

POLICY NOTE

The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Amendment Rules 2022

SSI 2022/264

The above instrument was made in exercise of the powers conferred by section 177 of the Children's Hearings (Scotland) Act 2011. The instrument is subject to negative procedure.

Summary Box

Insert one or two sentences to explain what the purpose of the instrument is.

The purpose of the instrument is to ensure that the rules regarding the composition of pre-hearing panels are consistent with the Children's Hearings (Scotland) Act 2011.

Policy Objectives

In order to introduce flexibility to the current strict requirement for a children's hearing to have both male and female Panel Members, an amendment to the Children's Hearings (Scotland) Act 2011 passed at Stage 2 of the Coronavirus (Recovery and Reform)(Scotland) Act 2022, and will come into force on 1 November 2022. It will include the words "so far as practicable" in the requirement at section 6(3)(a) of the 2011 Act that a children's hearing includes both male and female Panel Members. Section 6(5) of the 2011 Act specifies that these requirements also apply to pre-hearing panels.

However, the procedural rules for selection of members of pre-hearing panels are set down separately in The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 ("the Rules").

Rule 3(2) of the Rules states:

(2) In selecting members of a pre-hearing panel in terms of section 79(2)(a) (referral of certain matters for pre-hearing determination) of the Act the National Convener must ensure that the prehearing panel—

(a) includes both male and female members of the Children's Panel; and

(b) so far as practicable, consists only of members of the Children's Panel who live or work in the area of the local authority which is the relevant local authority for the child to whom the pre-hearing panel relates.

In light of section 6(5) of the 2011 Act, in order to ensure clarity this instrument removes Rule 3(2) of the Rules. This will mean that the Rules are consistent with the 2011 Act as amended.

Consultation

During the development of the amendment to the 2022 Act, the Scottish Government undertook a focussed and targeted engagement exercise, requesting views from 21 key stakeholder organisations working in children's rights, protection and justice. While limited, the responses that were received were supportive, which officials concluded was indicative of the broader support voiced by stakeholders in separate discussions.

As part of the process of gathering evidence to support this change, Children's Hearings Scotland undertook engagement with children and young people. They did this through in-person engagement with Our Hearings, Our Voice, the independent board for children and young people from across Scotland between the ages of 8-18, who have experience of the Children's Hearings System. Furthermore, they had three face to face meetings with children and young people with experience of the hearings system and CHS. Feedback was gathered using a child friendly feedback form.

Of those children and young people consulted, only half were aware of the existing prescriptive requirement for a mixed gender panel. The majority of respondents had no strong feelings about the gender balance of a panel, saying either they had no preference, or it wasn't important to them. The issue of potential trauma, and creating safe spaces within hearings was raised, with some respondents alert to the need for children's views to be considered. Retaining a strict requirement for mixed gender panels was of low importance to these children.

Impact Assessments

An Equality Impact Assessment and a Child Rights and Wellbeing Impact Assessment have been undertaken in relation to this policy, encompassing the amendment to the 2022 Act and the instrument. No negative effects regarding equalities or children's rights and wellbeing have been assessed. Appropriate monitoring has been discussed with operational partners, and a process is in place for implementation.

Having given due consideration to the discrete and limited effects of this change, it has not been considered necessary to undertake a Strategic Environmental Assessment (SEA), a Data Protection Impact Assessment, an Island Communities Impact Assessment (ICIA) or a Fairer Scotland Duty assessment. The change introduces an important operational flexibility, but the Scottish Government anticipates it will not be routinely used. It has no environmental effects, nor any effects specific to island communities.

Financial Effects

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