

EXPLANATORY MEMORANDUM TO
THE CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014 (CONSEQUENTIAL
AND SAVING PROVISIONS) ORDER 2015

2015 No. 907

1. This Explanatory Memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to update existing UK legislation in consequence of the Children and Young People (Scotland) Act 2014 (“the 2014 Act”), which covers a wide range of policy in relation to children and aims to deliver a package of legislative rights for care experienced children and young people.

2.2 This Order is necessary to: modify section 44 of the Children (Scotland) Act 1995 (“the 1995 Act”) so that going forward the publishing restrictions in that provision only apply to proceedings before a sheriff on an application under section 76(1) of the 1995 Act (exclusion orders); amend section 93(2) of the 1995 Act so that “child” for the purposes of section 44 means a person under the age of eighteen years in England and Wales and Northern Ireland as well as in Scotland; make a minor corrective amendment to the definition of “secure accommodation” in section 44(11) of the Criminal Procedure (Scotland) Act 1995; and, make a related saving provision in relation to section 44 of the 1995 Act.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 The Order is to be made in exercise of powers conferred by sections 104, 112(1) and 113(2), (4) and (5) of the Scotland Act 1998 (“the 1998 Act”). Section 104 of the 1998 Act provides for subordinate legislation to be made by the UK Government, which contains provisions that are necessary or expedient in consequence of any provision made by, or under, an Act of the Scottish Parliament. In this case, provision is required in consequence of provision made by the 2014 Act. The Order is subject affirmative resolution procedure in the UK Parliament.

4.2 Section 44 of the 1995 Act, which makes provision in relation to the prohibition of publication of proceedings at children’s hearings, was prospectively repealed, as it extends to Scotland, by schedule 6 to the Children’s Hearings (Scotland) Act 2011 (“the

2011 Act’) and was replaced for cases going forward under the 2011 Act by similar equivalent provision made in section 182 of the 2011 Act.

4.3 However, it became apparent after the 2011 Act was passed that section 44 is still needed. It is required so that it continues to be an offence for a person to publish relevant information in relation to historic children’s hearings cases which were dealt with under the 1995 Act. It is also required in relation to those cases which began under the 1995 Act system and continue to proceed under that Act following the “go live” of the new system on 24 June 2013 by virtue of transitional and savings provisions contained in a Scottish Statutory Instrument (S.S.I. 2013/150).

4.4 Therefore, paragraph 12(10) of schedule 5 to the 2014 Act now reverses the unintended repeal of section 44 of the 1995 Act for Scotland, which was never commenced once the issue was identified. The 2014 Act (at paragraph 4(4) of schedule 5) also amends section 44 so that, going forward, it only applies to exclusion order proceedings under section 76 of the 1995 Act (which remain under the 1995 Act and are not affected by the 2011 Act). Given the UK extent of section 44 of the 1995 Act (see section 105(8) of the 1995 Act), this Order is required to give effect in the rest of the UK to: the amended version of section 44 (restricting its future application to exclusion order proceedings under section 76 of the 1995 Act); and, the saving of the former version of section 44 for both historic cases and on-going transitional cases under the 1995 Act¹.

4.5 Section 52(b) of the Criminal Justice (Scotland) Act 2003 made a change to the definition of “child” for the purposes of section 44 of the 1995 Act (contained in section 93(2) of the 1995 Act) so that it was extended to persons up to the age of eighteen years. However, this change was not extended to England, Wales and Northern Ireland at the time. As this Order seeks to bring the existing parallel texts of section 44 into line, it also seeks to make an incidental change to this underlying definition in section 93(2) in order to bring those texts into line too for all jurisdictions.

4.6 The Children’s Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013/1465) amended section 44(11) of the Criminal Procedure (Scotland) Act 1995 by substituting the definition of ‘secure accommodation’ with a new definition that took into account the most up to date statutory cross-reference for Scotland, England, Wales and Northern Ireland. However, the substituted definition contains an undefined reference to the “2000 Act”. Therefore, paragraph 5(2) of schedule 5 to the 2014 Act corrects this for Scotland by clarifying that the reference is to the Care Standards Act 2000. Given section 44 of the Criminal Procedure (Scotland) Act 1995 has UK extent by virtue of section 309(4) and (5) of that Act, this Order is required to make the same clarification for the other jurisdictions.

5. Territorial Extent and Application

This instrument extends to England and Wales and Northern Ireland only.

¹ It is intended that similar saving provision will be made for Scotland in the commencement order bringing paragraph 4(4) of schedule 5 to the 2014 Act into force.

6. European Convention on Human Rights

The Parliamentary Under Secretary of State for Scotland, the Rt Hon David Mundell MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Children and Young People (Scotland) Act 2014 (Consequential and Saving Provisions) Order 2015 are compatible with the Convention rights.”

7. Policy background

7.1 The general policy objective underlying the provision made in articles 2 and 4 of this Order is that information relating to children’s hearings proceedings about the child concerned in, or any other child in any way connected with, those proceedings should not be published when its release may identify the child, their address or school and therefore place the child’s welfare at risk.

7.2 Although provision in relation to the prohibition of publication of proceedings at children’s hearings is now contained in section 182 of the 2011 Act, the similar protection afforded by section 44 of the 1995 Act is still required in relation to historical cases which were dealt with under the 1995 Act or those that were on-going under that Act when the new children’s hearings system was introduced (paragraph 4.3 refers). The protection afforded by section 44 of the 1995 Act is also required going forward for proceedings under section 76(1) of the 1995 Act which relates to exclusion orders (paragraph 4.4 refers). This is the only type of proceedings under the 1995 Act currently listed in section 44(1) that remains on the statute books as a result of the 2011 Act which replaced the 1995 Act hearings regime. Articles 2 and 4 of the Order achieve those policy objectives in relation to section 44 as it applies to England, Wales and Northern Ireland in consequence of similar changes made to section 44 as it applies to Scotland by paragraph 4(4) of schedule 5 to the 2014 Act.

8. Consultation outcome

8.1 No formal consultation has taken place on the Order; Orders taken forward under section 104 of the 1998 Act are not usually consulted on as they are made in consequence of Acts which have previously been the subject of separate consultation exercises. The provisions within this Order have the approval of the Department for Education, the Northern Ireland Executive, the Welsh Government and the Scottish Government.

8.2 With regard to wider consultation, the Scottish Government ran its consultation, *A Scotland for Children: A Consultation on the Children and Young People Bill*, from 4th July 2012. An analysis of the 298 responses received showed general support for the introduction of the Bill and the full analysis can be viewed here: <http://www.scotland.gov.uk/Publications/2012/12/4986/1>. On 22nd March 2013 the Scottish Government published its response to that consultation. The response can be viewed here: <http://www.scotland.gov.uk/Publications/2013/03/9148>

9. Guidance

No additional guidance is required for this Order.

10. Impact

10.1 This instrument has no impact of a regulatory nature on the private sector or civil society organisations and will not impose or reduce costs.

10.2 There will be no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

The effect of this Order is purely consequential. It does not create new policy or frameworks and therefore no monitoring or review of the effects of this Order are required.

13. Contact

Emma Lopinska at the Scotland Office (Tel: 0131 244 9016 or email: emma.lopinska@scotlandoffice.gsi.gov.uk) can answer any queries regarding the instrument.