

POLICY NOTE

THE CHILDREN'S HEARINGS (SCOTLAND) ACT 2011 (MOVEMENT RESTRICTION CONDITIONS) REGULATIONS 2013

SSI 2013/XXX

1. The above instrument is brought forward by the Scottish Ministers in exercise of the powers conferred by section 150(1) of the Children's Hearings (Scotland) Act 2011 (the 2011 Act) and sections 17 and 31 of the Children (Scotland) Act 1995 (the 1995 Act). The instrument is subject to the affirmative procedure in the Scottish Parliament. The date for the commencement of the regulations is 24 June 2013.

2. This instrument is one of a series of statutory instruments to be laid to implement the provisions of the 2011 Act. The purpose of the instrument is to make provision regarding the arrangements for monitoring compliance with a movement restriction condition (MRC) within a compulsory supervision order or interim compulsory supervision order.

Background

3. Movement restriction conditions were introduced as part of the Antisocial Behaviour etc. (Scotland) Act 2004. Section 135 of that Act amended section 70 of the 1995 Act to enable children's hearings to impose, as a condition of a supervision requirement, a "movement restriction condition". An MRC requires the child to comply with such arrangements for monitoring their movements as may be required. Monitoring is via an electronic monitoring service. The Intensive Support and Monitoring (Scotland) Regulations 2008 (SSI 2008/75) (the 2008 Regulations) were made under the 1995 Act and set out the arrangements for monitoring compliance with a MRC. These now require to be repealed and replaced with regulations made under the 2011 Act.

4. Under the 2011 Act a compulsory supervision order (CSO) may contain a MRC as was the case for supervision requirements under the 1995 Act. The 2011 Act also creates interim compulsory supervision orders (ICSOs) which are new shorter term orders introduced by section 86 of the 2011 Act and such orders can also contain a MRC. .

5. Section 150 of the 2011 Act enables the Scottish Ministers to make regulations relating to the restrictions that can be placed upon a child and the monitoring arrangements that may be imposed as part of an MRC. Subsection (2) provides that regulations may in particular prescribe methods of monitoring compliance; specify the devices that may be used for monitoring; prescribe the people who can carry out the monitoring; specify a maximum duration of any MRC included in an order and require that the condition be varied to designate another person if the person designated ceases to be a prescribed person or fall within a class of prescribed person. Subsection (4) provides that the Scottish Ministers may make arrangements, including contractual arrangements, to have monitoring carried out and subsection (5) provides for appropriate information sharing with a person providing a monitoring service in order to allow full and proper provision of that monitoring.

Policy objectives

6. The Scottish Ministers believe that for a very small number of young people, an MRC can be an effective intervention, provided it is just one part of an intensive programme of supervision and support, including educational provision. The regulations provide that an MRC cannot, therefore, be imposed without a child's plan that covers the range of elements in such a programme and how it will be delivered. The restriction of liberty that an MRC can impose is such that the use of such a measure should be subject to strict criteria and the restrictions must be clearly specified in the supervision order. This reflects the current position.

7. Since an MRC entails a restriction of liberty there is universal agreement that the criteria applied to the making of an MRC must be the same as that used for secure care. As such, the children's hearing must be satisfied that at least one of the criteria set out in section 83(6) of the 2011 Act is met before it can impose an MRC (these include that the child is likely to abscond again, is likely to engage in self harm or is likely to cause injury to another person). An MRC may be used as an alternative to placing a child in secure accommodation. An MRC may also be used to enable a child or young person to 'phase' their re-entry to the community from secure care, thus allowing an earlier transition from secure conditions.

8. These regulations are essentially a restatement of the 2008 Regulations reflecting that the policy in this area remains viable. The regulations:-

- Set out the arrangements for compulsory supervision orders or interim compulsory supervision orders that contain an MRC including the requirement for the preparation of a child's plan.
- Clarify the restrictions that must be imposed as part of an MRC.
- Separate, making clear, those conditions that must be imposed as part of an MRC from those which may be imposed.
- Provide that the child's plan must be recorded in writing but that this can be in electronic format.
- Broaden the definition of 'relevant person' for the purposes of the regulations to include a person deemed to be a 'relevant person' in line with the 2011 Act.
- Set out the duties of the implementation authority with regard to an MRC

9. These regulations will revoke the 2008 Regulations.

Consultation

10. The draft regulations were published on the Consultations section of the Scottish Government web site. Responses were in broad agreement with the principles of the regulations.

Financial Effects

11. A Business and Regulatory Impact Assessment (BRIA) has not been completed in relation to this instrument. The Minister for Children and Young People does not consider that a BRIA is necessary as the regulations do not place additional burdens or costs on local authorities, businesses or other stakeholders, nor do they reduce or transfer costs or burdens.

Children, Young People and Social Care Directorate
April 2013