
EXPLANATORY NOTE

(This note is not part of the Regulations)

The Children (Scotland) Act 2020 (“the Act”) received Royal Assent on 1st October 2020. Sections 32, 33, 34 and 35 came into force on the following day.

These Regulations bring into force the following provisions of the Act on 17 January 2021:

- Section 15 inserts subsection (2A) into section 11 of the Children (Scotland) Act 1995 (“the 1995 Act”) to make clear that an order under section 11(2) of the 1995 Act is regarded as relating to at least one of the matters mentioned in section 11(1) (parental responsibilities, parental rights, guardianship or the administration of a child’s property). This does not apply to Court of Session or sheriff court proceedings ongoing at 17 January 2021.
- Section 23 requires the Scottish Ministers to make funding available for alternative dispute resolution. They must lay before the Scottish Parliament a statement explaining how they have provided funding within 6 months of Royal Assent of the Act, and if they have not provided funding this has to be explained in the statement.
- Section 24 requires the Scottish Ministers to set up a pilot scheme of mandatory alternative dispute resolution meetings. They must lay before the Scottish Parliament within 6 months of Royal Assent a statement detailing the pilot including any exemptions that will be applied and how they intend to evaluate the pilot. If they have not set up a pilot by then, they must report the reasons why to the Scottish Parliament, and continue to do that at 6 monthly intervals until the pilot is established.

These Regulation brings into force the following provisions of the Act on 26 July 2021:

- Section 13 amends section 17 of the 1995 Act so local authorities must take such steps to promote personal relations and direct contact between children looked after by the authority and their siblings as appear to the authority to be appropriate having regard to the authority’s duty to promote the welfare of the child. The duty applies not only to siblings (defined as people who have at least one parent in common) but also to any other person with whom the child has lived and with whom the child has an ongoing relationship with the character of a relationship between siblings. This section also amends section 17(3) of the 1995 Act so before making any decision with respect to a child whom they are looking after, or proposing to look after, a local authority shall, so far as is reasonably practicable, ascertain the views of such siblings or those with a sibling-like relationship with the child.
- Section 14 amends section 29A of the Children’s Hearings (Scotland) Act 2011 (“the 2011 Act”) so that a children’s hearing or, as the case may be the sheriff, when considering whether to include a measure regulating contact, must in particular consider the inclusion of a measure regulating contact between the child and other persons with whom a child does not reside, namely relevant persons in relation to the child, siblings or persons with a sibling-like relationship with the child.
- Section 25 amends the 2011 Act to allow qualifying individuals an opportunity to participate in a children’s hearing, including a process for a review in the event that such an individual has been denied an opportunity to participate and a specific right for a person who qualified for an opportunity to participate at the last children’s hearing to request an early review of a Compulsory Supervision Order.
- Section 26 amends sections 160 and 164 of the 2011 Act to make clear that the existing right of appeal against a decision that an individual is or is not deemed a relevant person in relation to

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a child also applies to a decision that an individual is to ‘continue to be deemed’ or ‘no longer to be deemed’ a relevant person. This section of the Act also extends the section 164 right of appeal to the Principal Reporter, where a sheriff does not confirm the hearing’s decision. This does not affect the right of appeal already available to the child themselves, the individual in question, a relevant person in relation to the child or two or more persons together. Section 26(4) and (5) amends the Legal Aid (Scotland) Act 1986 so children’s legal aid may now be available in an appeal when it relates to whether a person is no longer to be deemed or is to continue to be deemed a relevant person.