

CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 16 – Children’s Hearings

Section 82 – Safeguarders: exceptions to duty to prepare report on appointment

254. This section amends section 33 of the Children’s Hearings (Scotland) Act 2011 (“the 2011 Act”) which deals with the functions of safeguarders. Section 33(1) of the 2011 Act requires any safeguarder appointed by a children’s hearing by virtue of section 30, on appointment, to prepare a report for the hearing. Following amendment, section 33 of the 2011 Act will provide that a report does not require to be prepared by a safeguarder if the children’s hearing is arranged under any of the following sections of the 2011 Act: section 45 (review by children’s hearing where child in place of safety), section 46 (review by children’s hearing where order prevents removal of child), section 50 (children’s hearing to provide advice to sheriff in relation to application), section 96 (children’s hearing to consider need for further interim compulsory supervision order), section 126 (review of contact direction), or section 158 (compulsory supervision order: suspension pending appeal).

Section 83 – Maximum period of child protection order

255. **Section 83** amends section 54 of the 2011 Act (termination of child protection order after maximum of 8 working days). Following amendment, section 54 of the 2011 Act will provide that if, following the making of a child protection order under section 37 of the 2011 Act, a children’s hearing does not take place within the period of 8 working days beginning on the day after the day on which a child is removed under the child protection order to a place of safety or within the period of 8 working days beginning on the day after the day on which the order was made, the child protection order automatically terminates.

Section 84 – Power to determine that deeming of person as relevant person to end

256. **Section 84** amends section 79 of the 2011 Act (referral of certain matters for pre-hearing determination) and adds a new section 81A into the 2011 Act. Following amendment, the 2011 Act will provide for a pre-hearing panel to determine whether an individual previously deemed for the purposes of the 2011 Act to be a “relevant person” in relation to a child should continue to be deemed a “relevant person” in relation to the child. The amendments at paragraph 12(2), (3) and (7) of schedule 5 are consequential on these substantive provisions. The amendment to section 160 of the 2011 Act at paragraph 12(8) of schedule 5 makes provision for appeal to the sheriff against a determination of the pre-hearing panel.

Section 85 – Grounds hearing: non-acceptance of facts supporting ground

257. **Section 85** amends section 90 of the 2011 Act (grounds to be put to child and relevant person). Following amendment, section 90(1)(a) requires the chairing member of a children’s hearing arranged under section 69(2) or 95(2) of the 2011 Act (known as the “grounds hearing”) to explain to the child and each relevant person each ground for referral to the children’s hearing (known as a “section 67 ground”) as set out in the statement of grounds prepared by the Principal Reporter under section 89 of the 2011 Act and all the facts supporting each section 67 ground set out in the statement of grounds. Existing section 90(1)(b) requires the chairing member to ask the child and each relevant person whether they accept that each section 67 ground applies in relation to the child. New section 90(1A) requires the chairing member to ask the child and each relevant person whether, in relation to each section 67 ground that that person accepts, each of the supporting facts is also accepted. New section 90(1B) provides that where the child or relevant person does not accept all of the supporting facts in relation to a section 67 ground which they have accepted, the ground is taken, for the purposes of the 2011 Act, to be accepted only if the grounds hearing considers that the person has accepted sufficient of the supporting facts to support the conclusion that the ground applies in relation to the child and it is appropriate to proceed in relation to the ground on the basis only of those supporting facts which are accepted. New section 90(1C) provides that where a ground is taken to be accepted by virtue of section 90(1B), the grounds hearing is required to amend the statement of grounds to delete any supporting facts which are not accepted. The amendments at paragraph 12(4), (5), (6) and (9) of schedule 5 are consequential on these substantive amendments.

Section 86 – Failure of child to attend grounds hearing: power to make interim order

258. **Section 86** amends section 95 of the 2011 Act (child fails to attend grounds hearing). Following amendment, new section 95(3) and (4) will give power to a children’s hearing arranged under section 69(2) or 95(2) (known as a “grounds hearing”) to make an interim compulsory supervision order (ICSO) where a child fails to attend that hearing and was not excused from attending the hearing and the hearing, as a result, has required the Principal Reporter to arrange another grounds hearing. New section 95(4) provides that this power is available if the hearing considers that the nature of the child’s circumstances is such that for their protection, guidance, treatment or control it is necessary that an ICSO be made as a matter of urgency. New section 95(5) provides that an ICSO made under section 95(4) may not include a requirement that the implementation authority arrange a specified medical or other examination of the child.

Section 87 – Limit on number of further interim compulsory supervision orders

259. **Section 87** amends section 96 of the 2011 Act (children’s hearing to consider need for further interim compulsory supervision order) so that a children’s hearing may only make a maximum of 3 interim compulsory supervision orders (ICSOs) in respect of a child in relation to one reference to the hearing. If a further ICSO is required beyond that, an application must be made to the sheriff under section 98 of the 2011 Act.

Section 88 – Area support teams: establishment

260. **Section 88** amends paragraphs 12 and 13 of schedule 1 of the the 2011 Act. Schedule 1 of the 2011 Act makes further provision about the National Convener of Children’s Hearings Scotland (CHS) and about CHS itself – such as provision relating to appointment and functions, etc. Paragraph 12 of the schedule provides for the establishment and membership of area support teams (ASTs) which are to carry out for their areas, the selection of children’s hearing members and paragraph 13 applies when the National Convener first establishes an AST under paragraph 12 and is a transitional provision dealing with the transfer of members from a Children’s Panel

Advisory Committee to an AST. Paragraph 14 makes provision for the functions of ASTs.

261. [Section 88\(2\)\(a\)](#) provides that the National Convener must keep the designation of areas under paragraph 12(1) under review and that the National Convener may revoke or make a new designation at any time. The National Convener will be required to ensure, when revoking or making new designations, that each local authority will fall within a designated area under paragraph 12(1). Where a designation is revoked, this will have the effect of dissolving the area support team that was established as a consequence of the designation. New paragraph 12(3C) requires the National Convener to consult with the affected local authority before revoking or making a designation. This means that the National Convener must ensure that when exercising the power to make and revoke designations of ASTs, there will always be an AST in relation to each local authority area and therefore that there will not be a time when a local authority no longer has an AST as a result of a revocation.
262. New paragraph 12(3D) provides that in sub-paragraph 3C “affected local authority” means in the case of making a designation the local authority whose area falls with the area proposed to be designated and, in the case of a revocation of a designation, each constituent local authority for the area support team established as a consequence of the designation.
263. On making or revoking a designation under paragraph 12(1) and 12(3B), the National Convener must notify each affected constituent local authority.
264. [Section 88\(2\)\(b\)](#) amends paragraph 13 of schedule 1 to the 2011 Act so that paragraph 13 applies where the National Convener establishes an area support team under paragraph 12(1) and where the area of the area support team consists of or includes a new area.
265. [Paragraph 13\(b\)\(iv\)](#) amends paragraph 13(7) to provide that “new area” means an area which has never previously been the area (or part of the area) of an area support team.
266. [Section 88\(3\)](#) provides that an area support team established before this section comes into force continues in existence as if it were established under paragraph 12(1) as amended by this section.

Section 89 – Area support teams: administrative support by local authorities

267. This section amends paragraph 14 of schedule 1 to the 2011 Act to provide that each constituent local authority (of an area support team, as established by the National Convener in terms of schedule 1, paragraph 12 of the 2011 Act) must provide an area support team with such administrative support as the National Convener considers appropriate. “Administrative support” is defined as staff, property or other services which the National Convener considers are required to facilitate the carrying out by an area support team of its functions.