

# CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 20 – General

#### Subordinate legislation

##### *Section 195 – Subordinate legislation*

319. This section relates to the powers of the Scottish Ministers contained in the Act to make subordinate legislation. It provides for these powers to be exercisable by statutory instrument, and provides standard powers for instruments to include ancillary provisions as the Scottish Ministers think necessary or expedient and to make different provisions for different purposes. Subordinate legislation under this Act is subject to the negative procedure unless specific contrary provision is made in particular sections of the Act (subsection (3)). Subsections (2) and (3) do not apply to an order made under section 206 (commencement orders). This prevents a commencement order, which is made without any Parliamentary procedure, from making incidental, consequential or supplementary provision.

##### *Section 196 – Negative procedure*

320. This section applies where subordinate legislation under the Act is subject to the negative resolution procedure in the Scottish Parliament. Such subordinate legislation is in the form of a statutory instrument which must be laid before the Parliament and is subject to annulment in pursuance of a resolution of parliament. Such instruments are laid as made instruments (not in draft form) and come into force (or remain in force) unless the Parliament annuls them within a period of 40 days from the day that they are laid.

##### *Section 197 – Affirmative procedure*

321. This section applies where subordinate legislation under the Act is subject to the affirmative resolution procedure in the Scottish Parliament. Such subordinate legislation is in the form of a statutory instrument which must be laid in draft before the Parliament for approval by resolution. Such instruments may only be made, and then come into force, after the Parliament has approved them.

##### *Section 198 - Super-affirmative procedure*

322. This section applies where subordinate legislation under the Act is subject to the super-affirmative resolution procedure in the Scottish Parliament – this applies to some of the powers in sections 10 and 17 only. Such subordinate legislation is in the form of a statutory instrument which must be laid in draft before the Parliament for approval by resolution. Such instruments may only be made, and then come into force, after the Parliament has approved them.

*These notes relate to the Children's Hearings (Scotland) Act  
2011 (asp 1) which received Royal Assent on 6 January 2011*

323. Subsection (3) requires that the Scottish Ministers, before laying such an instrument in draft before Parliament, must consult persons who are under 21 years of age as they consider appropriate, and such other persons as they consider appropriate. For the purposes of the consultation, Ministers must lay a copy of the proposed draft instrument before the Parliament, publish the proposed draft instrument as Ministers consider appropriate, and have regard to any representations about the proposed draft instrument that are made to them within 60 days of the date on which the copy of the proposed draft instrument is laid before the Parliament. Subsection (5) provides that in calculating the 60 day period, days when the parliament is dissolved or in recess for more than 4 days are not to be counted. Subsection (6) provides that when the draft instrument is laid before the Parliament, Ministers must lay before the Parliament an explanatory document giving details of the consultation carried out, any representations received as a result of the consultation, and the changes (if any) made to the proposed draft instrument as a result of those representations.