
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 150

The Children’s Hearings (Scotland) Act 2011 (Transitional, Savings and Supplementary Provisions) Order 2013

PART 1

PRELIMINARY

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Children’s Hearings (Scotland) Act 2011 (Transitional, Savings and Supplementary Provisions) Order 2013 and comes into force on the same day as section 7 (holding of children’s hearing) of the Children’s Hearings (Scotland) Act 2011.

(2) In this Order unless the context otherwise requires—

“the 1986 Act” means the Legal Aid (Scotland) Act 1986(1);

“the 1994 Act” means the Local Government etc. (Scotland) Act 1994(2);

“the 1995 Act” means the Children (Scotland) Act 1995(3);

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

“the 1996 Regulations” means the Secure Accommodation (Scotland) Regulations 1996(4);

“the 2001 Regulations” means the Panel of Persons to Safeguard the Interests of Children (Scotland) Regulations 2001(5);

“the 2013 Regulations” means the Secure Accommodation (Scotland) Regulations 2013(6);

“compulsory supervision order” has the meaning given by section 83 of the 2011 Act;

“the relevant date” means the day on which section 7 (holding of children’s hearing) of the 2011 Act is commenced;

“relevant proceedings” means—

(a) any proceedings before a children’s hearing under Part II of the 1995 Act;

(b) any application to the sheriff, sheriff principal or justice of the peace, as the case may be, to establish any ground of referral or for any order, authorisation, or warrant, as the case may be, under Part II of that Act;

(c) any appeal to the sheriff, sheriff principal or Court of Session under Part II of that Act;

“SCRA” means the Scottish Children’s Reporter Administration(7); and

(1) 1986 c.47.

(2) 1994 c.39.

(3) 1995 c.36.

(4) S.I. 1996/3255.

(5) S.S.I. 2001/476, as amended by S.S.I. 2011/320.

(6) S.S.I. 2013/XXX.

(7) SCRA was established by section 128(1) of the Local Government etc. (Scotland) Act 1994 and is continued in existence by section 15 of the 2011 Act.

“secure accommodation” means accommodation provided for the purposes of restricting the liberty of children in a residential establishment.

- (3) Relevant proceedings are commenced when one of the following occurs—
- (a) a children’s hearing is arranged by the Principal Reporter under Part II of the 1995 Act;
 - (b) any application or appeal is made under Part II of that Act.
- (4) Relevant proceedings are concluded when, in relation to any proceedings, the latest of the following occurs—
- (a) a children’s hearing or sheriff, as the case may be, discharges, or has discharged, a referral under Part II of the 1995 Act;
 - (b) a supervision requirement is, or has been, imposed or continued by the children’s hearing or sheriff, as the case may be, and either—
 - (i) the period for any appeal under the 1995 Act expires with no appeal or further appeal, as the case may be, being made; or
 - (ii) if an appeal or further appeal, as the case may be, is made, that appeal, or further appeal, is concluded;
 - (c) an application for any order, authorisation or warrant under Part II of the 1995 Act is refused and either—
 - (i) the period for any appeal under the 1995 Act expires with no appeal or further appeal, as the case may be, being made; or
 - (ii) if an appeal or further appeal, as the case may be, is made, that appeal or further appeal is concluded; or
 - (d) the expiry of any order, authorisation or warrant granted under the 1995 Act.

PART 2

GENERAL PROVISIONS

Proceedings in progress under the 1995 Act

2.—(1) Subject to paragraphs (3) and (4) and the following provisions of this Order, the enactments specified in paragraph (2) continue to apply for all purposes on and after the relevant date as they would have applied immediately before the relevant date to relevant proceedings in relation to a child which have commenced but on the relevant date have not concluded, until those proceedings have concluded.

(2) The enactments specified for the purposes of paragraph (1) are—

- (a) the 1995 Act;
- (b) any subordinate legislation made wholly or partly under the 1995 Act;
- (c) section 29 of the 1986 Act; and
- (d) the Legal Aid (Scotland) (Children) Regulations 1997⁽⁸⁾.

(3) Section 48 (transfer of case to another children’s hearing) of the 1995 Act does not apply to relevant proceedings falling within paragraph (1).

(4) Paragraph (2)(b) does not include any rules of court made by Act of Sederunt under section 91 of the 1995 Act and—

(8) [S.I. 1997/690](#).

- (a) section 5 of the Court of Session Act 1988⁽⁹⁾ (power to regulate procedure etc. by Act of Sederunt); or
- (b) section 32 of the Sheriff Courts (Scotland) Act 1971⁽¹⁰⁾ (power of Court of Session to regulate civil procedure in sheriff court).

(5) Where any enactment that contains provision applicable to relevant proceedings is repealed or modified, such repeal or modification does not have effect for the purposes of those relevant proceedings until those proceedings have concluded.

Concurrent proceedings in relation to the same child

3. Where after the relevant date a child is the subject of ongoing relevant proceedings under the 1995 Act by virtue of article 2 and further proceedings are to be brought in relation to that child, the 1995 Act applies to those further proceedings until they have concluded.

Selection of children's hearing

4.—(1) Despite article 2, a children's hearing held on or after the relevant date must be constituted in accordance with section 5 of the 2011 Act (children's hearing) from members of the Children's Panel appointed under section 4 of that Act and a hearing so constituted is to be treated for all purposes as if it were a children's hearing constituted under the 1995 Act for relevant proceedings that have commenced before the relevant date.

(2) Nothing in this Order affects the repeal of section 39 (formation of children's panel and children's hearings) of and paragraphs 1 and 2 (appointment), 9(a) (recruitment and training of panel members), 11(a) (expenses of panel members) and 12 (publication of list of members of children's panel) of Schedule 1 to the 1995 Act.

The Antisocial Behaviour etc. (Scotland) Act 2004

5. Where—

- (a) before the relevant date the sheriff has required the Principal Reporter to refer a child's case to a children's hearing under section 12(1) of the Antisocial Behaviour etc. (Scotland) Act 2004⁽¹¹⁾ (sheriff's power to refer case to children's hearing); and
- (b) on the relevant date the Principal Reporter has not yet done so,

relevant proceedings are deemed to have commenced when the requirement mentioned in paragraph (a) is made.

PART 3

SUPERVISION REQUIREMENTS

Supervision requirements – deemed compulsory supervision orders on the relevant date

6. Where on the relevant date a child is subject to a supervision requirement imposed under Part II of the 1995 Act and all relevant proceedings have concluded in relation to the supervision requirement, that supervision requirement is to be treated for all purposes as if it were a compulsory supervision order.

⁽⁹⁾ 1988 c.36.

⁽¹⁰⁾ 1971 c.58.

⁽¹¹⁾ 2004 asp 8.

Supervision requirements – deemed compulsory supervision orders on conclusion of relevant proceedings

7. Where after the relevant date a child is subject to or, as the case may be, is made subject to a supervision requirement imposed under Part II of the 1995 Act, that supervision requirement is to be treated for all purposes as if it were a compulsory supervision order when all relevant proceedings have concluded in relation to it.

Relevant period for deemed compulsory supervision orders

8. For the purposes of calculating the relevant period under section 83(1)(c) of the 2011 Act (meaning of “compulsory supervision order”), where a supervision requirement is to be treated as a compulsory supervision order under articles 6 or 7 it is to be treated as if it had been made on the day on which the supervision requirement was imposed under the 1995 Act or, as the case may be, was last reviewed or varied under the 1995 Act.

Implementation authority for deemed compulsory supervision orders

9.—(1) Where a supervision requirement is to be treated as a compulsory supervision order under article 6, the relevant local authority (within the meaning of section 93(1) of the 1995 Act) is to be treated as if it were the implementation authority for that compulsory supervision order.

(2) Where a children’s hearing imposes a supervision requirement under Part II of the 1995 Act after the relevant date, that hearing must specify which local authority is to be the relevant local authority in relation to that supervision requirement despite the definition of “relevant local authority” in section 93(1) (interpretation of Part II) of the 1995 Act.

(3) Where a supervision requirement is to be treated as a compulsory supervision order under article 7, the relevant local authority specified under paragraph (2) is to be treated as if it were the implementation authority for that deemed order.

Supervision requirements containing a movement restriction condition

10. Where—

- (a) under article 6 or 7 a supervision requirement is to be treated as if it were a compulsory supervision order; and
- (b) the supervision requirement includes a movement restriction condition imposed in accordance with section 70(9A)(b) of the 1995 Act⁽¹²⁾ (disposal of referral by children’s hearing: supervision requirements, including residence in secure accommodation),

the movement restriction condition is to be treated for all purposes as if it were a movement restriction condition included in a compulsory supervision order.

Supervision requirements containing condition that child be placed and kept in secure accommodation

11.—(1) Where paragraph (2) applies to a child and, but for this paragraph the supervision requirement would be treated as if it were a compulsory supervision order in accordance with article 6 or 7 the supervision requirement is not to be treated as if it were a compulsory supervision order until the condition that the child shall be liable to be placed and kept in secure accommodation in a residential establishment has been removed and—

(12) Subsection (9A) of section 70 was inserted by the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), section 135(2).

- (a) the period for any appeal in respect of the decision of the children’s hearing to remove that condition under the 1995 Act has expired with no appeal or further appeal, as the case may be, being taken; or
- (b) if an appeal or further appeal, as the case may be, is taken, when that appeal or further appeal is concluded.

(2) This paragraph applies where on or after the relevant date, a child is subject to or, as the case may be, is made subject to, a supervision requirement which contains a condition imposed in accordance with section 70(9A)(a) of the 1995 Act that the child shall be liable to be placed and kept in secure accommodation in a residential establishment.

PART 4

TRANSITIONAL AND SAVINGS PROVISIONS RELATING TO THE 1995 ACT

Consultation on local authority plans for services for children

12. Where at the relevant date a local authority is consulting on a plan, or review of a plan, under section 19 of the 1995 Act (local authority plans for services for children), that authority must consult the National Convenor of Children’s Hearings Scotland instead of the chairman of the children’s panel for that area in fulfilling their duty under section 19(5)(d) of that Act.

Frivolous appeals

13. Where a sheriff, whether before or after the relevant date, makes or has made an order under section 51(7) of the 1995 Act (order preventing subsequent appeal in respect of a supervision requirement), that order has effect in relation to a supervision requirement which is to be treated as a compulsory supervision order under article 6 or 7 as it would have had effect in relation to the supervision requirement made under Part II of the 1995 Act.

Reference to the Principal Reporter by court

14. Despite article 2(1), where a court has referred a matter to the Principal Reporter under section 54 of the 1995 Act(**13**) (reference to the Principal Reporter by court), the 1995 Act applies to that matter regardless of whether relevant proceedings in relation to the child to whom the matter relates have commenced before the relevant date.

Initial investigations by the Principal Reporter

15.—(1) Where the Principal Reporter makes an initial investigation under section 56(1) of the 1995 Act(**14**) (initial investigation by Principal Reporter) but makes no decision under section 56(4) or (6) before the relevant date, that investigation is to be treated for all purposes after the relevant date as an investigation under section 66 of the 2011 Act (investigation and determination by Principal Reporter) and paragraph (2) applies.

(2) If it appears to the Principal Reporter that a child might be in need of protection, guidance, treatment or control, the Principal Reporter must make a determination under section 66(2) of the 2011 Act and the 2011 Act applies to that case.

(13) Section 54 has been amended by the Civil Partnership Act 2004 (c.33), Schedule 28, paragraph 61 and the Adoption and Children (Scotland) Act 2007 (asp 4), schedule 2, paragraph 9(6).

(14) Section 56 has been amended by the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), section 137(2).

Measures for the emergency protection of children

16.—(1) Despite article 2(1), where on or after the relevant date—

- (a) (i) a children’s hearing arranged under section 59(2) of the 1995 Act (initial hearing of case of child subject to child protection order) is held; and
- (ii) the child protection order is continued by the children’s hearing under section 59(4) of that Act; or
- (b) a child protection order is continued by a sheriff under section 60(12)(d) of that Act (duration, recall or variation of child protection order),

paragraphs (2) and (3) have effect.

(2) Notice received by the Principal Reporter of the making of the child protection order under section 57 of the 1995 Act (child protection orders) is to be treated for all purposes as if it had been notice of the making of the child protection order given to the Principal Reporter under section 43 of the 2011 Act (notice of child protection order).

(3) References to section 65(2) of the 1995 Act (referral to, and proceedings at, children’s hearing) in sections 59(4) and 60(12)(d) of that Act are to be read as references to section 69(2) of the 2011 Act (determination under section 66: referral to children’s hearing) and the Principal Reporter must arrange a children’s hearing in accordance with that subsection of the 2011 Act.

(4) A children’s hearing arranged in accordance with paragraph (3) must take place no later than the eighth working day after the child protection order was implemented.

(5) The reference in paragraph (4) to the day on which the child protection order was implemented is to be construed in accordance with section 59(5)(a) and (b) of the 1995 Act.

Emergency protection of children – child protection order not available

17. Section 61(5) to (8) of the 1995 Act (emergency protection of children where child protection order not available) and the Emergency Child Protection Measures (Scotland) Regulations 1996(15) continue to have effect in relation to a child who, immediately before the relevant date, was being removed to or kept in a place of safety under section 61(5) of the 1995 Act.

Business meetings preparatory to children’s hearing

18. Where relevant proceedings are commenced before the relevant date and on or after the relevant date the Principal Reporter wishes to arrange a business meeting under section 64(1) of the 1995 Act (business meeting preparatory to children’s hearing), that meeting is to be arranged with members of the Children’s Panel from which the children’s hearing is to be selected in accordance with section 6 of the 2011 Act (selection of members of children’s hearing).

Applications for review of establishment of grounds of referral

19.—(1) The persons described in section 85(4) of the 1995 Act (application for review of establishment of grounds of referral) may, on or after the relevant date, make an application to the sheriff under section 85(1) of that Act to review a finding under section 68(10) that grounds of referral are established and such an application is deemed to be relevant proceedings within the meaning of this Order and the 1995 Act applies, subject to paragraph (2), for the purposes of that application.

(2) In section 85(4)(b) of the 1995 Act, “relevant person” is to have the meaning given by section 200 of the 2011 Act.

(3) For the purposes of applications under section 85(1) of the 1995 Act made on or after the relevant date, section 29(12) of the 1986 Act(16) (legal aid in respect of certain proceedings relating to children) is modified to the extent that “relevant person” has the meaning given by section 200 of the 2011 Act.

PART 5

TRANSITIONAL AND SAVINGS PROVISIONS RELATING TO THE 1994 ACT

The Principal Reporter

20.—(1) Where immediately before the relevant date there is a person appointed to the office of Principal Reporter under section 128(4) of the 1994 Act (the Scottish Children’s Reporter Administration), that person is to be treated for all purposes on or after the relevant date as if appointed in accordance with paragraph 8 of schedule 3 to the 2011 Act (the Scottish Children’s Reporter Administration).

(2) Where relevant proceedings are commenced before the relevant date, a person who is to be treated as having been appointed to the office of Principal Reporter under the 2011 Act in accordance with paragraph (1) is, on or after the relevant date, to retain any functions conferred on the Principal Reporter by the 1995 Act or any other enactment for the purposes of those proceedings.

Delegation of Principal Reporter’s functions

21.—(1) Where immediately before the relevant date there are officers appointed under section 128(5) of the 1994 Act to assist the Principal Reporter, those officers are to be treated for all purposes on or after the relevant date as if employed by SCRA in accordance with paragraph 11 of schedule 3 to the 2011 Act.

(2) Any function of the Principal Reporter, which immediately before the relevant date was delegated to an officer under section 131 of the 1994 Act (delegation of Principal Reporter’s functions), is to be treated for all purposes on or after the relevant date as if it had been delegated to that officer under paragraph 10 of schedule 3 to the 2011 Act.

Reporters appeal against dismissal

22.—(1) Subject to paragraph (3), section 129 of the 1994 Act (appeal against dismissal of Principal Reporter and other officers) and the Reporters (Appeals against Dismissal) (Scotland) Regulations 1997(17) continue to apply for all purposes on or after the relevant date where—

- (a) before the relevant date a person to whom those Regulations apply has received notification of dismissal by SCRA(18); and
- (b) an appeal against that dismissal under section 129 of the 1994 Act has been instituted.

(2) For the purposes of paragraph (1)(b), an appeal against dismissal instituted on or after the relevant date is to be treated as if it were an appeal under section 129 of the 1994 Act.

(3) The provisions specified in paragraph (1) continue to apply until—

- (a) the appeal is determined by the Scottish Ministers; or
- (b) the appeal is withdrawn.

(16) Section 29 was substituted by the 1995 Act, section 92.

(17) S.I. 1997/729. 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).

(18) SCRA is referred to in the 1997 Regulations as “the Administration”.

Members of Scottish Children’s Reporter Administration

23.—(1) Subject to paragraph (2), where immediately before the relevant date there are persons appointed as members of SCRA⁽¹⁹⁾ in accordance with paragraph 3 of Schedule 12 to the 1994 Act (status, constitution and proceedings of the Scottish Children’s Reporter Administration), those persons are to be treated for all purposes on or after the relevant date as if appointed in accordance with paragraph 2 of schedule 3 to the 2011 Act.

(2) Paragraph (1) does not apply to the Principal Reporter.

(3) The person appointed as chairman in accordance with paragraph 7 of Schedule 12 to the 1994 Act is to be treated for all purposes on or after the relevant date as if appointed as the chairing member in accordance with paragraph 7 of schedule 3 to the 2011 Act.

Directions

24. Any direction given by the Scottish Ministers to SCRA under section 134 of the 1994 Act⁽²⁰⁾ (directions by the Secretary of State) before the relevant date is to be treated for all purposes, with effect from the relevant date, as if it had been given under section 23 of the 2011 Act (directions).

PART 6

CHILDREN’S LEGAL AID, SAFEGUARDERS AND LEGAL REPRESENTATIVES

Persons appointed to safeguard the interests of children and legal representatives

25.—(1) Where on the relevant date a child is subject to ongoing relevant proceedings under the 1995 Act by virtue of article 2 and, in relation to that child, there is appointed either—

- (a) a person to safeguard the interests of that child under section 41 of the 1995 Act (safeguarding child’s interests in proceedings); or
- (b) a legal representative under the Children’s Hearings (Legal Representation) (Scotland) Rules 2002⁽²¹⁾,

that appointment is to continue after the relevant date until the relevant proceedings have concluded.

(2) Where after the relevant date a child is subject to ongoing relevant proceedings under the 1995 Act by virtue of article 2 and a children’s hearing, the sheriff or, as the case may be, a business meeting arranged by the Principal Reporter under section 64(1) of the 1995 Act wishes to appoint either—

- (a) a person to safeguard the interests of that child; or
- (b) a legal representative in relation to that child,

such an appointment is to be made either under section 41 of the 1995 Act or, as the case may be, under the Children’s Hearings (Legal Representation) (Scotland) Rules 2002.

Panel of Persons to Safeguard the Interests of Children (Scotland) Regulations 2001

26.—(1) The 2001 Regulations⁽²²⁾ are modified in accordance with paragraphs (2) and (3).

⁽¹⁹⁾ SCRA is referred to in the 1994 Act as “the Administration”.

⁽²⁰⁾ 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).

⁽²¹⁾ S.I. 2002/63, as amended by S.S.I. 2009/211.

⁽²²⁾ S.I. 2001/476, as amended by S.S.I. 2011/320.

(2) With effect from the relevant date, all functions conferred on the chairman of the children’s panel by the 2001 Regulations is instead to be exercised by the National Convener of Children’s Hearings Scotland appointed under section 1 of the 2011 Act.

(3) For regulation 6(2)(b) and (c) substitute—

“(b) a member of the Children’s Panel appointed by the National Convener by virtue of section 4(1) of the Children’s Hearings (Scotland) Act 2011 ([asp 1](#)); or

(c) a member of an area support team established by the National Convener under paragraph 12(1) of schedule 1 to the Children’s Hearings (Scotland) Act 2011.”.

Legal Aid for proceedings relating to children

27.—(1) The provisions listed in paragraph (2) are revoked.

(2) The provisions are—

(a) the Legal Aid (Scotland) (Children) Regulations 1997([23](#));

(b) regulation 7 of the Legal Aid (Supreme Court) (Scotland) Regulations 2009([24](#)); and

(c) regulation 5 of the Advice and Assistance and Legal Aid (Online Applications etc.) (Scotland) Regulations 2011([25](#)).

PART 7

CHILDREN PLACED IN SECURE ACCOMMODATION UNDER THE 1996 REGULATIONS

Children subject to certain supervision requirements placed in secure accommodation

28.—(1) Where a child is, before the relevant date, placed in secure accommodation under regulation 6(1) of the 1996 Regulations, relevant proceedings are deemed to have commenced when the child is so placed.

(2) For the purposes of paragraph (1), “relevant proceedings” includes all procedure and requirements mentioned in regulation 6 of the 1996 Regulations.

Children looked after by local authority placed in secure accommodation

29.—(1) Where a child is, before the relevant date, placed in secure accommodation under regulation 7(1) of the 1996 Regulations, relevant proceedings are deemed to have commenced when the child is so placed.

(2) For the purposes of paragraph (1), “relevant proceedings” includes all procedure and requirements mentioned in regulations 7 and 8 of the 1996 Regulations.

Children placed in secure accommodation as place of safety

30.—(1) Where a child is, before the relevant date, placed in secure accommodation under regulation 9(1) of the 1996 Regulations, relevant proceedings are deemed to have commenced when the child is so placed.

(23) [S.I. 1997/690](#).

(24) [S.S.I. 2009/312](#).

(25) [S.S.I. 2011/161](#).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(2) For the purposes of paragraph (1), “relevant proceedings” includes all procedure and requirements mentioned in regulation 9 of the 1996 Regulations.

St Andrew’s House,
Edinburgh
14th May 2013

AILEEN CAMPBELL
Authorised to sign by the Scottish Ministers