POLICY NOTE

THE CHILDREN (CARE AND JUSTICE) (SCOTLAND) ACT 2024 (COMMENCEMENT NO. 1 AND TRANSITIONAL PROVISION) REGULATIONS 2024

SSI 2024/211 (C. 17)

The above instrument was made in exercise of the powers conferred by section 38(3) of the Children (Care and Justice) (Scotland) Act 2024. The instrument is laid but subject to no procedure under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

Summary Box

The Children (Care and Justice) (Scotland) Bill (the Bill) was passed by the Scottish Parliament on 24 April 2024 and received Royal Assent on 4 June 2024. The Children (Care and Justice) Scotland Act 2024 is referred to below as "the Act".

The Children (Care and Justice) (Scotland) Act 2024 (Commencement No. 1 and Transitional Provision) Regulations 2024 ("the Regulations") commence provisions in the Act on 28 August ("the appointed day") to:

- change the meaning of "child" for the purposes of commencement of amendments to the relevant provisions of the Criminal Procedure (Scotland) Act 1995 to prohibit the detention of children (under the age of 18) in a young offender institution (YOI), and enable their placement in, for example, secure accommodation.
- provide that a child cannot be held on remand or sentenced to detention in a YOI.
- commence enabling powers concerning the regulation of the placement of such children in secure accommodation, including young persons under 19.
- ensure that all children who require to be detained in secure accommodation by virtue of sections 51(1)(a), 205(2), 208(1) or, as the case may be, 216(7) of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act"), are treated as "looked after" children to enhance the support they are entitled to both during and following their detention there.

The Regulations (regulation 3) also include transitional provisions to enable children who are currently detained in a YOI to be transferred, on and after the appointed day, for example to secure accommodation, and that transfer must take place before 31 August 2024.

Policy Objectives

Principally, the instrument will ensure that no child under 18 can be detained in a prison or YOI. Where deprivation of liberty is required, children will normally be placed in secure accommodation. This will allow appropriate care and support to be provided to meet the child's needs in a trauma-informed and child-centred setting. See in particular sections 18 and 19 of the Act as commenced by regulation 2 of the instrument.

The provisions of the Act which are being commenced by regulation 2 of the instrument create parity of treatment with other children who are placed in secure accommodation by virtue of other legislative provisions such as, for example, the Children's Hearings (Scotland) Act 2011, by enabling any child who requires to be detained (whether sentenced or

remanded) in secure accommodation by virtue of the applicable provisions of the 1995 Act, to be treated as if they were a "looked after" child (if not already) for the duration of their placement. This will assist the child to be supported both during their placement and as they return to the community and include access to aftercare entitlements should the child leave secure accommodation on or after their 16th birthday.

The transitional provisions in regulation 3 of the instrument, will also enable to enable children who are currently detained in a YOI to be transferred, on and after the appointed day and no later than 31 August, for example to secure accommodation. This will also ensure parity of treatment with children who require to be detained on and after the appointed day by virtue of the provisions being commenced by regulation 2.

Regulation 2 also commences relevant provisions of the Act in consequence of sections 18 and 19 of the Act. This includes section 18, which abolishes remand centres. There are no longer any remand centres in Scotland, since Longriggend closed in 2000.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Children (Care and Justice) (Scotland) Act 2024 (Commencement No. 1 and Transitional Provision) Regulations 2024 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

In preparing these Regulations, we consulted with children directly affected by the change in law and the following bodies: Scottish Prison Service (SPS), Rossie Secure Accommodation Service, Good Shepherd Centre Secure Unit, St Mary's Kenmure, Kibble Safe Centre, the Care Inspectorate, COSLA, Social Work Scotland (SWS), the Crown Office and Procurator Fiscal Service (COPFS), the Scottish Courts and Tribunal Service (SCTS), Police Scotland and the Children and Young People's Centre for Justice (CYCJ).

During this consultation, the following themes were discussed:

- good transitions for the children involved.
- preparedness of delivery partners.
- awareness raising of forthcoming changes.

Children currently in YOI have been told about the change and given the opportunity to ask questions. They also met with secure accommodation providers who told them what to expect in this type of care setting. Meetings to determine the appropriate placement for each child are ongoing between care providers and the relevant local authorities. Some of children will turn 18 a short time after they move so good transition planning in advance of their return to YOI after that date will also be crucial.

Given the uncertainty around exactly how many children will require to be moved, a degree of flexibility was built into the Regulations to allow moves to take place following the 'appointed day' to ensure safe movement of children to secure accommodation.

Concerns were raised by partners around individual cases having to return to court to have the warrant changed. Regulation 3(3) of the Regulations provide that transitional provisions in regulation 3(1) will apply despite the terms of any court document containing references in whatever terms to detention in a prison or YOI.

Individual meetings were held with secure accommodation centres to discuss essential safety and security work and staff training which was required to be undertaken prior to commencement. Proposals were received from each centre and Scottish Government funding was allocated to support these works.

SCTS are pursuing IT systems update work which will be required to ensure secure centers can be named in the warrants. Discussions are ongoing to agree processes if a child has appeared in court and an emergency placement is required.

As part of work to raise awareness of the forthcoming change, SCTS will approach Sheriffs in the Judicial Institute regarding the 'winding down' of the use of YOIs ahead of commencement so children are not detained there for a short time before being moved to secure accommodation.

Impact Assessments

A Children's Rights and Wellbeing impact assessment (CRWIA) has been completed in relation to the Regulations, in particular the transitional provisions in regulation 3 and is attached. This has to be read in conjunction with the CRWIA which was previously prepared and published in relation to the Children (Care and Justice) (Scotland) Bill in relation to the provisions of the Act which are now being commenced by virtue of these Regulations and is attached. The CRWIA contains more detail on the consultation undertaken.

Financial Effects

No Business and Regulatory Assessment (BRIA) is required.

Scottish Government
Children and Families Directorate

12 August 2024