



# Children's Hearings (Scotland) Act 2011

## 2011 asp 1

### PART 20

#### GENERAL

##### *Interpretation*

#### **199 Meaning of “child”**

- (1) In this Act, “child” means a person who is under 16 years of age (but subject to subsections (2) to (9)).
- (2) In paragraph (o) of section 67(2) and the other provisions of this Act in their application in relation to that paragraph, “child” means a person who is of school age.
- (3) Subsection (4) applies where a person becomes 16 years of age—
  - (a) after section 66 applies in relation to the person, but
  - (b) before a relevant event.
- (4) For the purposes of the application of this Act to the person, references in this Act to a child include references to the person until a relevant event occurs.
- (5) A relevant event is—
  - (a) the making of a compulsory supervision order in relation to the person,
  - (b) the notification of the person under section 68(3) that the question of whether a compulsory supervision order should be made in respect of the person will not be referred to a children's hearing, or
  - (c) the discharge of the referral.
- (6) Subsection (7) applies if—
  - (a) a compulsory supervision order is in force in respect of a person on the person's becoming 16 years of age, or
  - (b) a compulsory supervision order is made in respect of a person on or after the person becomes 16 years of age.

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- (7) For the purposes of the application of the provisions of this Act relating to that order, references in this Act to a child include references to the person until whichever of the following first occurs—
- (a) the order is terminated, or
  - (b) the person becomes 18 years of age.
- (8) Subsection (9) applies where a case is remitted to the Principal Reporter under section 49(7)(b) of the Criminal Procedure (Scotland) Act 1995.
- (9) For the purposes of the application of this Act to the person whose case is remitted, references in this Act to a child include references to the person until whichever of the following first occurs—
- (a) a children's hearing or the sheriff discharges the referral,
  - (b) a compulsory supervision order made in respect of the person is terminated, or
  - (c) the person becomes 18 years of age.

**Modifications etc. (not altering text)**

- C1** S. 199 modified (24.6.2022) by [The Cross-border Placements \(Effect of Deprivation of Liberty Orders\) \(Scotland\) Regulations 2022 \(S.S.I. 2022/225\)](#), regs. 1, **13(11)**

**200 Meaning of “relevant person”**

- (1) In this Act, “relevant person”, in relation to a child, means—
- (a) a parent or guardian having parental responsibilities or parental rights in relation to the child under Part 1 of the 1995 Act,
  - (b) a person in whom parental responsibilities or parental rights are vested by virtue of section 11(2)(b) of the 1995 Act,
  - (c) a person having parental responsibilities or parental rights by virtue of section 11(12) of the 1995 Act,
  - (d) a parent having parental responsibility for the child under Part 1 of the Children Act 1989 (c.41) (“the 1989 Act”),
  - (e) a person having parental responsibility for the child by virtue of—
    - (i) section 12(2) of the 1989 Act,
    - (ii) section 14C of the 1989 Act, or
    - (iii) section 25(3) of the Adoption and Children Act 2002 (c.38),
  - (f) a person in whom parental responsibilities or parental rights are vested by virtue of a permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007 (asp 4)),
  - (g) any other person specified by order made by the Scottish Ministers.
- (2) For the purposes of subsection (1)(a), a parent does not have parental responsibilities or rights merely by virtue of an order under section 11(2)(d) or (e) of the 1995 Act.
- (3) An order made under subsection (1)(g) is subject to the affirmative procedure.

**201 Meaning of “relevant local authority”**

- (1) In this Act, “relevant local authority”, in relation to a child, means—
- (a) the local authority in whose area the child predominantly resides, or

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- (b) where the child does not predominantly reside in the area of a particular local authority, the local authority with whose area the child has the closest connection.
- (2) For the purposes of subsection (1)(a), no account is to be taken of—
- (a) any period of residence in a residential establishment,
  - (b) any other period of residence, or residence in any other place, prescribed by the Scottish Ministers by regulations.
- (3) For the purposes of subsection (1)(b), no account is to be taken of—
- (a) any connection with an area that relates to a period of residence in a residential establishment,
  - (b) any other connection prescribed by the Scottish Ministers by regulations.

## 202 Interpretation

- (1) In this Act, unless the context otherwise requires—
- “the 1995 Act” means the Children (Scotland) Act 1995 (c.36),
  - “affirmative procedure” is to be construed in accordance with section 197,
  - “CHS” means Children's Hearings Scotland,
  - “chief social work officer” means the officer appointed under section 3 of the Social Work (Scotland) Act 1968 (c.49) by—
    - (a) in relation to a compulsory supervision order or an interim compulsory supervision order, the implementation authority,
    - (b) in relation to a medical examination order or a warrant to secure attendance, the relevant local authority for the child to whom the order or warrant relates,
  - “child assessment order” means an order mentioned in section 35,
  - “child protection order” means an order mentioned in section 37,
  - “compulsory supervision order” has the meaning given by section 83,
  - “contact order” has the meaning given by section 11(2)(d) of the 1995 Act,
  - “crime” has the meaning given in section 307(1) of the Criminal Procedure (Scotland) Act 1995 (c.46),
  - “functions” includes powers and duties; and “confer”, in relation to functions, includes impose,
  - “grounds determination” has the meaning given by section 110(1),
  - “grounds hearing” has the meaning given by section 90,
  - “implementation authority”—
    - (a) in relation to a compulsory supervision order, has the meaning given by section 83(1)(b),
    - (b) in relation to an interim compulsory supervision order, has the meaning given by section 86(1)(b),
  - “interim compulsory supervision order” has the meaning given by section 86,
  - “interim variation”, in relation to a compulsory supervision order, has the meaning given by section 140,
  - “medical examination order” has the meaning given by section 87,
  - “movement restriction condition” has the meaning given by section 84,
  - “negative procedure” is to be construed in accordance with section 196,

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“officer of law” has the meaning given by section 307(1) of the Criminal Procedure (Scotland) Act 1995 (c.46),

“parental responsibilities” has the meaning given by section 1(3) of the 1995 Act,

“parental rights” has the meaning given by section 2(4) of the 1995 Act,

“permanence order” has the meaning given by section 80(2) of the Adoption and Children (Scotland) Act 2007 (asp 4),

“place of safety”, in relation to a child, means—

- (a) a residential or other establishment provided by a local authority,
- (b) a community home within the meaning of section 53 of the Children Act 1989 (c.41),
- (c) a police station,
- (d) a hospital or surgery, the person or body of persons responsible for the management of which is willing temporarily to receive the child,
- (e) the dwelling-house of a suitable person who is so willing, or
- (f) any other suitable place the occupier of which is so willing,

“pre-hearing panel” has the meaning given by section 79(2)(a),

“prosecutor” has the meaning given by section 307(1) of the Criminal Procedure (Scotland) Act 1995 (c.46),

“residential establishment” means—

- (a) an establishment in Scotland (whether managed by a local authority, a voluntary organisation or any other person) which provides residential accommodation for children for the purposes of this Act, the 1995 Act or the Social Work (Scotland) Act 1968 (c.49),
- (b) a home in England or Wales that is—
  - (i) a community home within the meaning of section 53 of the Children Act 1989 (c.41),
  - (ii) a voluntary home within the meaning of that Act, or
  - (iii) a private children's home within the meaning of that Act, or
- (c) [<sup>F1</sup>an establishment in Northern Ireland that is—
  - (i) a private children's home within the meaning of the Children (Northern Ireland) Order 1995 ( S.I. 1995/755 ),
  - (ii) an authority home provided under Part VII of that Order, or
  - (iii) a voluntary home provided under Part VIII of that Order.]

“safeguarder” has the meaning given by section 30(1),

“school age” has the meaning given by section 31 of the Education (Scotland) Act 1980 (c.44),

“secure accommodation” means accommodation provided [<sup>F2</sup>for the purpose of restricting the liberty of children which—

- (a) in Scotland, is provided in a residential establishment approved in accordance with regulations made under section 78(2) of the Public Services Reform (Scotland) Act 2010 (asp 8) ,
- (b) in England, is provided in a children's home (within the meaning of the Care Standards Act 2000 (c.14) (“the 2000 Act”)) in respect of which a person is registered under Part 2 of that Act, except that before the coming into force of section 107(2) of the Health and Social Care (Community Health Standards) Act 2003 (c.43) , “secure accommodation” means accommodation in relation to England which—

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- (i) is provided in a children's home (within the meaning of the 2000 Act) in respect of which a person is registered under Part 2 of that Act, and
- (ii) is approved by the Secretary of State for the purpose of restricting the liberty of children,
- (c) in Wales, is provided in a children's home (within the meaning of the 2000 Act) in respect of which a person is registered under Part 2 of that Act,]

“secure accommodation authorisation” has the meaning given by section 85,

“statement of grounds” has the meaning given by section 89(3),

“subordinate legislation” means—

- (a) an order,
- (b) regulations, or
- (c) rules,

“super-affirmative procedure” is to be construed in accordance with section 198,

[<sup>F3</sup>“supporting facts” has the meaning given by section 90(1D),]

“warrant to secure attendance” has the meaning given by section 88, and

“working day” means every day except—

- (a) Saturday and Sunday,
- (b) 25 and 26 December,
- (c) 1 and 2 January.

(2) References in this Act to a decision of a children's hearing are references to a decision of a majority of the members of a children's hearing.

[<sup>F4</sup>(2A) References in this Act to a determination of a pre-hearing panel are references to a determination of a majority of the members of a pre-hearing panel.]

(3) References in this Act to varying a compulsory supervision order, an interim compulsory supervision order or a medical examination order include varying the order by adding or removing measures.

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#### Textual Amendments

- F1** Words in s. 202(1) substituted (24.6.2013) by [The Children's Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **Sch. 1 para. 21(a)(i)**
- F2** Words in s. 202(1) substituted (24.6.2013) by [The Children's Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **Sch. 1 para. 21(a)(ii)**
- F3** Words in s. 202(1) inserted (26.1.2015) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), s. 102(3), **Sch. 5 para. 12(9)**; S.S.I. 2014/353, art. 2(2)(3), Sch.
- F4** S. 202(2A) inserted (24.6.2013) by [The Children's Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **Sch. 1 para. 21(b)**

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#### Modifications etc. (not altering text)

- C2** S. 202 modified (24.6.2022) by [The Cross-border Placements \(Effect of Deprivation of Liberty Orders\) \(Scotland\) Regulations 2022 \(S.S.I. 2022/225\)](#), regs. 1, **13(12)**

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[View outstanding changes](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 17A inserted by [2020 asp 16 s. 6\(2\)](#)
- s. 25(3) inserted by [2020 asp 16 s. 30\(7\)](#)
- s. 27(3)-(4A) substituted for s. 27(3)(4) by [2020 asp 16 s. 3\(2\)](#)
- s. 62(5)(q)-(u) inserted by [2020 asp 9 s. 8\(2\)\(b\)](#)
- s. 163(2)-(2B) substituted for s. 163(2) by [2020 asp 16 s. 27\(3\)\(b\)](#)
- s. 164(2)-(2B) substituted for s. 164(2) by [2020 asp 16 s. 27\(4\)\(b\)](#)
- s. 165(2)-(2B) substituted for s. 165(2) by [2020 asp 16 s. 27\(5\)\(b\)](#)