

POLICY NOTE

THE CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014 (COMMENCEMENT No. 1 AND TRANSITORY PROVISIONS) ORDER 2014

SSI 2014/131 (C.9)

1. The above instrument is made in exercise of the powers conferred by section 102(3) and (4) of the Children and Young People (Scotland) Act 2014 (the 2014 Act).

Policy Objectives

2. The instrument forms part of an implementation package for the 2014 Act. The provisions in the 2014 Act are being commenced in several stages, and therefore some transitory provisions are required.

3. The Order specifies that the following provisions of the 2014 Act will come into force on the 28th June 2014: section 46 (the definition of early learning and childcare), paragraphs 2(1) and (6) and 7 of schedule 5 (consequential amendments) and so far as is necessary for the purpose of commencing those paragraphs, section 98 (modification of enactments). The order also specifies that 1st August 2014 is the day that the provisions listed in the Schedule to the Order come into force. Some provisions are only partially commenced for certain purposes.

4. In particular the Schedule to the Order commences the following:-

- Parts 6, 7 and 8 of the 2014 Act which relate to the provision of Early Learning and Childcare (ELC) and certain other provisions in so far as they are related to ELC such as section 96 (assessment of wellbeing), section 71 (assistance in relation to kinship care orders) and section 72 (orders which are kinship care orders);
- Section 94 of the 2014 Act which repeals section 38 of the Children and Young Persons Act 1963 which has the effect of removing restrictions in that section which prevent children under 14 from being granted a child performance licence under section 37 of the 1963 Act, except in certain limited circumstances;
- Certain powers to make subordinate legislation, enabling the Scottish Ministers to make orders or, as the case may be, regulations under Parts 9 (corporate parenting), 10 (aftercare), 11 (continuing care), 12 (services in relation to children at risk of becoming looked after, etc.), 13 (support for kinship care) and 17 (appeal against detention in secure accommodation and provision of free school lunches) of the 2014 Act as well as certain other provisions within those Parts insofar as they are required to enable these powers to be used; and
- Certain consequential amendments made in schedule 5 to the 2014 Act which relate in particular to the early learning and childcare provisions in Part 6 of the 2014 Act.

Transitory provisions: Child's Plan

5. Some provisions commenced by this Order are connected to the Child's Plan under Part 5, which is not expected to be commenced until 2016. Article 3 of the Order makes transitory provision for the period between 1st August 2014 and such time as a child's plan is first prepared under Part 5. Under section 49(5) of the 2014 Act (looked after 2 year olds: alternative arrangements to meet wellbeing needs), local authorities are required to include certain information in the child's plan.

6. This transitory provision means that until such time as a child's plan is first prepared under Part 5, local authorities must include the relevant information in the child's plan prepared under regulation 5 of the Looked After Children (Scotland) Regulations 2009.

Transitory provisions: modification of section 5(1) of the Social Work (Scotland) Act 1968

7. Some provisions in Parts 12 and 13 of the 2014 Act (those provisions which are not commenced by this Order, see first and third bullet point in paragraph 4 above) are not expected to be commenced until 2015. Article 4 makes transitory provision for the period between 1st August 2014 and the commencement of these as yet uncommenced provisions in Parts 12 and 13 of the 2014 Act.

8. Until such time as the remaining provisions in Parts 12 and 13 of the 2014 Act are commenced in 2015, section 5(1) of the Social Work (Scotland) Act 1968 (the 1968 Act) (which requires local authorities to perform their functions under certain enactments under the general guidance of the Scottish Ministers), as modified by paragraph 1(a)(ii) of schedule 5 to the 2014 Act, is to be read as if the references to Part 12 and Part 13 of the 2014 Act were omitted. This means that section 5 of the 1968 Act as modified by the 2014 Act will only refer to Part 6 of the 2014 Act in so far as it applies to looked after children.

Consultation

9. Formal Consultation took place on the Children and Young People (Scotland) Act 2014 pre-introduction. Informal consultation with stakeholders took place during the Parliamentary process and continues following Royal Assent. During implementation of the Act, both informal and formal consultation is planned.

10. Formal consultation specifically on the statutory guidance on Parts 6 – 8 (the early learning and childcare provisions) will conclude in June 2014.

Impacts

11. An equality impact assessment and business and regulatory impact assessment were carried out for the Children and Young People (Scotland) Bill. A privacy impact assessment was undertaken throughout the Parliamentary process, and published on the 2014 Act following Royal Assent. The impact assessments are available on the Scottish Government website.

**Children & Families
Scottish Government**

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