

CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 18 – Miscellaneous

Children's hearings: procedural rules

Section 177 – Children's hearings: procedural rules

257. This section enables Scottish Ministers to make rules about the practice and procedure of Children's Hearings and Pre-Hearings. Subsection (2) sets out a non-exhaustive list of matters which may be included in these rules. Procedural rules made under this section that include the following matters will be subject to affirmative procedure: specifying matters that may be determined by Pre-Hearing Panels; attendance of persons, excusal and exclusion from attending; withholding documents; and representation of persons at Children's Hearings. Procedural rules that relate to other matters under this section - constituting and arranging hearings; notification; obtaining the views of the child to whom a Children's Hearing relates; provision of documents; prescribing the form of the statement of grounds; the recording and transmission of information; expenses; and appeals – will be subject to negative procedure.
258. In making any procedural rules under subsection (2)(i)(i) – rules making provision for or in connection with the provision of specified documents to members of Children's Hearings – the Scottish Ministers must ensure that any views that may have been expressed by the child to whom the hearing relates are reflected in one of the documents provided to members of that Children's Hearing. Subsection (3) provides that references to a "Children's Hearing" in this section include a Pre-Hearing Panel.

Disclosure of information

Section 178 – Children's hearing: disclosure of information

259. This section provides that a Children's Hearing can withhold information about the child from a particular person if disclosing the information to that person would be likely to cause significant harm to the child. An example of such a situation would be where a relevant person was excluded from part of a hearing, and during that time, the child spoke of matters that if then shared with the relevant person might endanger the child. Section 178 applies despite any other statutory requirements to give the person an explanation of what took place at the hearing or to provide the person with information or the reasons for a decision made by the hearing.

Section 179 – Sharing of information: prosecution

260. This section applies to specific circumstances where there are both criminal proceedings in the criminal courts and care and protection proceedings in the Children's Hearings system, and the Crown Office and Procurator Fiscal Service request specific

information, such as expert reports or transcripts of care and protection proceedings, from the Principal Reporter.

261. Subsection (1)(a) provides that the care and protection proceedings can include past situations, for example where the sheriff found the grounds for referral not to be established and the child is not subject to any order. Subsection (1)(b) and (c) cover both summary and solemn criminal proceedings. Subsection (1)(d) provides that this provision applies when the child is connected to the criminal proceedings in any way or is connected to the accused or any other person involved in the criminal proceedings. Subsection (2) places a duty on the reporter to provide any information to the Crown Office and Procurator Fiscal Service which the reporter holds which relates to the prosecution and which the Crown Office requests for the purpose of preventing or detecting crime or apprehending or prosecuting offenders.

Section 180 – Sharing of information: panel members

262. This section places the local authority under a duty to comply with a request from the National Convener to provide him or her with information about the implementation of compulsory supervision orders by that authority. The National Convener may then disclose that information to all members of the Children's Panel. This information might include: policy statements of the council, details of types of residential establishments that the council owns/has use of; statistics on types of compulsory supervision orders, and general information on how the council goes about implementing compulsory supervision orders.

Implementation of compulsory supervision orders: annual report

Section 181 - Implementation of compulsory supervision orders: annual report

263. This section places a duty on the National Convener to prepare a report about the implementation of compulsory supervision orders during the preceding financial year for submission by Ministers to Parliament. This report must also be provided by the National Convener to all panel members. The report must include details of implementation across Scotland and on a local authority basis. Subsection (4) provides that for the purposes of preparing the report the National Convener may require each local authority to provide information about the number of compulsory supervision orders for which they are the implementation authority, changes of circumstances giving rise to the orders and the ways in which the overall wellbeing of children who are subject to the orders has been affected by them. The National Convener may also require other information relating to the implementation of orders. Subsection (5) ensures the information is presented in an anonymised and aggregated basis by making clear that it must not identify or enable the identification of any particular child.

Publishing restrictions

Section 182 – Publishing restrictions

264. This section prohibits the publication of certain information about proceedings at a Children's Hearing or court proceedings under this Act. This provision applies to any person and could therefore include journalists and their publishers as well as panel members, the Principal Reporter, social workers, parents and other relatives.
265. Subsection (1) prohibits the publication of protected information if it is intended that publication will, or is likely to, lead to the identification of the child or the child's address or school. Subsection (2) provides that a breach of section 182(1) is an offence. A single publication can constitute many offences if different people are involved in its publication. Subsection (3) provides that it is a defence if the person can prove that they did not intend, know or have reason to suspect that publication would lead to the identification of the child or the child's address or school. Subsections (4) to (6)

provide for the restriction on publication to be waived or lessened by the sheriff or the Court of Session in relation to proceedings before them, and by the Scottish Ministers in relation to proceedings before a Children's Hearing if this is in the interests of justice. Subsections (7) and (8) provide that the publication of information about a child by a local authority or an adoption agency is not an offence under this section where it is for the purposes of making arrangements in relation to the child under the Act or the Adoption and Children (Scotland) Act 2007.

266. Subsection (9) defines "protected information" and "publish" for the purposes of this section. "Protected information" includes information relating to various stages of the Children's Hearings process and information given to the Principal Reporter. "Publish" includes to publish matters in a programme service within the meaning of the Broadcasting Act 1990, thus including a television or radio programme or service (including digital), or teletext.

Mutual assistance

Section 183 – Mutual assistance

267. This section places an obligation on CHS, the National Convener, SCRA and the Principal Reporter to co-operate with each other in relation to the performance of their duties under the Act. Each of them must comply with a request by the other for assistance in carrying out functions conferred by the Act. Subsection (3) provides that a local authority may make a request to not only another local authority, but also a health board, for assistance in the performance of the local authority's functions under the Act, and those persons are under a duty to comply. This reflects the fact that the compulsory supervision order may require the local authority to provide services under the order which the authority does not itself provide, under section 144(3). Furthermore, the power to request assistance and the duty to comply extends to all the local authority's functions under the Act so it would therefore cover for example, investigating whether a child should be referred to the reporter, or responding to requests for information from the National Convener under section 180 or 181, as well as functions relating to implementing any orders under the Act. Subsection (5) provides that any request under section 183 must specify the assistance that is required. The duties in this section do not apply if complying with a request would be incompatible with any function of the person or would unduly prejudice the conduct of that function (subsection (6)).

Section 184 – Enforcement of obligations on health board under section 183

268. This section provides an additional enforcement mechanism in relation to the request for help by a local authority to a health board in connection with the implementation of a compulsory supervision order. This provision is restricted to requests for assistance by a local authority where the local authority is the specified implementation authority for a compulsory supervision order and is in connection with the implementation of that order. Where the implementation authority has made a request to a health board for assistance in connection with the implementation of the order and the implementation authority considers that the health board has unreasonably failed to comply with the request the implementation authority may refer the matter to the Scottish Ministers. Subsection (3) provides that the Scottish Ministers may then, if they consider that the health board has unreasonably failed to comply with the request, direct the health board to comply with that request. Subsection (4) provides that the health board must comply with that direction.

Proceedings before sheriff under Act

Section 185 – Amendment of section 32 of Sheriff Courts (Scotland) Act 1971

269. This section amends the Sheriff Courts (Scotland) Act 1971 ("the 1971 Act") and inserts into section 32 powers for the Court of Session to make court rules about:

enabling witnesses to give evidence when not physically present in court; prescribing circumstances in which a party to proceedings may be prohibited from personally questioning witnesses; permitting a party to be represented by a person who is neither an advocate nor a solicitor; and prescribing the functions and rights of Safeguarders appointed by the sheriff.

Consent of child to medical examination or treatment

Section 186 – Consent of child to medical examination or treatment

270. This section clarifies that, where a child is subject to an order that includes a condition requiring that a medical examination or treatment be arranged, the child's ability to consent to or refuse medical examination or treatment is preserved in terms of the Age of Legal Capacity (Scotland) Act 1991.

Rehabilitation of offenders

Section 187 – Rehabilitation of Offenders Act 1974: treatment of certain disposals by children's hearings

271. This section amends the Rehabilitation of Offenders Act 1974 ("the 1974 Act"). It inserts into the Act a new section 8B(1A) which provides for certain matters to be treated as an "alternative to prosecution" under that Act and so benefit from the protections contained in that Act. A child is to be treated as having been given an "alternative to prosecution" where following a referral on a relevant offence ground the ground has been accepted or established, and a compulsory supervision order has been made, varied, continued or the referral has been discharged. Similar provision is made in relation to offence proceedings under the Children (Scotland) Act 1995. Provision is also made for the "alternative to prosecution" to become spent and so no longer require to be disclosed by the individual in situations where convictions and alternative to prosecutions require to be disclosed by the individual.
272. Paragraph 1 of schedule 6 to this Act repeals the existing meaning in the 1974 Act which caused such offence referral grounds to be regarded as a conviction.
273. **Section 187** severs the link between Children's Hearing disposals and the Police Act 1997 ("the 1997 Act"), through which Disclosure Scotland discharges its functions of providing criminal record checks for recruitment and other purposes. These changes will be retrospective. Subsection (3) also provides protection for these disposals under the 1974 Act. The protection afforded will mean that an "alternative to prosecution" will become spent after 3 months of the offence grounds being accepted or established, or of a compulsory supervision order being made.

Criminal record certificates

Section 188 – Criminal record certificates

274. This extends the meaning of "relevant matter" in section 113A of the 1997 Act. This is achieved by bringing certain "alternatives to prosecution" in the new section 8B (1A) and (1D) of the 1974 Act within the meaning of "relevant matter" in the 1997 Act as well as certain supervision requirements and discharges made under the Social Work (Scotland) Act 1968. Section 188 therefore establishes a link between the alternatives to prosecution resulting from Children's Hearings on offence grounds and the 1997 Act.
275. Subsection (b) provides Scottish Ministers with the power to make an order specifying to which offences (resulting in an alternative to prosecution following a Children's Hearing), the definition of 'relevant matter' will apply. This limits the offences Disclosure Scotland can access whilst discharging their functions of providing criminal record checks for recruitment and other purposes. Any such order will be subject to

These notes relate to the Children's Hearings (Scotland) Act 2011 (asp 1) which received Royal Assent on 6 January 2011

affirmative procedure. Subsection (6B) provides that the order can set out offences by level of seriousness.

Places of safety

Section 189 – Places of safety: restrictions on use of police stations

276. This section provides that a child may be kept or detained in a police station only if there is no alternative place of safety available. If kept or detained in a police station, the child must be transferred to a suitable place as soon as reasonably practicable.

Orders made outwith Scotland

Section 190 – Effect of orders made outwith Scotland

277. This section enables regulations to be made to allow for an order made by a court in England, Wales or Northern Ireland to have effect in Scotland as if it was a compulsory supervision order. This section also enables the modification of the Act or the Social Work (Scotland) Act 1968 in their application by virtue of the regulations to the non-Scottish orders. These regulations will be subject to affirmative procedure.