

(Paper 5.5A, FLC 27 October 2014; Paper 7.1C, FLC 19 October 2015)

APPEALS UNDER SECTION 44A OF THE CRIMINAL PROCEDURE (SCOTLAND) ACT 1995 – SCOTTISH GOVERNMENT POLICY PAPER

REQUEST FOR COURT RULES

Purpose:

This request relates to provision contained within the Children and Young People (Scotland) Act 2014.

Timing:

There are no key dates but we would hope to be in a position to make new regulations (under new sections 44A(5 and (6) – see below)) which would come into effect later this year (unlikely to be before December). The Council will be kept in touch with thinking on the likely timescale.

Summary of request/proposal:

Section 91 of the 2014 Act amends the Criminal Procedure (Scotland) Act 1995 by inserting insert a new section 44A. This new section provides that a child or relevant person(s) in relation to the child, or the child and one or more relevant persons jointly or 2 or more relevant persons jointly, may appeal to the sheriff against a local authority decision to detain the child in secure accommodation following an order having been made to detain the child in residential accommodation under section 44 of the CPSA. New section 44A(3) provides that an appeal hearing under this new section cannot be held in open court. New section 44A(4) provides that the sheriff may either confirm the decision to detain the child in secure accommodation or quash the decision and direct the local authority to move the child to residential accommodation which is not secure accommodation instead. New section 44A(5) allows the Scottish Ministers by regulations to make further provisions about appeals. These regulations may specify the period within which appeals should be made, make provision about the hearing of evidence during an appeal and provide for appeals to the sheriff principal and Court of Session against the determination of an appeal.

The Scottish Government is proposing to make regulations which come into effect later this year (probably December) and these will mirror as far as possible the appeal process which is set out in regulations 11 and 12 of the Children's Hearings

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(Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation)
(Scotland) Regulations 2013 (SSI 2013/212).

This new procedure reflects appeal rights in the Children's Hearings (Scotland) Act 2011. Section 151 of that Act sets out the ways in which secure accommodation authorisations are implemented where a children's hearing makes a relevant order or warrant (including a compulsory supervision order) in relation to a child and section 162 of that Act provides for an appeal to the sheriff against a decision to implement a secure accommodation authorisation, including by one or more relevant persons in relation to a child.

The amendment to the 1995 Act is simply intended to ensure that children who are placed in secure accommodation following an order being made under section 44 to this Act will have the same appeal rights as children who are placed in secure accommodation under the provisions of the 2011 Act.

Substantial thought was given by stakeholders to the role of secure care as part of the Securing Our Future Initiative process, and joint views and recommendations were agreed. The secure accommodation provisions in the 2011 Act were the subject of debate during passage through the Scottish Parliament and give effect to some of those recommendations. As only a small number of orders are actually made under section 44 of the Criminal Procedure (Scotland) Act 1995, it is not considered that there will be significant resource implications, or that the change will be contentious among stakeholders.

Vires:

We think that this is a civil matter as opposed to a criminal one as the appeal would be against a local authority's decision and not the decision of a sheriff under section 44 of the 1995 Act. In the circumstances we consider that the general power contained in section 32(1) of the Sheriff Courts (Scotland) Act 1971 provides the vires to make the rule(s) required.

[Please provide specific details as to what consideration has been given to the vires of the court to make the rules in question. Policy teams may wish to consult their legal advisers in this respect.]

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