POLICY NOTE

THE CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994 (MODIFICATION) (SCOTLAND) REGULATIONS 2027

SSI 2027/XXX

The above instrument is to be made in exercise of the power conferred by section 35(1) of the Children (Care and Justice) (Scotland) Act 2024. In accordance with section 35(3)(a) of that Act, the instrument is subject to the affirmative procedure.

Summary Box

This draft instrument modifies the Criminal Justice and Public Order Act 1994 to allow the Scottish Ministers to authorise prisoner custody officers to have custody of children within Scotland, where they have been sentenced under section 205 or 208 of the Criminal Procedure (Scotland) Act 1995 and are outwith a place of detention (ordinarily secure accommodation) for temporary purposes.

Policy Objectives

Section 102(2) of the Criminal Justice and Public Order Act 1994 ("the 1994 Act") sets out the functions that may be carried out by prisoner custody officers (PCOs) where the Scottish Ministers have arranged and authorised for them to do so. Section 102(2)(d) includes the function of having custody of prisoners while they are outside a prison for temporary purposes. In practice, this may used - for example – to allow a prisoner to attend a funeral or to undertake a visit to a sick relative on compassionate grounds.

The definition of "prisoner" and "prison" for the purposes of section 102 of the 1994 Act are set out in section 117(1). "Prisoner" means any person who is in legal custody or is deemed to be in legal custody under section 295 of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act") and "prison" includes:
(a) any prison other than a naval, military or air force prison; and
(b) a remand centre or young offenders institution within the meaning of section 19 of the Prisons Act 1989.

Following commencement of section 208A of the 1995 Act (as inserted by section 19(6) of the Children (Care and Justice) (Scotland) Act 2024), Ministers cannot direct that children sentenced under sections 205 or 208 of that Act be detained in a prison or a young offenders institution. Per section 208A of the 1995 Act, the Scottish Ministers may direct that a child be detained in secure accommodation.

This instrument accordingly provides a basis for the Scottish Ministers to authorise a PCO to have custody of a child within Scotland where they have been sentenced under section 205 or 208 of the 1995 Act and are outwith secure accommodation (or other appropriate place where Ministers have directed that the child be detained) for temporary purposes.

Operational flexibility is required to ensure that Ministers can authorise appropriately skilled and trained custody officers to transport and have custody of children for whom they are responsible within Scotland, when they are temporarily outside their place of detention. This would occur following an assessment that is appropriate to grant a temporary release from that place in exceptional circumstances, with appropriate measures put in place to ensure the safety of the child and others.

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 Criminal Justice and Public Order Act 1994 (Modification) Scotland Regulations 2027 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

No public consultation has been carried out.

The draft instrument makes a minor, technical modification to existing legislation in exercise of an ancillary power and does not introduce any new policy or substantive change. The modification is necessary to ensure appropriate arrangements can be made for the custody of children who are temporarily outwith a place of detention that Ministers have directed under section 205 or 208 of the 1995 Act, following the prohibition on them directing detention in a prison or young offenders institution.
Given the limited nature of the change, the Scottish Government considered that formal consultation would not be a proportionate use of public or stakeholder resources.

Impact Assessments
A Children's Rights and Wellbeing impact assessment (CRWIA) has been completed in relation to the Criminal Justice and Public Order Act 1994 (Modification) Scotland Regulations 2027.

Financial Effects

No Business and Regulatory Assessment (BRIA) is required.

Scottish Government
Children and Families Directorate

2 November 2026