

POLICY NOTE

THE CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014 (COMMENCEMENT NO. 9 AND SAVING PROVISION) ORDER 2015

SSI 2015/317 (C. 38)

1. The above instrument is made by the Scottish Ministers in exercise of the powers conferred by sections 102(3) and (4) of the Children and Young People (Scotland) Act 2014 (“the 2014 Act”). The instrument is laid before the Scottish Parliament in accordance with section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

Policy Objectives

2. The Order forms part of an implementation package for the 2014 Act. The provisions in the Act are being commenced in several stages.

3. The Order partially commences section 8 of the 2014 Act for the limited purpose of enabling the Scottish Ministers to make orders in accordance with the powers contained in that provisions. This power relate to Part 3 of the 2014 Act which makes provision as to children’s services planning.

4. Section 75 of the 2014 Act amends the Adoption and Children (Scotland) Act 2007 by inserting new sections 13A-13G into Part 1 of that Act. The new provisions put Scotland’s Adoption Register (which was set up in 2011 as a non-statutory service) onto a statutory footing. This Order partially commences section 75 of the 2014 Act and paragraphs 11(1), (5) and (6) of schedule 5 to the 2014 Act to the extent necessary to enable the Scottish Ministers to make regulations under section 13A(2) of the 2007 Act.

5. This Order also partially commences section 98 (modification of enactments) for the purposes of commencing paragraphs 4(1) and (4), 5(1) and (2) and 12(10) of schedule 5 to the 2014 Act.

6. The day appointed for the coming into force of the provisions described above is 30th September 2015 (article 2).

Saving provision

7. Article 3 of the Order makes a saving provision so that, despite this Order commencing paragraph 4(4) of schedule 5 to the 2014 Act on 30th September 2015, section 44 of the Children (Scotland) Act 1995 (“the 1995 Act”) continues to have the same effect on or after that date as it had immediately before that date in relation to any proceedings or appeals mentioned in section 44(1) which have or has concluded or are or is continuing, on that date.

8. Section 44 of the 1995 Act, which makes provision in relation to the prohibition of publication of proceedings at children’s hearings, was prospectively repealed, as it extends to Scotland, by schedule 6 to the Children’s Hearings (Scotland) Act 2011 (‘the 2011 Act’) and was replaced for cases going forward under the 2011 Act by similar equivalent provision made in section 182 of the 2011 Act.

9. However, it became apparent after the 2011 Act was passed that section 44 is still needed. It is required so that it continues to be an offence for a person to publish relevant information in relation to historic children's hearings cases which were dealt with under the 1995 Act. It is also required in relation to those cases which began under the 1995 Act system and continue to proceed under that Act following the "go live" of the new system on 24 June 2013 by virtue of transitional and savings provisions contained in a Scottish Statutory Instrument (S.S.I. 2013/150).

10. Therefore, paragraph 12(10) of schedule 5 to the 2014 Act now reverses the unintended repeal of section 44 of the 1995 Act for Scotland, which was never commenced once the issue was identified. The 2014 Act (at paragraph 4(4) of schedule 5) also amends section 44 so that, going forward, it only applies to exclusion order proceedings under section 76 of the 1995 Act, which remain under the 1995 Act and are not affected by the 2011 Act. Given the UK extent of section 44 of the 1995 Act (see section 105(8) of the 1995 Act), an Order under section 104 of the Scotland Act 1998 was required in consequence of the 2014 Act to give effect in the rest of the UK to the amended version of section 44 (restricting its future application to exclusion order proceedings under section 76 of the 1995 Act) and to provide for the saving of the former version of section 44 for both historic cases and on-going transitional cases under the 1995 Act. The section 104 Order (S.I. 2015/907) was made on 24 March 2015 and the relevant provisions come into force on the same day as paragraphs 4(4) and 5(2) of schedule 5 to the 2014 Act, as provided for in this Order.

Consultation

11. No consultation was carried out in relation to this instrument, however, formal consultation took place on the 2014 Act pre-introduction and is continuing as part of the implementation process. Informal consultation with stakeholders took place during the parliamentary process and is also continuing.

Impact Assessments

12. An equality impact assessment and a business regulatory impact assessment were carried out for the Children and Young People (Scotland) Bill. A privacy impact assessment was undertaken throughout the parliamentary process. These impact assessments are available on the Scottish Government website (<http://www.gov.scot/Topics/People/Young-People/legislation/impact>).

Financial Effects

13. 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 on business.

Scottish Government
Children and Families Directorate
27 August 2015