

POLICY NOTE

THE CHILDREN (SCOTLAND) ACT 2020 (COMMENCEMENT NO. 2) REGULATIONS 2021

SSI 2021/339 (C. 24)

The above instrument was made in exercise of the powers conferred by section 34 of the Children (Scotland) Act 2020. The instrument is laid but not subject to further parliamentary procedure.

Purpose of the instrument.

The purpose of the instrument is to commence the following provisions of the Children (Scotland) Act 2020¹ (“the 2020 Act”) for certain purposes:

- section 7(3) and (4) (register of solicitors for section 22B of the Vulnerable Witnesses (Scotland) Act 2004) on consultation requirements and SSI procedure (commenced for all purposes);
- section 9 (register of child welfare reporters) (commenced for the purpose of making regulations)
- Section 10(1) and (3) (regulation of provision of contact services) (commenced for all purposes); and
- Section 17(1) and (3) (curators ad litem) (commenced for the purposes of making regulations).

Policy objectives

The Regulations commence the provisions outlined above on 25 October 2021.

Section 7 of the 2020 Act makes provision on the Scottish Ministers establishing and maintaining a register of solicitors from which the court can appoint a lawyer if a party is prohibited from conducting their own case and fails to appoint a lawyer themselves.

Section 7(3), commenced by the SSI, provides that, before making regulations in relation to this register, the Scottish Ministers must consult the Faculty of Advocates and the Law Society of Scotland. Section 7(4), also commenced by this SSI, provides that where these regulations amend primary legislation, they will be subject to the affirmative procedure. Otherwise, they are subject to the negative procedure.

Section 9 of the 2020 Act inserts section 101A into the Children (Scotland) Act 1995 (“the 1995 Act”). That section will, in due course, place a duty on the Scottish Ministers to establish a register of child welfare reporters. Partially commencing this section now (for the purpose of making regulations only) will allow the Scottish Ministers to make regulations in relation to this register before section 9 is fully commenced.

¹ <https://www.legislation.gov.uk/asp/2020/16/contents>

Section 10(3) of the 2020 Act inserts section 101C into the 1995 Act. This allows the Scottish Ministers by regulations to make provision about the regulation of child contact services provided in relation to the requirements of contact orders.

Once section 10(2) of the 2020 Act is brought into force (through future commencement regulations) so as to insert a new subsection (14) into section 11 of the 1995 Act (court orders relating to parental responsibilities etc), courts ordering contact to take place at a contact centre will only be able to use regulated contact services.

Similarly, once section 11 of the 2020 Act is commenced, solicitors will be prohibited from referring people to contact services which are not regulated contact services.

Section 17(3) of the 2020 Act inserts section 101B into the 1995 Act. This will place a duty on the Scottish Ministers to establish a register of curators ad litem who may be appointed in cases under section 11 of the 1995 Act. It will also empower them to make regulations about the arrangements for that register.

Once section 17(2) of the 2020 Act is brought into force (through future commencement regulations) so as to insert a new section 11D into the 1995 Act, courts considering the appointment of such curators will be restricted to appointing people on that register.

Partially commencing section 17(1) and (3) now (for the purpose of making regulations only) will allow the Scottish Ministers to make regulations in relation to this register ahead of commencing section 17(2) of the 2020 Act as well as bringing section 17(3) into force for the purpose of establishing the register.

Consultation

The policy objectives of the 2020 Act were subject to parliamentary scrutiny as part of the parliamentary process². The Policy Memorandum for the Children (Scotland) Bill (“the Bill”) that preceded the 2020 Act outlined the results of the public consultation exercise on the review of the Children (Scotland) Act 1995 held in 2018³.

As these Regulations bring into force provisions of the Act, no further consultation has been carried out in relation to this instrument.

Public consultations were run between 22 March 2021 and 12 July 2021 on the registers of child welfare reporters, curators ad litem and solicitors who may be appointed when an individual has been prohibited from conducting their case themselves⁴ and on the regulation of child contact centres⁵.

² <https://beta.parliament.scot/bills/children-scotland-bill>

³ <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/children-scotland-bill/introduced/policy-memorandum-children-scotland-bill.pdf>

⁴ [Registers of child welfare reporters, curators ad litem and of solicitors who may be appointed when an individual has been prohibited from conducting their case themselves - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

⁵ [Regulation of child contact centre services - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

Impact Assessments

No specific Impact Assessments have been prepared for these commencement Regulations. However, the Scottish Government published when the Bill was introduced:

- A Business and Regulatory Impact Assessment (BRIA)⁶
- An Equality Impact Assessment (EQIA)⁷
- A Child Rights and Wellbeing Impact Assessment (CRWIA)⁸
- An Islands Communities Screening Assessment⁹
- A Fairer Scotland Duty Impact Assessment¹⁰
- A Data Protection Impact Assessment¹¹

Financial Effects

The financial effects of the 2020 Act are detailed in the BRIA and Financial Memorandum¹² prepared in respect of the Bill that preceded the 2020 Act and the supplementary Financial Memorandum which was prepared after stage 2 of the Bill¹³. No significant financial effects are expected as a consequence of these Regulations.

**Scottish Government
Justice Directorate**

September 2021

⁶ <https://www.gov.scot/publications/final-business-regulatory-impact-assessment-children-scotland-bill/>

⁷ <https://www.gov.scot/publications/equality-impact-assessment-record-children-scotland-bill/>

⁸ <https://www.gov.scot/publications/child-rights-wellbeing-impact-assessment-children-scotland-bill/>

⁹ <https://www.gov.scot/publications/islands-communities-screening-assessment-children-scotland-bill/>

¹⁰ <https://www.gov.scot/publications/fairer-scotland-duty-impact-assessment-children-scotland-bill/>

¹¹ <https://www.gov.scot/publications/data-protection-impact-assessment-children-scotland-bill/>

¹² <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/children-scotland-bill/introduced/financial-memorandum-children-scotland-bill.pdf>

¹³ <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/children-scotland-bill/stage--2/supplementary-financial-memorandum-children-scotland-bill.pdf>