

## POLICY NOTE

### THE CHILDREN (SCOTLAND) ACT 2020 (COMMENCEMENT NO. 1 AND SAVING PROVISIONS) REGULATIONS 2020

SSI 2020/412 (C. 37)

The above instrument was made in exercise of the powers conferred by section 34 of the Children (Scotland) Act 2020. The instrument is laid but not subject to further parliamentary procedure.

#### **Purpose of the instrument.**

The purpose of the instrument is to commence the following sections of the Children (Scotland) Act 2020<sup>1</sup> (“the 2020 Act”):

- section 13 (promotion of contact between looked after children and siblings),
- section 14 (duty to consider contact when making etc. compulsory supervision order),
- section 15 (clarification of order-making power),
- section 23 (funding for alternative dispute resolution),
- section 24 (pilot scheme for mandatory alternative dispute resolution meetings).
- section 25 (opportunity to participate in hearing),
- section 26 (appeal against relevant person decision).

#### **Policy objectives**

The Regulations commence the provisions noted in the box - on 17 January 2021 for sections 15, 23 and 24 of the 2020 Act, and on 26 July 2021 for sections 13, 14, 25 and 26.

Section 13 aims to place a duty on local authorities to promote sibling personal relations in the same way as they are required to promote personal relations and direct contact with a child and their parent.

Section 14 aims to ensure that when a decision maker in children’s hearings proceeding is deciding whether to include a direction regulating contact between the child and a person or class of person, the decision maker must in particular consider the relationships between the child and their siblings and between the child and their relevant persons and decide if a relationship should be supported by a legal measure of contact implemented by the relevant authority (usually the local authority where the child is from).

Relevant persons are parents of a child and anyone that a children’s hearing decides is a ‘deemed relevant person’ due to having (or having recently had) a significant involvement in the upbringing of the child. Siblings is given an extended meaning to include those who share one or both parents with the child (whether biologically or by virtue of adoption or the Human Fertilisation and Embryology Act 2008) and those with whom the child shares a sibling-like relationship

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<sup>1</sup> <https://www.legislation.gov.uk/asp/2020/16/contents>

Section 15 makes clear that an order under section 11(2) of the Children (Scotland) Act 1995<sup>2</sup> is to be regarded as related to at least one of the matters mentioned in section 11(1). An order under section 11(2) includes, at (d) a “contact order” which regulates the arrangements for maintaining personal relations between a child under 16 and any person with whom the child is not, or will not be, living.

Section 23 places a duty on the Scottish Ministers to make funding for alternative dispute resolution (“ADR”) available. Ministers are to lay a statement before the Scottish Parliament explaining how they have provided funding for ADR, and within six months of Royal Assent of the 2020 Act if they have not provided funding for ADR to lay a statement explaining why they have not fulfilled this duty. Commencing this section now will allow Ministers to fulfil the obligation to lay a statement before the Parliament within six months of Royal Assent.

Section 24 requires the Scottish Ministers to set up a pilot scheme of mandatory alternative dispute resolution meetings. Ministers are within six months of Royal Assent of the 2020 Act to lay before the Scottish Parliament a statement describing the pilot scheme, providing an explanation of any exceptions to the scheme apart from the mandatory one where there has been abuse between parties, and how the Scottish Ministers intend to evaluate the scheme. If they have not discharged their duty, they must report the reasons why to the Parliament, and continue to do that at six monthly intervals until the pilot is established. Commencing this section now will allow Ministers to fulfil the obligation to lay a statement before the Parliament within six months of Royal Assent.

Section 25 amends the Children’s Hearings (Scotland) Act 2011<sup>3</sup> (the 2011 Act) to allow qualifying individuals an opportunity to participate in a children’s hearing, including a process for a review in the event that such an individual has been denied an opportunity to participate and a specific right for a person who qualified for an opportunity to participate at the last children’s hearing to request an early review of a Compulsory Supervision Order.

Section 26 amends sections 160 and 164 of the 2011 Act to make clear that the existing right of appeal against a decision that an individual is or is not deemed as a relevant person in relation to a child also applies to a decision that an individual is to ‘continue to be deemed’ or ‘no longer to be deemed’ a relevant person. This section of the 2020 Act also extends the section 164 right of appeal to the Principal Reporter, where a sheriff does not confirm the hearing’s decision. This does not affect the right of appeal already available to the child themselves, the individual in question, a relevant person in relation to the child or two or more persons together. Section 26(4) and (5) of the 2020 Act amends the Legal Aid (Scotland) Act 1986<sup>4</sup>. This will mean that children’s legal aid may now be available in an appeal when the appeal relates to whether a person is no longer to be deemed or is to continue to be deemed as a relevant person.

## **Consultation**

The policy objectives of the 2020 Act were subject to parliamentary scrutiny as part of the parliamentary process<sup>5</sup>. The Policy Memorandum for the Bill that preceded the 2020 Act

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<sup>2</sup> <https://www.legislation.gov.uk/ukpga/1995/36/contents>

<sup>3</sup> <https://www.legislation.gov.uk/asp/2011/1/contents>

<sup>4</sup> <https://www.legislation.gov.uk/ukpga/1986/47/contents>

<sup>5</sup> <https://beta.parliament.scot/bills/children-scotland-bill>

outlined the results of the public consultation exercise on the review of the Children (Scotland) Act 1995 held in 2018<sup>6</sup>. As these Regulations bring into force provisions of the Act, no further consultation has been carried out in relation to this instrument beyond discussion with the Scottish Courts and Tribunal Service.

## **Impact Assessments**

No specific Impact Assessments have been prepared for these commencement Regulations. However, the Scottish Government published when the Bill was introduced:

- A Business and Regulatory Impact Assessment (BRIA)<sup>7</sup>
- An Equality Impact Assessment (EQIA)<sup>8</sup>
- A Child Rights and Wellbeing Impact Assessment (CRWIA)<sup>9</sup>
- An Islands Communities Screening Assessment<sup>10</sup>
- A Fairer Scotland Impact Assessment<sup>11</sup>
- A Data Protection Impact Assessment<sup>12</sup>

## **Financial Effects**

The financial effects of the 2020 Act are detailed in the BRIA and Financial Memorandum<sup>13</sup> prepared in respect of the Bill that preceded the 2020 Act and the supplementary Financial Memorandum which was prepared after stage 2 of the Bill<sup>14</sup>. No significant financial effects are expected as a consequence of these Regulations.

Scottish Government  
Justice Directorate

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<sup>6</sup> <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/children-scotland-bill/introduced/policy-memorandum-children-scotland-bill.pdf>

<sup>7</sup> <https://www.gov.scot/publications/final-business-regulatory-impact-assessment-children-scotland-bill/>

<sup>8</sup> <https://www.gov.scot/publications/equality-impact-assessment-record-children-scotland-bill/>

<sup>9</sup> <https://www.gov.scot/publications/child-rights-wellbeing-impact-assessment-children-scotland-bill/>

<sup>10</sup> <https://www.gov.scot/publications/islands-communities-screening-assessment-children-scotland-bill/>

<sup>11</sup> <https://www.gov.scot/publications/fairer-scotland-duty-impact-assessment-children-scotland-bill/>

<sup>12</sup> <https://www.gov.scot/publications/data-protection-impact-assessment-children-scotland-bill/>

<sup>13</sup> <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/children-scotland-bill/introduced/financial-memorandum-children-scotland-bill.pdf>

<sup>14</sup> <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/children-scotland-bill/stage--2/supplementary-financial-memorandum-children-scotland-bill.pdf>