

# CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Schedule 3 – The Scottish Children's Reporter Administration*

##### **Status**

375. [Schedule 3](#) is introduced by section 16. It makes provision concerning the status, governance, constitution and proceedings of SCRA and other administrative matters in relation to members and employees. Paragraph 1 makes clear that SCRA is not to be regarded as a servant or agent of the Crown and that SCRA's property is not to be regarded as property of the Crown. This has legal implications in relation to immunities which are applied to servants or agents of the Crown and also in relation to particular statutory provisions which relate to Crown property.

##### **Membership**

376. Under paragraph 2(1) and (7), the Scottish Ministers may appoint new members to SCRA and may re-appoint eligible members for a further term of office. Section 205 will allow for provisions to provide for continuity of membership in the transition of this enactment.
377. [Paragraph 2\(2\)](#) states that membership of SCRA is to consist of between 5 and 8 members and paragraph 2(3) allows for Ministers to substitute, by order made by statutory instrument, different numbers of minimum or maximum members.
378. [Paragraph 2\(5\)](#) provides the Scottish Ministers may only appoint members if satisfied of the member's individual knowledge and experience relative to the functions of SCRA and of the Principal Reporter. In addition, under paragraph 2(6), Ministers must satisfy themselves that a person to be appointed has no financial or other interests that conflict with the person's role as a member of SCRA.

##### **Persons disqualified from membership**

379. [Paragraph 3](#) provides that members of the Scottish Parliament, members of the House of Commons and members of the European Parliament are disqualified from appointment as members of SCRA. Paragraph 3 also disqualifies a member of SCRA from holding office if the person subsequently becomes a member of the Scottish Parliament, the House of Commons or a member of the European Parliament.

##### **Resignation of members**

380. [Paragraph 4](#) provides for members to resign office by giving written notice to the Scottish Ministers.

### **Removal of members**

381. Paragraph 5 sets out the circumstances in which the Scottish Ministers may revoke the appointment of a member of SCRA and clarifies when a member will be considered insolvent, where this may apply to a termination of an appointment.

### **Remuneration, allowances etc.**

382. Paragraph 6 provides for the remuneration, allowances or gratuities, and pensions of members and former members of SCRA to be determined by the Scottish Ministers and paid by SCRA. Paragraphs 6(3) and 6(4) provide for the Scottish Ministers to determine any compensation arrangements for any former member of SCRA and for SCRA to make such payments.

### **Chairing meetings**

383. Paragraph 7 provides for the Scottish Ministers to appoint a chairing member from the membership of SCRA and for Ministers to determine the terms and conditions of appointment. Paragraph 7(3) provides for an adjustment of a member's appointment so that the member may continue in office until the expiry of the chairing membership.

### **The Principal Reporter**

384. Paragraphs 8 to 10 deal with the terms and conditions of appointment of the Principal Reporter and the delegation of functions of the Principal Reporter. Paragraph 8(1) provides for SCRA to appoint the Principal Reporter with the approval of the Scottish Ministers. Paragraph 8(2) requires SCRA to take reasonable steps to involve persons under 21 in the selection process for appointment to the post of Principal Reporter. Paragraph 8(3) provides for SCRA to determine the terms and conditions of the appointment of the Principal Reporter with the approval of Ministers. Paragraph 8(4) provides flexibility for Ministers to prescribe qualifications which must be held by the Principal Reporter.
385. Paragraph 8(5) provides that members of the Scottish Parliament, members of the House of Commons and members of the European Parliament are disqualified from appointment and from holding office as Principal Reporter. Paragraph 8(6) entitles the Principal Reporter to appeal against dismissal to Ministers should the Principal Reporter be dismissed by SCRA. Paragraph 8(8) enables Ministers to prescribe the procedure for the making of an appeal, the effect of making an appeal, the powers of Ministers to dispose of an appeal and the effect of exercising the appeal.

### **Supplementary powers of Principal Reporter**

386. Paragraph 9 provides the Principal Reporter with the necessary general powers that are incidental or conducive to the achievement of the Principal Reporter's functions.

### **Delegation of Principal Reporter's functions**

387. Paragraph 10 provides for the Principal Reporter to delegate the Principal Reporter's functions to authorised members of staff of SCRA. There are no restrictions on the Principal Reporter to prevent the Principal Reporter from carrying out any of the delegated functions. Paragraph 10(4) prevents the Principal Reporter from delegating any functions to a person who may be employed jointly by SCRA and a local authority without the approval of SCRA.

### **Staff**

388. Paragraphs 11(1) and 11(2) provide SCRA with the necessary powers to make appropriate staffing arrangements to assist the Principal Reporter in the performance of their functions. SCRA may appoint employees and determine terms and conditions of

employment. These terms and conditions will be subject to the approval of the Scottish Ministers.

389. [Paragraph 11\(3\)](#) provides for SCRA to pay or contribute to payments for pensions, allowances or gratuities, including compensation for loss of employment to eligible employees. SCRA may also provide and maintain payment schemes for pensions, allowances or gratuities. [Paragraph 11\(4\)](#) provides for SCRA, with the approval of the Scottish Ministers to determine the eligibility of employees and former employees and the amount of payments due. [Paragraph 11\(5\)](#) to [11\(7\)](#) relate to reckonable service where a former employee who has participated in SCRA's pension later becomes a member of SCRA and provides for members to be treated as employees for the purpose of any remuneration scheme. Any discretion as to payable benefits and eligibility must meet with the approval of the Scottish Ministers.

### **Appeals against dismissal**

390. [Paragraph 12](#) provides a right of appeal for certain employees of SCRA against dismissal. [Paragraph 12](#) enables the Scottish Ministers to make provision by regulations about the appeal procedure, the effect of making an appeal and the powers of the Ministers to dispose of such appeals.

### **Committees**

391. [Paragraph 13](#) provides for SCRA to set up committees comprising members and non-members, to give directions to such committees and to pay such remuneration and allowances to non-members as the Scottish Ministers approve.

### **SCRA's supplementary powers**

392. [Paragraph 14](#) provides SCRA with the necessary general powers that are incidental or conducive to the achievement of SCRA's functions including the ability to conduct research and publish material relating to its functions, to enter into contracts and to manage assets.

### **Procedure**

393. [Paragraph 15](#) provides for SCRA to determine its own procedures.

### **Delegation of SCRA's functions**

394. Under [paragraph 16](#), SCRA may authorise any person, employee, member or any of its committees to exercise its functions. Any delegation does not affect the entitlement of SCRA to exercise any of its functions.

### **Financial interests**

395. [Paragraph 17](#) requires the Scottish Ministers to satisfy themselves that members of SCRA have no financial or other interest that is likely to conflict with the member's role as a member of SCRA. Ministers may request information from a member in relation to conflicts of interest and the member is obliged to comply with any such request.

### **Grants**

389. [Paragraph 18](#) concerns funding of SCRA. The Scottish Ministers may determine the level of funding and make payment by grant award with such terms and conditions as are determined by the Ministers.

### **Accounts**

396. [Paragraph 19](#) concerns the duties on SCRA to keep accounts and accounting records and to prepare financial statements. It includes specific details about the power of

the Scottish Ministers to make directions about the form, content and preparation of accounts.

### **Provision of accounts and other information to Scottish Ministers**

397. [Paragraph 20](#) is based on section 136(1) of the 1994 Act and provides for the Scottish Ministers to direct SCRA to give them accounts or other information in relation to SCRA's property and activities or proposed activities. SCRA must comply with any direction and co-operate with the requirements of any related audit and inspection.

### **SCRA's annual report**

398. [Paragraph 21](#) places a duty on SCRA to prepare an annual report and submit it to the Scottish Ministers at the end of each financial year. The Scottish Ministers must, in turn, lay the report before Parliament. The annual report must include information as to how SCRA has fulfilled its functions during the year along with any other information that SCRA considers appropriate. The report must include a copy of the annual report submitted separately to SCRA by the Principal Reporter under paragraph 22. Separate reports are required in the first instance to preserve the independence of functions between SCRA and the Principal Reporter.

### **Principal Reporter's annual report**

399. [Paragraph 22](#) places a duty on the Principal Reporter to prepare an annual report each year on the carrying out of their statutory functions, along with any other information that they consider appropriate. The report must be submitted to SCRA as soon as practicable after the end of the financial year for which it is prepared.

### **Validity of proceedings and actions**

400. [Paragraph 23](#) makes clear that the validity of proceedings or actions of SCRA and any of its committees remains unaffected by any irregularities associated with vacancies, disqualification of members or the process of appointments.