

Changes to legislation: Children's Hearings (Scotland) Act 2011, SCHEDULE 5 is up to date with all changes known to be in force on or before 25 September 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULE 5 **S**

(introduced by section 203(1))

MINOR AND CONSEQUENTIAL AMENDMENTS

Legal Aid (Scotland) Act 1986 (c.47)

- 1 (1) The Legal Aid (Scotland) Act 1986 is amended as follows.
- (2) In section 4 (Scottish Legal Aid Fund)—
- (a) in subsection (2)—
- (i) in paragraph (aza), after sub-paragraph (ii) insert—
“(ia) children's legal assistance;”, and
- (ii) after paragraph (aza) insert—
“(azb) any sums payable by the Board under contracts made by virtue of section 33B;”, and
- (b) in subsection (3), after paragraph (cb) insert—
“(cc) any contribution payable to the Board by any person in pursuance of section 28K of this Act;”.
- (3) In section 4A (Scottish Legal Aid Board's power to make grants in respect of provision of civil legal aid etc.)—
- (a) in subsection (2)—
- (i) in paragraph (a) for the words from “aid” to “matters” substitute “aid, advice and assistance in relation to civil matters or children's legal assistance ”,
- (ii) in paragraph (b) after “matters” insert “ or children's matters ”, and
- (iii) in paragraph (c) at the end add “ or children's matters ”,
- (b) in subsection (13)—
- (i) for the words “aid or advice and assistance” substitute “ aid, advice and assistance or children's legal aid ”, and
- (ii) at the end add “ or children's legal aid ”, and
- (c) in subsection (14), at the end add “and
“children's matters” means matters relating to children's hearings, pre-hearing panels (as defined in section 79(2)(a) of the 2011 Act) or proceedings under Part 10 or 15 of the 2011 Act”.
- (4) In subsection (1A) of section 31 (selection of solicitors and counsel)—
- (a) after paragraph (a), insert—
“(aa) section 28M(3);”,
- (b) after paragraph (d), insert—
“(da) regulations made under section 33B(4);”, and
- (c) in the full-out, after “assistance” insert “ or children's legal assistance ”.
- (5) In section 35A (Board's powers to obtain information from solicitors in certain cases)
- (a) after subsection (1) insert—
“(1A) The Board may, for the purpose of determining whether—

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- (a) a solicitor, an employee of the solicitor or an employee of the solicitor's firm may be committing a criminal offence in connection with children's legal assistance,
 - (b) a solicitor may be seeking, in relation to children's legal assistance, to recover from the Fund money to which the solicitor is not entitled, as, for example, by performing unnecessary work, or
 - (c) a solicitor or firm whose name appears on the register maintained under section 28M(1) is or may not be complying with the code of practice under section 28N for the time being in force,
- require the solicitor or firm to produce such information and documents relating wholly or partly to the provision of children's legal assistance as it may specify, at such time and place as it may specify.”, and
- (b) in subsection (2), after “(1)” insert “ or (1A) ”.
- (6) In section 35B (Board's powers of entry)—
- (a) in subsection (1), after paragraph (c) insert “or
 - (ca) a solicitor whose name appears on the register maintained under section 28M(1) may not be complying with the code of practice under section 28N for the time being in force;”,
 - (b) in subsection (2)—
 - (i) in paragraph (b), at the beginning insert “ in the case mentioned in subsection (2A), ”, and
 - (ii) after paragraph (b) insert—
 - “(ba) in the case mentioned in subsection (2B), take possession of any documents which appear to him to relate, wholly or partly, to any children's legal assistance provided in or from those premises;”, and
 - (c) after subsection (2) insert—
 - “(2A) The case mentioned in subsection (2)(b) is where the warrant is issued in pursuance of—
 - (a) paragraph (a), (b) or (c) of subsection (1), or
 - (b) paragraph (d) of subsection (1) where the requirement to produce the documents was made under subsection (1) of section 35A.
 - (2B) The case mentioned in subsection (2)(ba) is where the warrant is issued in pursuance of—
 - (a) paragraph (ca) of subsection (1), or
 - (b) paragraph (d) of subsection (1) where the requirement to produce the documents was made under subsection (1A) of section 35A.”.
- (7) In section 37(2) (regulations under Act which require to be laid in draft and approved by the Scottish Parliament before being made), after “24(4)” insert “ , 28C(3), 28K(2), 28L(1) or (8), ”.
- (8) In section 41 (interpretation)—

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- (a) after “requires—” insert—
- ““the 2011 Act” means the Children's Hearings (Scotland) Act 2011 (asp 1);”,
- (b) after the definition of “the Board” insert—
- ““children's legal aid” has the meaning given to it in section 28B(2) of this Act;
- “children's legal assistance” means—
- (a) children's legal aid, and
- (b) advice and assistance in relation to children's hearings, pre-hearing panels (as defined in section 79(2)(a) of the 2011 Act) or proceedings under Part 10 or 15 of the 2011 Act;”, and
- (c) in the definition of “legal aid”—
- (i) after “aid,”, where it third occurs, insert “ children's legal aid ”, and
- (ii) the words from “or”, where it second occurs, to the end of the definition are repealed.
- (9) In section 42 (disposable income and disposable capital: regulations), after subsection (3) insert—
- “(4) Regulations under this section may make different provision for—
- (a) children's legal aid and legal aid other than children's legal aid,
- (b) advice and assistance in relation to children's matters and advice and assistance other than advice and assistance in relation to children's matters.
- (5) In subsection (4)(b), “children's matters” has the meaning given by section 4A(14).”.

Commencement Information

- 11** Sch. 5 para. 1(1)-(7)(8)(c)(9) in force at 24.6.2013 by [S.S.I. 2013/195](#), [arts. 2, 3](#)
- 12** Sch. 5 para. 1(8)(a)(b) in force at 31.1.2012 by [S.S.I. 2012/1](#), [art. 2\(2\)](#)

Children (Scotland) Act 1995 (c.36)

- 2 (1) The Children (Scotland) Act 1995 is amended as follows.
- (2) In section 12 (restrictions on certain decrees)—
- (a) in subsection (1), for “or 54 of this Act” substitute “ of this Act or section 62 of the Children's Hearings (Scotland) Act 2011 ”,
- (b) in subsection (2)(a), for “or 54 of this Act” substitute “ of this Act or section 62 of the Children's Hearings (Scotland) Act 2011 ”.
- (3) In section 16 (welfare of child and consideration of views)—
- (a) in subsection (1)—
- (i) the words “a children's hearing decide, or” are repealed,
- (ii) the words “their or” are repealed,

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- (b) in subsection (2), the words “a children's hearing or as the case may be” are repealed,
 - (c) in subsection (3)—
 - (i) for “(4)(a)(i) or (ii) or (b)” substitute “ (4) ”,
 - (ii) the words “requirement or”, in both places where they occur, are repealed,
 - (iii) the words “the children's hearing consider, or as the case may be” are repealed,
 - (d) for subsection (4) substitute—

“(4) The circumstances to which subsection (2) refers are that the sheriff is considering whether to make, vary or discharge an exclusion order.”,
 - (e) in subsection (5)—
 - (i) paragraph (a) is repealed,
 - (ii) in paragraph (b), for “Chapters 1 to 3” substitute “ Chapter 1 or 3 ”.
- (4) In section 17 (duty of local authority to child looked after by them)—
- (a) in subsection (6), for paragraph (b) substitute—

“(b) who is subject to a compulsory supervision order or an interim compulsory supervision order and in respect of whom they are the implementation authority (within the meaning of the Children's Hearings (Scotland) Act 2011);”,
 - (b) subsection (6)(c) is repealed,
 - (c) in subsection (6)(d), for “such responsibilities” substitute “ responsibilities as respects the child ”.
- (5) In section 19 (local authority plans for services for children)—
- (a) in subsection (2), after paragraph (a) insert—

“(aa) the Children's Hearings (Scotland) Act 2011;”,
 - (b) in subsection (5)—
 - (i) in paragraph (c), the words “appointed under section 127 of the Local Government etc. (Scotland) Act 1994” are repealed,
 - (ii) for paragraph (d) substitute—

“(d) the National Convener of Children's Hearings Scotland;”.
- (6) In section 33 (effect of orders etc. made in different parts of the United Kingdom)—
- (a) in subsection (1)—
 - (i) the words “or to a supervision requirement” are repealed,
 - (ii) the words “or, as the case may be, as if it were a supervision requirement” are repealed,
 - (b) in subsection (2)—
 - (i) paragraph (b) is repealed,
 - (ii) in the full-out, the words “or requirement” are repealed,
 - (c) subsection (4) is repealed,
 - (d) in subsection (5)(b), the words “or to a supervision requirement” are repealed,

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- (e) in subsection (5)(c), the words “or to a supervision requirement” are repealed.
- (7) In section 38(4) (limited disapplication of certain enactments while child being provided with refuge), for “section 83 of this Act” substitute “ section 171 of the Children's Hearings (Scotland) Act 2011 ”.
- (8) In section 75 (powers in relation to secure accommodation)—
- (a) in subsection (1)(b), for “supervision requirement” substitute “ compulsory supervision order, interim compulsory supervision order, medical examination order or warrant to secure attendance (all within the meaning of the Children's Hearings (Scotland) Act 2011) ”,
- (b) after subsection (2) insert—
- “(2A) In subsection (2), “relevant person” has the meaning given by section 200 of the Children's Hearings (Scotland) Act 2011 and includes a person deemed to be a relevant person by virtue of section 81(3), 160(4)(b) or 164(6) of that Act.”,
- (c) for subsection (4) substitute—
- “(4) A child may not be kept in secure accommodation by virtue of regulations made under this section for a period exceeding 66 days from the day when the child was first taken to the secure accommodation.”.
- (9) In section 76(8) (making of child protection order instead of exclusion order)—
- (a) in paragraph (b), for “section 57 of this Act” substitute “ Part 5 of the Children's Hearings (Scotland) Act 2011 ”,
- (b) in the full-out—
- (i) for “an order under that section” substitute “ a child protection order ”,
- (ii) after “that” insert “ Part ”.
- (10) In section 93(1) (interpretation), in the definition of “children's hearing”, for “section 39(3); but does not include a business meeting arranged under section 64, of this Act” substitute “ section 5 of the Children's Hearings (Scotland) Act 2011 ”.
- (11) In section 93(2)(b) (meaning of “child”), for the definition of “child” substitute—
- ““child” means—
- (i) in relation to section 75, a person under the age of 18 years,
- (ii) in relation to any other section, a person under the age of 16 years;”.

Commencement Information

- 13** Sch. 5 para. 2(1)-(7)(9)(11) in force at 24.6.2013 by [S.S.I. 2013/195](#), [arts. 2, 3](#)
- 14** Sch. 5 para. 2(8) in force at 12.6.2013 for specified purposes by [S.S.I. 2013/190](#), [art. 2](#)
- 15** Sch. 5 para. 2(8) in force at 24.6.2013 in so far as not already in force by [S.S.I. 2013/195](#), [arts. 2, 3](#)
- 16** Sch. 5 para. 2(10) in force at 24.6.2013 for specified purposes by [S.S.I. 2013/195](#), [arts. 2, 3](#)

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Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)

3 In section 12 of the Antisocial Behaviour etc. (Scotland) Act 2004 (sheriff's power to refer child to children's hearing where antisocial behaviour order made etc.), for subsection (1) substitute—

“(1) This section applies where—

- (a) the sheriff makes an antisocial behaviour order or an interim order in respect of a child, and
- (b) the sheriff considers that a section 67 ground (other than the ground mentioned in section 67(2)(j)) applies in relation to the child.

(1A) The sheriff may require the Principal Reporter to arrange a children's hearing.

(1B) The sheriff must give the Principal Reporter a section 12 statement if—

- (a) the sheriff makes a requirement under subsection (1A), and
- (b) a compulsory supervision order is not in force in relation to the child.

(1C) A section 12 statement is a statement—

- (a) specifying which of the section 67 grounds the sheriff considers applies in relation to the child,
- (b) setting out the reasons why the sheriff considers the ground applies, and
- (c) setting out any other information about the child which appears to the sheriff to be relevant.

(1D) In this section—

“compulsory supervision order” has the meaning given by section 83 of the Children's Hearings (Scotland) Act 2011,

“section 67 ground” means a ground mentioned in section 67(2) of that Act.”.

Commencement Information

I7 Sch. 5 para. 3 in force at 24.6.2013 by S.S.I. 2013/195, arts. 2, 3

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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\(5\)\(b\)](#)