



Children's Hearings (Scotland) Act 2011

2011 asp 1

PART 20

GENERAL

Formal communications

193 Formal communications

- (1) The following are formal communications—
 - (a) a notice,
 - (b) a determination,
 - (c) a direction,
 - (d) a report,
 - (e) a statement,
 - (f) a referral under section 127.
- (2) A formal communication must be in writing.
- (3) That requirement is satisfied by a formal communication in electronic form which is—
 - (a) sent by electronic means, and
 - (b) capable of being reproduced in legible form.
- (4) A formal communication sent in accordance with subsection (3) is to be taken to be received on the day it is sent.

Forms

194 Forms

- (1) The Scottish Ministers may determine—
 - (a) the form of documents produced by virtue of this Act, and
 - (b) the manner in which those documents are to be conveyed.

- (2) The Scottish Ministers may in particular determine that documents may be conveyed by electronic means.

Subordinate legislation

195 Subordinate legislation

- (1) Any power of the Scottish Ministers to make subordinate legislation under this Act is exercisable by statutory instrument.
- (2) Any such power includes power to make—
 - (a) such incidental, supplementary, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
 - (b) different provision for different purposes.
- (3) Except in any case where subordinate legislation under this Act is subject to the affirmative procedure or the super-affirmative procedure, subordinate legislation under this Act is subject to the negative procedure.
- (4) Subsections (2) and (3) do not apply to an order under section 206(2).

196 Negative procedure

- (1) Subsection (2) applies where subordinate legislation under this Act is subject to the negative procedure.
- (2) The statutory instrument containing the subordinate legislation is subject to annulment in pursuance of a resolution of the Scottish Parliament.

197 Affirmative procedure

- (1) Subsection (2) applies where subordinate legislation under this Act is subject to the affirmative procedure.
- (2) The subordinate legislation must not be made unless a draft of the statutory instrument containing the subordinate legislation has been laid before, and approved by resolution of, the Scottish Parliament.

198 Super-affirmative procedure

- (1) Subsections (2) to (6) apply where subordinate legislation under this Act is subject to the super-affirmative procedure.
- (2) The subordinate legislation must not be made unless a draft of the statutory instrument containing the subordinate legislation has been laid before, and approved by resolution of, the Scottish Parliament.
- (3) Before laying a draft instrument before the Parliament under subsection (2), the Scottish Ministers must consult—
 - (a) such persons who are under 21 years of age as they consider appropriate, and
 - (b) such other persons as they consider appropriate.
- (4) For the purposes of such a consultation, the Scottish Ministers must—

- (a) lay a copy of the proposed draft instrument before the Parliament,
 - (b) publish in such a manner as the Scottish Ministers consider appropriate a copy of the proposed draft instrument, and
 - (c) have regard to any representations about the proposed draft instrument that are made to them within 60 days of the date on which the copy of the proposed draft instrument is laid before the Parliament.
- (5) In calculating any period of 60 days for the purposes of subsection (4)(c), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.
- (6) When laying a draft instrument before the Parliament under subsection (2), the Scottish Ministers must also lay before the Parliament an explanatory document giving details of—
- (a) the consultation carried out under subsection (3),
 - (b) any representations received as a result of the consultation, and
 - (c) the changes (if any) made to the proposed draft instrument as a result of those representations.

Interpretation

199 Meaning of “child”

- (1) In this Act, “child” means a person who is under 16 years of age (but subject to subsections (2) to (9)).
- (2) In paragraph (o) of section 67(2) and the other provisions of this Act in their application in relation to that paragraph, “child” means a person who is of school age.
- (3) Subsection (4) applies where a person becomes 16 years of age—
- (a) after section 66 applies in relation to the person, but
 - (b) before a relevant event.
- (4) For the purposes of the application of this Act to the person, references in this Act to a child include references to the person until a relevant event occurs.
- (5) A relevant event is—
- (a) the making of a compulsory supervision order in relation to the person,
 - (b) the notification of the person under section 68(3) that the question of whether a compulsory supervision order should be made in respect of the person will not be referred to a children’s hearing, or
 - (c) the discharge of the referral.
- (6) Subsection (7) applies if—
- (a) a compulsory supervision order is in force in respect of a person on the person’s becoming 16 years of age, or
 - (b) a compulsory supervision order is made in respect of a person on or after the person becomes 16 years of age.
- (7) For the purposes of the application of the provisions of this Act relating to that order, references in this Act to a child include references to the person until whichever of the following first occurs—

- (a) the order is terminated, or
 - (b) the person becomes 18 years of age.
- (8) Subsection (9) applies where a case is remitted to the Principal Reporter under section 49(7)(b) of the Criminal Procedure (Scotland) Act 1995.
- (9) For the purposes of the application of this Act to the person whose case is remitted, references in this Act to a child include references to the person until whichever of the following first occurs—
- (a) a children's hearing or the sheriff discharges the referral,
 - (b) a compulsory supervision order made in respect of the person is terminated, or
 - (c) the person becomes 18 years of age.

200 Meaning of “relevant person”

- (1) In this Act, “relevant person”, in relation to a child, means—
- (a) a parent or guardian having parental responsibilities or parental rights in relation to the child under Part 1 of the 1995 Act,
 - (b) a person in whom parental responsibilities or parental rights are vested by virtue of section 11(2)(b) of the 1995 Act,
 - (c) a person having parental responsibilities or parental rights by virtue of section 11(12) of the 1995 Act,
 - (d) a parent having parental responsibility for the child under Part 1 of the Children Act 1989 (c.41) (“the 1989 Act”),
 - (e) a person having parental responsibility for the child by virtue of—
 - (i) section 12(2) of the 1989 Act,
 - (ii) section 14C of the 1989 Act, or
 - (iii) section 25(3) of the Adoption and Children Act 2002 (c.38),
 - (f) a person in whom parental responsibilities or parental rights are vested by virtue of a permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007 (asp 4)),
 - (g) any other person specified by order made by the Scottish Ministers.
- (2) For the purposes of subsection (1)(a), a parent does not have parental responsibilities or rights merely by virtue of an order under section 11(2)(d) or (e) of the 1995 Act.
- (3) An order made under subsection (1)(g) is subject to the affirmative procedure.

201 Meaning of “relevant local authority”

- (1) In this Act, “relevant local authority”, in relation to a child, means—
- (a) the local authority in whose area the child predominantly resides, or
 - (b) where the child does not predominantly reside in the area of a particular local authority, the local authority with whose area the child has the closest connection.
- (2) For the purposes of subsection (1)(a), no account is to be taken of—
- (a) any period of residence in a residential establishment,
 - (b) any other period of residence, or residence in any other place, prescribed by the Scottish Ministers by regulations.

- (3) For the purposes of subsection (1)(b), no account is to be taken of—
- (a) any connection with an area that relates to a period of residence in a residential establishment,
 - (b) any other connection prescribed by the Scottish Ministers by regulations.

202 Interpretation

- (1) In this Act, unless the context otherwise requires—
- “the 1995 Act” means the Children (Scotland) Act 1995 (c.36),
 - “affirmative procedure” is to be construed in accordance with section 197,
 - “CHS” means Children’s Hearings Scotland,
 - “chief social work officer” means the officer appointed under section 3 of the Social Work (Scotland) Act 1968 (c.49) by—
 - (a) in relation to a compulsory supervision order or an interim compulsory supervision order, the implementation authority,
 - (b) in relation to a medical examination order or a warrant to secure attendance, the relevant local authority for the child to whom the order or warrant relates,
 - “child assessment order” means an order mentioned in section 35,
 - “child protection order” means an order mentioned in section 37,
 - “compulsory supervision order” has the meaning given by section 83,
 - “contact order” has the meaning given by section 11(2)(d) of the 1995 Act,
 - “crime” has the meaning given in section 307(1) of the Criminal Procedure (Scotland) Act 1995 (c.46),
 - “functions” includes powers and duties; and “confer”, in relation to functions, includes impose,
 - “grounds determination” has the meaning given by section 110(1),
 - “grounds hearing” has the meaning given by section 90,
 - “implementation authority”—
 - (a) in relation to a compulsory supervision order, has the meaning given by section 83(1)(b),
 - (b) in relation to an interim compulsory supervision order, has the meaning given by section 86(1)(b),
 - “interim compulsory supervision order” has the meaning given by section 86,
 - “interim variation”, in relation to a compulsory supervision order, has the meaning given by section 140,
 - “medical examination order” has the meaning given by section 87,
 - “movement restriction condition” has the meaning given by section 84,
 - “negative procedure” is to be construed in accordance with section 196,
 - “officer of law” has the meaning given by section 307(1) of the Criminal Procedure (Scotland) Act 1995 (c.46),
 - “parental responsibilities” has the meaning given by section 1(3) of the 1995 Act,
 - “parental rights” has the meaning given by section 2(4) of the 1995 Act,
 - “permanence order” has the meaning given by section 80(2) of the Adoption and Children (Scotland) Act 2007 (asp 4),
 - “place of safety”, in relation to a child, means—
 - (a) a residential or other establishment provided by a local authority,

Status: This is the original version (as it was originally enacted).

- (b) a community home within the meaning of section 53 of the Children Act 1989 (c.41),
- (c) a police station,
- (d) a hospital or surgery, the person or body of persons responsible for the management of which is willing temporarily to receive the child,
- (e) the dwelling-house of a suitable person who is so willing, or
- (f) any other suitable place the occupier of which is so willing,

“pre-hearing panel” has the meaning given by section 79(2)(a),

“prosecutor” has the meaning given by section 307(1) of the Criminal Procedure (Scotland) Act 1995 (c.46),

“residential establishment” means—

- (a) an establishment in Scotland (whether managed by a local authority, a voluntary organisation or any other person) which provides residential accommodation for children for the purposes of this Act, the 1995 Act or the Social Work (Scotland) Act 1968 (c.49),
- (b) a home in England or Wales that is—
 - (i) a community home within the meaning of section 53 of the Children Act 1989 (c.41),
 - (ii) a voluntary home within the meaning of that Act, or
 - (iii) a private children’s home within the meaning of that Act, or
- (c) a home in Northern Ireland that is—
 - (i) provided under Part VIII of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)),
 - (ii) a voluntary home within the meaning of that Order, or
 - (iii) a registered children’s home within the meaning of that Order,

“safeguarder” has the meaning given by section 30(1),

“school age” has the meaning given by section 31 of the Education (Scotland) Act 1980 (c.44),

“secure accommodation” means accommodation provided in a residential establishment, approved in accordance with regulations made under section 29 of the Regulation of Care (Scotland) Act 2001 (asp 8) or section 22(8)(a) of the Care Standards Act 2000 (c.14), for the purpose of restricting the liberty of children,

“secure accommodation authorisation” has the meaning given by section 85,

“statement of grounds” has the meaning given by section 89(3),

“subordinate legislation” means—

- (a) an order,
- (b) regulations, or
- (c) rules,

“super-affirmative procedure” is to be construed in accordance with section 198,

“warrant to secure attendance” has the meaning given by section 88, and

“working day” means every day except—

- (a) Saturday and Sunday,
- (b) 25 and 26 December,
- (c) 1 and 2 January.

- (2) References in this Act to a decision of a children’s hearing are references to a decision of a majority of the members of a children’s hearing.

- (3) References in this Act to varying a compulsory supervision order, an interim compulsory supervision order or a medical examination order include varying the order by adding or removing measures.

General

203 Consequential amendments and repeals

- (1) Schedule 5 contains minor amendments and amendments consequential on the provisions of this Act.
- (2) The enactments specified in schedule 6, which include enactments that are spent, are repealed to the extent specified.

204 Ancillary provision

- (1) The Scottish Ministers may by order make such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- (2) An order under subsection (1) may modify any enactment (including this Act).
- (3) An order under this section containing provisions which add to, replace or omit any part of the text of an Act is subject to the affirmative procedure.

205 Transitional provision etc.

- (1) The Scottish Ministers may by order make such provision as they consider necessary or expedient for transitory, transitional or saving purposes in connection with the coming into force of any provision of this Act.
- (2) An order under subsection (1) may modify any enactment (including this Act).

206 Short title and commencement

- (1) This Act may be cited as the Children's Hearings (Scotland) Act 2011.
- (2) The provisions of this Act, other than sections 193 to 202, 204, 205 and this section, come into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under subsection (2) may contain transitional, transitory or saving provision in connection with the coming into force of this Act.