

POLICY NOTE

THE CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014 (COMMENCEMENT NO. 12 AND SAVING PROVISION) ORDER 2016

SSI 2016/254 (C. 22)

1. The above instrument is made in exercise of the powers conferred by section 102 (3) and (4) of the Children and Young People (Scotland) Act 2014 (“the 2014 Act”). The instrument is not subject to any parliamentary procedure.

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. The purpose of this Order is to commence, or further commence, certain provisions of the 2014 Act as follows.

3. This Order commences provisions relating to children’s services planning. The Order commences from 7th October 2016 section 7 and sections 9 to 18 of the 2014 Act. Section 8 is commenced so far as not already commenced. That section was partially commenced by an earlier commencement order. These provisions are contained in Part 3 of the 2014 Act. The Order commences from 1st April 2017 paragraphs 4(2), 4(3), 5(3), 9, 11(2), 11(3) and 11(4) of Schedule 5. These provisions also relate to children’s services planning.

4. This Order also commences from 28 November 2016 two provisions in the 2014 Act which amend the Legal Aid (Scotland) Act 1986 (‘the 1986 Act’). Section 92 adds a new section 28LA to the 1986 Act to enable Scottish Ministers to make regulations in respect of certain court proceedings under the Children’s Hearings (Scotland) Act 2011. Paragraph 3(3) of Schedule 5 sets out the Parliamentary procedure that such regulations should follow (affirmative procedure).

5. The Order also commences sections 2 and 3 and Schedule 1 of the 2014 Act from 1st April 2017. These provisions all relate to the rights of children.

6. The Order commences sections 5 and 6 of the 2014 Act from 7th August 2017. These provisions relate to the Commissioner for Children and Young People in Scotland.

Saving Provision

7. Article 4 contains a saving provision so that, despite the Order commencing section 5 of the 2014 Act, the Commissioner for Children and Young People (Scotland) Act 2003 (“the 2003 Act”) will continue to apply as it did before that date. This will allow investigations being undertaken under Section 7 of the 2003 Act that have not concluded before the commencement of Part 2 of the 2014 Act on 7th August 2014 to continue under section 7 of the 2003 Act as it was before amendment by the 2014 Act until they have reached a conclusion.

Consultation

8. No consultation was carried out in relation to this instrument, however, formal consultation took place on the Children and Young People (Scotland) Bill pre-introduction. Consultation on the 2014 Act has continued as part of the implementation process including on guidance in relation to Part 1 (public authorities duties in relation to the UNCRC) and Part 3 (children's services planning). Informal consultation with stakeholders on the provisions covered by this instrument took place during the parliamentary process and is also continuing.

Impact Assessments

9. 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>). A Children's Rights and Wellbeing Impact Assessment (CRWIA) on Part 1 (sections 2 and 3) and Part 3 draft statutory and non-statutory guidance is currently being undertaken.

Financial Effects

10. There are no financial implications for the Scottish Government, local government or on business in respect of Part 1 (sections 2 and 3), and Part 3 of the Act, as set out in the Financial Memorandum of the Children and Young People (Scotland) Bill.

12. There are financial implications associated with extending the powers of the Commission for Children and Young People in Scotland under Part 2 of the Act. The Financial Memorandum of the Children and Young People (Scotland) Bill sets out estimates for these costs based on between 1 and 4 investigations per year. Actual costs are subject to agreement between the Scottish Parliament's Corporate Body (SPCB) and the Commissioner.

Scottish Government
Children and Families Directorate
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