (Scotland) Act 2011

[8] Under regulation 12 Secure Accommodation (Scotland) Regulations 2013 if the requirements under regulation 11(3)(a) and (b) are met, with the review requirements as set out in regulation 13

**Remittal:** When a child who is aged 17 years and six months or less, pleads guilty to, or is found guilty of an offence, the court can seek the advice of a Children's Hearing prior to disposing of the case or dispose of the case by remitting it to the Children's Hearing. The rules that apply vary depending on the child's age and legal status, as per s.49 of the [Criminal Procedure \(Scotland\) Act 1995](#). If the case is remitted for disposal and the child attends a Hearing, this can result in a relevant order with a secure accommodation authorisation being made as detailed above.

**Sentence:** Where a child in summary proceedings pleads guilty to, or is found guilty of an offence, under s.44 of the Criminal Procedure (Scotland) Act 1995, the court may order the child be detained in residential accommodation which the local authority considers appropriate, for a period not exceeding one year. This can include secure accommodation[9] but the child may only be kept in secure accommodation for so long as the CSWO and head of unit considers necessary.

Where a child has failed to pay a fine, under s.216 of the Criminal Procedure (Scotland) Act 1995 they can be detained in a place chosen by the local authority for up to a month – this could be secure accommodation[10].

Where any child is sentenced by a court under solemn proceedings under s.205(2) or 208 of the Criminal Procedure (Scotland) Act 1995, the Scottish Ministers have statutory responsibility for placing and managing the child's sentence and will direct where the child is to be placed.

Where a child is detained in secure accommodation under sections 51, 205, 208 or 216 of the Criminal Procedure (Scotland) Act 1995, for any length of time, the child will be treated as "looked after" by the local authority. The roles and responsibilities for children placed in secure accommodation through a criminal justice route are outlined in more detail [here](#).

**For further info/support contact CYCJ on 0141 444 8622 or [cycj@strath.ac.uk](mailto:cycj@strath.ac.uk)**

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[9] Under regulation 11 [Secure Accommodation \(Scotland\) Regulations 2013](#), with the review requirements as set out in regulation 13

[10] Under regulation 12 [Secure Accommodation \(Scotland\) Regulations 2013](#) if the requirements under regulation 11(3)(a) and (b) are met, with the review requirements as set out in regulation 13