

Routes into secure care

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“Depriving a child of their liberty infringes on one of their most fundamental human rights and impinges on associated rights to freedom of association and family life” ([Scottish Government, 2013, p.3](#)). Secure accommodation is defined as [accommodation](#) provided for the purpose of restricting the liberty of children (aged under 18) in a residential establishment premises, where care services are provided and which has been approved by [Scottish Ministers](#) for that purpose. Under Article 37 of the UNCRC “...no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a childshall be used only as a measure of last resort and for the shortest appropriate period of time”. If this right is to be upheld, all professionals must understand the different legal routes into secure care, which this will highlight. This should be supplemented with seeking legal advice on a case-by-case basis.

Children’s Hearings System (CHS) At any one time, around 90% of children in secure care are there through the CHS. A relevant order or warrant (Compulsory Supervision Order (CSO), Interim Compulsory Supervision Order (ICSO), medical examination order, or a warrant to secure attendance) may include a secure accommodation authorisation, enabling the child to be placed and kept in secure accommodation. This can be made if the Children’s Hearing or Sheriff are satisfied that one or more of the conditions under s.83(6), 87(4) or 88(3) of the [Children’s Hearings \(Scotland\) Act 2011](#) are met:

- a) 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
- (b) that the child is likely to engage in self-harming conduct
- (c) that the child is likely to cause injury to another person; and

having considered the other options available (including a [movement restriction condition](#)) that it is necessary to include a secure accommodation authorisation in the order.

Once an authorisation is made, the Chief Social Work Officer (CSWO) is responsible for deciding to implement the order, as per The [Children’s Hearings \(Scotland\) Act 2011 \(Implementation of Secure Accommodation Authorisation\) \(Scotland\) Regulations 2013](#) and accompanying [Guidance](#). They may only do so with the consent of the head of the secure unit.

Where a child is subject to a relevant order which does not include a secure accommodation authorisation; or is being provided with accommodation by a local authority under s.25 of the [Children \(Scotland\) Act 1995](#); or subject to a [permanence order](#) under the [Secure Accommodation \(Scotland\) Regulations 2013](#), children can be placed in secure accommodation in specific circumstances. In these situations there are regulatory requirements on the CSWO and the Principal Reporter. The maximum period during which a child may be kept in secure accommodation without the authority of a Children’s Hearing or Sheriff is up to 72 hours in any period of 28 consecutive days. It is essential that the local authority notify the Principal Reporter immediately of any such placement. Children can only be referred to the Reporter if aged under 16 or, if over 16, subject to a referral already under consideration or subject to a CSO. This underlines the importance of ensuring children over 16 remain [subject to a CSO](#) when

appropriate and justified.

Local authorities are responsible for providing (either by delivering or purchasing) secure accommodation services for children in these circumstances.

Police Powers Where a child is aged under 16, or 16/17 and subject to a CSO or ICSO through the CHS, and under s.22 [Criminal Justice \(Scotland\) Act 2016](#) is to be kept in a [place of safety](#) until they can be brought to court, they can be placed in secure accommodation. This is under regulation 12 of the Secure Accommodation (Scotland) Regulations 2013 if the requirements under regulation 11(3)(a) and (b) are met. The child may only be kept there as long as the CSWO and head of unit considers necessary.

The local authority is responsible for providing secure accommodation services and does not require to inform the Principal Reporter. The Procurator Fiscal will decide to either deal with the child's case and for them to attend Court or refer it to the Reporter, for the child to attend a Children's Hearing.

Court Under the [Whole System Approach](#), in sentencing or remanding children, secure accommodation should be used by the court where possible as an alternative to Young Offender Institutions (YOIs).

Remand: Under s.51 [Criminal Procedure \(Scotland\) Act 1995](#), where a court remands a child under 16, it shall commit the child to local authority care. The court can require this to either be in secure accommodation or a suitable place of safety chosen by the authority (which can include secure accommodation and requires similar [considerations and review](#) to those detailed above by the CSWO and Head of Unit). If the child is aged 16/17 and subject to a CSO, the court can commit the child to secure accommodation or a YOI. If the child is aged 16/17 and not subject to a CSO, as there are no remand centres in Scotland, the court has no other option but to commit to a YOI. These arrangements apply for the period of remand or until liberation.

Remittal: When a child who is aged 17 years and six months or less, pleads guilty to, or is found guilty of an offence, the court can seek the advice of the CHS prior to disposing of the case or dispose of the case by remitting it to the Children's Hearing. The rules that apply vary depending on the child's age and legal status as per s.49 of the Criminal Procedure (Scotland) Act 1995. This can result in a relevant order with a secure accommodation authorisation being made as detailed above.

Sentence: Where a child in summary proceedings pleads guilty to, or is found guilty of an offence, under s.44 of the Criminal Procedure (Scotland) Act 1995, the court may order the child be detained in residential accommodation which the local authority considers appropriate, for a period not exceeding one year. This can include secure accommodation under regulation 12 if the requirements under regulation 11 of the Secure Accommodation (Scotland) Regulations 2013 are met. The child may only be kept in secure accommodation for so long as the CSWO and head of unit considers necessary, with the requirements for [review](#) specified in the 2013 Regulations.

In these cases, local authorities are [responsible](#) for providing secure accommodation services.

For children under 16, or aged 16/17 who are subject to CSO through the CHS, convicted under solemn procedures and sentenced to detention under [section 208](#); and all children under 18 who have been convicted of murder under section 205(2) of the Criminal Procedure (Scotland) Act 1995, the place of detention shall be determined by [Scottish Ministers](#) and where practicable and appropriate, will be secure accommodation. If a child convicted under solemn procedures is aged 16/17 and not subject to a CSO, the court must commit to a YOI.