

EXECUTIVE NOTE TO
THE CHILDREN'S HEARINGS (SCOTLAND) AMENDMENT RULES 2009

SSI 2009 No. 307

1. The above instrument (“the Rules”) was made in exercise of the powers conferred by section 42(1) of the Children (Scotland) Act 1995 (“the 1995 Act”). The instrument is subject to negative resolution procedure. The purpose of the Rules is to make a purely consequential amendment to the Children’s Hearings (Scotland) Rules 1996 (“the 1996 Rules”). The amendment is being made in consequence of the repeal of the Fostering of Children (Scotland) Regulations 1996 (“the 1996 Regulations”) by the Looked After Children (Scotland) Regulations 2009 (“the 2009 Regulations”).

Legislative Background

2. The 2009 Regulations consolidate and update the regulations relating to Looked After Children, including care planning, fostering, kinship care and placement of looked after children in residential units. At the same time the 2009 Regulations repeal the current regulations, the 1996 Regulations and the Arrangements for Looked After Children (Scotland) Regulations 1996.

3. Rule 20 of the 1996 Rules makes provision for a Children’s Hearing to dispose of a case by making a supervision requirement. Subparagraph (6) of Rule 20 does not allow a Children’s Hearing to make a supervision requirement requiring the child to reside at any with any person, who is not a relevant person, unless the Children’s Hearing has received and considered a report from the local authority, together with recommendations from that authority. The local authority must also have confirmed to the Children’s Hearing that they have carried out the procedures and gathered the information described in regulation 15 of the 1996 Regulations.

4. When the 2009 Regulations repeal the 1996 Regulations the provisions of Regulation 15 of the 1996 Regulations will be contained within Regulation 7 of the 2009 Regulations. Therefore the reference to the 1996 Regulations will be redundant.

5. The Rules will therefore replace reference to regulation 15 of the 1996 Regulations with reference to the 2009 Regulations. This will ensure that the range of places a supervision requirement can require a child to reside is maintained. This change will not make any procedural changes to the Children's Hearing and is purely consequential to the repeal of the 1996 Regulations by the 2009 Regulations. The amendment is not related to any other legislative stream.

Consultation

6. No formal consultation has been undertaken on these Regulations. The Administrative Justice and Tribunal Council (AJTC) are required to be consulted where legislation would have an effect on the procedure of the Children’s Hearings. However, the Rules are being made in consequence to the Looked After Children (Scotland) Regulations 2009, replacing reference to the 1996 Regulations with reference to the equivalent provisions

in the 2009 Regulations and will have no procedural effect on the Children's Hearings. We have informed the AJTC that we are making the Rules.

7. The Scottish Children's Reporter Administration is also aware of the need to make this change and have been advised that we are making it in this way.

Financial Effects

8. The Rules will have no financial effect as the amendment is designed to maintain the status quo with respect to the making of supervision requirements.

Children, Young People and Social Care Directorate
September 2009