
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 146

CHILDREN AND YOUNG PERSONS

The Children's Hearings (Scotland) Act 2011 (Rehabilitation of Offenders) (Transitory Provisions) Order 2013

Made - - - - 14th May 2013
Laid before the Scottish
Parliament - - - - 15th May 2013
Coming into force in accordance with article 1(1)

The Scottish Ministers make the following Order in exercise of the powers conferred by section 205 of the Children's Hearings (Scotland) Act 2011(1) and all other powers enabling them to do so.

Citation, commencement and cessation of effect

1.—(1) This Order may be cited as the Children's Hearings (Scotland) Act 2011 (Rehabilitation of Offenders) (Transitory Provisions) Order 2013 and comes into force on the same day as section 7 of the Children's Hearings (Scotland) Act 2011.

(2) This Order ceases to have effect on the day section 187 of the Children's Hearings (Scotland) Act 2011 comes into force.

Modification of the Rehabilitation of Offenders Act 1974

2.—(1) The Rehabilitation of Offenders Act 1974(2) has effect subject to the modifications specified in this Article.

(2) In section 1(4)(3) (rehabilitated persons and spent convictions), the reference to "criminal proceedings" is to be read as if it included proceedings in which a ground of referral under section 52(2)(i) of the Children (Scotland) Act 1995, or section 67(2)(j) of the Children's Hearings (Scotland) Act 2011, is under consideration.

(3) Section 3(4) (special provision with respect to certain disposals by children's hearings under the Social Work (Scotland) Act 1968) has effect as if—

(1) 2011 asp 1.
(2) 1974 c.53 ("the 1974 Act"). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46) and the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2003 (S.I. 2003/415).
(3) Section 1(4) of the 1974 Act was relevantly amended by section 24(1) of and paragraph 8 of schedule 7 to the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13).
(4) Section 3 of the 1974 Act was relevantly amended by paragraph 23(2)(a) and (b) of Schedule 4 to the Children (Scotland) Act 1995 (c.36).

- (a) the text of the section were subsection (1) of the section;
- (b) the words from “a ground” to “that Act” (where the latter words occur a second time) were paragraph (a) of that subsection,
- (c) after that paragraph there were inserted—
 - “; or
 - (b) one or more of the section 67 grounds under the Children’s Hearings (Scotland) Act 2011 is that mentioned in section 67(2)(j) of that Act (meaning of “section 67 ground”) and that ground has either been accepted by the child and, where necessary, by any person who is a relevant person, or has been established to the satisfaction of the sheriff under section 108 or section 114 of that Act;”, and
- (d) after subsection (1) (created as mentioned in paragraph (a)) there were added—
 - “(2) In subsection (1)(b), “relevant person” has the meaning given in section 200 of the Children’s Hearings (Scotland) Act 2011 and includes any individual who is deemed a relevant person under section 81(3), or by virtue of an order under section 160(4)(b), of that Act.”.
- (4) Section 5 (rehabilitation periods for particular sentences) has effect as if—
 - (a) in subsection (3)(5)—
 - (i) the word “and” immediately following paragraph (a) were omitted;
 - (ii) after paragraph (b) there were added—
 - “and
 - (c) to the discharge by a children’s hearing or, as the case may be, by the sheriff of the referral of a child’s case to a children’s hearing under section 91(3)(b), 93(2)(b), 94(2)(b), 108(3)(b), 114(3)(b) or 119(3)(b) of the Children’s Hearings (Scotland) Act 2011;”;
 - (b) after subsection (5)(f)(6) there were inserted—
 - “(fa) a compulsory supervision order under any provision of the Children’s Hearings (Scotland) Act 2011;”, and
 - (c) in subsection (10)(7), after “1995” there were inserted “or a compulsory supervision order under any provision of the Children’s Hearings (Scotland) Act 2011”.

St Andrew’s House,
Edinburgh
14th May 2013

AILEEN CAMPBELL
Authorised to sign by the Scottish Ministers

(5) Section 5(3) of the 1974 Act was amended by the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 23(3)(a).
(6) Section 5(5) of the 1974 Act was relevantly amended by the Criminal Justice (Scotland) Act 1980 (c.62), Schedule 7, paragraph 24(c) and the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 23(3)(b).
(7) Section 5(10) of the 1974 Act was relevantly amended by the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 23(3)(c).

EXPLANATORY NOTE

(This note is not part of the Order)

Section 8B of the Rehabilitation of Offenders Act 1974 (“the 1974 Act”), inserted by the Criminal Justice and Licensing (Scotland) Act 2010, lists a number of ‘alternatives to prosecution’ for which certain protections are afforded, in terms of Schedule 3 to the 1974 Act. Section 187(2) of the Children’s Hearings (Scotland) Act 2011 (“the 2011 Act”) amends section 8B so as to insert subsections (1A) to (1E). Section 187(1) and (1B) of the 2011 Act, once in force, will provide that where a child has committed an offence the disposal of the case will be treated as an ‘alternative to prosecution’ in terms of section 8B, rather than a conviction. Such disposals will enjoy the protection of section 8B and Schedule 3. In terms of section 187(1D) and (1E) disposals by the children’s hearing system under the Children (Scotland) Act 1995 (“the 1995 Act”), where the child has committed an offence, will enjoy the same protections.

This Order ensures the effective operation of the 2011 Act meanwhile by providing that a disposal under the 2011 Act, where a child has committed an offence will, like a disposal under the 1995 Act, be treated as a criminal conviction – though for the purposes of the 1974 Act only. Section 3 of the 1974 Act provides that where an offence-based ground of referral under the 1995 Act is established, it shall be treated for the purposes of the 1974 Act (but not otherwise) as a conviction. This Order makes a similar provision for a disposal under an offence-based ground of referral under the 2011 Act. Sections 5(3)(b) and 5(5)(f) of the 1974 Act provide that such disposals under the 1995 Act will after certain periods of time be regarded as spent. This Order makes similar provision for disposals under the 2011 Act. Exclusions and exceptions to that rule are contained in the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013.