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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 150**

**CHILDREN AND YOUNG PERSONS**

**The Children’s Hearings (Scotland) Act 2011 (Transitional,  
Savings and Supplementary Provisions) Order 2013**

*Made* - - - - 14th May 2013  
*Laid before the Scottish  
Parliament* - - - - 15th May 2013  
*Coming into force in accordance with article 1*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 204 and 205 of the Children’s Hearings (Scotland) Act 2011<sup>(1)</sup> and all other powers enabling them to do so.

**PART 1**

**PRELIMINARY**

**Citation, commencement and interpretation**

**1.**—(1) This Order may be cited as the Children’s Hearings (Scotland) Act 2011 (Transitional, Savings and Supplementary Provisions) Order 2013 and comes into force on the same day as section 7 (holding of children’s hearing) of the Children’s Hearings (Scotland) Act 2011.

(2) In this Order unless the context otherwise requires—

“the 1986 Act” means the Legal Aid (Scotland) Act 1986<sup>(2)</sup>;

“the 1994 Act” means the Local Government etc. (Scotland) Act 1994<sup>(3)</sup>;

“the 1995 Act” means the Children (Scotland) Act 1995<sup>(4)</sup>;

“the 2011 Act” means the Children’s Hearings (Scotland) Act 2011;

“the 1996 Regulations” means the Secure Accommodation (Scotland) Regulations 1996<sup>(5)</sup>;

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(1) [2011 asp 1](#)  
(2) [1986 c.47](#).  
(3) [1994 c.39](#).  
(4) [1995 c.36](#).  
(5) [S.I. 1996/3255](#).

“the 2001 Regulations” means the Panel of Persons to Safeguard the Interests of Children (Scotland) Regulations 2001<sup>(6)</sup>;

“the 2013 Regulations” means the Secure Accommodation (Scotland) Regulations 2013<sup>(7)</sup>;

“compulsory supervision order” has the meaning given by section 83 of the 2011 Act;

“the relevant date” means the day on which section 7 (holding of children’s hearing) of the 2011 Act is commenced;

“relevant proceedings” means—

- (a) any proceedings before a children’s hearing under Part II of the 1995 Act;
- (b) any application to the sheriff, sheriff principal or justice of the peace, as the case may be, to establish any ground of referral or for any order, authorisation, or warrant, as the case may be, under Part II of that Act;
- (c) any appeal to the sheriff, sheriff principal or Court of Session under Part II of that Act;

“SCRA” means the Scottish Children’s Reporter Administration<sup>(8)</sup>; and

“secure accommodation” means accommodation provided for the purposes of restricting the liberty of children in a residential establishment.

(3) Relevant proceedings are commenced when one of the following occurs—

- (a) a children’s hearing is arranged by the Principal Reporter under Part II of the 1995 Act;
- (b) any application or appeal is made under Part II of that Act.

(4) Relevant proceedings are concluded when, in relation to any proceedings, the latest of the following occurs—

- (a) a children’s hearing or sheriff, as the case may be, discharges, or has discharged, a referral under Part II of the 1995 Act;
- (b) a supervision requirement is, or has been, imposed or continued by the children’s hearing or sheriff, as the case may be, and either—
  - (i) the period for any appeal under the 1995 Act expires with no appeal or further appeal, as the case may be, being made; or
  - (ii) if an appeal or further appeal, as the case may be, is made, that appeal, or further appeal, is concluded;
- (c) an application for any order, authorisation or warrant under Part II of the 1995 Act is refused and either—
  - (i) the period for any appeal under the 1995 Act expires with no appeal or further appeal, as the case may be, being made; or
  - (ii) if an appeal or further appeal, as the case may be, is made, that appeal or further appeal is concluded; or
- (d) the expiry of any order, authorisation or warrant granted under the 1995 Act.

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<sup>(6)</sup> S.S.I. 2001/476, as amended by S.S.I. 2011/320.

<sup>(7)</sup> S.S.I. 2013/XXX.

<sup>(8)</sup> SCRA was established by section 128(1) of the Local Government etc. (Scotland) Act 1994 and is continued in existence by section 15 of the 2011 Act.

## PART 2

### GENERAL PROVISIONS

#### **Proceedings in progress under the 1995 Act**

2.—(1) Subject to paragraphs (3) and (4) and the following provisions of this Order, the enactments specified in paragraph (2) continue to apply for all purposes on and after the relevant date as they would have applied immediately before the relevant date to relevant proceedings in relation to a child which have commenced but on the relevant date have not concluded, until those proceedings have concluded.

(2) The enactments specified for the purposes of paragraph (1) are—

- (a) the 1995 Act;
- (b) any subordinate legislation made wholly or partly under the 1995 Act;
- (c) section 29 of the 1986 Act; and
- (d) the Legal Aid (Scotland) (Children) Regulations 1997<sup>(9)</sup>.

(3) Section 48 (transfer of case to another children’s hearing) of the 1995 Act does not apply to relevant proceedings falling within paragraph (1).

(4) Paragraph (2)(b) does not include any rules of court made by Act of Sederunt under section 91 of the 1995 Act and—

- (a) section 5 of the Court of Session Act 1988<sup>(10)</sup> (power to regulate procedure etc. by Act of Sederunt); or
- (b) section 32 of the Sheriff Courts (Scotland) Act 1971<sup>(11)</sup> (power of Court of Session to regulate civil procedure in sheriff court).

(5) Where any enactment that contains provision applicable to relevant proceedings is repealed or modified, such repeal or modification does not have effect for the purposes of those relevant proceedings until those proceedings have concluded.

#### **Concurrent proceedings in relation to the same child**

3. Where after the relevant date a child is the subject of ongoing relevant proceedings under the 1995 Act by virtue of article 2 and further proceedings are to be brought in relation to that child, the 1995 Act applies to those further proceedings until they have concluded.

#### **Selection of children’s hearing**

4.—(1) Despite article 2, a children’s hearing held on or after the relevant date must be constituted in accordance with section 5 of the 2011 Act (children’s hearing) from members of the Children’s Panel appointed under section 4 of that Act and a hearing so constituted is to be treated for all purposes as if it were a children’s hearing constituted under the 1995 Act for relevant proceedings that have commenced before the relevant date.

(2) Nothing in this Order affects the repeal of section 39 (formation of children’s panel and children’s hearings) of and paragraphs 1 and 2 (appointment), 9(a) (recruitment and training of panel members), 11(a) (expenses of panel members) and 12 (publication of list of members of children’s panel) of Schedule 1 to the 1995 Act.

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<sup>(9)</sup> S.I. 1997/690.

<sup>(10)</sup> 1988 c.36.

<sup>(11)</sup> 1971 c.58.

## **The Antisocial Behaviour etc. (Scotland) Act 2004**

### **5. Where—**

- (a) before the relevant date the sheriff has required the Principal Reporter to refer a child's case to a children's hearing under section 12(1) of the Antisocial Behaviour etc. (Scotland) Act 2004(12) (sheriff's power to refer case to children's hearing); and
- (b) on the relevant date the Principal Reporter has not yet done so,

relevant proceedings are deemed to have commenced when the requirement mentioned in paragraph (a) is made.

## **PART 3**

### **SUPERVISION REQUIREMENTS**

#### **Supervision requirements – deemed compulsory supervision orders on the relevant date**

6. Where on the relevant date a child is subject to a supervision requirement imposed under Part II of the 1995 Act and all relevant proceedings have concluded in relation to the supervision requirement, that supervision requirement is to be treated for all purposes as if it were a compulsory supervision order.

#### **Supervision requirements – deemed compulsory supervision orders on conclusion of relevant proceedings**

7. Where after the relevant date a child is subject to or, as the case may be, is made subject to a supervision requirement imposed under Part II of the 1995 Act, that supervision requirement is to be treated for all purposes as if it were a compulsory supervision order when all relevant proceedings have concluded in relation to it.

#### **Relevant period for deemed compulsory supervision orders**

8. For the purposes of calculating the relevant period under section 83(1)(c) of the 2011 Act (meaning of "compulsory supervision order"), where a supervision requirement is to be treated as a compulsory supervision order under articles 6 or 7 it is to be treated as if it had been made on the day on which the supervision requirement was imposed under the 1995 Act or, as the case may be, was last reviewed or varied under the 1995 Act.

#### **Implementation authority for deemed compulsory supervision orders**

9.—(1) Where a supervision requirement is to be treated as a compulsory supervision order under article 6, the relevant local authority (within the meaning of section 93(1) of the 1995 Act) is to be treated as if it were the implementation authority for that compulsory supervision order.

(2) Where a children's hearing imposes a supervision requirement under Part II of the 1995 Act after the relevant date, that hearing must specify which local authority is to be the relevant local authority in relation to that supervision requirement despite the definition of "relevant local authority" in section 93(1) (interpretation of Part II) of the 1995 Act.

(3) Where a supervision requirement is to be treated as a compulsory supervision order under article 7, the relevant local authority specified under paragraph (2) is to be treated as if it were the implementation authority for that deemed order.

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(12) 2004 asp 8.

### **Supervision requirements containing a movement restriction condition**

#### **10. Where—**

- (a) under article 6 or 7 a supervision requirement is to be treated as if it were a compulsory supervision order; and
- (b) the supervision requirement includes a movement restriction condition imposed in accordance with section 70(9A)(b) of the 1995 Act<sup>(13)</sup> (disposal of referral by children's hearing: supervision requirements, including residence in secure accommodation),

the movement restriction condition is to be treated for all purposes as if it were a movement restriction condition included in a compulsory supervision order.

### **Supervision requirements containing condition that child be placed and kept in secure accommodation**

**11.—**(1) Where paragraph (2) applies to a child and, but for this paragraph the supervision requirement would be treated as if it were a compulsory supervision order in accordance with article 6 or 7 the supervision requirement is not to be treated as if it were a compulsory supervision order until the condition that the child shall be liable to be placed and kept in secure accommodation in a residential establishment has been removed and—

- (a) the period for any appeal in respect of the decision of the children's hearing to remove that condition under the 1995 Act has expired with no appeal or further appeal, as the case may be, being taken; or
- (b) if an appeal or further appeal, as the case may be, is taken, when that appeal or further appeal is concluded.

(2) This paragraph applies where on or after the relevant date, a child is subject to or, as the case may be, is made subject to, a supervision requirement which contains a condition imposed in accordance with section 70(9A)(a) of the 1995 Act that the child shall be liable to be placed and kept in secure accommodation in a residential establishment.

## **PART 4**

### **TRANSITIONAL AND SAVINGS PROVISIONS RELATING TO THE 1995 ACT**

#### **Consultation on local authority plans for services for children**

**12.** Where at the relevant date a local authority is consulting on a plan, or review of a plan, under section 19 of the 1995 Act (local authority plans for services for children), that authority must consult the National Convenor of Children's Hearings Scotland instead of the chairman of the children's panel for that area in fulfilling their duty under section 19(5)(d) of that Act.

#### **Frivolous appeals**

**13.** Where a sheriff, whether before or after the relevant date, makes or has made an order under section 51(7) of the 1995 Act (order preventing subsequent appeal in respect of a supervision requirement), that order has effect in relation to a supervision requirement which is to be treated as a compulsory supervision order under article 6 or 7 as it would have had effect in relation to the supervision requirement made under Part II of the 1995 Act.

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<sup>(13)</sup> Subsection (9A) of section 70 was inserted by the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), section 135(2).