

POLICY NOTE

THE CHILDREN'S HEARINGS (SCOTLAND) ACT 2011 (COMMENCEMENT NO. 10) ORDER 2020

SSI 2020/243 (C. 19)

The above instrument was made in exercise of the powers conferred by section 206(2) of the Children's Hearings (Scotland) Act 2011. The instrument is not subject to any parliamentary procedure.

Purpose of the instrument

This instrument is being made to commence the provisions at section 122 of the Children's Hearings (Scotland) Act 2011 ("the Act").

Section 122 makes provision in relation to 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 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 objective of these will be to ensure that the right support is available for children and the arrangements for providing it are effective.

Approach to commencement of section 122

This Commencement Order will firstly commence sub-sections (4) to (7) on 7 September 2020, which will allow Scottish Ministers to make regulations in connection with 'children's advocacy services'. Section 122(7) of the Act defines this as "services of support and representation provided for the purpose of assisting a child in relation to the child's involvement in a children's hearing".

The Commencement Order will then commence sub-sections (1) to (3) of section 122 which relate to the duty of the chairing member of the children's hearing to inform the child of the availability of children's advocacy services.

Commencing section 122 in this way will allow Scottish Ministers to ensure that appropriate arrangements are in place and regulations under section 122(4) have been made, before the duty on the Chairing member commences. To fully achieve the policy intention, these arrangements and regulations must be in place in advance of sub-sections (1)-(3) being commenced.

Further information on the policy objectives can be found in the Revised Explanatory Notes that accompanied the Bill at stage 2 of its passage to becoming the Act, see paragraph 35 (section 122 was named section 29A Children’s hearing: duty to consider appointing an advocate on introduction into the Bill at Stage 2), see here:
[https://www.parliament.scot/S3_Bills/Childrens%20Hearings%20\(Scotland\)%20Bill/b41as3-stage2-en-rev.pdf](https://www.parliament.scot/S3_Bills/Childrens%20Hearings%20(Scotland)%20Bill/b41as3-stage2-en-rev.pdf)

Consultation

No formal consultation was carried out in specific relation to this Commencement Order.

However, engagement with relevant stakeholders on implementation planning continues via regular meetings of an Expert Reference Group.

Impact Assessments

Equalities, Children’s Rights and Wellbeing Impact and Data Protection Impact Assessments have been completed on children’s advocacy in the Children’s Hearings System and will be published with the draft regulations when they are laid in parliament in September 2020.

There are no equality, children's rights and wellbeing or privacy impact issues identified.

Financial Effects

The Minister for Children and Young People confirms that no Business and Regulatory Impact Assessment is necessary as the instrument has no financial effects on local government or on business at the level that would require such an assessment to be prepared.

Nonetheless, the Scottish Government sought to demonstrate what the costs of providing such a service might look like at the time that the Bill for the Act was 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)

Scottish Government
Children and Families Directorate

August 2020