

## **EXECUTIVE NOTE**

### **THE CHILDREN'S HEARINGS (LEGAL REPRESENTATION) (SCOTLAND) AMENDMENT RULES 2009 SSI 2009/211**

The above instrument was made in exercise of the powers conferred by sections 42(1) and 42(2) (a), (b), (d) and (i) and 103(3) of the Children (Scotland) Act 1995. The instrument is subject to negative resolution procedure.

#### **Policy Objectives**

The purpose of this instrument is to extend the availability of state-funded legal representation in children's hearings to relevant persons, in certain circumstances. This is achieved by amendment to the Children's Hearings (Legal Representation) (Scotland) Rules 2002 which set out the circumstances under which children could access state-funded legal representation in a children's hearing.

Provision of state-funded legal representation will be extended, in certain circumstances, to support the effective participation of relevant persons where it is considered they would otherwise be unable to effectively participate in a children's hearing.

The instrument also makes minor amendment to the rules in relation to the provision of free legal representation to children under the scheme. Rule 4 of the instrument amends rule 3 of the 2002 Regulations to provide that account should be taken of the entitlement of the child to be accompanied by another representative under the 1996 rules in assessing the need for a child to have legal representation to support effective participation. (The same provision is made for relevant persons in the new rule 3A.)

New rule 3B provides guidance on factors which may affect a person's ability to effectively participate. These factors should be considered by the children's hearing when making an assessment of effective participation in relation to a child or relevant person.

The current scheme whereby local authorities appoint a legal representative on behalf of a child and re-claim costs from the Scottish Government will be extended to relevant persons.

#### **Consultation**

In accordance with section 44 of, and paragraph 24 of Schedule 7 to, the Tribunals, Courts and Enforcement Act 2007, Scottish Ministers have consulted with the Administrative Justice and Tribunals Council and its Scottish Committee. The Scottish Children's Reporter has also had prior sight of the draft.

#### **Financial Effects**

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sector is foreseen. Additional costs for Scottish Government are anticipated, as yet undetermined. No additional financial burden will fall on local authorities.