

EXECUTIVE NOTE

THE SCOTTISH PUBLIC SERVICES OMBUDSMAN ACT 2002 AMENDMENT ORDER 2012

SSI 2012/xxx

The above instrument is proposed to be made in exercise of the powers conferred by section 3(2)(c) of the Scottish Public Services Ombudsman Act 2002 (“the 2002 Act”) and all other powers enabling Her Majesty to do so. The power to make this Order is to be exercised by Her Majesty by Order in Council following approval of the draft Order by the Scottish Parliament through the affirmative resolution procedure.

Policy objectives

The Children’s Hearings (Scotland) Act 2011 establishes a new public office, the National Convener, and a new public body, Children's Hearings Scotland, to support the Children’s Panel. It is intended that the office holder and body should be subject to the same scrutiny and regulation as existing, similar office holders and bodies. To that end, this instrument proposes to add the National Convener and Children's Hearings Scotland to Part 2 of schedule 2 to the 2002 Act.

The 2002 Act provides the legal framework for the work of the Scottish Public Services Ombudsman. Part 2 of schedule 2 to the 2002 Act includes a list of Scottish public authorities that are “persons liable to be investigated” by the Ombudsman. Both Children's Hearings Scotland and the National Convener fall within the definition of “public authority” at section 3(3)(a) of the 2002 Act and have functions which the Ombudsman would be entitled to investigate concerns about under section 5(1)(a). The draft Order therefore proposes to list the National Convener and Children's Hearings Scotland in Part 2 of schedule 2. It is intended that these provisions should take effect the day after the instrument is made.

The Scottish Children’s Reporter Administration (SCRA) is already listed in Part 2 of schedule 2 and this includes the exercise by the Principal Reporter of their statutory functions. The Principal Reporter will however no longer be a member of SCRA once the Children's Hearings (Scotland) Act 2011 is fully commenced and the post of Principal Reporter will by itself fall within the definition of “public authority” at section 3(3)(a) of the 2002 Act and have functions which the Ombudsman would be entitled to investigate concerns about under section 5(1)(a).

The draft Order therefore proposes to list the Principal Reporter within Part 2 of schedule 2. The draft Order provides for this to take effect from the commencement of the provision of the 2011 Act which provides for the continuation of the office of Principal Reporter.

Consultation

Consultation on this instrument has been carried out with the National Convener, with Children’s Hearings Scotland and the Principal Reporter. They have all indicated that they are content to be listed in Part 2 of schedule 2 to the 2002 Act. These provisions will ensure that the National Convener, Children's Hearings Scotland and the Principal Reporter are

subject to well established and appropriate scrutiny in the same way as similar public office holders and public bodies.

Impact assessments

There are no equality impact issues.

Financial effects

The Minister for Children and Young People confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or business.

**Scottish Government
Children and Families Directorate**

18 November 2011