
SCOTTISH STATUTORY INSTRUMENTS

2012 No. 334

CHILDREN AND YOUNG PERSONS

The Children’s Hearings (Scotland) Act 2011 (Child Protection Emergency Measures) Regulations 2012

Made - - - - 6th December 2012
Laid before the Scottish
Parliament - - - - 10th December 2012
Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 57 of the Children’s Hearings (Scotland) Act 2011⁽¹⁾ and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Children’s Hearings (Scotland) Act 2011 (Child Protection Emergency Measures) Regulations 2012 and come into force on the same day as section 57 (sections 55 and 56: regulations) of the Children’s Hearings (Scotland) Act 2011.

Interpretation

2. In these Regulations—

“the Act” means the Children’s Hearings (Scotland) Act 2011;

“applicant” means the person who applied to a justice of the peace for an order in respect of a child under section 55(1) (application to justice of the peace) of the Act; and

“specified person” means a person specified in an order made under section 55 of the Act.

Implementation

3. Notwithstanding section 55(4) of the Act (order not implemented within 12 hours), an order made by a justice of the peace under section 55(2) of the Act must be implemented as soon as practicable.

(1) 2011 asp 1.

Notification of persons

4. As soon as practicable after implementing an order made under section 55(2) of the Act the specified person, or if there is no specified person, the applicant, must inform the following persons of the matters in regulation 5—

- (a) any relevant person in relation to the child;
- (b) any person, other than a relevant person, with whom the child was residing immediately before the making of the order;
- (c) the relevant local authority in relation to the child, where neither the specified person nor the applicant are the relevant local authority;
- (d) the local authority for the area in which the place of safety or other place in which the child is being kept is situated, where that local authority is not the specified person, the applicant or the relevant local authority;
- (e) the local authority for the area in which the child was residing immediately before the making of the order, where that local authority is not the specified person, the applicant, the relevant local authority or the local authority under paragraph (d); and
- (f) the Principal Reporter.

Matters to be notified

5. The persons in regulation 4 must be informed of—

- (a) the steps taken to implement the order;
- (b) the location of the place of safety where the child is being kept under section 55(1)(b) of the Act or, as the case may be, the place where the child is staying under section 55(1)(c);
- (c) the reasons for the making of the order; and
- (d) any other steps which the specified person or the applicant has taken or is taking to safeguard the welfare of the child.

Withholding information

6. When informing the persons in regulation 4(a) and (b) the specified person or the applicant may withhold, from any of the persons being informed, any of the information in regulation 5(b) and (d) where they consider it necessary to do so in order to safeguard the welfare of the child.

Notice where order ceases to have effect

7. Where an order made under section 55(2) of the Act ceases to have effect by virtue of section 55(4) (order not implemented within 12 hours), the specified person or the applicant must as soon as practicable inform—

- (a) the justice of the peace who made the order; and
- (b) the persons notified in accordance with regulation 4.

Notice where Principal Reporter terminates order

8. Where an order made under section 55(2) of the Act is terminated by the Principal Reporter by virtue of section 55(6), the Principal Reporter must as soon as practicable inform the specified person, if different from the applicant.

Duties to child

9.—(1) After the making of an order under section 55(2) of the Act the specified person, or if there is no specified person, the applicant, must regard the need to safeguard the welfare of the child as the paramount consideration.

(2) As soon as practicable on or after implementing an order the specified person, or if there is no specified person, the applicant, must so far as practicable and taking account of the age and maturity of the child—

- (a) inform the child of the reasons for the making of the order;
- (b) inform the child of any other steps which the specified person or the applicant has taken or is taking to safeguard the welfare of the child;
- (c) give the child an opportunity to express the child's views; and
- (d) have regard to any views expressed by the child.

(3) After implementing an order the specified person, or if there is no specified person, the applicant, may—

- (a) permit contact between the child and any person; and
- (b) subject any such contact to any conditions which the specified person or the applicant consider appropriate to safeguard the welfare of the child.

Constable's power - notification of persons

10. As soon as practicable after a child has been removed by a constable to a place of safety under section 56(1) (constable's power to remove child to place of safety) of the Act, a constable must take such steps as are practicable to inform the following persons of the matters in regulation 11—

- (a) any relevant person in relation to the child;
- (b) any person, other than a relevant person, with whom the child was residing immediately before being removed to the place of safety;
- (c) the relevant local authority in relation to the child;
- (d) the local authority for the area in which the place of safety to which the child was removed is situated, where that local authority is not the relevant local authority;
- (e) the local authority for the area in which the child was residing immediately before being removed to the place of safety, where that local authority is not the relevant local authority nor the local authority under paragraph (d); and
- (f) the Principal Reporter.

Constable's power - matters to be notified

11. The persons in regulation 10 must be informed of—

- (a) the removal of the child by a constable to a place of safety;
- (b) the location of the place of safety where the child is being kept;
- (c) the reasons for the removal of the child to a place of safety; and
- (d) any other steps which a constable has taken or is taking to safeguard the welfare of the child while in a place of safety.

Constable's power - withholding information

12. When informing the persons in regulation 10(a) and (b) a constable may withhold, from any of the persons being informed, any of the information in regulation 11(b) and (d) where the constable considers it necessary to do so in order to safeguard the welfare of the child.

Constable's power - continued keeping of child

13. Where a child has been removed to a place of safety by a constable under section 56(1) of the Act, a constable keeping the child in a place of safety can only continue to do so if satisfied—

- (a) of the matters mentioned in section 39(2)(a) (consideration by sheriff: application by local authority or other person) of the Act; and
- (b) that it is necessary to keep the child in a place of safety to protect the child from the harm mentioned there or from further harm.

Constable's power - duties to child

14.—(1) After the removal of a child by a constable to a place of safety under section 56(1), the constable must regard the need to safeguard the welfare of the child as the paramount consideration.

(2) As soon as practicable on or after the removal of a child by a constable to a place of safety the constable, must so far as practicable and taking account of the age and maturity of the child—

- (a) inform the child of the reasons for the removal to a place of safety;
 - (b) inform the child of any other steps which the constable has taken or is taking to safeguard the welfare of the child;
 - (c) give the child an opportunity to express the child's views; and
 - (d) have regard to any views expressed by the child.
- (3) After the removal of a child by a constable to a place of safety the constable may—
- (a) permit contact between the child and any person; and
 - (b) subject any such contact to any conditions which the constable considers appropriate to safeguard the welfare of the child.

St Andrew's House,
Edinburgh
6th December 2012

AILEEN CAMPBELL
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision concerning the duties of any person removing a child to, or keeping a child in, a place of safety under the Children's Hearings (Scotland) Act 2011 ("the 2011 Act"). Regulations 3 to 9 make provision in respect of an order made by a justice of the peace under section 55 of the 2011 Act and regulations 10 to 14 make provision in respect of a constable's power to remove a child under section 56 of the 2011 Act.

Regulation 3 requires that an order made by a justice of the peace under section 55(2) of the 2011 Act (authorising the removing of a child to, or keeping of a child in, a place of safety) is implemented as soon as practicable (under section 55(4) of the 2011 Act any such order requires to be implemented within 12 hours failing which it ceases to have effect).

Regulations 4, 5 and 6 make provision in connection with the sharing of information with, or withholding of information from, certain persons following implementation of a justice of the peace order.

Regulation 7 requires that the justice of the peace and certain other persons are informed when an order made by the justice of the peace is not implemented.

Where the applicant for a justice of the peace order is not also the person specified to implement the order, and under section 55(6) of the 2011 Act the Principal Reporter has terminated the order (by giving notice of such to the applicant), regulation 8 requires the Principal Reporter to inform the specified person that the order has been terminated.

Regulation 9(1) provides that the person implementing the justice of the peace order is to regard the need to safeguard the welfare of the child as the paramount consideration.

Regulation 9(2) makes provision in connection with information to be shared with the child on implementation of a justice of the peace order.

Regulation 9(3) makes provision in connection with contact with a child following implementation of a justice of the peace order.

Regulations 10, 11 and 12 make provision in connection with the sharing of information with, or withholding of information from, certain persons following removal of a child to a place of safety by a constable.

Regulation 13 provides that a constable may only continue to keep a child in a place of safety where satisfied of the matters mentioned in section 39(2)(a) of the 2011 Act (including that the child is suffering from or is likely to suffer significant harm) and that it is necessary to keep the child in a place of safety to protect the child from such harm or from further harm.

Regulation 14(1) provides that after the removal of a child to a place of safety by a constable, the constable must regard the need to safeguard the welfare of the child as the paramount consideration.

Regulation 14(2) makes provision in connection with information to be shared with the child removed to a place of safety by a constable.

Regulation 14(3) makes provision in connection with contact with a child following their removal to a place of safety by a constable.