

## **POLICY NOTE**

### **THE CHILDREN'S HEARINGS (SCOTLAND) ACT 2011 (TRANSITIONAL, SAVINGS AND SUPPLEMENTARY PROVISIONS) ORDER 2013**

#### **SSI 2013/150**

The above instrument is made in exercise of the powers conferred by sections 204 and 205 of the Children's Hearings (Scotland) Act 2011 ("the 2011 Act"). The instrument is subject to negative procedure.

#### **Policy objectives**

##### Policy objectives of the 2011 Act

The 2011 Act repeals and replaces Chapter 2 and most of Chapter 3 of Part II of the Children (Scotland) Act 1995 ("the 1995 Act") and strengthens and modernises Scotland's Children's Hearings system. It introduces structural change and creates:-

- a national Children's Panel which will replace local authority children's panels which operated under the 1995 Act;
- the role of the National Convener who will lead the Children's Panel;
- Children's Hearings Scotland, the body set up to support the National Convener in the delivery of her functions, and;
- Area Support Teams which replace Children's Panel Advisory Committees.

The 2011 Act also promotes children's rights and streamlines Children's Hearings processes by introducing a number of procedural changes.

##### Policy objectives of this instrument

This Order makes provision to facilitate a smooth transition from the current Children's Hearings processes and structures under the 1995 Act to the new arrangements established by the 2011 Act.

##### Part 1 - Preliminary

Article 1 of the Order sets out definitions used in the rest of the Order. It defines what is meant by "relevant proceedings", which are proceedings before a children's hearing or court under Part II of the 1995 Act. The general policy is that "relevant proceedings" will continue under the same legislation as they were commenced until they conclude so that the process is easier to understand and follow, particularly for children and families, but also for those operating the Children's Hearings system. Articles 1(3) and (4) set out, respectively, when "relevant proceedings" commence and conclude. Article 1 also defines what is meant by "relevant date", which is the date on which the new children's hearings system under the 2011 Act will begin to operate (24 June 2013).

##### Part 2 – General Provisions

Article 2 makes general savings provision in respect of primary and subordinate legislation that is applicable to “relevant proceedings” which have commenced but on the relevant date have not concluded, until those proceedings have concluded.

Article 3 provides that a fresh referral, which is received in respect of a child who is already subject to “relevant proceedings”, is to be dealt with under the same legislation as the ongoing “relevant proceedings” (i.e. the 1995 Act) in order to keep the process as straight forward as possible for the child and others.

Article 4 provides that those panel members sitting on “relevant proceedings” will be drawn from the national Children’s Panel set up by the 2011 Act.

Article 5 ensures that, where a Sheriff has required the Principal Reporter to refer a child’s case under the Antisocial Behaviour etc. (Scotland) Act 2004, before the relevant date, the 1995 Act will apply. This set of circumstances is not otherwise caught by the definition of relevant proceedings and so specific provision requires to be made.

### Part 3 – Supervision Requirements

Articles 6 and 7 make provision for supervision requirements to be treated as if they were compulsory supervision orders in certain circumstances. Article 8 makes provision to allow for the calculation of the relevant period for a supervision requirement that is deemed to be a compulsory supervision order under articles 6 or 7.

Article 9 sets out which local authority’s responsibility it will be to implement a supervision requirement upon its conversion to a compulsory supervision order.

Articles 10 and 11 make specific provision relating to the conversion of a supervision requirement to a compulsory supervision order where those supervision requirements contain movement restriction or secure accommodation conditions.

### Part 4 – Transitional and Savings Provisions Relating To The 1995 Act

Articles 12 to 19 make a number of specific transitional and savings provisions in relation to the 1995 Act which are not covered by the general provision made by Parts 2 and 3.

### Part 5 – Transitional and Savings Provisions Relating To The 1994 Act

Articles 20-24 make provision for the transitional and savings arrangements that will apply to the Scottish Children’s Reporter Administration (“SCRA”) and the Principal Reporter in relation to appointments, the exercising and delegation of functions, appeals against dismissal and directions given by the Scottish Ministers to SCRA. SCRA and the Principal Reporter are continued in existence by the 2011 Act and these provisions seek to ensure that they retain all of the functions they require in order to deal with relevant proceedings as well as proceedings under the 2011 Act. These provisions also seek to ensure that the current appointments of the Principal Reporter, officers and members of SCRA are retained.

### Part 6 – Children’s Legal Aid, Safeguarders and Legal Representatives

Article 25 enables appointments that have been made to “relevant proceedings” from the safeguarders panel and legal representatives scheme (saved by Article 2) to continue as well as providing that appointments may be made in “relevant proceedings”, where they have not already been, beyond the relevant date.

Article 26 provides that the National Convener will assume functions in the Panel of Persons to Safeguard the Interests of Children (Scotland) Regulations 2001 previously undertaken by persons who will no longer exist beyond the relevant date.

Article 27 revokes Legal Aid (Scotland) (Children) Regulations 1997(a) though Articles 2(c) and (d) save these regulations and section 29 of the 1986 Act for the purposes of “relevant proceedings” and allow that where legal aid has been granted in respect of “relevant proceedings” it shall continue to apply beyond the relevant date.

#### Part 7 – Children Placed In Secure Accommodation Under The 1996 Regulations

Articles 28 to 30 set out that the commencement of “relevant proceedings” will be where a child is placed in secure accommodation rather than the point at which the Reporter is able to arrange a hearing to review that placement.

Such a placement could be made where the child is not subject to supervision. It may also be made where a child who is subject to supervision but whose supervision requirement would otherwise have converted to a compulsory supervision order on or after 24 June – this provision would ensure that the child’s case continues as part of “relevant proceedings”.

#### **Commencement**

The Order is scheduled to come into force on 24 June 2013, the same day as section 7 (holding of children’s hearings) of the 2011 Act.

#### **Consultation**

Given the technical nature of this instrument a formal consultation exercise was not undertaken. However, informal consultation did take place with key partners in the Children’s Hearings system during the development of the instrument.

#### **Impact Assessments**

It has not been considered necessary to prepare an equality impact assessment for this instrument as it has no effect on equality issues.

#### **Financial Effects**

The Minister for Children and Young People confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government  
Children and Families Directorate  
15 May 2013