

POLICY NOTE

THE CHILDREN'S HEARINGS (SCOTLAND) ACT 2011 (CHILDREN'S ADVOCACY SERVICES) REGULATIONS 2020

SSI 2020/XXX

The above instrument was made in exercise of the powers conferred on the Scottish Ministers by section 122(4) and section 195(2)(a) and (b) of the Children's Hearings (Scotland) Act 2011 and all other powers enabling them to do so. The instrument is subject to the affirmative procedure.

Purpose of the instrument

Section 122 makes provision in relation to children's advocacy services, which are defined under section 122(7) as "services of support and representation provided for the purposes of assisting a child in relation to the child's involvement in a children's hearing".

These regulations are made under section 122(4), which allows the Scottish Ministers to make provision for or in connection with children's advocacy services. The regulations set out, amongst other things, the qualifications to be held by persons providing children's advocacy services and the training they require to undertake. It also makes provision regarding the payment of expenses, fees and allowances by the Scottish Ministers to persons providing children's advocacy services.

Policy Objectives

The purpose of section 122 of the Act is to make provision for children's advocacy services at children's hearings. Section 122(2) introduces a requirement on the chairing member of a children's hearing to inform the child of the availability of children's advocacy services. Section 122(7) defines this as "services of support and representation provided for the purposes of assisting a child in relation to the child's involvement in a children's hearing".

In addition, section 122(4) contains a regulation-making power that allows Scottish Ministers to make regulations for, or in connection with, the provision of children's advocacy services. The objectives are to ensure that the right support is available for children and the arrangements for providing it are effective.

The primary role of children's advocacy is to support children and young people to express their own needs and views and therefore to support decision-makers to make informed decisions on issues which influence children's lives where those issues are considered within children's hearings. The role of children's advocacy services is therefore to make sure children's rights are respected and their views and wishes are fully considered within the decision making within their children's hearing.

Section 122(4) of the Act provides that Scottish Ministers may make regulations which cover a number of areas in relation to persons providing children's advocacy services. This includes

the qualifications to be held, training to be completed and payment of expenses, fees and allowances.

The regulations apply where Scottish Ministers have entered into arrangements with a service provider under section 122(5) of the Act for the provision of children's advocacy services.

Child advocacy workers must act in accordance with the children's advocacy service standards. Detailed in the National Practice Model and Service Delivery Model for the provision of advocacy services for children's hearings. The National Practice Model Guidance, published in March 2020 can be accessed here:

<https://www.gov.scot/publications/advocacy-childrens-hearings-system-national-practice-model-guidance/>

Persons are only qualified to act as child advocacy workers under this provision when they have completed training and qualifications in accordance with the Regulations. Under Regulation 4(2), the Scottish Ministers must provide, or make arrangement for, this training and qualification to both child advocacy workers and potential child advocacy workers and this training must be successfully completed. Pre-appointment and in-service training and future qualifications for those child advocacy workers will be provided to ensure they have the knowledge and competence to understand the critical parts of the children's hearings system and to support children effectively in the children's hearings context. Regulation 5 specifies the particular matters on which training must be provided. This includes the legislation relevant to children's hearings, possible outcomes of hearings, rights of children and young people at children's hearings and the roles and functions of the child advocacy worker and other key persons involved in children's hearings.

The service providers are entitled to the payment of fees, expenses and allowances in accordance with the arrangements they have entered into with Scottish Ministers under section 122(5) of the Act. Section 122(5) enables Scottish Ministers to enter into agreements (contractual or otherwise) with any person other than a local authority, Children's Hearings Scotland (CHS) or Scottish Children's Reporter Administration (SCRA) for the provision of children's advocacy services. The oversight and funding for this provision will be carried out by the Scottish Government's Children's Hearings Advocacy Team, and managed through grant funding agreements with third sector organisations providing advocacy services across each local authority area in Scotland. This ensures independence of the services from these named public bodies. This also allows grant funding to be provided to commissioned providers and one-off payments for expenses, fees, and allowances to child advocacy workers considered to be appropriate for the purposes of these Regulations to deliver these children's advocacy services.

Provisions under regulation 7 will mean that Scottish Ministers may consent to the continuation of existing advocacy relationships for children and young people who are referred to children's hearings prior to the commencement of these regulations. Supporting continuity of pre-existing advocacy relationships where possible and offering an element of choice for children and young people as to who may provide advocacy for their children's hearings. This only applies to those who are acting in a way akin to a child advocacy worker as defined for the purposes of children's advocacy in children's hearings.

Consultation

No formal consultation was carried out in relation to these regulations. However, engagement with relevant stakeholders took place in the development of them.

Informal consultation with stakeholders took place during the Bill's parliamentary passage, and this has continued as the pre-implementation phase of the 2011 Act was developed. Detailed engagement also took place when the Scottish Government issued a discussion paper on 22 January 2019, to the children's care and justice sectors. An indicative response date of 1 March was set and 7 responses received, the last being submitted on 21 March 2019.

The development of the National Practice Model included wide engagement with stakeholders, including advocacy providers and children and young people who have experienced the children's hearings system. This work has involved the setting up of an Expert Reference Group, Workshops and Consultations.

Three research reports were published in 12 July 2017. The reports relate to Advocacy Pilots undertaken by Who Cares? Scotland for the Scottish Government over 2016-17. The research looked at advocacy service for children and young people involved in the children's hearings system.

The reports are:

Advocacy matters: an analysis of young people's views

Advocacy matters: an analysis of stakeholder views

Advocacy Action Research: final evaluation report

The Children's Hearings Advocacy Expert Reference Group at the end of 2019 discussed the matters for inclusion in the Regulations and the position paper resulting from this discussion and engagement is available on the Scottish Government website here:

<https://www.gov.scot/publications/childrens-hearings-advocacy-expert-reference-group-policy-position-paper/>

We will continue to work with the Expert Reference Group in a strategic role, directed at ensuring timely delivery of a high quality service and at further quality improvement development work which will be required after implementation. The Expert Reference Group terms of reference and membership are available here:

<https://www.gov.scot/groups/childrens-hearings-advocacy-expert-reference-group/>

Impact Assessments

The following impact assessments have been completed:

- Equalities Impact Assessment
- Data Protection Impact Assessment
- Children's Rights and Wellbeing Impact Assessment

No equality, rights or privacy issues have been identified in these assessments.

Screening has been carried out for other impact assessments (Environmental, Islands and Communities and Fairer Scotland Duty) and it has determined they are not required.

Financial Effects

The Minister for Children and Young People confirmed a Business and Regulator Impact Assessment (BRIA) is not necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

The expected costs associated with the new provision were detailed at the time of inclusion in the Bill introduced to the Scottish Parliament, in the Supplementary Financial Memorandum as Amended at Stage 2, published in November 2010 see here:

[https://www.parliament.scot/S3_Bills/Childrens%20Hearings%20\(Scotland\)%20Bill/b41as3-stage2-fm.pdf](https://www.parliament.scot/S3_Bills/Childrens%20Hearings%20(Scotland)%20Bill/b41as3-stage2-fm.pdf)

We have further considered the financial effects. The costs are under £5 million, and the impact is solely on the public sector. The Scottish Government is assured that no new policy or resourcing challenges have arisen.

Stated in the 2019-20 Programme for Government there will be an initial budget of £1.5 million for 2020-21. Based on the grant monitoring returns from providers and feedback from other sources, there will be periodic reviews of the levels of demand for, and provision of, advocacy for children's hearings. As a matter of course, these Government interventions will remain under review with regards to the extent and distribution of unmet demand with our analytical colleagues and the Expert Reference Group who will help inform any necessary revisions for future grant awards.

The Scottish Ministers will ensure children and young people are provided an element of choice of service provider, with the aim of securing one primary and at least one alternate provider in each local authority area. These provisions must provide additionality to any existing services commissioned by the local authorities.

It is not envisaged that every child and young person attending a children's hearing will want to make use of the service. Children and young people will have the freedom of choice to accept or reject advice, information, support and help offered by children's advocacy services. Many will be content to provide their views themselves or will have other people they choose to support them.

Scottish Government
Children and Families Directorate

September 2020