

2009 No. 211

CHILDREN AND YOUNG PERSONS

**The Children's Hearings (Legal Representation) (Scotland)
Amendment Rules 2009**

<i>Made</i> - - -	<i>2nd June 2009</i>
<i>Laid before the Scottish Parliament</i>	<i>3rd June 2009</i>
<i>Coming into force</i> - -	<i>4th June 2009</i>

The Scottish Ministers make the following Rules in exercise of the powers conferred by sections 42(1) and (2)(a), (b), (d) and (i) and 103(3) of the Children (Scotland) Act 1995(a) and of all other powers enabling them to do so.

In accordance with section 44 of, and paragraph 24 of Schedule 7 to, the Tribunals, Courts and Enforcement Act 2007 they have consulted with the Administrative Justice and Tribunals Council(b).

Citation and commencement

1. These Regulations may be cited as the Children's Hearings (Legal Representation) (Scotland) Amendment Rules 2009 and come into force on 4th June 2009.

Amendment of the Children's Hearings (Legal Representation) (Scotland) Rules 2002

2. The Children's Hearings (Legal Representation) (Scotland) Rules 2002(c) are amended in accordance with rules 3 to 7.

3. In rule 2 (interpretation)–

- (a) in the definition of “legal representative” after “Hearing” insert “or to act as the legal representative of a relevant person due to attend a Children's Hearing”; and
- (b) after the definition of “the Principal Reporter” insert–
““the 1996 Rules” means the Children's Hearings (Scotland) Rules 1996(d).”.

(a) 1995 c.36. The functions of the Secretary of State transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) 2007 c.15. Consultation was previously with the Council on Tribunals and its Scottish Committee under section 8(1) and (3) of the Tribunals and Inquiries Act 1992 (c.53). Sections 8(1) and (3) of the Tribunals and Inquiries Act 1992 are now repealed. Section 45(1) of the Tribunals, Courts and Enforcement Act 2007 abolishes the Council on Tribunals and its Scottish Committee, with section 44 of and Schedule 7 to that Act establishing the Administrative Justice and Tribunals Council and its Scottish Committee in their place. The Children's Hearings are a “listed tribunal” for the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007, under S.S.I. 2007/436.

(c) S.S.I. 2002/63.

(d) S.S.I. 1996/3261.

4. In rule 3 (legal representation for the purpose of assisting children at a Children’s Hearing), in paragraph (1)(a), before “legal” insert “despite the entitlement of the child to be accompanied by a representative under rule 11 of the 1996 Rules”.

5. After rule 3 (legal representation for the purpose of assisting children at a Children’s Hearing) insert–

“3A.— Legal representation for the purpose of assisting a relevant person at a Children’s Hearing

(1) A business meeting arranged by the Principal Reporter under section 64(1) of the Act may appoint to a relevant person who is due to attend a Children’s Hearing a legal representative, if it appears to that business meeting that–

- (a) it may be necessary to make a supervision requirement (or review a supervision requirement) which includes a requirement–
 - (i) that the child who is the subject of a Children’s Hearing reside at any place, where such a requirement would result in the child no longer residing with the relevant person;
 - (ii) regulating the relevant person’s contact with the child; or
 - (iii) affecting the relevant person’s parental rights under section 2 of the Act; and
- (b) despite the entitlement of the relevant person to be accompanied by a representative under rule 11 of the 1996 Rules, legal representation is required to enable the relevant person to effectively participate at the Hearing.

(2) The Children’s Hearing may at any time appoint to any relevant person a legal representative if it appears to that Hearing that the circumstances in paragraph (1) exist and may do so even where a business meeting or previous Children’s Hearing has considered the appointment of a legal representative for that relevant person.

(3) When any appointment of a legal representative is made, the business meeting or the Children’s Hearing shall direct the Principal Reporter to advise the local authority of that appointment.

3B.— Effective participation

A person’s ability to effectively participate in a Children’s Hearing may be affected, in particular, by–

- (a) the complexity of the case, including the points of law in issue;
- (b) the nature of the issues involved;
- (c) the ability of the individual, with the assistance of a representative under rule 11 of the 1996 Rules, to consider and challenge any document or information before the Hearing;
- (d) the ability of the individual, with the assistance of a representative under rule 11 of the 1996 Rules, to present their views in an effective manner.”.

6. In rule 4 (notification of Children’s Hearings and provision of documents to legal representative) for “the legal representative”, wherever it appears, substitute “any legal representative (whether appointed under these Rules or otherwise)”.

7. In rule 5 (panel of legal representatives)–

- (a) in paragraph (1) after “within which the child resides”, in both places where it appears, insert “, or within which the relevant person resides, as the case may be,”;

- (b) in paragraph (2) for “the legal representative” substitute “any legal representative appointed under these Rules.”.

ADAM INGRAM

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
2nd June 2009

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules made under sections 42(1) and (2)(a), (b), (d) and (i) and 103(3) of the Children (Scotland) Act 1995 amend the Children's Hearings (Legal Representation) (Scotland) Rules 2002 ("the principal Rules") to permit legal representatives for relevant persons to be appointed by a business meeting or Children's Hearings and for legal representatives to attend Children's Hearings.

Rule 4 amends the principal Rules to ensure that a business meeting or children's hearings consider the possible contribution of a representative available under rule 11 of the Children's Hearings (Scotland) Rules 1996 to assist a child to effectively participate in the proceedings before appointing a legal representative to the child.

Rule 5 specifies when the business meeting and the Children's Hearings may consider the appointment of a legal representative for a relevant person attending a Children's Hearing and the circumstances in which an appointment may be made. In addition rule 5 specifies a non exhaustive list of factors which may affect a person's ability to effectively participate in the hearing.

Rules 3, 6 and 7 make other minor consequential amendments to the principal Rules.

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