

CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – the Principal Reporter and the Scottish Children's Reporter Administration (Scra)

The Principal Reporter and SCRA

Section 14 – The Principal Reporter

16. This section provides for the post of Principal Reporter to continue. That post was established by section 127(1) of the Local Government etc. (Scotland) Act 1994 (“the 1994 Act”).

Section 15 – The Scottish Children's Reporter Administration

17. This section provides for SCRA to continue to exist as part of the Children's Hearings system. That body was established by section 128(1) of the 1994 Act.

Section 16 – Further provision about Principal Reporter and SCRA

18. [Schedule 3](#) makes extensive further provision about the Principal Reporter and SCRA including their status and governance arrangements.

The Principal Reporter

Section 17 – Duty as respects location of children's hearing

19. This section places a duty on the Principal Reporter (who is the person responsible for arranging all Children's Hearings) to ensure that a Children's Hearing takes place, so far as is practicable, in the child's local authority area.

Section 18 – Power to change Principal Reporter's functions

20. This section gives the Scottish Ministers power to vary the functions of the Principal Reporter. Ministers may specify further functions for the Principal Reporter, either by creating entirely new functions or through transferring functions from existing bodies or persons. Functions may also be removed from the Principal Reporter and transferred to another body or person should Ministers consider this to be appropriate. Any such change to the functions of the Principal Reporter will require to be made by an order subject to super-affirmative procedure. Subsection (1)(e) confers power on the Scottish Ministers to specify the manner in which the Principal Reporter must carry out a function or the time period in which the function must be carried out. Any such specification will require to be made by an order subject to affirmative procedure. See sections 197 and 198 for definitions of “affirmative procedure” and “super-affirmative procedure”.

Section 19 – Rights of audience

21. This section gives the Scottish Ministers the power to make regulations to empower the Principal Reporter to conduct any proceedings before the sheriff or sheriff principal in relation to the Children's Hearings system despite not being a solicitor or advocate. This authorisation will also extend to persons to whom functions of the Principal Reporter have been delegated under paragraph 10 of schedule 3 (a "reporter"). Ministers may also prescribe any qualification, training or experience that must be undertaken by the Principal Reporter (and other reporters exercising the Principal Reporter's functions) before conducting such court proceedings.

Functions of SCRA

Section 20 – Assisting Principal Reporter

22. This section specifies the principal function of SCRA which is to support the Principal Reporter in carrying out their functions.

Section 21 – Provision of accommodation for children's hearings

23. This section places a duty on SCRA to provide suitable accommodation and facilities for Children's Hearings. Subsection (2) provides that such accommodation and facilities must, so far as practicable, be provided within each local authority area across Scotland. Subsection (3) places a duty on SCRA to ensure that accommodation and facilities for Children's Hearings continue to be separate from criminal courts and police stations.

Section 22 – Independence of Principal Reporter

24. This section protects the independence of the Principal Reporter by ensuring that neither SCRA nor any other person may direct or guide the Principal Reporter in the conduct of their statutory functions. Subsection (2) makes clear that this prohibition is subject to the power of the Scottish Ministers under section 18(1)(e) to specify by secondary legislation the manner or timing in which any function of the Principal Reporter is to be carried out.

Section 23 – Directions

25. This section provides for the Scottish Ministers to give directions to SCRA on the carrying out of its functions. This power could be used, for example, to set the strategic direction of the children's reporter service or to set organisational objectives and outcomes. SCRA must comply with such directions.

Transfer of staff, property etc.

Section 24 – Transfer of staff, property etc.

26. This section introduces schedule 4 which makes provision about the transfer of staff, property, rights, liabilities and obligations from SCRA, local authorities or the Scottish Ministers to CHS.