Draft Order laid before Parliament under section 115 and paragraphs 1, 2 and 3 of Schedule 7 to the Scotland Act 1998, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No.

CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
CHILDREN AND YOUNG PERSONS

The Children's Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013

Made - - - -	*2013*
Coming into force in accordance with article 1(2)	*2013*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and (4) and 113(2), (3), (4) and (5) of the Scotland Act 1998(**1**).

In accordance with section 115 of, and paragraphs 1, 2 and 3 of Schedule 7, to that Act, a draft of this instrument has been laid before and approved by a resolution of each House of Parliament.

Citation and commencement

1.—(1) This Order may be cited as the Children's Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013.

(2) This Order comes into force on the same day as section 7 (holding of children's hearing) of the 2011 Act comes into force.

Interpretation

2.—(1) Subject to paragraph (3), in this Order unless the context otherwise requires—

"the 1986 Order" means the Education and Libraries (Northern Ireland) Order 1986(**2**);

"the 1989 Act" means the Children Act 1989(**3**);

"the 1995 Act" means the Children (Scotland) Act 1995(**4**);

(**1**) 1998 c.46.
(**2**) S.I. 1986/594 (N.I. 3).
(**3**) 1989 c.41.
(**4**) 1995 c.36.

"the 1995 Order" means the Children (Northern Ireland) Order 1995(**5**);

"the 2011 Act" means the Children's Hearings (Scotland) Act 2011(**6**);

"child" has the meaning given by section 199 of the 2011 Act;

"child assessment order" means an order mentioned in section 35 of the 2011 Act;

"child protection order" means an order mentioned in section 37 of the 2011 Act;

"children's hearing" is to be construed in accordance with section 5 of the 2011 Act;

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

"constable" includes a constable within the meaning of section 43A of the Interpretation Act (Northern Ireland) 1954(**7**);

"court", in relation to Northern Ireland, means a court of summary jurisdiction;

"interim compulsory supervision order" has the meaning given by section 86 of the 2011 Act;

"local authority" means—

(a) in relation to England, the council of a county, a metropolitan district, a London borough or the Common Council of the City of London;

(b) in relation to Wales, the council of a county or a county borough;

(c) in relation to Northern Ireland, a Health and Social Care Trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991(**8**) and renamed by section 1(3) of the Health and Social Care (Reform) Act (Northern Ireland) 2009(**9**); and

(d) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(**10**);

"medical examination order" has the meaning given by section 87 of the 2011 Act;

"place of safety", in relation to a child, means—

(a) a residential or other establishment provided by a local authority;

(b) a community home within the meaning of section 53 of the 1989 Act;

(c) a police station;

(d) a hospital or surgery in England or Wales, the person or body of persons responsible for the management of which is willing temporarily to receive the child;

(e) a hospital in Northern Ireland under the management of a Health and Social Care Trust(**11**), the body or persons responsible for the management of which is willing temporarily to receive the child;

(f) the dwelling-house of a suitable person who is so willing; or

(g) any other suitable place, the occupier of which is so willing;

"pre-hearing panel" has the meaning given by section 79(2)(a) of the 2011 Act;

"residential establishment" means—

(**5**) S.I. 1995/755 (N.I. 2).
(**6**) 2011 asp 1.
(**7**) 1954 c.33 (N.I.).
(**8**) S.I. 1991/194 (N.I. 1).
(**9**) 2009 c.1 (N.I.). Pursuant to Article 2(3) of the 1995 Order and S.R. 1994 No. 64 (as amended by S.R. 1996 No. 439), references in the 1995 Order to an "authority" are construed as references to a Health and Social Care Trust.
(**10**) 1994 c.39.
(**11**) Established by Article 10 of S.I. 1991/194 (N.I. 1) and renamed by section 1(3) of the Health and Social Care (Reform) Act (Northern Ireland) 2009.

(a) an establishment in Scotland (whether managed by a local authority, a voluntary organisation or any other person) which provides residential accommodation for children for the purposes of the 2011 Act, the 1995 Act or the Social Work (Scotland) Act 1968(**12**);

(b) a home in England or Wales that is—

(i) a community home within the meaning of section 53 of the 1989 Act;

(ii) a voluntary home within the meaning of that Act; or

(iii) a private children's home within the meaning of that Act; or

(c) an establishment in Northern Ireland that is—

(i) a private children's home, within the meaning of the 1995 Order(**13**);

(ii) an authority home provided under Part VII of that Order(**14**); or

(iii) a voluntary home provided under Part VIII of that Order;

"secure accommodation" means accommodation provided for the purpose of restricting the liberty of children which—

(a) in Scotland, is provided in a residential establishment approved in accordance with regulations made under section 78(2) of the Public Service Reform (Scotland) Act 2010(**15**);

(b) in England, is provided in a children's home within the meaning of the Care Standards Act 2000(**16**) ("the 2000 Act") in respect of which a person is registered under Part 2 of that Act, except that before the coming into force of section 107(2) of the Health and Social Care (Community Health Standards) Act 2003(**17**), "secure accommodation" means accommodation in relation to England which—

(i) is provided in a children's home, within the meaning of the 2000 Act, in respect of which a person is registered under Part 2 of that Act; and

(ii) is approved by the Secretary of State for the purpose of restricting the liberty of children;

(c) in Wales, is provided in a children's home within the meaning of the 2000 Act in respect of which a person is registered under Part 2 of that Act; and

"warrant to secure attendance" has the meaning given by section 88 of the 2011 Act.

(2) Any notification mentioned in article 13(1)(c) or 14(1)(c) or consent mentioned in article 13(1)(d) or 14(1)(d) which must be done in writing may be made in electronic form which is—

(a) sent by electronic means; and

(b) capable of being reproduced in legible form.

(3) For the purpose of article 4, the definition of "place of safety" in paragraph (1) does not apply.

Extent

3.—(1) Except as provided in paragraphs (2) to (6) below, this Order extends to England and Wales, Scotland and Northern Ireland.

(**12**) 1968 c.49.
(**13**) Relevant amending instrument is S.I. 2003/431 (N.I. 9).
(**14**) Pursuant to Article 2(3) of the 1995 Order and S.R. 1994 No. 64 (as amended by S.R. 1996 No. 439), references in the 1995 Order to an "authority" are construed as references to a Health and Social Care Trust.
(**15**) 2010 asp 8.
(**16**) 2000 c.14.
(**17**) 2003 c.43.

(2) The modifications made by the Schedules have the same extent as the provisions being modified.

(3) Articles 7, 13 and 16 extend to England and Wales and Scotland only.

(4) Articles 10, 11 and 12 extend to England and Wales and Northern Ireland only.

(5) Article 14 extends to Scotland and Northern Ireland only.

(6) Article 20 extends to England and Wales only.

Transitional provisions and savings

4.—(1) Section 70(4) of the 1995 Act (disposal of referral by children's hearing: supervision requirements, including residence in secure accommodation) continues to have effect where a supervision requirement has been or is made under section 70 of that Act before or after section 7 of the 2011 Act comes into force.

(2) Section 74 of the 1995 Act (further provision as respects children subject to supervision requirements) and the Children's Hearings (Transmission of Information etc.) (Scotland) Regulations 1996(**18**) continue to have effect in respect of a child subject to a supervision requirement made under that Act before or after section 7 of the 2011 Act comes into force.

(3) Section 82 of the 1995 Act (recovery of certain fugitive children) continues to have effect in respect of a child who is required or who continues to be required to be kept in a place of safety, relevant place or with any person under Part 2 of the 1995 Act before or after section 7 of the 2011 Act comes into force.

(4) In paragraph (3)—

"relevant place" has the same meaning as in section 82(1)(b) of the 1995 Act; and

"person" has the same meaning as in section 82(1)(c) and (3) of the 1995 Act.

(5) Section 83 of the 1995 Act (harbouring) continues to have effect in respect of a child who by virtue of paragraph (3) continues to be liable to arrest under section 82(1) or (3) of that Act.

(6) The definitions of "local government area", "place of safety", "compulsory measures of supervision", "relevant local authority" and "supervision requirement" in section 93(1) of the 1995 Act (interpretation of Part 2) continue to have effect for the purposes of paragraphs (1) to (5).

Enforcement of orders

5.—(1) Paragraph (2) applies where a relevant order authorising the keeping of a child in a particular place (an "authorised place") is in force in relation to a child and that child is in England, Wales or Northern Ireland.

(2) A constable may enforce the order—

(a) by searching for the child;

(b) by apprehending the child;

(c) by taking the child to the authorised place;

(d) where it is not reasonably practicable to take the child immediately to the authorised place, by taking the child to, and detaining the child in, a place of safety for as short a period of time as is practicable; and

(e) by entering premises if the constable has reasonable grounds for believing the child is on those premises.

(**18**) S.I. 1996/3260.

(3) A constable may use reasonable force, if necessary, in the exercise of the powers set out in paragraph (2)(a) to (e).

(4) In this article, "relevant order" means—

(a) a child assessment order;

(b) a child protection order;

(c) an order under section 55 of the 2011 Act;

(d) a compulsory supervision order;

(e) an interim compulsory supervision order; or

(f) a medical examination order.

Warrants to secure attendance

6.—(1) Paragraph (2) applies where a warrant to secure attendance is in force in relation to a child, and that child is in England, Wales or Northern Ireland.

(2) A constable may enforce the warrant—

(a) by searching for the child;

(b) by apprehending the child;

(c) by taking the child to, and detaining the child in, a place of safety;

(d) by bringing the child before the relevant proceedings; and

(e) so far as is necessary for the execution of the warrant, by entering premises if the constable has reasonable grounds for believing the child is on those premises.

(3) A constable may use reasonable force, if necessary, in the exercise of the powers set out in paragraph (2)(a) to (e).

(4) In this article, "relevant proceedings", in relation to a warrant to secure attendance, means the children's hearing or, as the case may be, proceedings before the sheriff in respect of which it is granted.

Compulsory supervision orders and interim compulsory supervision orders

7.—(1) Where a compulsory supervision order or interim compulsory supervision order contains a requirement of the type mentioned in section 83(2)(a) of the 2011 Act (meaning of "compulsory supervision order"), the place specified in that requirement may be a place in England or Wales.

(2) Where a compulsory supervision order or interim compulsory supervision order contains a direction of the type mentioned in section 83(2)(b) of the 2011 Act and the place at which the child is required to reside in accordance with the order is a place in England or Wales, the order is authority for the person in charge of that place to restrict the child's liberty to the extent that the person considers appropriate having regard to the measures included in the order.

Child absconding from place

8.—(1) This article applies where—

(a) a child requires to be kept in a particular place by virtue of—

(i) a child assessment order;

(ii) a child protection order;

(iii) an order under section 55 of the 2011 Act;

(iv) section 56 of the 2011 Act;