

CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 20 – General

Interpretation

Section 199 – Meaning of “child”

324. This section provides a definition of “child” for the purposes of the Act. A child means a person under 16 years of age. However this section also provides some exceptions to that general rule. Subsection (2) provides that for the purposes of referrals under section 67(2)(o) (failure to attend school), references in the Act to a child include references to a person who is school age. “School age” has the meaning given in section 31 of the Education (Scotland) Act 1980.
325. Subsections (3), (4) and (5) provide that where a person becomes 16 after section 66 of the Act applies (after the Principal Reporter has obtained information that suggests the child might need a compulsory supervision order but before the reporter has made a determination on that issue) but before a relevant event, the Act continues to apply to that person until a relevant event occurs. A relevant event is the making of a compulsory supervision order, the notification under section 68(3) that the question of whether a compulsory supervision order should be made in respect of the child will not be referred to the Children’s Hearing (the reporter has determined not to refer to the Children’s Hearing) or the discharge of the referral. Subsections (6) and (7) provide that the provisions of the Act continue to apply to persons who are subject to a compulsory supervision order on becoming 16 or when one is made in respect of that person on or after they become 16 until the compulsory supervision order is terminated (it may be continued at review under sections 138 or 139 where necessary) or the person reaches 18 years of age.
326. Subsections (8) and (9) relate to persons whose case has been remitted to the Children’s Hearings under section 49(7)(b) of the Criminal Procedure (Scotland) Act 1995 for disposal. Where the person concerned will be over the age of 16 but under 18 and not at the time of the remit subject to a compulsory supervision order, the provisions of the Act will apply to them until the hearing or sheriff discharges the referral, any resulting compulsory supervision order is terminated or the person reaches 18 years of age.

Section 200 – Meaning of “relevant person”

327. This section defines the meaning of “relevant person” in relation to a child in the Act. A relevant person means:
- a parent or guardian who has parental responsibilities or parental rights in relation to the child under Part 1 of the 1995 Act;

These notes relate to the Children's Hearings (Scotland) Act 2011 (asp 1) which received Royal Assent on 6 January 2011

- a person in whom parental responsibilities or parental rights are vested under section 11(2)(b) of the 1995 Act; a person in whom parental responsibilities or parental rights are vested under section 11(12) of the 1995 Act;
 - a parent having parental responsibility for the child under Part 1 of the Children Act 1989;
 - a person having parental responsibility for the child under other provisions of the 1989 Act or the Adoption and Children Act 2002;
 - a person in whom parental responsibilities or parental rights are vested by a permanence order under the Adoption and Children (Scotland) Act 2007; or
 - any other person specified by order made by the Scottish Ministers.
328. Any such order will be subject to affirmative procedure. Subsection (2) provides that a parent does not have parental responsibilities or rights merely by virtue of contact order or specific issues order made under section 11(2)(d) or (e) of the 1995 Act.

Section 201 – Meaning of “relevant local authority”

329. Most duties under the Act are imposed on the “relevant local authority” for the child and that term is defined in this section. The relevant local authority for the child is the local authority for the area in which the child predominantly resides or (if that criterion does not apply) the area which the child has the closest connection to. In determining the relevant local authority no account is taken of a period of residence in a residential establishment, any other period of residence, residence in any other place, or connections with an area which may be prescribed in regulations. The child’s relevant local authority may change during the child’s involvement in the Children’s Hearings system.

Section 202 – Interpretation

330. This section defines certain terms that are used in the Act.