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Care and Justice Division



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Local authority Chief Executives  
Directors of Social Work departments

By e-mail

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Dear Sir/Madam

### **Children's Hearings (Scotland) Act 2011**

As you may know, the Children's Hearings (Scotland) Act 2011 was enacted on 6 January 2011. In a recent communication with you about children and young people's reference groups I promised to get back in touch with local authorities with some detail about how this legislation will impact specifically on local authorities.

I therefore attach an information leaflet and I would be extremely grateful if you could please ensure that your local authority colleagues who have dealings with the children's hearings system are made aware of the information contained within this leaflet at the earliest opportunity.

Many thanks for your assistance and please do contact me if you would like to discuss further.

Yours faithfully

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## CHILDREN'S HEARINGS (SCOTLAND) ACT 2011: WHAT DOES IT MEAN FOR LOCAL AUTHORITIES/SOCIAL WORK DEPARTMENTS?

### Introduction

Whilst there are a great number of changes that will be introduced to the Children's Hearings system by the Children's Hearings (Scotland) Act 2011 ("the 2011 Act"), this briefing note is designed specifically for staff working in local authorities and seeks to highlight some of the changes of specific interest to them. It describes the changes that the 2011 Act introduces by reference to key stages in the Hearings process: so before, during, after and outwith a hearing. ***Of course, this document should not form a substitute for familiarisation with the new legislation itself.*** However, the Scottish Government Children's Hearings team would be very happy to discuss any aspect of this paper further – contact details can be found at the end of the paper.

### Background

The Children's Hearings (Scotland) Bill was introduced to Parliament in February 2010 and successfully passed through that process in November 2010. It received royal assent in January 2011 and is now called the Children's Hearings (Scotland) Act 2011.

The 2011 Act is a large piece of legislation which brings almost all of the legislation relevant to children's hearings into one place – it will replace large sections of the Children (Scotland) Act 1995. Many of the key changes the 2011 Act introduces are structural, for example:-

- the creation of the role of the National Convener, who will, for the first time, act as a figurehead for panel members and ensure they are consistently supported to a high standard;
- a dedicated national body, Children's Hearings Scotland (CHS). CHS will support the National Convener in the delivery of his/her functions associated with: the recruitment, selection, training, retention and support of panel members. This will result in panel members being better equipped to determine the best possible outcomes for children in hearings no matter where in Scotland the child lives;
- the establishment of area support teams by the National Convener in collaboration with local authorities that will support the Hearings system at a local level – these will replace existing Children's Panel Advisory Committees (CPACs);
- the creation of a national children's panel in place of local authority children's panels; and
- the creation of a national Safeguarder panel to improve consistency and standards and improve understanding within the system of the role.

A large number of other changes are being introduced by the 2011 Act including many which seek to promote and strengthen children's rights but those of most significance to local authorities are set out below.

### **Before the hearing**

- Section 67 - the new and revised **grounds** upon which a child can be referred to a Children's Hearing;
- Section 79+ – the role of **pre-hearings** which will replace business meetings. Introduces new provision for the procedures that can be raised in a pre-hearing and allows for the child, relevant person and Safeguarder to attend;
- Sections 83(1) and 116(5) – introduce definitions of definition of **implementation authority** and **relevant authority**. A compulsory supervision order and interim compulsory supervision order name an implementation authority as being responsible for the implementation of the order, including any exercise of a secure accommodation authorisation. Warrants to secure attendance and medical examination orders do not specify an implementation authority and these would fall to the relevant local authority to implement;
- Section 83 – **compulsory supervision orders** (CSOs) will replace supervision requirements and will change slightly from how they currently operate under the 1995 Act to become more flexible. The detail to facilitate these changes will be developed through work on procedural rules;
- Sections 84 & 150 – **movement restriction conditions** (MRCs). Local authorities will wish to note that Scottish Ministers may make regulations which will enable the duration of each measure within the MRC to be limited. This is in line with the Intensive Support and Monitoring (Scotland) Regulations 2008 which currently specify the conditions for an MRC;
- Sections 86, 98-100 – **interim compulsory supervision orders** (ICSOs). An ICSO will combine the current place of safety warrants and the new interim measures which will allow a child to be placed under compulsory measures of supervision at home. An interim order will mirror the current duration of place of safety warrants and each order may not last more than 22 days. The test for the issuing of interim compulsory supervision orders will remain high – the orders may only be issued in urgent circumstances and for the protection, guidance, treatment and control of the child. ICSOs will not be issued casually, as they will still be subject to the test that the circumstances are urgent and that the measures are necessary for the protection, guidance, treatment or control of the child;
- Section 88 – **warrant to secure attendance**. Local authorities will wish to ensure they are familiar with warrants under the 2011 Act.

## At the hearing

- Section 121 – **confirmation that child given opportunity to express views before hearing**. Whilst procedural rules are being developed which will determine the nature of documents to be submitted to the Hearing and the child, it will remain a crucial role for the Social Work Officer to ensure that these documents contain the child’s genuine views that have been expressed;
- Section 178 – **disclosure of information**. This provision will allow the Children’s Hearing to withhold information about the child from a particular person if disclosing the information to that person would be likely to cause significant harm to the child. It will apply despite any other statutory requirements to give the person an explanation of what took place at the hearing or to provide the person with information or the reasons for a decision made by the hearing.

## After the hearing

- Section 131 – **review of CSO**. It will remain the duty of the local authority to require review if it thinks a CSO ought to be varied or terminated or if its implementation is not being complied with;
- Section 144 – **implementation of CSO**. It will remain the duty of the local authority to give effect to a CSO;
- Section 145 – **order requiring child to reside in certain place**. The local authority will continue to have a duty to investigate that, where a child is placed outwith the local authority’s accommodation, conditions under the CSO are being complied with and where that is not the case take steps that the local authority considers reasonable;
- Sections 146-148 – **breach of duties**. The Children’s Hearing may direct the National Convener (NC) to make an application to enforce the authority’s duty where it considers that a local authority is in breach of a duty in relation to a CSO. The NC will assume the duty that currently sits with the Principal Reporter. Although the National Convener must act on directions from the Children’s Hearing, this process will trigger the review arrangements in the way that it does currently;
- Sections 85, 151, 153, 162 – **secure accommodation authorisations**. Local authorities will wish to note that Scottish Ministers may make regulations which will require the Chief Social Work Officer and Head of Unit to record their reasons for reaching a decision. Regulations may also be made to enable the child or relevant person to appeal such a decision;
- Section 184 – **enforcement of obligations on health board**. Where the implementation authority has made a request to a health board for assistance in connection with the implementation of the order and considers that the health board has unreasonably failed to comply with the request the implementation authority may

refer the matter to the Scottish Ministers. Scottish Ministers may then direct the health board to comply with that request. The health board must comply with that direction;

- **Part 15 should be noted in its entirety as it deals with appeals on a variety of matters.**

### Outwith the hearing

- **Part 5 should be noted in its entirety as it deals with child assessment and child protection orders, contact directions, parental responsibilities & rights directions, notice of orders and the appropriate obligations on local authorities.**
- Section 140 – **interim variation of CSO**. The new power will apply when the child is subject to a CSO and where, at a review Hearing, the Hearing defers making a substantive decision, perhaps for the purposes of further investigation. The interim variation brings with it many of the components of the interim CSO. It offers the same flexibility and protections but the child remains subject to a single order – so it can be seen as an adjustment to the existing CSO;
- Sections 180 & 181 – “**feedback loop**.” Local authorities must comply with any request from the NC for information in relation to the implementation of CSOs. The NC is also required to prepare a report for Scottish Ministers containing such information - if requested to provide information towards this report, local authorities must comply with that request;
- Section 183 – **mutual assistance**. A local authority may make a request to not only another local authority, but also a health board, for assistance in the performance of the local authority’s functions under the Act, and those persons are under a duty to comply. This reflects the fact that the CSO may require the local authority to provide services under the order which the authority does not itself provide;
- Sections 32-34 – **safeguarders**. These sections remove responsibility for the management and payment of safeguarders from local authorities. Scottish Ministers will now take this on via third party arrangements;
- Sections 28B-192 – **legal aid and advice**. Local authorities will no longer be responsible for legal aid/representative arrangements. The Scottish Legal Aid Board will take this on instead;
- Schedule 1 paragraph 12 and schedule 6 – **area support teams**. Schedule 6 will repeal existing legislation (the 1995 Act etc) which will remove local children’s panels and CPACs. ASTs will be created to replace CPACs through the 2011 Act and their set up must be achieved by agreement between local authorities and the NC. ASTs will support the work of the NC;
- Schedule 1 paragraph 13 – this provision allows for existing CPAC members to transfer to **AST membership** should they so wish. A local authority may nominate one to the AST for its authority area;

- Schedule 1 paragraph 14 – **AST functions**. This paragraph sets out the various tasks that ASTs will undertake in supporting the NC.

## **General**

- Schedule 5 sets out **minor and consequential amendments** to other pieces of legislation.
- Schedule 6 sets out those pieces of legislation which will be **repealed** in consequence of the 2011 Act.
- **The 2011 Act** can be viewed here <http://www.legislation.gov.uk/asp/2011/1/contents>

It should be noted that a range of secondary legislation is being developed which will concern matters such as procedural rules (section 177) relating to the procedure to be followed at children’s hearings. The target that the Scottish Government is working to is to fully implement the Act by around summer 2012.

It may be helpful to note that local authorities and social work departments are represented on our Implementation working group by CoSLA (Robert Nicol and John Urquhart) and ADSW (Michelle Miller). This group is assisting the Scottish Government with the development of legislative and practice change.

## **Further information**

If you have any questions please contact:-

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