

2013 No. 147

CHILDREN AND YOUNG PERSONS

**The Children's Hearings (Scotland) Act 2011 (Modification of
Subordinate Legislation) Order 2013**

Made - - - - - *14th May 2013*

Laid before the Scottish Parliament *15th May 2013*

Coming into force in accordance with article 1

The Scottish Ministers make the following Order in exercise of the powers conferred by section 204 of the Children's Hearings (Scotland) Act 2011(a) and all other powers enabling them to do so.

Citation and commencement

1. This Order may be cited as the Children's Hearings (Scotland) Act 2011 (Modification of Subordinate Legislation) Order 2013 and comes into force on the same day as section 7 (holding of children's hearing) of the Children's Hearings (Scotland) Act 2011.

Modification of subordinate legislation

2. The Schedule to this Order, which makes modifications to subordinate legislation, has effect.

AILEEN CAMPBELL

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
14th May 2013

SCHEDULE

Article 2

MODIFICATION OF SUBORDINATE LEGISLATION

Local Government Superannuation (Scotland) Regulations 1987

1.—(1) The Local Government Superannuation (Scotland) Regulations 1987(a) are amended as follows.

(2) In regulation E2A(4) (entitlement to preserved benefits on transfer to a new authority under the Local Government etc. (Scotland) Act 1994 or on dissolution of a development corporation)(b) in sub-paragraph (a)(iii) of the definition of “new authority” after “established under section 128” insert “of that Act and continued by section 15 (the Scottish Children’s Reporter Administration) of the Children’s Hearings (Scotland) Act 2011(c)”.

(3) In regulation T1 (definitions)(d) in paragraph (c) of the definition of “transferred employee” after “established under section 128 of that Act” insert “and continued by section 15 (the Scottish Children’s Reporter Administration) of the Children’s Hearings (Scotland) Act 2011(e)”.

(4) In Schedule 3, Part 1, paragraph 4 (eligible employees)(f) after “established under section 128 of the Local Government etc. (Scotland) Act 1994” insert “and continued by section 15 (the Scottish Children’s Reporter Administration) of the Children’s Hearings (Scotland) Act 2011(g)”.

Further Education Student Records (Scotland) Regulations 1990

2.—(1) The Further Education Student Records (Scotland) Regulations 1990(h) are amended as follows.

(2) In regulation 2(1) (interpretation) after the definition of “personal information” insert—

““Reporter” means the Principal Reporter or any employee of the Scottish Children’s Reporter Administration to whom there is delegated, under schedule 3, paragraph 10 to the Children’s Hearings (Scotland) Act 2011 (asp 1) any function under that Act or any other enactment; and”.

(3) In regulation 8 (opinion required before giving access to information obtained from the Reporter to a Children’s Panel)—

- (a) in the cross-heading for “**Children’s Panel**” substitute “**children’s hearing**”; and
- (b) in paragraph (1) for “Children’s Panel” substitute “children’s hearing”.

Fees in the Registers of Scotland Order 1995

3. In article 2(i) of the Fees in the Registers of Scotland Order 1995 (interpretation)(i) after “established under section 128 of the Local Government etc. (Scotland) Act 1994” insert “and continued by section 15 (the Scottish Children’s Reporter Administration) of the Children’s Hearings (Scotland) Act 2011”.

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- (a) S.I. 1987/1850. Revoked by S.S.I. 2008/229 subject to the savings provisions in that instrument.
 - (b) Regulation E2A was inserted by S.I. 1997/3048.
 - (c) 2011 asp 1.
 - (d) Part T was inserted by S.I. 1995/3294.
 - (e) 2011 asp 1.
 - (f) Paragraph 4 was substituted by S.I. 1995/3294.
 - (g) 2011 asp 1.
 - (h) S.I. 1990/1560.
 - (i) S.I. 1995/1945. Paragraph (i) was inserted by S.S.I. 2006/600.

Residential Establishments – Child Care (Scotland) Regulations 1996

4. In regulation 2(1) of the Residential Establishments – Child Care (Scotland) Regulations 1996 (interpretation)(a) for the definition of “children’s hearing” substitute—

““children’s hearing” means a hearing constituted in accordance with section 5 of the Children’s Hearings (Scotland) Act 2011(b);”.

Curators ad Litem and Reporting Officers (Panels) (Scotland) Regulations 2001

5. In regulation 10 of the Curators ad Litem and Reporting Officers (Panels) (Scotland) Regulations 2001 (expenses, fees and allowances)(c) omit paragraph (2).

Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003

6. In regulation 13(6)(c) of the Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003 (manner in which financial assistance is provided)(d)—

- (a) after “section 70(3) of that Act” insert “or by giving effect to a compulsory supervision order or interim compulsory supervision order and a requirement within that order of the type mentioned in section 83(2)(a) or 86(2) of the Children’s Hearings (Scotland) Act 2011(e) (“residence requirement”)”; and
- (b) after “a supervision requirement under that Act” insert “or by giving effect to a residence requirement within a compulsory supervision order or interim compulsory supervision order”.

Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005

7. In regulation 10(1) of the Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005 (disclosure of the plan)(f) for sub paragraph (j) substitute—

“(j) to the Principal Reporter, or employee of the Scottish Children’s Reporter Administration to whom there is delegated under schedule 3, paragraph 10 to the Children’s Hearings (Scotland) Act 2011 (asp 1) any of the Principal Reporter’s functions under that Act or any other enactment, for the purposes of performing functions under any enactment with respect to a matter concerning a child or young person for whom the plan has been prepared.”.

Management of Offenders etc. (Scotland) Act 2005 (Specification of Persons) Order 2007

8. In the schedule to the Management of Offenders etc. (Scotland) Act 2005 (Specification of Persons) Order 2007 (persons specified for the purposes of section 10(3) of the Management of Offenders etc. (Scotland) Act 2005)(g), in the entry relating to the Principal Reporter omit from “appointed” to “1994”.

Local Government Pension Scheme (Administration) (Scotland) Regulations 2008

9. In Schedule 2 to the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 (scheme employers)(h) for “The Scottish Children’s Reporter established under

(a) S.I. 1996/3256 to which there have been amendments not relevant to this Order.
(b) 2011 asp 1.
(c) S.S.I. 2001/477 amended by S.S.I. 2011/320.
(d) S.S.I. 2003/608 amended by S.S.I. 2013/137.
(e) 2011 asp 1.
(f) S.S.I. 2005/518 amended by S.S.I. 2010/149 (as amended by S.S.I. 2010/275 regulation 2(2)).
(g) S.S.I. 2007/92 amended by S.S.I. 2011/25 and 2012/38.
(h) S.S.I. 2008/228 amended by S.S.I. 2009/93, 2009/187, 2010/233, 2010/234 and 2012/236.

section 128 of the Local Government etc (Scotland) Act 1994” substitute “The Scottish Children’s Reporter Administration established under section 128 of the Local Government etc. (Scotland) Act 1994 and continued by section 15 (the Scottish Children’s Reporter Administration) of the Children’s Hearings (Scotland) Act 2011(a)”.

Adoption Agencies (Scotland) Regulations 2009

- 10.**—(1) The Adoption Agencies (Scotland) Regulations 2009(b) are amended as follows.
- (2) In regulation 13 (adoption agency decisions)—
- (a) in paragraph (5) for “supervision requirement” substitute “compulsory supervision order”; and
 - (b) in paragraph (6) for “in accordance with” to “supervision requirement)” substitute “that the circumstances mentioned in section 131(2)(c)(i) or (d) of the Children’s Hearings (Scotland) Act 2011 (duty of implementation authority to require review)(c) exist and”.
- (3) In regulation 23 (application for a permanence order: child subject to supervision requirement)—
- (a) in paragraph (1) for “supervision requirement” substitute “compulsory supervision order”;
 - (b) in paragraph (3)(b) for “section 73(13) of the 1995 Act” substitute “section 141(2) of the Children’s Hearings (Scotland) Act 2011 (“the 2011 Act”)(d)”; and
 - (c) in paragraph (4) for “section 73(13) of the 1995 Act” substitute “section 141(2) of the 2011 Act”.

Looked After Children (Scotland) Regulations 2009

- 11.**—(1) The Looked After Children (Scotland) Regulations 2009(e) are amended as follows.
- (2) In regulation 2 (interpretation)—
- (a) insert the following definitions at the appropriate places:—
 - ““the 2011 Act” means the Children’s Hearings (Scotland) Act 2011(f);”;
 - ““child protection order” means an order mentioned in section 37 of the 2011 Act;”;
 - ““compulsory supervision order” has the meaning given by section 83 of the 2011 Act;”;
 - ““contact direction”—
 - (a) in relation to a child protection order, has the meaning given by section 41(3) of the 2011 Act;
 - (b) in relation to a compulsory supervision order, interim compulsory supervision order or medical examination order, means a measure contained within such an order of the type mentioned in section 83(2)(g) or 87(2)(e) of that Act;”; - ““exclusion order” has the meaning given by section 76(12) of the 1995 Act;”;
 - ““interim compulsory supervision order” has the meaning given by section 86 of the 2011 Act;”;
 - ““medical examination order” has the meaning given by section 87 of the 2011 Act;”;and

(a) 2011 asp 1.
(b) S.S.I. 2009/154 to which there are amendments not relevant to this Order.
(c) 2011 asp 1.
(d) 2011 asp 1.
(e) S.S.I. 2009/210 amended by S.S.I. 2009/290 and S.S.I. 2011/211.
(f) 2011 asp 1.

- “warrant to secure attendance” has the meaning given by section 88 of the 2011 Act;”;
and
- (b) for the definition of “relevant person” substitute—
“relevant person” has the meaning given by section 200 of the 2011 Act and includes a person deemed to be a relevant person by virtue of section 81(3), 160(4)(b) or 164(6) of that Act; and”.
- (3) In regulation 5 (child’s plan)—
- (a) in paragraph (2)—
- (i) for sub-paragraph (c) substitute—
“(c) any relevant person in respect of the child;” and
- (ii) for sub-paragraph (d) substitute—
“(d) any person other than a relevant person who appears to the authority to have (or to recently have had) a significant involvement in the upbringing of the child;”;
- (b) in paragraph (4)—
- (i) for sub-paragraph (c) substitute—
“(c) any relevant person in respect of the child; and” and
- (ii) for sub-paragraph (d) substitute—
“(d) any person other than a relevant person who appears to the authority to have (or to recently have had) a significant involvement in the upbringing of the child.”; and
- (c) in paragraph (5) for “a supervision requirement or order or warrant granted under Part II of the 1995 Act” substitute “an exclusion order or any order or warrant made by a children’s hearing or sheriff under the 2011 Act”.
- (4) In regulation 7 (recommendations by local authority to Principal Reporter)—
- (a) in paragraph (1) for “section 56(7) of the 1995 Act” substitute “section 66(4) of the 2011 Act (investigation and determination by the Principal Reporter); and
- (b) in paragraph (2)(d) omit “who is not a relevant person”.
- (5) In regulation 8(3) (arrangements for child to be cared for by parents or persons with parental rights and parental responsibilities) for sub-paragraph (a) substitute—
“(a) be subject to the terms of any compulsory supervision order, interim compulsory supervision order, warrant to secure attendance, permanence order or exclusion order made in respect of the child; and”.
- (6) In regulation 10(1) (kinship carers) omit “who is looked after by that authority in terms of section 17(6) of the 1995 Act”.
- (7) In regulation 11(1) (placement of child with kinship carer) for sub-paragraph (a) substitute—
“(a) the placement is, or would be, contrary to the terms of any—
(i) order or warrant made by the children’s hearing or the sheriff under the 2011 Act;
(ii) permanence order; or
(iii) exclusion order; or”.
- (8) In regulation 13 (notification of placement with kinship carer)—
- (a) after paragraph (1) insert—
“(1A) Where the child is subject to a compulsory supervision order or interim compulsory supervision order, the local authority must provide notification of the placement to—
(a) the Principal Reporter; and
(b) the child’s relevant person.”;
- (b) in paragraph (2) for “paragraph (1)(c) or (d)” substitute “paragraphs (1)(c) and (d) and (1A)” and

- (c) in paragraph (3)(b) for “a supervision requirement or an order or warrant granted under Part II of the 1995 Act” substitute “an exclusion order or any order or warrant made by the children’s hearing or the sheriff under the 2011 Act”.
- (9) In regulation 21(1) (foster carers) omit “who is looked after by that authority in terms of section 17(6) of the 1995 Act”.
- (10) In regulation 27(1) (placement of child with foster carer) for sub-paragraph (a) substitute—
- “(a) the placement is, or would be, contrary to the terms of any—
 - (i) order or warrant made by the children’s hearing or the sheriff under the 2011 Act;
 - (ii) permanence order; or
 - (iii) exclusion order; or”.
- (11) In regulation 29 (notification of placement with foster carer)—
- (a) after paragraph (1) insert—
 - “(1A) Where the child is subject to a compulsory supervision order or interim compulsory supervision order, the local authority must provide notification of the placement to—
 - (a) the Principal Reporter; and
 - (b) the child’s relevant person.”;
 - (b) in paragraph (2) for “paragraph (1)(c) and (d)” substitute “paragraphs (1)(c) and (d) and (1A)”; and
 - (c) in paragraph (3)(b) for “a supervision requirement or an order or warrant granted under Part II of the 1995 Act” substitute “an exclusion order or any order or warrant made by the children’s hearing or the sheriff under the 2011 Act”.
- (12) In regulation 33(1)(b) (fostering and kinship care allowances) for “section 70(3)(a) of the 1995 Act” substitute “a compulsory supervision order”.
- (13) In regulation 34 (child placed in residential establishment: notification)—
- (a) after paragraph (1) insert—
 - “(1A) Where the child is subject to a compulsory supervision order or interim compulsory supervision order, the local authority must provide notification of the placement to—
 - (a) the Principal Reporter; and
 - (b) the child’s relevant person.”;
 - (b) in paragraph (2) for “paragraph (1)(c)” substitute “paragraphs (1)(c) and (d) and (1A)”; and
 - (c) in paragraph (3)(b) for “a supervision requirement or an order or warrant granted under Part II of the 1995 Act” substitute “an exclusion order or any order or warrant made by the children’s hearing or the sheriff under the 2011 Act”.
- (14) In regulation 36 (emergency placement with carer)—
- (a) in paragraph (1) omit “who is looked after by a local authority in terms of section 17(6) of the 1995 Act”; and
 - (b) in paragraph (4) for sub-paragraph (a) substitute—
 - “(a) the placement is, or would be, contrary to the terms of any—
 - (i) order or warrant made by the children’s hearing or the sheriff under the 2011 Act;
 - (ii) permanence order; or
 - (iii) exclusion order; or”.
- (15) In regulation 40 (notification of an extended emergency placement)—
- (a) after paragraph (1) insert—

“(1A) Where the child is subject to a compulsory supervision order or interim compulsory supervision order, the local authority must provide notification of the placement to—

- (a) the Principal Reporter; and
- (b) the child’s relevant person.”;
- (b) in paragraph (2) for “paragraph (1)(c) or (d)” substitute “paragraphs (1)(c) and (d) and (1A)”;
- (c) in paragraph (2)(b) for “a supervision requirement or an order or warrant granted under Part II of the 1995 Act” substitute “an exclusion order or any order or warrant made by the children’s hearing or the sheriff under the 2011 Act”.

(16) In Schedule 4 (matters and obligations to be covered in foster and kinship placement agreements)—

- (a) in paragraph 1(b) for “supervision requirement or” substitute “order or warrant made by the children’s hearing or sheriff under the 2011 Act or other”; and
- (b) in paragraph 6 for “contact required” to the end substitute “contact direction contained within a compulsory supervision order, interim compulsory supervision order, medical examination order or child protection order.”.

Adoption and Children (Scotland) Act 2007 (Modification of Enactments) Order 2010

12. In Schedule 1 to the Adoption and Children (Scotland) Act 2007 (Modification of Enactments) Order 2010 (modification of enactments)(a) omit paragraph 5.

Parental Responsibility and Measures for the Protection of Children (International Obligations) (Scotland) Regulations 2010

13.—(1) The Parental Responsibility and Measures for the Protection of Children (International Obligations) (Scotland) Regulations 2010(b) are amended as follows.

(2) In regulation 2 (interpretation)—

- (a) in the definition of “Children’s Hearing” for “section 93 of the Children (Scotland) Act 1995” substitute “section 5 of the Children’s Hearings (Scotland) Act 2011(c)”; and
- (b) omit the definition of “the Principal Reporter”.

(3) In regulation 5(1)(a) (principal reporters: application to refer to a child to children’s hearing) for “section 65(1) of the Children (Scotland) Act 1995” substitute “section 69(2) of the Children’s Hearings (Scotland) Act 2011(d)”.

(4) In regulation 10(2)(c) (requests for information under Council Regulation) for “under section 41(1)(b) of the Children (Scotland) Act 1995” substitute “by virtue of section 30(2), 31(3) or 82(1) of the Children’s Hearings (Scotland) Act 2011(e)”.

(5) In regulation 12 (the cross-heading of which becomes “Local authorities, Children’s Hearings and sheriffs: placement of child in another Contracting State”)—

- (a) in paragraphs (1) and (2) after “Children’s Hearing” in each of those paragraphs insert “or sheriff”;
- (b) in paragraphs (2)(a) and (b) for “making a supervision requirement under section 70(3)(a) of the Children (Scotland) Act 1995” substitute “making, continuing or varying a compulsory supervision order or interim compulsory supervision order (as defined respectively in sections 83 and 86 of the Children’s Hearings (Scotland) Act 2011)”; and

(a) S.S.I. 2010/21.

(b) S.S.I. 2010/213 as amended by S.S.I. 2011/211.

(c) 2011 asp 1.

(d) 2011 asp 1.

(e) 2011 asp 1.

- (c) in paragraph (3) for “local authority, or in the case of the Children’s Hearing the Principal Reporter,” substitute “local authority or, in the case of the Children’s Hearing or sheriff, the Principal Reporter,”.

Retention of Samples etc. (Children’s Hearings) (Scotland) Order 2011

14.—(1) The Retention of Samples etc. (Children’s Hearings) (Scotland) Order 2011(a) is amended as follows.

(2) In article 3(2) (relevant violent offences) for “ground of referral to a children’s hearing” substitute “section 67 ground”.

(3) After article 3(2) insert—

“(3) For the purpose of paragraph (2) “section 67 ground” has the meaning given by section 67(1) of the Children’s Hearings (Scotland) Act 2011.”.

(a) S.S.I. 2011/197.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes modifications of subordinate legislation. The modifications are consequential on, or ancillary to, the Children's Hearings (Scotland) Act 2011.

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