

Draft Regulations laid before the Scottish Parliament under sections 190(2)(c) and 197(2) of the Children's Hearings (Scotland) Act 2011, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2022 No.

CHILDREN AND YOUNG PERSONS

**The Cross-border Placements (Effect of Deprivation
of Liberty Orders) (Scotland) Regulations 2022**

<i>Made</i>	-	-	-	-	2022
<i>Coming into force</i>	-	-			2022

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 190 and 195(2) of the Children's Hearings (Scotland) Act 2011⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 190(2)(c) and 197(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 Cross-border Placements (Effect of Deprivation of Liberty Orders) (Scotland) Regulations 2022 and come into force on the day after the date on which they are made.

Interpretation

2.—(1) In these Regulations—

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

“the 2010 Act” means the Public Services Reform (Scotland) Act 2010⁽²⁾,

“chief social work officer” means an officer appointed in accordance with section 3 of the Social Work (Scotland) Act 1968⁽³⁾ or a deputy designated by the receiving local authority,

“child” means a person under the age of 18 years,

“the Commissioner for Children and Young People in Scotland” means the Commissioner appointed in accordance with section 2 of the Commissioner for Children and Young People

(1) 2011 asp 1.

(2) 2010 asp 8.

(3) 1968 c. 49. Section 3 was substituted by section 46 of the Local Government etc. (Scotland) Act 1994 (c. 39).

(Scotland) Act 2003(4), or a member of staff appointed under paragraph 7(1) of schedule 1 of that Act,

“the court” means—

- (a) in relation to England and Wales, the court exercising the inherent jurisdiction of the High Court of England and Wales,
- (b) in relation to Northern Ireland, the High Court of Justice in Northern Ireland,

“deprivation of liberty order” means an order (including an interim order) made under the inherent jurisdiction of the High Court of England and Wales or, as the case may be, made by the High Court of Justice in Northern Ireland, which authorises the deprivation of liberty of a child in a residential care setting,

“Health Board” means a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978(5),

“local authority” means—

- (a) in relation to England and Wales, a local authority within the meaning of section 105(1) of the Children Act 1989(6) as it relates to England and Wales,
- (b) in relation to Northern Ireland, a Health and Social Care trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991(7),
- (c) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(8),

“placement” means the placement of a child into a residential care setting, where that child was, immediately prior to the placement, resident in England, Wales or, as the case may be, Northern Ireland, and references to a child being “placed” are to be construed accordingly,

“placing local authority” means the local authority in England, Wales or, as the case may be, Northern Ireland, which has been granted a deprivation of liberty order,

“Principal Reporter” means the Principal Reporter appointed under paragraph 8 of schedule 1 of the Act or an officer of the Scottish Children’s Reporter Administration to whom there is delegated under paragraph 10(1) of schedule 3 of that Act any function of the Principal Reporter,

“receiving local authority” means the local authority in Scotland within which the residential care setting mentioned in the deprivation of liberty order is located,

“residential care setting” means a residential institution in Scotland which provides day-to-day care for children,

“residential institution” means an establishment (whether managed by a local authority, a voluntary organisation or any other person) which—

- (a) is not secure accommodation,

(4) 2003 asp 17. Section 2 was amended by paragraphs 1(a) and (b) of schedule 5 of the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 11).

(5) 1978 c. 29. Section 2 was amended by section 14(2) and paragraph 1 of schedule 7 of the Health and Social Services and Social Security Adjudications Act 1983 (c. 41); sections 28, 66(1) and paragraph 19(1) of schedule 9 of the National Health Service and Community Care Act 1990 (c. 19); paragraph 1(2) of schedule 1 of the National Health Service Reform (Scotland) Act 2004 (asp 7); and section 42(1) and paragraph 2 of schedule 2 of the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13).

(6) 1989 c. 41 The definition of “local authority” was amended by paragraph 13 of schedule 10 and by paragraph 1 of schedule 18 of the Local Government (Wales) Act 1994 (c. 19). There are other amendments to section 105(1) which are not relevant to these Regulations.

(7) S.I. 1991 No. 194 (N.I. 1), as amended by section 1(3) of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (N.I. 2009 c. 1).

(8) 1994 c. 39. Section 2 was amended by paragraph 232(1) of schedule 22 of the Environment Act 1995 (c. 25).

- (b) provides residential accommodation for children in order to safeguard or promote their welfare or otherwise to protect or further their interests, and
- (c) is managed by a care service which is registered by Social Care and Social Work Improvement Scotland in accordance with Chapter 3 of the 2010 Act,
“Social Care and Social Work Improvement Scotland” means the body established by section 44 of the 2010 Act⁽⁹⁾.

(2) Unless the context otherwise requires, any expression in these Regulations which is not listed in paragraph (1) and which is defined in the Act is to be construed in accordance with the Act’s definition.

(3) Any reference in these Regulations to anything done in writing includes a reference to anything done in electronic form which is—

- (a) sent by electronic means, and
- (b) capable of being reproduced in legible form.

Deprivation of liberty order to have effect as if compulsory supervision order

3.—(1) Where paragraph (1) of regulation 4 or, as the case may be, 5 applies, a deprivation of liberty order has effect as if it were a compulsory supervision order for the purposes mentioned in paragraph (2).

(2) The purposes are—

- (a) authorising in law the deprivation of liberty of the child who is the subject of the order in Scotland, and
- (b) the application of the Act in relation to the deprivation of liberty order (in respect of which, see regulation 13).

Deprivation of liberty order recognised in Scotland on date Regulations come into force

4.—(1) This paragraph applies where, on the day on which these Regulations come into force, a deprivation of liberty order is recognised and enforceable in Scotland by virtue of an interlocutor made before that day by the Court of Session.

(2) Paragraph (1) ceases to apply on the earlier of the following occurrences—

- (a) the deprivation of liberty order ceasing to have effect in the jurisdiction of the court which made the order,
- (b) regulation 5(1) applying in relation to the deprivation of liberty order,
- (c) the end of the period during which the deprivation of liberty order is recognised and enforceable in Scotland by virtue of the Court of Session’s interlocutor.

Deprivation of liberty order made, or continued, on or after day Regulations come into force

5.—(1) This paragraph applies where a relevant circumstance as specified in paragraph (2) occurs and the circumstance specified in paragraph (3) applies.

(2) A “relevant circumstance” occurs when a deprivation of liberty order—

- (a) which was recognised and enforceable in Scotland as mentioned in paragraph (1) of regulation 4 is, before the end of the period mentioned in paragraph (2)(c) of that regulation, reviewed and continued in effect beyond the end of that period by the court which made the order, or

(9) 2010 asp 8.

- (b) is made on or after the day on which these Regulations come into force.
- (3) The circumstance in this paragraph is that regulation 7 has been complied with in relation to the deprivation of liberty order.
- (4) Paragraph (1) ceases to apply—
 - (a) on the deprivation of liberty order ceasing to have effect in the jurisdiction of the court which made the order, or
 - (b) where the occurrence mentioned in paragraph (a) does not happen within a relevant period, at the end of the relevant period unless the deprivation of liberty order is, on or before the last day of the relevant period, reviewed and continued in effect beyond the end of the relevant period by the court which made the order.
- (5) The “relevant period” is—
 - (a) where the deprivation of liberty order has not previously been reviewed and continued in effect by the court which made the order, the period of three months beginning with the day on which the order was made,
 - (b) otherwise, the period of three months beginning the day on which the order was reviewed and continued in effect, or last reviewed and continued in effect, by the court which made the order.
- (6) In this regulation, references to a deprivation of liberty order being “continued in effect” include references to that order being extended.

Effect of child becoming subject to compulsory supervision order or interim compulsory supervision order

6. A deprivation of liberty order ceases to have effect as provided for in regulation 3(1) where a child who is the subject of the order becomes subject to a compulsory supervision order or interim compulsory supervision order.

Notice and undertaking required for deprivation of liberty order to have effect as if compulsory supervision order

7. This regulation is complied with if a copy of the following has been given in writing by or on behalf of the placing authority to each person mentioned in regulation 8—

- (a) a notice containing the information specified in regulation 9, and
- (b) an undertaking meeting the requirements specified in regulation 10.

Persons to be given copy of notice and undertaking

8. The persons to be given a copy of the notice and undertaking mentioned in regulation 7 are—
- (a) the Health Board which provides health services in the area in which the child is to be placed,
 - (b) the Commissioner for Children and Young People in Scotland,
 - (c) the person in charge of the residential care setting in which the child is to be placed,
 - (d) the Chief Social Work Officer of the receiving local authority,
 - (e) any person acting for the time being as the director of education of the receiving local authority,
 - (f) the Scottish Ministers,
 - (g) the Principal Reporter, and

- (h) Social Care and Social Work Improvement Scotland.

Content of notice

9. The information specified for the purposes of this regulation is—
- (a) the name of the placing local authority,
 - (b) the gender of the child who is the subject of the deprivation of liberty order,
 - (c) the age of the child who is the subject of the deprivation of liberty order,
 - (d) the name of the residential care setting in which the child is to be placed, and
 - (e) the time that the deprivation of liberty order—
 - (i) comes into effect, and
 - (ii) expires (if it is not subsequently extended).

Content of undertaking

10. The undertaking mentioned in regulation 7(b) must specify that for the duration of the placement of the child who is the subject of the deprivation of liberty order, the placing local authority will—

- (a) provide or secure the provision of all services required to support the child, and
- (b) meet all of the costs arising from, or in consequence of, the child's placement, other than the costs of advocacy provided to the child in accordance with regulation 11.

Provision of advocacy services

11.—(1) Where a child becomes the subject of a deprivation of liberty order which has effect as if it were a compulsory supervision order as provided for in regulation 3(1), the Scottish Ministers must, as soon as reasonably practicable, inform that child of the availability of children's advocacy services.

(2) The Scottish Ministers need not comply with the requirement in paragraph (1) if, taking account of the age and maturity of the child, the Scottish Ministers consider that it would not be appropriate to do so.

(3) The Scottish Ministers may enter into arrangements (contractual or otherwise) with any person other than a local authority, CHS or SCRA for the provision of children's advocacy services.

(4) For the purposes of this regulation, "children's advocacy services" means services of support and representation provided for the purposes of assisting a child to convey their needs and views to the manager of the residential care setting in which they have been placed.

Review following transfer in cases of urgent necessity

12.—(1) This regulation applies where a child who is the subject of a deprivation of liberty order is transferred from the residential care setting where the child was residing to another place under section 143 of the Act (as modified by regulation 13).

(2) Where paragraph (1) of regulation 4 applies in relation to the order, paragraph (2) of that regulation is to be read as if, after sub-paragraph (a), there were inserted—

“(aa) the end of the period of 14 days beginning with the day on which the child who is the subject of the order was transferred to another place under section 143 of the Act,”.

(3) Where paragraph (1) of regulation 5 applies in relation to the order, paragraph (4) of that regulation is to be read as if, for that paragraph, there were substituted—