

*Draft Order laid before the Scottish Parliament under section 197(2) and 204(3) of the Children's Hearings (Scotland) Act 2011, for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2013 No.**

**CHILDREN AND YOUNG PERSONS**

**The Children's Hearings (Scotland) Act 2011  
(Modification of Primary Legislation) Order 2013**

*Made* - - - - *2013*

*Coming into force in accordance with article 1*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 204 of the Children's Hearings (Scotland) Act 2011<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with sections 197(2) and 204(3) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation and commencement**

1. This Order may be cited as the Children's Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 and comes into force on the same day as section 7 of the Children's Hearings (Scotland) Act 2011 (holding of children's hearing).

**Modification of enactments**

2.—(1) Schedule 1, which makes modifications of certain enactments, has effect.

(2) The enactments specified in Schedule 2 are repealed to the extent specified.

St Andrew's House,  
Edinburgh  
Date

*Name*  
Authorised to sign by the Scottish Ministers

## SCHEDULE 1

Article 2(1)

## MODIFICATION OF PRIMARY LEGISLATION

**Social Work (Scotland) Act 1968**

1.—(1) The Social Work (Scotland) Act 1968(2) is amended as follows.

(2) In section 1(1) (local authorities for the administration of the Act)(3), for “or Part II of the Children (Scotland) Act 1995” substitute “, Part 2 of the Children (Scotland) Act 1995 (c.36) or Parts 5, 6, 9 to 11, 13 to 16, and 18 of the Children’s Hearings (Scotland) Act 2011 (asp 1)”.

(3) In section 4 (provisions relating to performance of functions by local authorities)(4), after “1995” insert “or any of Parts 5, 6, 9 to 11, 13 to 16, and 18 of the Children’s Hearings (Scotland) Act 2011 (asp 1)”.

(4) In section 5 (powers of Scottish Ministers)(5)—

(a) in subsection (1), after “1995” insert “, Parts 5, 6, 9 to 11, 13 to 16, and 18 of the Children’s Hearings (Scotland) Act 2011 (asp 1)”;

(b) in subsection (1B), after paragraph (r) add—

“(s) Parts 5, 6, 9 to 11, 13 to 16, and 18 of the Children’s Hearings (Scotland) Act 2011(asp 1).”; and

(c) in subsection (2)(c), for “and (q)” substitute “, (q) and (s)”.

(5) In section 6A(1)(e) (inquiries into functions of Principal Reporter)(6) from “Part” to “1995” substitute “the Children’s Hearings (Scotland) Act 2011 (asp 1)”.

(6) In section 9 (training courses and grants for training in social work)(7), in each of subsections (1) and (2), for “or Part II of the Children (Scotland) Act 1995” substitute “, Part 2 of the Children (Scotland) Act 1995 (c.36) or the Children’s Hearings (Scotland) Act 2011 (asp 1)”.

(7) In section 11(1) (compulsory purchase of land)(8), for “or Part II of the Children (Scotland) Act 1995” substitute “, Part 2 of the Children (Scotland) Act 1995 (c.36) or the Children’s Hearings (Scotland) Act 2011 (asp 1)”.

(8) In section 27(1)(b)(vi) (local authority to provide certain services in relation to children’s hearings)(9), from “supervision” to the end substitute “compulsory supervision order made by virtue of the ground mentioned in section 67(2)(j) of the Children’s Hearings (Scotland) Act 2011 (asp 1);”.

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(2) 1968 c.49.

(3) Section 1(1) was amended by the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 15(2).

(4) Section 4 was amended by the National Health Service and Community Care Act 1990 (c.19), section 66(2), Schedule 9, paragraph 10(3); the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 15(3); and the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), schedule 4, paragraph 1(2).

(5) Section 5(1) was amended by the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 15(4)(a). Section 5(1B) was inserted by the Local Government etc. (Scotland) Act 1994 (c.39), Schedule 13, paragraph 76(3)(b). Paragraph (r) is inserted prospectively by the Social Care (Self-directed Support) (Scotland) Act 2013 (asp 1), section 21(b). Section 5(2)(c) was amended by the Children Act 1975 (c.72), Schedule 3, paragraph 49; the Children Act 1989 (c.41), Schedule 13, paragraph 19; the Local Government etc. (Scotland) Act 1994 (c.39), Schedule 13, paragraph 76(3)(c); the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 15(4)(c); and the Adoption and Children (Scotland) Act 2007 (asp 4), schedule 2, paragraph 2(2)(b).

(6) Section 6A was inserted by the National Health Service and Community Care Act 1990 (c.19), section 54; relevantly amended by the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 15(7) and S.S.I. 2011/186.

(7) Section 9 was amended by the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 15(8).

(8) Section 11 was amended by the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 15(10).

(9) Section 27(1)(b) was inserted by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), Schedule 4, paragraph 6(4)(d); relevantly amended by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), schedule 1, paragraph 3(a)(i).

(9) In section 59(1) (duty of local authority to provide residential and other establishments etc.)(10), for “or Part II of the Children (Scotland) Act 1995” substitute “, Part 2 of the Children (Scotland) Act 1995 (c.36) or the Children’s Hearings (Scotland) Act 2011 (asp 1)”.

(10) In section 78 (duty to make contributions in respect of children in care etc.)(11)—

(a) in subsection (1), for “supervision requirement” substitute “compulsory supervision order”; and

(b) in subsection (2), for the words from “supervision” to “1995,” substitute “compulsory supervision order which”.

(11) In section 83(1) (variation of trusts), for “supervision requirement” substitute “compulsory supervision order”.

(12) In section 94(1) (interpretation)(12)—

(a) after the definition of “community rehabilitation order” insert—

““compulsory supervision order” has the meaning given by section 83 of the Children’s Hearings (Scotland) Act 2011 (asp 1),”;

(b) in the definition of “establishment”, for “or of Part II of the Children (Scotland) Act 1995” substitute “, Part 2 of the Children (Scotland) Act 1995 (c.36) or the Children’s Hearings (Scotland) Act 2011 (asp 1)”; and

(c) in the definition of “residential establishment”, for “or of Part II of the Children (Scotland) Act 1995” substitute “, Part 2 of the Children (Scotland) Act 1995 (c.36) or the Children’s Hearings (Scotland) Act 2011 (asp 1)”.

### **Local Government (Scotland) Act 1973**

2. In Schedule 7A to the Local Government (Scotland) Act 1973 (access to information: exempt information)(13), in paragraph 5 of Part I, from “relating”, where it second occurs, to the end substitute “where any particular child is subject to a compulsory supervision order or interim compulsory supervision order (as defined respectively in sections 83 and 86 of the Children’s Hearings (Scotland) Act 2011 (asp 1)) information relating to the order.”.

### **Children Act 1975**

3. In section 51(2) of the Children Act 1975 (restriction on removal of child where applicant has provided home for 3 years: exceptions)(14)—

(a) the word “or” immediately after paragraph (ii) is repealed;

(b) in paragraph (iii), the words “, or authority or warrant granted,” and “2 or” are repealed; and

(c) after paragraph (iii) insert—

“(iv) in accordance with section 56 of the Children’s Hearings (Scotland) Act 2011 (asp 1) (constable’s power to remove child to place of safety); or

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(10) Section 59(1) was amended by the National Health Service and Community Care Act 1990 (c.19), Schedule 9, paragraph 10(7); the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 15(15); the Regulation of Care (Scotland) Act 2001 (asp 8), section 72(c); and the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), section 25(4) and schedule 4, paragraph 1(6).

(11) Section 78(1) was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 10, Part 1; the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 15(17)(a). Section 78(2) was amended by the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 15(17)(b).

(12) Section 94(1) was relevantly amended by the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 15(28)(c) and (h).

(13) 1973 c.65. Schedule 7A was inserted by the Local Government (Access to Information) Act 1985 (c.43), section 2(2), Schedule 1.

(14) 1975 c.72. Section 51(2) was amended by the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 26(4)(b).

(v) in accordance with an order or warrant under that Act of 2011.”.

### **Education (Scotland) Act 1980**

4.—(1) The Education (Scotland) Act 1980(15) is amended as follows.

(2) In section 36(3) (provision of information to Principal Reporter where failure to attend school regularly)(16), for “53(1) of the Children (Scotland) Act 1995” substitute “60 of the Children’s Hearings (Scotland) Act 2011 (asp 1)”.

(3) In section 44(2) (failure to attend school regularly: powers of court)(17), for “54(1) of the Children (Scotland) Act 1995” substitute “62(1) of the Children’s Hearings (Scotland) Act 2011 (asp 1)”.

(4) In section 131 (functions conferred by Act not to apply in relation to certain children etc.)(18)—

(a) in paragraph (b) of subsection (2), for “supervision requirement” substitute “compulsory supervision order”; and

(b) after that subsection, insert—

“(3) In this section—

“compulsory supervision order” has the meaning given by section 83 of the Children’s Hearings (Scotland) Act 2011 (asp 1),

“residential establishment” has the meaning given by paragraph (a) of the definition of that expression in section 202(1) of that Act.”.

### **Foster Children (Scotland) Act 1984**

5.—(1) The Foster Children (Scotland) Act 1984(19) is amended as follows.

(2) In section 7 (circumstances in which persons disqualified from keeping foster children)(20)—

(a) in subsection (1), after paragraph (b) insert—

“(ba) by virtue of a compulsory supervision order or an interim compulsory supervision order, a child was removed from the person’s care;”; and

(b) after subsection (4), insert—

“(5) In this section, “compulsory supervision order” and “interim compulsory supervision order” have the meanings given by sections 83 and 86 of the Children’s Hearings (Scotland) Act 2011 (asp 1).”.

(3) In section 13 (search warrants)(21)—

(a) for “55 of the Children (Scotland) Act 1995” substitute “36 of the Children’s Hearings (Scotland) Act 2011 (asp 1)”; and

(b) for “(1)(a)” substitute “(2)(a)”.

(4) In section 21(1) (interpretation)(22)—

(15) 1980 c.44.

(16) Section 36(3) was amended by the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 28(2).

(17) Section 44(2) was amended by the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 28(3)(b).

(18) Section 131(2) was amended by the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), section 277(3).

(19) 1984 c.56.

(20) There are no relevant amendments to section 7.

(21) Section 13 was amended by the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 35(6).

(22) Section 21(1) was relevantly amended by the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 35(7)(a) and the Regulation of Care (Scotland) Act 2001 (asp 8), schedule 3, paragraph 12(3)(b).

- (a) in the definition of “place of safety”, for “93(1) of the Children (Scotland) Act 1995 (c.36)” substitute “202(1) of the Children’s Hearings (Scotland) Act 2011 (asp 1)”; and
- (b) in the definition of “residential establishment”—
  - (i) after “means” insert—
    - “(a”;
    - and
  - (ii) after “not” insert—
    - “; or
    - (b) a residential establishment as defined in section 202(1) of the Children’s Hearings (Scotland) Act 2011 (asp 1);”.

### **Civil Evidence (Scotland) Act 1988**

6. In section 9 of the Civil Evidence (Scotland) Act 1988 (interpretation)(23), in paragraph (a) of the definition of “civil proceedings”, from “under”, where it first occurs, to the end substitute “made by virtue of section 93(2)(a), 94(2)(a) or 110(2) of the Children’s Hearings (Scotland) Act 2011 (asp 1) except in so far as the application relates to the ground mentioned in section 67(2)(j) of that Act;”.

### **Local Government and Housing Act 1989**

7. In section 14(5)(f) of the Local Government and Housing Act 1989 (voting rights of members of certain sub-committees)(24), after “to” insert “(c) or”.

### **Civil Evidence (Family Mediation) (Scotland) Act 1995**

8. In section 2(1)(d) of the Civil Evidence (Family Mediation) (Scotland) Act 1995 (exception to general rule of inadmissibility for certain civil proceedings relating to children)(25), after sub-paragraph (iii) insert—

- “(iiia) under Part 5 or, as the case may be, any of Parts 8 to 16 of the Children’s Hearings (Scotland) Act 2011 (asp 1) before, or relating to, a children’s hearing, before a sheriff or before a justice of the peace;
- (iiib) on any appeal arising from such proceedings as are mentioned in sub-paragraph (iiia);”.

### **Children (Scotland) Act 1995**

9.—(1) The Children (Scotland) Act 1995(26) is amended as follows.

(2) In section 3(4) (parental responsibilities and parental rights: effect on actings where certain orders granted in relation to child or child’s property)(27), from “supervision” to the end substitute “compulsory supervision order or interim compulsory supervision order (as defined in sections 83 and 86 respectively of the Children’s Hearings (Scotland) Act 2011 (asp 1)) that is in force in relation to the child.”.

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(23) 1988 c.32. Section 9 has been amended by the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 44 and Schedule 5, paragraph 1.

(24) 1989 c.42. There are amendments to section 14 which are not relevant to this Order. This amendment is in consequence of the repeal of section 14(5)(d) by Schedule 2 to this Order.

(25) 1995 c.6. Section 2(1)(d) has been amended by the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 59(a) and (b), the Adoption and Children (Scotland) Act 2007 (asp 4), schedule 2, paragraph 8 and schedule 3, paragraph 1 and by S.S.I. 2010/2.

(26) 1995 c.36.

(27) There are amendments to section 3 which are not relevant to this Order.

(3) In section 17(6)(d) (duty of local authority to child looked after by them: meaning of “looked after”)(**28**) after “Act” insert “or section 190 of the Children’s Hearings (Scotland) Act 2011 ([asp 1](#)) (effect of Orders made outwith Scotland)”.

(4) In section 93(1) (interpretation of Part 2 of Act)(**29**)—

(a) in the definition of “residential establishment”, in paragraph (c), from “a”, where it second occurs, to the end substitute—

“(i) a private children’s home within the meaning of the Children (Northern Ireland) Order 1995 ([S.I. 1995/755](#)),

(ii) an authority home provided under Part VII of that Order, or

(iii) a voluntary home provided under Part VIII of that Order,”; and

(b) in the definition of “secure accommodation”, from “in”, where it first occurs, to the end, substitute—

“for the purpose of restricting the liberty of children which—

(a) in Scotland, is provided in a residential establishment approved in accordance with regulations made under section 78(2) of the Public Services Reform (Scotland) Act 2010 ([asp 8](#)),

(b) in England, is provided in a children’s home (within the meaning of the Care Standards Act 2000 ([c.14](#)) (“the 2000 Act”)) in respect of which a person is registered under Part 2 of that Act, except that before the coming into force of section 107(2) of the Health and Social Care (Community Health Standards) Act 2003 ([c.43](#)), “secure accommodation” means accommodation in relation to England which—

(i) is provided in a children’s home (within the meaning of the 2000 Act) in respect of which a person is registered under Part 2 of that Act, and

(ii) is approved by the Secretary of State for the purpose of restricting the liberty of children,

(c) in Wales, is provided in a children’s home (within the meaning of the 2000 Act) in respect of which a person is registered under Part 2 of that Act.”.

## **Criminal Procedure (Scotland) Act 1995**

**10.**—(1) The Criminal Procedure (Scotland) Act 1995(**30**) is amended as follows.

(2) In section 18E (retention of samples etc.: children referred to children’s hearings)(**31**)—

(a) in subsection (1), for the words from “the”, where it first occurs, to the end substitute “subsection (3), (4) or (5) applies.”;

(b) subsection (2) is repealed;

(c) for subsections (3) to (5) substitute—

“(3) This subsection applies where—

(a) in relation to a children’s hearing arranged in relation to the child under section 69(2) of the 2011 Act, a section 67 ground is that the child has committed an offence mentioned in subsection (6) (a “relevant offence”),

**(28)** Section 17(6) has been amended by the Adoption and Children (Scotland) Act 2007 ([asp 4](#)), schedule 2, paragraph 9(4) and is prospectively amended by the Children’s Hearings (Scotland) Act 2011 ([asp 1](#)), schedule 5, paragraph 2(4).

**(29)** There are amendments to section 93 which are not relevant to this Order.

**(30)** 1995 c.46.

**(31)** Section 18E was inserted by the Criminal Justice and Licensing (Scotland) Act 2010 ([asp 13](#)), section 80.

- (b) the ground is accepted by the child and each relevant person in relation to the child under section 91(1) or 105(1) of that Act, and
  - (c) no application to the sheriff under section 93(2)(a) or 94(2)(a) of that Act is made in relation to that ground.
- (4) This subsection applies where—
- (a) in relation to a children's hearing arranged in relation to the child under section 69(2) of the 2011 Act, a section 67 ground is that the child has committed a relevant offence,
  - (b) the sheriff, on an application under section 93(2)(a) or 94(2)(a) of that Act, determines under section 108 of that Act that the ground is established, and
  - (c) no application to the sheriff under section 110(2) of that Act is made in relation to the ground.
- (5) This subsection applies where, on an application under section 110(2) of the 2011 Act in relation to the child—
- (a) the sheriff is satisfied under section 114(2) or 115(1)(b) of that Act that a section 67 ground which constitutes a relevant offence is established or accepted by the child and each relevant person in relation to the child, or
  - (b) the sheriff determines under section 117(2)(a) of that Act that—
    - (i) a section 67 ground which was not stated in the statement of grounds which gave rise to the grounds determination is established, and
    - (ii) the ground constitutes a relevant offence.”;
- (d) in subsection (9)(a), for sub-paragraphs (i) to (iv) substitute—
- “(i) where subsection (3) applies, the date on which the section 67 ground was accepted as mentioned in that subsection,
  - (ii) where subsection (4) applies, the date on which the section 67 ground was established as mentioned in that subsection,
  - (iii) where the section 67 ground is established as mentioned in paragraph (a) of subsection (5), the date on which that ground was established under section 108 of the 2011 Act or, as the case may be, accepted under section 91(1) or 105(1) of that Act, or
  - (iv) where the section 67 ground is established as mentioned in paragraph (b) of subsection (5), the date on which that ground was established as mentioned in that paragraph.”;
- (e) in subsection (11)—
- (i) after “section”, where it first occurs, insert—
    - ““the 2011 Act” means the Children's Hearings (Scotland) Act 2011 ([asp 1](#)),
    - “grounds determination” has the meaning given by section 110(1) of the 2011 Act.”;
  - (ii) in the definition of “relevant person”, for “93(2) of the Children Act” substitute “200(1) of the 2011 Act except that it includes a person deemed to be a relevant person by virtue of section 81(3), 160(4)(b) or 164(6) of that Act”; and
  - (iii) at the end, insert—
    - ““section 67 ground” has the meaning given by section 67(1) of the 2011 Act;
    - “statement of grounds” has the meaning given by section 89(3) of the 2011 Act.”; and

- (f) in subsection (12), for “ground of referral” substitute “section 67 ground”.
- (3) In section 46(5)(b) (presumption and determination of age of child: effect of failure to provide certain information to court)**(32)**—
- (a) for “supervision requirement” substitute “compulsory supervision order or interim compulsory supervision order”; and
  - (b) from “the”, where it fourth occurs, to the end substitute “section 190 of the Children’s Hearings (Scotland) Act 2011 (asp 1)”.
- (4) In section 48(1) (power to refer certain children to reporter), from “Chapter” to the end substitute “the Children’s Hearings (Scotland) Act 2011 (asp 1)”.
- (5) In section 49 (reference or remit to children’s hearing)**(33)**, in each of subsections (1), (3) and (6)(a), for “supervision requirement”, wherever it occurs, substitute “compulsory supervision order or interim compulsory supervision order”.
- (6) In section 51 (remand and committal of children and young persons)**(34)**—
- (a) in subsection (1)(a)(i), from “within” to “1995” substitute “(as defined in section 202(1) of the Children’s Hearings (Scotland) Act 2011 (asp 1))”;
  - (b) in subsection (1)(aa), for “supervision requirement” substitute “compulsory supervision order or interim compulsory supervision order”; and
  - (c) in subsection (4A)(c), from “supervision” to the end substitute “compulsory supervision order or interim compulsory supervision order, the implementation authority (as defined in section 202(1) of the Children’s Hearings (Scotland) Act 2011 (asp 1))”.
- (7) In section 262(3) (construction of sections 259 to 261A)**(35)**, in the definition of “criminal proceedings”, from “under” to the end, substitute “by virtue of section 93(2)(a) or 94(2)(a) of the Children’s Hearings (Scotland) Act 2011 (asp 1) to determine whether a ground is established, in so far as the application relates to the commission of an offence by the child, or for a review of such a determination.”
- (8) In section 307(1) (interpretation)**(36)**—
- (a) in the definition of “child”, from “Chapters” to the end substitute “section 199 of the Children’s Hearings (Scotland) Act 2011 (asp 1)”;
  - (b) in the definition of “children’s hearing”, from “has” to the end substitute “is to be construed in accordance with section 5 of the Children’s Hearings (Scotland) Act 2011 (asp 1)”;
  - (c) after the definition of “compulsion order”, insert—
 

““compulsory supervision order” has the meaning given by section 83 of the Children’s Hearings (Scotland) Act 2011 (asp 1)”;
  - (d) after the definition of “interim compulsion order”, insert—
 

““interim compulsory supervision order” has the meaning given by section 86 of the Children’s Hearings (Scotland) Act 2011 (asp 1)”;

**(32)** There are amendments to section 46 which are not relevant to this Order.

**(33)** Section 49 has been amended by the Crime and Punishment (Scotland) Act 1997 (c.48), section 23(a), the Crime and Disorder Act 1998 (c.37), Schedule 8, paragraph 118, the Criminal Justice Act 2003 (c.44), section 290(2), the Violent Crime Reduction Act 2006 (c.38), Schedule 1, paragraph 4(2) and the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), schedule 1, paragraph 26(d).

**(34)** Subsection (1)(aa) was inserted by the Crime and Punishment (Scotland) Act 1997 (c.48), section 56(2) and has been amended by the Criminal Justice (Scotland) Act 2003 (asp 7), section 23(3)(b)(i) and (ii). Subsection (4A) was inserted by the Crime and Punishment (Scotland) Act 1997 (c.48), section 56(4) and has been amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 64(2)(d). There are other amendments to section 51 which are not relevant to this Order.

**(35)** Section 262(3) has been amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 85(3).

**(36)** There are amendments to section 307 which are not relevant to this Order.



- (e) in the definition of “place of safety”, from “means”, where it second occurs, to the end substitute “has the meaning given by section 202(1) of the Children’s Hearings (Scotland) Act 2011 (asp 1)”.

(9) In Schedule 8 (documentary evidence in criminal proceedings), in paragraph 8, in the definition of “criminal proceedings”, from “under” to the end substitute “of an application made by virtue of section 93(2)(a) or 94(2)(a) of the Children’s Hearings (Scotland) Act 2011 (asp 1) to determine whether a ground is established, in so far as the application relates to the commission of an offence by the child, or for a review of such a determination.”.

### **Regulation of Care (Scotland) Act 2001**

**11.** In section 68(1) of the Regulation of Care (Scotland) Act 2001 (grants in respect of activities relating to child care and family support)(37)—

- (a) the word “or”, where it fourth occurs, is repealed;
- (b) after “(c.36)” insert “or the Children’s Hearings (Scotland) Act 2011 (asp 1)”; and
- (c) for “either” substitute “any”.

### **Criminal Justice (Scotland) Act 2003**

**12.** In section 53(4) of the Criminal Justice (Scotland) Act 2003 (provision by Principal Reporter of information to victims: interpretation)(38), in the definition of “relevant person”, from “in”, where it first occurs, to the end substitute “has the meaning given by section 200 of the Children’s Hearings (Scotland) Act 2011 (asp 1)”.

### **Mental Health (Care and Treatment) (Scotland) Act 2003**

**13.** In section 31(3) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (assistance for local authorities from Health Boards etc.)(39), at the end insert “and section 183 of the Children’s Hearings (Scotland) Act 2011 (asp 1) (which enables a local authority to obtain assistance from another local authority or a health board in the carrying out of the authority’s functions under the Act).”.

### **Antisocial Behaviour etc. (Scotland) Act 2004**

**14.—(1)** The Antisocial Behaviour etc. (Scotland) Act 2004(40) is amended as follows.

(2) In section 112(3) (conduct of certain proceedings by Principal Reporter etc.), from “officer” to the end substitute “person employed by the Scottish Children’s Reporter Administration to whom there is delegated, under paragraph 10 of schedule 3 to the Children’s Hearings (Scotland) Act 2011 (asp 1), any function of the Principal Reporter.”.

(3) In section 117 (interpretation of Part 9), for the definition of “parent” substitute—

““parent” means—

- (a) any parent enjoying parental responsibilities or parental rights under Part 1 of the Children (Scotland) Act 1995,
- (b) any individual in whom parental responsibilities or parental rights are vested by, under or by virtue of that Act,

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(37) 2001 asp 8.

(38) 2003 asp 7.

(39) 2003 asp 13.

(40) 2004 asp 8.

- (c) any individual in whom parental responsibilities or parental rights are vested by, under or by virtue of a permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007), and
- (d) any individual who appears to be an individual who ordinarily (and other than by reason only of the individual's employment) has charge of, or control over, the child.”.

### **Emergency Workers (Scotland) Act 2005**

**15.** In section 2(3)(g) of the Emergency Workers (Scotland) Act 2005 (capacity in which social worker acting for purposes of offence under section 2(1))(41)—

- (a) in sub-paragraph (i), after “order” insert “(as defined in section 202(1) of the Children's Hearings (Scotland) Act 2011 (asp 1)”; and
- (b) for sub-paragraph (ii) substitute—
  - “(ii) an order under section 55 of that Act of 2011 (emergency order for removal of child)”.

### **Scottish Commission for Human Rights Act 2006**

**16.** In section 14(9) of the Scottish Commission for Human Rights Act 2006 (meaning of “children's hearing proceedings” for purposes of section)(42), for “Part 2 of the Children (Scotland) Act 1995 (c.36)” substitute “the Children's Hearings (Scotland) Act 2011 (asp 1)”.

### **Adoption and Children (Scotland) Act 2007**

**17.—(1)** The Adoption and Children (Scotland) Act 2007(43) is amended as follows.

(2) In section 23(3) (cases where certain children may be removed from care of prospective adopters)—

- (a) the word “or” immediately after paragraph (b) is repealed;
- (b) in paragraph (c), the words “2 or” are repealed; and
- (c) after paragraph (c) insert—
  - “or
  - (d) the removal is authorised by an order or warrant under the Children's Hearings (Scotland) Act 2011 (asp 1)”.

(3) In section 36 (the title of which becomes “Revocation of compulsory supervision order on making of adoption order”)—

- (a) in subsection (1)—
  - (i) in paragraph (a), for “supervision requirement” substitute “compulsory supervision order”; and
  - (ii) in paragraph (b), from “compulsory” to the end substitute “it would no longer be necessary that, for the protection, guidance, treatment or control of the child, the child be subject to the compulsory supervision order.”; and
- (b) in subsection (2), for “supervision requirement” substitute “compulsory supervision order”.

(41) 2005 asp 2. Section 2(3) has been amended by S.S.I. 2008/37.

(42) 2006 asp 16.

(43) 2007 asp 4.

(4) In section 72(5) (prohibition of certain payments: interpretation), in the definition of “place of safety”, for “93(1) of the 1995 Act” substitute “202(1) of the Children’s Hearings (Scotland) Act 2011 (asp 1)”.

(5) In section 79(4)(b) (further consequences of placement order), for “55 of the 1995 Act” substitute “36 of the Children’s Hearings (Scotland) Act 2011 (asp 1)”.

(6) In section 89 (the title of which becomes “Revocation of compulsory supervision order on making of permanence order”)—

(a) in subsection (1)—

(i) in paragraph (a), for “supervision requirement” substitute “compulsory supervision order”; and

(ii) in paragraph (b), from “compulsory” to the end substitute “it would no longer be necessary that, for the protection, guidance, treatment or control of the child, the child be subject to the compulsory supervision order.”; and

(b) in subsection (2), for “supervision requirement” substitute “compulsory supervision order”.

(7) In section 90 (the title of which becomes “Precedence of certain other orders”), in subsection (2)(b), for “supervision requirement” substitute “compulsory supervision order or interim compulsory supervision order”.

(8) In section 95(1)(c) (circumstances in which children’s hearing to prepare report for court), for sub-paragraphs (i) and (ii) substitute “make or vary (other than by interim variation, as defined in section 140 of the Children’s Hearing (Scotland) Act 2011 (asp 1)) a compulsory supervision order in respect of the child.”.

(9) In section 96 (the title of which becomes “Application: effect on compulsory supervision order”), in subsection (2), from “supervision” to “Act” substitute “compulsory supervision order may not be made or varied (other than by interim variation, as defined in section 140 of the Children’s Hearings (Scotland) Act 2011 (asp 1)) in respect of the child”.

(10) In section 97 (the title of which becomes “Interim orders and revocation of compulsory supervision order”)—

(a) in subsection (3)—

(i) in paragraph (a), for “supervision requirement” substitute “compulsory supervision order”; and

(ii) in paragraph (b), from “compulsory” to the end substitute “it would no longer be necessary that, for the protection, guidance, treatment or control of the child, the child be subject to the compulsory supervision order.”;

(b) in subsection (4), for “supervision requirement” substitute “compulsory supervision order”; and

(c) in subsection (5)—

(i) in paragraph (a), for “supervision requirement” substitute “compulsory supervision order”;

(ii) in paragraph (b), from “order” to the end of the paragraph substitute “interim order conflict, or are otherwise inconsistent, with the compulsory supervision order”; and

(iii) in the full-out words, after “the”, where it second occurs, insert “interim”.

(11) In section 106 (the title of which becomes “Child subject to compulsory supervision order: duty to refer to Principal Reporter”), in subsection (1)(a), for “supervision requirement” substitute “compulsory supervision order”.

(12) In section 110(2)(b) (power to make provision about allowances for care of children subject to compulsory supervision orders), for “section 70(3)(a) of that Act” substitute “a compulsory supervision order”.

(13) In section 119 (interpretation)—

(a) in subsection (1)—

(i) after the definition of “child” insert—

““compulsory supervision order” has the meaning given by section 83 of the Children’s Hearings (Scotland) Act 2011 (asp 1),”; and

(ii) after the definition of “guardian” insert—

““interim compulsory supervision order” has the meaning given by section 86 of the Children’s Hearings (Scotland) Act 2011 (asp 1),”;

(b) in subsection (7), for the words from “under” to “requirement” substitute “of an order mentioned in subsection (8)”; and

(c) after subsection (7) insert—

“(8) The orders are—

(a) a compulsory supervision order—

(b) an order varying a compulsory supervision order—

(c) an interim compulsory supervision order.”.

### **Protection of Vulnerable Groups (Scotland) Act 2007**

**18.**—(1) The Protection of Vulnerable Groups (Scotland) Act 2007(44) is amended as follows.

(2) In section 96 (fostering)—

(a) in each of subsections (1)(d)(ii) and (3)(b) for “supervision requirement” substitute “compulsory supervision order”; and

(b) in subsection (8), after “section”, where it first occurs, insert—

““compulsory supervision order” has the meaning given by section 83 of the Children’s Hearings (Scotland) Act 2011 (asp 1),”.

### **Public Services Reform (Scotland) Act 2010**

**19.**—(1) The Public Services Reform (Scotland) Act 2010(45) is amended as follows.

(2) In section 105(1) (interpretation of Part 5), in paragraph (c) of the definition of “child”, from “has” to the end of that paragraph substitute “means a person who is under the age of 18”.

(3) In schedule 8 (information on exercise of public functions: listed public bodies), after the entry for “Caledonian Maritime Assets Ltd” insert “Children’s Hearings Scotland”.

(4) In schedule 12 (care services : definitions) in paragraph 12(2), for paragraph (e) substitute—

“(e) is a person with whom a child is required to reside by virtue of a compulsory supervision order or an interim compulsory supervision order (as defined in sections 83 and 86 of the Children’s Hearings (Scotland) Act 2011 (asp 1)),”.

(44) 2007 asp 14.

(45) 2010 asp 8.

## Children's Hearings (Scotland) Act 2011

20.—(1) The Children's Hearings (Scotland) Act 2011(46) is amended as follows.

(2) In section 6 (selection of members of children's hearing), after sub-paragraph (4) insert—

“(5) In this section “children's hearing” includes a pre-hearing panel.”.

(3) In section 26 (decisions inconsistent with section 25), in subsection (1)(a) and (b) and (2) after “children's hearing” insert “, pre-hearing panel”.

(4) In section 27 (views of the child), in subsections (1), (3) and (5) after “children's hearing” insert “, pre-hearing panel”.

(5) After section 29, insert—

### “29A Duty to consider including contact direction

(1) A children's hearing must, when making, varying or continuing a compulsory supervision order in relation to a child, consider whether to include in the order a measure of the type mentioned in section 83(2)(g).

(2) A sheriff must, when varying or continuing a compulsory supervision order in relation to a child, consider whether to include in the order a measure of the type mentioned in section 83(2)(g).”.

(6) In section 31(4) (sheriff: duty to consider appointing safeguarder) after “(other than this section” insert “and section 33”.

(7) In section 66 (investigation and determination by Principal Reporter)—

(a) in subsection (1)(a), after sub-paragraph (vii), insert—

“(viii) a reference from a court under section 48(1) of the Criminal Procedure (Scotland) Act 1995 (c.46)”; and

(b) after subsection (2), insert—

“(2A) In a case where a certificate is supplied under section 48(1) of the Criminal Procedure (Scotland) Act 1995, the Principal Reporter is deemed to have determined under subsection (2)(a) that the Principal Reporter considers that a section 67 ground applies in relation to the child.”.

(8) In section 67(2)(p)(i) (section 67 ground - pressure to enter into civil partnership) for “is being,” substitute “has been, is being”.

(9) In section 78 (rights of certain persons to attend children's hearing), after sub-paragraph (6) insert—

“(7) In this section “children's hearing” includes a pre-hearing panel.”.

(10) In section 98(1) (application for extension or variation of interim compulsory supervision order)—

(a) at the beginning of paragraph (b) insert—

“either—

(i) the current order is made under section 93(5) and”; and

(b) at the end of paragraph (b) insert—

“, or

(ii) the current order is made under section 100(2).”.

(11) In section 115 (recall: power to refer other grounds), after subsection (4) insert—

“(5) If the sheriff makes an interim compulsory supervision order under subsection (3) specifying that the child is to reside at a place of safety, the children’s hearing must be arranged to take place no later than the third day after the day on which the child begins to reside at the place of safety.”

(12) In section 117 (new section 67 ground established: sheriff to refer to children’s hearing), after subsection (4) insert—

“(5) If the sheriff makes an interim compulsory supervision order under subsection (3) specifying that the child is to reside at a place of safety, the children’s hearing must be arranged to take place no later than the third day after the day on which the child begins to reside at the place of safety.”

(13) In section 140(4)(b) (interim variation of compulsory supervision order), for “an application under Part 10” substitute “an application made by virtue of section 93(2)(a) or 94(2)(a)”.

(14) In section 155(7) (procedure), for “section 32” substitute “section 34”.

(15) In section 156 (determination of appeal), after subsection (3) insert –

“(3A) If the sheriff continues or varies a compulsory supervision order under subsection (3)(b), the sheriff—

(a) must, if the order contains a movement restriction condition (or is being varied so as to include such a condition), require the order to be reviewed by a children’s hearing on a day or within a period specified in the order,

(b) may, in any other case, require the order to be so reviewed.”

(16) In section 159 (frivolous and vexatious appeals), in each of subsections (1)(a) and (2), after “154” insert “or 161”.

(17) In section 168(2)(c) (enforcement of orders), omit sub-paragraph (ii) and the word “and” immediately preceding it.

(18) In section 175(2)(d) (sections 173 and 174: application to sheriff for order as to evidence), for “under section or whose appointment is confirmed under that section” substitute “in relation to the child by virtue of section 30”.

(19) In section 176(2)(c) (amendment of Vulnerable Witnesses (Scotland) Act 2004), in the inserted text after “section 98” insert “or 99”.

(20) In section 182(9) (publishing restrictions), before the definition of “protected information” insert—

““children’s hearing” includes a pre-hearing panel.”

(21) In section 202 (interpretation)—

(a) in subsection (1)—

(i) in the definition of “residential establishment”, for paragraph (c), substitute—

“(c) an establishment in Northern Ireland that is—

(i) a private children’s home within the meaning of the Children (Northern Ireland) Order 1995 (S.I. 1995/755),

(ii) an authority home provided under Part VII of that Order, or

(iii) a voluntary home provided under Part VIII of that Order,”; and

(ii) in the definition of “secure accommodation”, for the words from “in”, where it first occurs, to the end, substitute—

“for the purpose of restricting the liberty of children which—

- (a) in Scotland, is provided in a residential establishment approved in accordance with regulations made under section 78(2) of the Public Services Reform (Scotland) Act 2010 (asp 8),
  - (b) in England, is provided in a children's home (within the meaning of the Care Standards Act 2000 (c.14) ("the 2000 Act")) in respect of which a person is registered under Part 2 of that Act, except that before the coming into force of section 107(2) of the Health and Social Care (Community Health Standards) Act 2003 (c.43), "secure accommodation" means accommodation in relation to England which—
    - (i) is provided in a children's home (within the meaning of the 2000 Act) in respect of which a person is registered under Part 2 of that Act, and
    - (ii) is approved by the Secretary of State for the purpose of restricting the liberty of children,
  - (c) in Wales, is provided in a children's home (within the meaning of the 2000 Act) in respect of which a person is registered under Part 2 of that Act,"; and
- (b) after subsection (2), insert—
- “(2A) References in this Act to a determination of a pre-hearing panel are references to a determination of a majority of the members of a pre-hearing panel.”.

## SCHEDULE 2

Article 2(2)

### REPEALS

| <i>Enactment</i>   | <i>Extent of repeal</i>  |
|--|--|
| Social Work (Scotland) Act 1968 (c.49)                                   | In section 94(1), the definition of “supervision requirement”.                                   |
| Local Government (Scotland) Act 1973 (c.65)                              | Section 56(9)(d).  |
| Education (Scotland) Act 1980 (c.44)                                     | In section 135(1), the definitions of “residential establishment” and “supervision requirement”. |
| Local Government and Housing Act 1989 (c.42)                             | Section 14(5)(d).  |
| Civil Evidence (Family Mediation) (Scotland) Act 1995 (c.6)              | Section 2(1)(d)(ii) and (ia).  |
| Children (Scotland) Act 1995 (c.36)                                      | In section 93(2)(b), the words “(except section 75A)”.   |
| Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40) | In Schedule 4, paragraph 97(2) to (6).   |
| Criminal Procedure (Scotland) Act 1995 (c.46)                            | In section 307(1), the definition of “supervision requirement”.                                  |
| Regulation of Care (Scotland) Act 2001 (asp 8)                           | Section 74.<br><br>Section 76.   |

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: *The Children's Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 No. 211*

| <i>Enactment</i>   | <i>Extent of repeal</i>   |
|--|---|
| Criminal Justice (Scotland) Act 2003 (asp 7)                 | In section 53(4), the definition of “the Principal Reporter”.   |
| Civil Partnership Act 2004 (c.33)                            | In Schedule 28, paragraph 61.   |
| Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)        | Section 116.<br>Sections 135 to 137.<br>In schedule 4, paragraph 4.   |
| Adoption and Children (Scotland) Act 2007 (asp 4)            | Section 96(5).<br>Section 106(4).<br>In section 119(1), the definitions of “compulsory measures of supervision” and “supervision requirement”.<br>In schedule 2, paragraph 9(6) to (8). |
| Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14) | In section 96(8), the definition of “supervision requirement”.  |
| Public Services Reform (Scotland) Act 2010 (asp 8)           | In schedule 8, the entries “any Children’s Panel” and “any Children’s Panel Advisory Committee”.  |
| Children’s Hearings (Scotland) Act 2011 (asp 1)              | Section 83(3).<br>Section 138(5).   |

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes modifications of primary legislation. The modifications are consequential on, or ancillary to, the Children’s Hearings (Scotland) Act 2011 (asp 1).