



Children's Hearings (Scotland) Act 2011

2011 asp 1

PART 18

MISCELLANEOUS

Children's hearings: procedural rules

177 Children's hearings: procedural rules

- (1) The Scottish Ministers may make rules about the procedure relating to children's hearings.
- (2) Rules may in particular make provision for or in connection with—
 - (a) specifying matters that may be determined by pre-hearing panels,
 - (b) constituting children's hearings,
 - (c) arranging children's hearings,
 - (d) notifying persons about children's hearings,
 - (e) attendance of persons at children's hearings,
 - (f) specifying circumstances in which persons may be excused from attending children's hearings,
 - (g) specifying circumstances in which persons may be excluded from children's hearings,
 - (h) obtaining the views of the child to whom a children's hearing relates,
 - (i) provision of specified documents to—
 - (i) members of children's hearings,
 - (ii) the child to whom a children's hearing relates,
 - (iii) relevant persons in relation to the child to whom a children's hearing relates,
 - (iv) any other specified persons,
 - (j) withholding of specified documents from persons mentioned in paragraph (i),
 - (k) prescribing the form of the statement of grounds,
 - (l) the recording and transmission of information,
 - (m) representation of persons at children's hearings,
 - (n) payment of expenses,

- (o) appeals.
- (3) In making rules in pursuance of subsection (2)(i)(i), the Scottish Ministers must ensure that any views expressed by the child to whom a children's hearing relates are reflected in a specified document.
- (4) Rules containing provision of the type mentioned in subsection (2)(a), (e), (f), (g), (j) or (m) are subject to the affirmative procedure.
- (5) In this section—
 - “children's hearing” includes pre-hearing panel,
 - “specified” means specified in the rules.

Disclosure of information

178 Children's hearing: disclosure of information

- (1) A children's hearing need not disclose to a person any information about the child to whom the hearing relates or about the child's case if disclosure of that information to that person would be likely to cause significant harm to the child.
- (2) Subsection (1) applies despite any requirement under an enactment (including this Act and subordinate legislation made under it) or rule of law for the children's hearing—
 - (a) to give the person an explanation of what has taken place at proceedings before the hearing, or
 - (b) to provide the person with—
 - (i) information about the child or the child's case, or
 - (ii) reasons for a decision made by the hearing.

179 Sharing of information: prosecution

- (1) This section applies where—
 - (a) by virtue of this Act, the Principal Reporter, a children's hearing or the sheriff has determined, is determining or is to determine any matter relating to a child,
 - (b) criminal proceedings have been commenced against an accused,
 - (c) the proceedings have not yet been concluded, and
 - (d) the child is connected in any way with the circumstances that gave rise to the proceedings, the accused or any other person connected in any way with those circumstances.
- (2) The Principal Reporter must make available to the Crown Office and Procurator Fiscal Service any information held by the Principal Reporter relating to the prosecution which the Service requests for the purpose of—
 - (a) the prevention or detection of crime, or
 - (b) the apprehension or prosecution of offenders.

180 Sharing of information: panel members

- (1) A local authority must comply with a request from the National Convener to provide to the National Convener information about the implementation of compulsory supervision orders by the authority.

- (2) The National Convener may disclose information provided by a local authority under subsection (1) to members of the Children's Panel.

Implementation of compulsory supervision orders: annual report

181 Implementation of compulsory supervision orders: annual report

- (1) The National Convener must, as soon as is reasonably practicable after the end of each financial year, prepare and submit to the Scottish Ministers a report about implementation of compulsory supervision orders during the year—
- (a) in Scotland as a whole, and
 - (b) in each local authority area.
- (2) The National Convener must give a copy of the report to each member of the Children's Panel.
- (3) The Scottish Ministers must lay the report before the Scottish Parliament.
- (4) For the purposes of preparing the report, the National Convener may require each local authority to provide to the National Convener for each financial year—
- (a) information about—
 - (i) the number of compulsory supervision orders for which the authority is the implementation authority,
 - (ii) changes in the circumstances that led to the making of the orders,
 - (iii) the ways in which the overall wellbeing of children who are subject to the orders has been affected by them, and
 - (b) such other information relating to the implementation of the orders as the National Convener may require.
- (5) Information provided under subsection (4) must not identify (or enable the identification of) a particular child.
- (6) In this section, “financial year” has the meaning given by paragraph 24(3) of schedule 1.

Publishing restrictions

182 Publishing restrictions

- (1) A person must not publish protected information if the publication of the information is intended, or is likely, to identify—
- (a) a child mentioned in the protected information, or
 - (b) an address or school as being that of such a child.
- (2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (3) It is a defence for a person (“P”) charged with a contravention of subsection (1) to show that P did not know or have reason to suspect that the publication of the protected information was likely to identify a child mentioned in the protected information, or, as the case may be, an address or school of such a child.

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- (4) In relation to proceedings before a children's hearing, the Scottish Ministers may in the interests of justice—
- (a) dispense with the prohibition in subsection (1), or
 - (b) relax it to such extent as they consider appropriate.
- (5) In relation to proceedings before the sheriff under Part 10 or 15, the sheriff may in the interests of justice—
- (a) dispense with the prohibition in subsection (1), or
 - (b) relax it to such extent as the sheriff considers appropriate.
- (6) In relation to proceedings in an appeal to the Court of Session under this Act, the Court may in the interests of justice—
- (a) dispense with the prohibition in subsection (1), or
 - (b) relax it to such extent as the Court considers appropriate.
- (7) The prohibition in subsection (1) does not apply in relation to the publication by or on behalf of a local authority or an adoption agency of information about a child for the purposes of making arrangements in relation to the child under this Act or the Adoption and Children (Scotland) Act 2007 (asp 4).
- (8) In subsection (7), “adoption agency” has the meaning given by the Adoption and Children (Scotland) Act 2007.
- (9) In this section—
- “protected information” means—
- (a) information in relation to—
 - (i) a children's hearing,
 - (ii) an appeal against a decision of a children's hearing,
 - (iii) proceedings before the sheriff under Part 10 or 15, or
 - (iv) an appeal from any decision of the sheriff or sheriff principal made under this Act, or
 - (b) information given to the Principal Reporter in respect of a child in reliance on, or satisfaction of, a provision of this Act or any other enactment,
- “publish” includes in particular—
- (a) to publish matter in a programme service, as defined by section 201 of the Broadcasting Act 1990 (c.42), and
 - (b) to cause matter to be published.

Mutual assistance

183 Mutual assistance

- (1) A person mentioned in subsection (2) must comply with a request by another such person for assistance in the carrying out of functions conferred by virtue of this Act.
- (2) The persons are—
- (a) CHS,
 - (b) the National Convener,
 - (c) SCRA,

- (d) the Principal Reporter.
- (3) A person mentioned in subsection (4) must comply with a request by a local authority for assistance in the carrying out of the local authority's functions under this Act.
- (4) The persons are—
 - (a) another local authority,
 - (b) a health board constituted under section 2 of the National Health Service (Scotland) Act 1978 (c.29).
- (5) A request under this section must specify the assistance that is required.
- (6) Nothing in this section requires a person to comply with a request if—
 - (a) it would be incompatible with any function (whether conferred by statute or otherwise) of the person to whom it is directed, or
 - (b) it would unduly prejudice the carrying out by the person to whom the request is directed of the person's functions.

184 Enforcement of obligations on health board under section 183

- (1) This section applies where—
 - (a) the implementation authority in relation to a compulsory supervision order has made a request for assistance from a health board under section 183(3),
 - (b) the request is in connection with the implementation of the compulsory supervision order, and
 - (c) the implementation authority is satisfied that the health board has unreasonably failed to comply with the request.
- (2) The implementation authority may refer the matter to the Scottish Ministers.
- (3) On receiving a reference under subsection (2), the Scottish Ministers may, if they are satisfied that the health board has unreasonably failed to comply with the request, direct the health board to comply with the request.
- (4) The health board must comply with a direction under subsection (3).

Proceedings before sheriff under Act

185 Amendment of section 32 of Sheriff Courts (Scotland) Act 1971

- (1) Section 32 of the Sheriff Courts (Scotland) Act 1971 (c.58) (power of Court of Session to regulate civil procedure in sheriff court) is amended as follows.
- (2) In subsection (1)—
 - (a) after paragraph (eb) insert—
 - “(ec) enabling a witness (including a witness who is outwith Scotland) in proceedings under Part 10 or 15 of the Children's Hearings (Scotland) Act 2011 to give evidence by a means specified in the act of sederunt that does not require the witness to be physically present in court in such circumstances, and subject to such conditions, as may be specified in the act of sederunt,

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- (ed) prescribing circumstances in which a party to proceedings under Part 10 or 15 of the Children's Hearings (Scotland) Act 2011 may be prohibited from personally conducting the examination of witnesses,”
- (b) after paragraph (i) insert—
 - “(ia) permitting a party to proceedings under the Children's Hearings (Scotland) Act 2011 to be represented (including through the making of oral submissions to the sheriff on the party's behalf), in such circumstances as may be specified in the act of sederunt, by a person who is neither an advocate nor a solicitor,” and
- (c) after paragraph (k) insert—
 - “(ka) prescribing functions of safeguarders appointed by the sheriff in relation to proceedings under Part 10 or 15 of the Children's Hearings (Scotland) Act 2011,
 - (kb) prescribing rights of safeguarders appointed by the sheriff in relation to proceedings under Part 10 or 15 of the Children's Hearings (Scotland) Act 2011 to information relating to the proceedings,”.
- (3) After subsection (4) add—
 - “(5) In subsection (1), “civil proceedings” includes proceedings under the Children's Hearings (Scotland) Act 2011.”.

Consent of child to medical examination or treatment

186 Consent of child to medical examination or treatment

- (1) Nothing in this Act prejudices any capacity of a child enjoyed by virtue of section 2(4) of the Age of Legal Capacity (Scotland) Act 1991 (c.50) (capacity of child with sufficient understanding to consent to surgical, medical or dental procedure or treatment).
- (2) In particular, where—
 - (a) under an order mentioned in subsection (3) any examination or treatment is arranged for the child, and
 - (b) the child has the capacity mentioned in section 2(4) of the Age of Legal Capacity (Scotland) Act 1991,
 the examination or treatment may be carried out only if the child consents to it.
- (3) Those orders are—
 - (a) a child assessment order,
 - (b) a child protection order,
 - (c) a compulsory supervision order,
 - (d) an interim compulsory supervision order,
 - (e) a medical examination order.

Rehabilitation of offenders

187 Rehabilitation of Offenders Act 1974: treatment of certain disposals by children's hearings

- (1) The Rehabilitation of Offenders Act 1974 (c.53) is amended as follows.
- (2) In section 8B (protection afforded to spent alternatives to prosecution: Scotland)—
- (a) after subsection (1) insert—
- “(1A) For the purposes of this Act, a person has also been given an alternative to prosecution in respect of an offence if (whether before or after the commencement of this section) in proceedings before a children's hearing to which subsection (1B) applies—
- (a) a compulsory supervision order (as defined in section 83 of the 2011 Act) has been made or, as the case may be, varied or continued in relation to the person, or
- (b) the referral to the children's hearing has been discharged (whether wholly or in relation to the ground that the person committed the offence).
- (1B) This subsection applies to proceedings if the proceedings were taken in relation to the person on the ground (whether alone or with other grounds) that the person had committed the offence and—
- (a) the ground was accepted for the purposes of the 2011 Act by—
- (i) the person, and
- (ii) any person who was a relevant person as respects those proceedings, or
- (b) the ground was established or treated as established for the purposes of the 2011 Act.
- (1C) In subsections (1A) and (1B)—
- “the 2011 Act” means the Children's Hearings (Scotland) Act 2011,
- “relevant person”—
- (a) has the meaning given by section 200 of the 2011 Act, and
- (b) includes a person who was deemed to be a relevant person by virtue of section 81(3), 160(4)(b) or 164(6) of that Act.
- (1D) For the purposes of this Act, a person has also been given an alternative to prosecution in respect of an offence if (whether before or after the commencement of this section) in proceedings before a children's hearing to which subsection (1E) applies—
- (a) a supervision requirement has been made or, as the case may be, varied or continued under the Children (Scotland) Act 1995 (“the 1995 Act”) in relation to the person, or
- (b) the referral to the children's hearing has been discharged (whether wholly or in relation to the ground that the person committed the offence).

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- (1E) This subsection applies to proceedings if the proceedings were taken in relation to the person on the ground (whether alone or with other grounds) that the person had committed the offence and—
- (a) the ground was accepted for the purposes of the 1995 Act by the person and, where necessary, the relevant person (as defined in section 93(2) of that Act), or
 - (b) the ground was established, or deemed to have been established, for the purposes of that Act.”, and
- (b) in subsection (2), for “subsection (1)” substitute “subsections (1), (1A) and (1D)”.
- (3) In Schedule 3 (protection for spent alternatives to prosecution: Scotland), after subparagraph (1)(a) of paragraph 1 insert—
- “(aa) in the case of—
 - (i) a compulsory supervision order referred to in paragraph (a) of subsection (1A) of that section, the period of 3 months beginning on the day the compulsory supervision order is made or, as the case may be, varied or continued, or
 - (ii) a discharge referred to in paragraph (b) of subsection (1A) of that section, the period of 3 months beginning on the day of the discharge,
 - (ab) in the case of—
 - (i) a supervision requirement referred to in paragraph (a) of subsection (1D) of that section, the period of 3 months beginning on the day the supervision requirement is made or, as the case may be, varied or continued, or
 - (ii) a discharge referred to in paragraph (b) of subsection (1D) of that section, the period of 3 months beginning on the day of the discharge.”.

Criminal record certificates

188 Criminal record certificates

In section 113A of the Police Act 1997 (c.50) (criminal record certificates)—

- (a) in subsection (6), in the definition of “relevant matter”, after paragraph (b) insert—
 - “(ba) an alternative to prosecution of the type mentioned in section 8B(1A) or (1D) of that Act which relates to an offence specified in an order made by the Scottish Ministers by statutory instrument, including any such alternative to prosecution which so relates and which is spent under Schedule 3 to that Act,
 - (bb) a supervision requirement made in relation to a person by a children’s hearing under section 44 of the Social Work (Scotland) Act 1968 in the circumstances mentioned in subsection (6A) if the supervision requirement relates to an offence specified in an order under paragraph (ba),
 - (bc) the discharge under section 43 of the Social Work (Scotland) Act 1968 of the referral of a person to a children’s hearing

- in the circumstances mentioned in subsection (6A) if the discharge relates to an offence specified in an order under paragraph (ba),” and
- (b) after that subsection, insert—
- “(6A) The circumstances are—
- (a) the person was referred to the children’s hearing on the ground (whether alone or among other grounds) mentioned in section 32(2)(g) of the Social Work (Scotland) Act 1968 (commission of offence), and
- (b) the ground was accepted by the person and, where necessary, by the person’s parent or established to the satisfaction of the sheriff under section 42 of that Act.
- (6B) An order under paragraph (ba) of the definition of “relevant matter” in subsection (6) may specify an offence by reference to a particular degree of seriousness.
- (6C) A statutory instrument containing an order under paragraph (ba) of the definition of “relevant matter” in subsection (6) may not be made unless a draft of the instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.”.

Places of safety

189 Places of safety: restrictions on use of police stations

- (1) This section applies where a person is authorised or required under this Act to keep or detain a child in a place of safety.
- (2) A child may be kept or detained in a police station only if it is not reasonably practicable to keep or detain the child in a place of safety which is not a police station.
- (3) Where a child is being kept or detained in a police station, the person must take steps to identify a place of safety which is not a police station and transfer the child to that place as soon as is reasonably practicable.

Orders made outwith Scotland

190 Effect of orders made outwith Scotland

- (1) The Scottish Ministers may by regulations make provision for a specified non-Scottish order which appears to them to correspond to a compulsory supervision order to have effect as if it were such an order.
- (2) Regulations under subsection (1)—
- (a) may provide that a non-Scottish order is to have such effect only—
- (i) in specified circumstances,
- (ii) for specified purposes,
- (b) may modify the following enactments in their application by virtue of the regulations to a non-Scottish order—
- (i) the Social Work (Scotland) Act 1968,

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- (ii) this Act,
 - (c) are subject to affirmative procedure.
- (3) In this section—
 - “non-Scottish order” means an order made by a court in England and Wales or in Northern Ireland,
 - “specified” means specified in the regulations.