

CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – the National Convener and Children's Hearings Scotland (Chs)

The National Convener and CHS

Section 1 – The National Convener

3. This section provides for the creation of the post of National Convener of CHS. The first National Convener will be appointed by the Scottish Ministers and thereafter appointments will be made by CHS with the approval of the Scottish Ministers, under terms set out in schedule 1, paragraph 8. Subsection (3) places a duty on the Scottish Ministers to take reasonable steps to involve persons under 21 in the process for selecting the first National Convener and this responsibility is passed to CHS for subsequent appointments in schedule 1. Appointments are for a fixed term of 5 years and the terms and conditions of the first National Convener are to be determined by the Scottish Ministers. The terms and conditions for subsequent appointments will be determined by CHS and approved by the Scottish Ministers.

Section 2 – Children's Hearings Scotland

4. This section provides for the establishment of a dedicated national body to support the Children's Hearings system to be known as Children's Hearings Scotland.

Section 3 – Further provision about National Convener and CHS

5. This section introduces schedule 1 which makes further provision for the National Convener and CHS.

The Children's Panel

Section 4 – The Children's Panel

6. This section places a duty on the National Convener to appoint persons to be members of the national Children's Panel. The National Convener has a duty to ensure that the Children's Panel is sufficiently staffed and includes people from all local authority areas. This supports the principle of having people from the local community involved in local decision making. Subsection (3) introduces schedule 2 which makes detailed provision concerning the recruitment, appointment, training and payment of expenses of panel members. This section establishes one national Children's Panel for Scotland in place of the 32 local authority panels which currently exist.

Children's hearings

Section 5 – Children's hearing

7. **Section 5** defines a Children's Hearing as one that consists of three members of the Children's Panel. Children's Hearings are to carry out the functions conferred on them by this Act or any other enactment.

Section 6 – Selection of members of children's hearing

8. **Section 6** makes provision for the selection of panel members to sit on a Children's Hearing. The National Convener has a duty to ensure that a hearing consists of both male and female members of the panel and, wherever possible, they either work or live in the local authority area in which the hearing will sit. While the duty to ensure a gender balance is firm, there is a limited degree of flexibility that allows members of a Children's Hearing to be drawn from a wider geographical area than the immediate local authority in which the hearing will be held. Subsection (4) provides that the National Convener may select one of the three members to act as chairing member in that hearing. Schedule 1, paragraph 14 places an obligation on the National Convener to delegate this function to the area support teams, defined in schedule 1.

Section 7 – Holding of children's hearing

9. This section places a duty on the National Convener to ensure that hearings are held where required in order to carry out functions under this Act or other legislation.

Section 8 – Provision of advice to children's hearing

10. This section provides the National Convener with the power to provide advice to Children's Hearings and Pre-hearing Panels. Subsection (2) contains a non-exhaustive list of the types of advice which the National Convener might provide to Children's Hearings and Pre-hearing Panels. This includes legal advice, procedural advice, advice about the consequences of decisions and advice about the implementation of decisions.

Section 9 – Independence of children's hearing

11. This section serves to protect the independence of the Children's Hearing. It makes clear that neither the National Convener nor the Principal Reporter can guide or direct the Children's Hearing in carrying out any of its functions.

Power to change National Convener's functions

Section 10 – Power to change National Convener's functions

12. This section gives the Scottish Ministers power to vary the functions of the National Convener. Ministers may specify further functions for the National Convener, either by creating entirely new functions or through transferring functions from existing bodies or persons. Functions may also be removed from the National Convener or transferred to another body or person, should Ministers consider this to be appropriate. Any such change to the functions of the National Convener will require to be made by an order subject to super-affirmative procedure. Subsection (1)(e) confers power on the Scottish Ministers to specify the manner in which the National Convener must carry out a function or the time period in which the function must be carried out. Any such specification will require to be made by an order subject to affirmative procedure. See sections 197 and 198 for definitions of "affirmative procedure" and "super-affirmative procedure".

Functions of CHS

Section 11 – Provision of assistance to National Convener

13. This section specifies the principal function of CHS which is to support the work of the National Convener.

Section 12 – Independence of National Convener

14. This section provides a clear separation of functions between CHS and the National Convener and prevents CHS or any other person from directing or guiding the National Convener in carrying out their functions. Subsection (2) makes clear that this prohibition is subject to the power of the Scottish Ministers under section 10(1)(e) to specify by secondary legislation the manner or timing in which any function of the National Convener is carried out.

Section 13 – Directions

15. This section enables the Scottish Ministers to give directions to CHS about the carrying out of its functions. Such directions might relate to setting the strategic direction of CHS or its organisational objectives and outcomes. CHS must comply with these directions.