



SCOTTISH
CHILDREN'S REPORTER
ADMINISTRATION

Practice Direction 20

Secure Accommodation

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SUMMARY

- A compulsory supervision order (including an interim variation of the order), interim compulsory supervision order, medical examination order and a warrant to secure attendance may include a secure accommodation authorisation.
- A secure accommodation authorisation can only be included if specific criteria are met.
- The chief social work officer of the implementation authority can only implement the secure accommodation authorisation and place the child in secure accommodation if the head of the unit providing the secure accommodation consents to the placement.
- In making their decisions on whether to implement a secure accommodation authorisation, both the chief social work officer and the head of unit require to comply with various regulations. These regulations require the chief social officer to notify the specified people (including the child, relevant persons and reporter) of these decisions.
- If the chief social work officer decides not to implement a secure accommodation authorisation, then he must notify the child, relevant persons and the reporter of this decision. The reporter is not required to arrange a further children's hearing as a result of this decision.
- The child and relevant persons have a right to appeal against a decision of the chief social work officer to implement or not to implement a secure accommodation authorisation. This is in addition to their right to appeal against the decision of the children's hearing.
- If the chief social work officer decides to implement a secure accommodation authorisation, but the head of unit does not consent to the placement in secure accommodation, the chief social work officer must notify the reporter. The reporter must then arrange a children's hearing to review the secure accommodation authorisation.
- If specific criteria are met, the chief social work officer may place a child in secure accommodation, even though the child is not subject to an order or warrant that contains a secure accommodation authorisation. If he does so, the chief social work officer must notify the reporter. The reporter must arrange a children's hearing (or consider whether it is necessary to do so) or apply to the sheriff for a further interim compulsory supervision order. The children's hearing or hearing before the sheriff must take place within 72 hours of the child's placement in secure accommodation (with an additional 24 hours in some circumstances).

- A secure accommodation authorisation will cease to have effect once the child is removed from secure accommodation because either the chief social work officer considers it unnecessary for the child to be kept there or the chief social work officer is required to remove the child.
- When a child is subject to a compulsory supervision order with a secure accommodation authorisation, the reporter must arrange a children's hearing to review the order, unless the authorisation has ceased to have effect. The hearing must take place within 3 months of the order being made, varied or continued.

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1. Introduction

- 1.1. The Children's Hearings (Scotland) Act 2011 enables a children's hearing and a sheriff, where the necessary criteria apply, to include a secure accommodation authorisation in various orders and a warrant.
- 1.2. When such a measure is included in an order or warrant it is initially for the chief social work officer of the implementation authority and then for the head of the secure unit to decide whether to implement the authorisation and place the child in secure accommodation. The Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013 apply to this decision of the chief social work officer. The Children's Hearings (Scotland) Act 2011 provides for a specific right of appeal against this decision.
- 1.3. Where a child is not subject to an order or warrant that includes a secure accommodation authorisation, in certain circumstances The Secure Accommodation (Scotland) Regulations 2013 enable the chief social work officer to move the child into secure accommodation.
- 1.4. Both the act and the regulations require the reporter to arrange a children's hearings in various situations which follow on from the decisions mentioned above.
- 1.5. This Practice Direction details the procedures involved as they relate to the practice of reporters and gives direction regarding how they are to be applied in practice. Some aspects of the regulations apply to the chief social work officer and the head of the unit providing secure accommodation. However as they do not relate directly to the practice of reporters, it does not consider them in detail.
- 1.6. The relevant statutory provisions are contained in the:
 - Children's Hearings (Scotland) Act 2011 sections 83, 85 – 88, 135, 151 - 153
 - The Secure Accommodation (Scotland) Regulations 2013
 - The Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013
 - Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 rules 94 - 96

2. Making a secure accommodation authorisation

- 2.1. A secure accommodation authorisation (SAA) may be included in a compulsory supervision order (CSO), interim compulsory supervision order (ICSO), medical examination order (MEO) or warrant. Section 85 defines a SAA as an authorisation enabling the child to be placed and kept in secure accommodation within a residential establishment.

CSO

2.2. The test for making an SAA in a CSO is set out in section 83(5) of the 2011 Act. A SAA can be included in a CSO only if:

- the order contains a measure requiring the child to reside at:
 - a residential establishment which contains both secure accommodation and accommodation which is not secure accommodation, or
 - two or more residential establishments, one of which contains accommodation which is not secure accommodation, **and**
- one or more of the conditions mentioned in section 83(6) applies, **and**
- having considered the other options available (including a movement restriction condition) the children's hearing or, as the case may be, the sheriff is satisfied that it is necessary to include a secure accommodation authorisation in the order.

2.3. The conditions mentioned in section 83(6) are:

- 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,
- that the child is likely to engage in self-harming conduct,
- that the child is likely to cause injury to another person.

ICSO

2.4. The test in section 83(5) applies to inclusion of an SAA in an ICSO **except** that there is no requirement for the order to require the child to reside at a specified residential establishment – see section 86(4). Instead the ICSO may require the child to reside at any place of safety away from the place where the child predominantly resides. The inclusion of the SAA will enable the chief social work officer to place the child in secure accommodation in the place of safety.

Interim variation of a CSO

2.5. Where a CSO is varied on an interim basis, the test for making a SAA in section 83(5) applies, **except** that there is no requirement for the order to require the child to reside at a specified residential establishment – see section 140(3). Instead the interim variation of the CSO may require the child to reside at any place of safety away from the place where the child predominantly resides. The inclusion of the SAA will enable the chief social work officer to place the child in secure accommodation in the place of safety.

MEO

- 2.6. In terms of section 87(3), a MEO may include an SAA only if:
- the order authorises the keeping of the child in a residential establishment,
 - one of the conditions mentioned in section 87(4) applies (these are exactly the same as the conditions in section 83(6) – see paragraph 2.3 above) , and
 - having considered the other options available, the children’s hearing is satisfied that it is necessary to include a SAA in the order.

Warrant

- 2.7. In terms of section 88(2), a warrant to secure attendance may include an SAA only if:
- the warrant authorises the keeping of the child in a residential establishment,
 - one of the conditions mentioned in section 88(3) applies, and
 - having considered the other options available, the children’s hearing or sheriff is satisfied that it is necessary to include an SAA in the warrant.

The conditions mentioned in section 88(3) are exactly the same as those specified in section 83(6) – see paragraph 2.3 above.

- 2.8. A warrant authorises an officer of law to detain the child in a place of safety. The definition of place of safety in section 202 includes a residential establishment provided by a local authority. Therefore if the child is to be detained in secure accommodation in a residential establishment other than one provided by a local authority, this will need to be specified in the warrant. It may be good practice to specify the residential establishment in any warrant authorising secure accommodation.

3. Implementing a secure accommodation authorisation

- 3.1. When a children’s hearing has included a SAA in either a CSO, an interim variation of a CSO, a ICSO, a MEO or a warrant to secure attendance, section 151(3) says that the chief social work officer (CSWO) may implement the authorisation and place the child in secure accommodation only with the consent of the head of the unit providing the secure accommodation.
- 3.2. The Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013 (Implementation of SAA Regulations) prescribe various steps that both

the CSWO and the head of unit must take before implementing the SAA and placing the child in secure accommodation. Any references to a regulation in section 3 of this Practice Direction relate to a regulation in the Implementation of SAA Regulations.

- 3.3. When deciding whether to implement the SAA, regulation 4 requires the CSWO to:
 - consult and take into account the views of the child, each relevant person and the head of unit;
 - assess whether one or more of the conditions specified in section 83(6) of the Act continue to apply in respect of the child and whether placement in secure accommodation would be in the child's best interests; and
 - take into account the hearing's decision to make the relevant order or warrant and the reasons for that decision.
- 3.4. Having come to a decision on whether or not to implement the SAA, the CSWO must notify the child, relevant persons, head of unit and the reporter of the decision – see regulation 5. The notification must include details of the CSWO's reasons for the decision. The notification sent to the child and relevant persons must inform them of:
 - their right to appeal the CSWO's decision under section 162 of the Act; and
 - if the decision was not to implement the SAA, their right to ask the CSWO to review his decision.
- 3.5. The CSWO must notify his decision to the child, relevant persons, head of unit and reporter within 72 hours of being notified by reporter of the decision of the children's hearing. If he does not do so within the 72 hours, regulation 5(3) says that the CSWO will be deemed to have made a decision not to implement the SAA.
- 3.6. If the CSWO decides to implement the SAA, the head of unit is then required to come to his decision on whether to consent to the placement in secure accommodation. Regulation 6 prescribes the factors that the head of unit must take into account in this decision. The head of unit must notify the CSWO of his decision within 48 hours of the CSWO notifying him of his decision.
- 3.7. If the head of unit does not consent to the child being placed in secure accommodation, the CSWO must notify the reporter and require a review of the order that contained the SAA (see section 7 below). The CSWO must do so within 48 hours of the head of unit notifying him of his decision – regulation 8.
- 3.8. The child and/or any relevant person can appeal to the sheriff against the CSWO's decision to implement, or not to implement the SAA. The appeal is under section 162 of the Act. This right to appeal is in addition to their right to appeal against the decision of the children's

hearing to make the order containing the SAA. Reference should be made to Practice Direction 24 on Appeals for more information about this appeal.

- 3.9. If the CSWO decides not to implement the SAA, the child and/or any relevant person can also require that the CSWO reviews the decision. Regulation 7 of the Implementation of SAA Regulations applies to this review by the CSWO. Having carried out the review, the CSWO must notify the child, each relevant person, the head of unit and the reporter of his decision.
- 3.10. Once a SAA has been implemented and a child has been placed in secure accommodation, regulation 10 requires that the CSWO must review the child's placement in secure accommodation at various times. Having carried out these reviews of the placement, the CSWO must notify the reporter, amongst others, of his decision.
- 3.11. Having been notified of the CSWO's decision under either regulation 4 or 7 (whether the decision was to implement the SAA or not), the reporter does not require to take any action.
- 3.12. Having been notified of the CSWO's decision on a review of the child's placement in secure accommodation to remove the child from secure accommodation, the reporter must record that the SAA has ceased to have effect (see section 4 below).

4. Secure accommodation authorisation ceasing to have effect

- 4.1. Section 151(5) of the Act says that a SAA will cease to have effect once the child is removed from secure accommodation because either:
 - the CSWO considers it unnecessary for the child to be kept there (this will usually happen after a formal review of the child's placement in secure accommodation under regulation 10 of the Implementation of SAA Regulations); or
 - the CSWO is required to do so by virtue of the Implementation of SAA Regulations (for example, following a successful appeal under section 162 of the Act).
- 4.2. Note that the SAA will only cease to have effect when the child is removed from secure accommodation. Therefore it does not "cease to have effect" where the CSWO does not implement the SAA in the first place.

5. Moving a child into secure accommodation when no secure accommodation authorisation is in force

- 5.1. The Secure Accommodation (Scotland) Regulations 2013 enable the CSWO to move a child into secure accommodation even though the

child is not subject to an order or warrant with a SAA. The CSWO can only do so if certain conditions are met and the child is either:

- subject to a CSO (this includes an interim variation of a CSO);
- subject to a ICSO;
- subject to a MEO
- subject to a permanence order or
- accommodated by the local authority under section 25 of the Children (Scotland) Act 1995.

Any references to a regulation in section 5 of this Practice Direction relate to a regulation in The Secure Accommodation (Scotland) Regulations 2013.

- 5.2. Having moved child to into secure accommodation under a regulation in The Secure Accommodation (Scotland) Regulations 2013, the CSWO must immediately notify the reporter, amongst others, of the placement.
- 5.3. If the child is subject to a CSO (whether or not an interim variation of the CSO is in force), the CSWO's notification must require a review of the CSO – regulation 7. The reporter must arrange the children's hearing to take place within 72 hours beginning with the time of the placement in secure accommodation.
- 5.4. If child is subject to ICSO or MEO, the reporter must arrange a further children's hearing or make an application to sheriff for a further ICSO – regulation 8. The children's hearing or hearing before the sheriff must take place within 72 hours beginning with the time of the placement in secure accommodation.
- 5.5. The specific action that the reporter must take will depend on the ICSO or MEO that the child is currently subject to:
 - Where it is an ICSO made by a children's hearing under section 92 or 120, the reporter must arrange a deferred children's hearing to take place under section 119.
 - Where it is an ICSO made by a children's hearing under section 93 or 96 (where the statement of grounds is the subject of an application to the sheriff), the reporter must arrange a children's hearing to take place under section 96(2) to consider whether a further ICSO should be made.
 - Where it is an ICSO made by a children's hearing under section 95(4) (where the hearing has directed the reporter to arrange another grounds hearing), the reporter must arrange the grounds hearing to take place within 72 hours of the child being placed in secure accommodation.
 - Where it is an ICSO made by a children's hearing under section 96 and the hearing would be unable to make a further ICSO as the hearing has made the 3rd ICSOs, the reporter must make an

application to the sheriff for an extension or variation of the ICSO under section 98.

- Where it is an ICSO made by the sheriff under section 98, 99 or 100 the reporter must apply to the sheriff for a further extension of the ICSO under section 99.
- Where the ICSO was made by the sheriff under section 109, 115 or 117 (following the determination of a proof application or a review of a grounds determination), the reporter must arrange a children's hearing to take place under section 119.
- Where the MEO was made by the children's hearing under section 92 or 120, the reporter must arrange a deferred children's hearing under section 119.

- 5.6. If the child is subject to a permanence order or accommodated by the local authority under section 25 of the Children (Scotland) Act 1995, the notification from the CSWO of the placement in secure accommodation will be a referral of the child to the reporter. The reporter must make a decision on the referral in terms of section 66(2), but must do so within a shortened timescale.
- 5.7. If the reporter determines that a section 67 ground applies and that it is necessary for a CSO to be made in respect of the child, the reporter must arrange a children's hearing. The reporter must prepare a statement of grounds for the children's hearing.
- 5.8. Regulation 10(5) requires that the reporter arrange the children's hearing to take place within 72 hours of the child being placed in secure accommodation. However, if it is not reasonably practicable to arrange the children's hearing within 72 hours (for example if the reporter requires further information in order to prepare the statement of grounds), the reporter will have a further period of 24 hours in which to arrange the hearing (regulation 10(6)).
- 5.9. In arranging any children's hearing referred to in this section of the Practice Direction, the reporter is to notify the hearing and provide papers as soon as practicable before the beginning of the hearing¹.
- 5.10. Regulation 5 states a maximum period during which a child can be kept in secure accommodation without a SAA included in an order or warrant to secure attendance made by a children's hearing or a sheriff. The child can only be kept for a maximum of 72 hours in any period of

¹ There is no specific provision in The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 that applies to the arranging of these hearings. However, given the short timescale for arranging the hearings it is not possible for the reporter to comply with the requirement to give 7 days notice of the hearing. In the absence of any specific provision, the approach to be followed by the reporter in notifying these hearings and providing papers for them is consistent with the approach in rule 36 (which relates to the duty to arrange a review under section 136 when a child is transferred).

28 consecutive days. However, this may be extended by 24 hours if regulation 10(6) applies (see paragraph 5.8 above).

- 5.11. In calculating the 72 or 24 hour periods when arranging a children's hearing or applying to the sheriff under The Secure Accommodation (Scotland) Regulations 2013, the reporter must take account of every day (including Sundays and public holidays).

6. Review of a compulsory supervision order with a secure accommodation authorisation

- 6.1. Where the child is subject to a CSO with a SAA, the reporter must initiate a review of the order before the end of the period of 3 months beginning with the day the order was made, varied or continued – section 135. For the avoidance of doubt this applies even where the SAA was not implemented (see paragraph 6.4 below).
- 6.2. The reporter cannot arrange a review under section 135 if the SAA has ceased to have effect as a result of the child having been removed from secure accommodation (see section 4 above).
- 6.3. The reporter is to initiate the review by arranging the children's hearing to take place within the 3 month period. However, provided that the children's hearing takes place within the 3 month period, the hearing may defer its decision so that a further children's hearing takes place more than 3 months after the order was made. Neither the CSO nor the SAA will cease to have effect after the 3 months period has elapsed.
- 6.4. If the CSWO did not implement the SAA, the reporter will require to arrange the review children's hearing as required by section 135. However, the local authority may request a review in terms of section 131.

7. Children's hearing arranged where Head of Unit does not consent to placement in secure

- 7.1. Any references in this section of the Practice Direction to a regulation relate to the Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013.
- 7.2. When the CSWO notifies the reporter of the head of unit's decision (under regulation 8) not to consent to the child being placed in secure accommodation, the reporter must arrange a children's hearing – regulation 9. The only purpose of the children's hearing is to review the SAA. Unless the hearing is arranged for any additional purpose, it cannot review the order that contains the SAA.

- 7.3. The reporter must arrange the children's hearing to take place no later than 3 working days after being notified by the CSWO under regulation 8. The day when the reporter is notified is not included in the calculation of the 3 working days. The first working day is the day after the reporter was notified.
- 7.4. Rules 94 – 96 of Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 apply specifically to a children's hearing arranged under regulation 9.
- 7.5. Rule 94 requires that as soon as practicable before the beginning of the children's hearing, the reporter must notify the following persons of the date, time and place of the hearing:
- the child;
 - each relevant person;
 - the CSWO;
 - the head of unit who made the decision under regulation 6;
 - any appointed safeguarder;
 - any individual other than a relevant person who appears to the reporter to have or recently have had a significant involvement in the upbringing of the child;
 - the 3 members of the children's hearing; and
 - the National Convener.

The reporter is also to notify these people of the purpose of the children's hearing.

- 7.6. In addition to providing these people with written notice of the children's hearing, the reporter is also to verbally notify them so as to ensure they have as much notice as possible of the hearing.
- 7.7. When issuing the written notice of the children's hearing, rule 94(4) also requires that the reporter provide the following people with the papers for the hearing:
- the child;
 - each relevant person;
 - the CSWO;
 - the head of unit who made the decision under regulation 6 of the Implementation of SAA Regulations;
 - any appointed safeguarder;
 - any individual other than a relevant person who appears to the reporter to have or recently have had a significant involvement in the upbringing of the child;
 - the 3 members of the children's hearing
- 7.8. The papers for the hearing (see rule 94(4)) are:

- All decisions and reasons for decision made by all pre-hearing panels and children's hearings in relation to the child;
- The decision of the CSWO to implement the SAA made under regulation 5; and
- The decision of the head of unit not to consent to the child being placed in secure accommodation made under regulation 6 of the Implementation of SAA regulations.

7.9. The children's hearing may vary the CSO, ICSO or MEO but only by varying or removing the SAA – regulation 9(3). It is not competent for the hearing to vary any other measure in the order, for example the requirement that the child resides in a specific residential establishment.

7.10. If the hearing varies or removes the SAA, this decision would be appealable under section 154(3) of the Act. If the hearing does not vary or remove the SAA, there is no right of appeal. The chair is to inform the child, relevant person and safeguarder of any applicable right of appeal.

8. Other Relevant Material

Implementation of Secure Accommodation Authorisation (Scotland)
Regulations 2013
Practice Direction 24 on Appeals

9. Responses to Case Practice Enquiries Since Publication of PD

9.1 Where a child is not placed in secure accommodation following a secure authorisation by a hearing, the secure authorisation does not lapse. However, there is then no clear mechanism for the child to be placed in secure accommodation during the currency of the authorisation should circumstances change. The Secure Accommodation Regulations do not apply because the child is subject to an order that already includes a secure accommodation authorisation and the Implementation of Secure Accommodation Authorisation Regulations do not provide for subsequent placing in secure once a decision (or deemed decision) not to place the child in secure is made. However, if the local authority purports to move the child into secure under the Secure Accommodation Regulations, the reporter should proceed to arrange a hearing. Where a local authority relies on the existing secure authorisation to move the child into secure, the child or relevant person will be able to appeal the decision (and may be able to request a review of the decision under Regulation 10 of the Implementation Regulations.)