

# CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Schedule 1 – Children's Hearings Scotland*

335. [Schedule 1](#) makes provision as regards CHS and the National Convener. It is introduced by section 3.

#### **Status**

336. [Paragraph 1](#) relates to the status of CHS. It makes clear that CHS is not to be regarded as a servant or agent of the Crown and that CHS's property is not to be regarded as property of the Crown. This has legal implications in relation to immunities which are applied to servants or agents of the Crown and also in relation to particular statutory provisions which relate to Crown property.

#### **Membership**

337. [Paragraphs 2\(1\)](#) and [\(7\)](#) make provision for the Scottish Ministers to appoint members to CHS and allow the Scottish Ministers to re-appoint former members for a further term of office. [Paragraph 2\(2\)](#) provides that CHS may comprise of between 5 and 8 members. Ministers may substitute, by order (subject to negative procedure), a different minimum or maximum number of members. [Paragraph 2\(4\)](#) provides for a member of CHS to hold and vacate office in accordance with the terms and conditions of the member's appointment as determined by Ministers. [Paragraph 2\(5\)](#) provides for the appointment of members based on their individual knowledge and experience relevant to the functions of CHS and the National Convener.
338. [Paragraph 2\(6\)](#) provides that Ministers must satisfy themselves that potential members have no financial or other interest that would be likely to conflict with their role as a member of CHS and so prejudice their ability to carry out that role should they be appointed.

#### **Persons disqualified from membership**

339. [Paragraph 3](#) disqualifies a person from being appointed as a member of CHS if the person is a member of the Scottish Parliament, the House of Commons or a member of the European Parliament. It also disqualifies a person from continuing to hold office as a member of CHS if the person subsequently becomes a member of the Scottish Parliament, the House of Commons or a member of the European Parliament.

#### **Resignation of members**

340. [Paragraph 4](#) provides for CHS members to resign office by giving written notice to the Scottish Ministers.

## **Removal of members**

341. [Paragraph 5](#) sets out the circumstances in which Ministers may revoke the appointment of a member of CHS and clarifies when a member will be considered insolvent, where this may apply to a termination of an appointment.

## **Remuneration, allowances etc.**

342. [Paragraph 6](#) makes provision for the payment of remuneration, allowances, gratuities, and pensions to members and former members of CHS, and for such payments to be determined by Ministers and to be made by CHS. Ministers may determine that a person who ceases to be a member other than on the expiry of their term of office should receive compensation. Where Ministers so determine, CHS are required to make such a payment.

## **Chairing meetings**

343. [Paragraph 7](#) deals with the office of "chairing member" and provides a duty on the Scottish Ministers to appoint a chairing member from amongst the membership of CHS.

## **The National Convener**

344. [Paragraph 8](#) deals with the appointment of the National Convener. The Scottish Ministers are to appoint the first National Convener of CHS under section 1(2). Under paragraphs 8(1) and 8(2), subsequent appointments are to be made by CHS with the approval of the Scottish Ministers. Paragraph 8(3) provides for a duty on CHS to take reasonable steps to involve persons who are under 21 in the process of selection for appointment or re-appointment to the post of National Convener before making any such appointment or re-appointment. Paragraph 8(5) provides for the terms and conditions of appointment of the National Convener to be determined by CHS and approved by the Scottish Ministers. Paragraph 8(6) provides for Scottish Ministers to make regulations to prescribe qualifications which must be held by the National Convener. Paragraph 8(7) provides that members of the Scottish Parliament, the House of Commons and the European Parliament are disqualified from appointment and from holding office as National Convener.
345. [Paragraphs 8\(8\)](#) and [8\(9\)](#) entitle the National Convener to appeal against dismissal to the Scottish Ministers should the National Convener be dismissed by CHS. Paragraph 8(10) provides the Scottish Ministers with the power to make regulations as to the procedure for the making of an appeal, the effect of making an appeal, the powers of Ministers to dispose of an appeal and the effect of exercising those powers.

## **Supplementary powers of National Convener**

346. [Paragraph 9](#) provides the National Convener with a general power to do anything which the National Convener thinks appropriate for the purposes of, or in connection with, any of the National Convener's functions. This would include anything incidental or conducive to the achievement of the National Convener's functions, such as research and publicity, contracting and asset management.

## **Delegation of National Convener's functions**

347. [Paragraph 10](#) allows the National Convener to delegate certain of his or her functions to any other person except the Principal Reporter, SCRA or a local authority. Persons to whom functions might be delegated include employees of CHS, volunteers, or members of area support teams. Any of the National Convener's functions (other than preparing and submitting an annual report, and appointing panel members) may be delegated.
348. [Paragraph 10\(4\)](#) prevents the National Convener from delegating any function of providing legal and other advice to a Children's Hearing to any person employed by

SCRA or a local authority. Paragraph 10(5) provides that where the National Convener delegates the function of providing legal or other advice to a Children's Hearing, that person may not also perform other functions on behalf of the National Convener. For example, a person authorised by the National Convener to provide legal advice to Children's Hearings on behalf of the National Convener, may not also be involved in the recruitment of panel members. Paragraph 10(6) provides that even where the National Convener has delegated a function under paragraph 10(1), the National Convener may still carry out that function personally. This is similar to current arrangements for the Principal Reporter and the performance of the Principal Reporter's functions.

349. [Paragraph 10\(7\)](#) enables the Scottish Ministers to make regulations relating to the qualifications to be held by persons carrying out functions or classes of functions delegated by the National Convener.
350. [Paragraph 10\(8\)](#) relates to accountability and makes clear that persons authorised to perform delegated functions must comply with any direction given by the National Convener as to the carrying out of that function. Paragraph 10(9) allows CHS to pay persons, to whom a function is delegated, such expenses and allowances determined by the Scottish Ministers.

### **Staff**

351. [Paragraph 11](#) makes provision as to the staffing of CHS. Paragraph 11(1) provides for CHS to make appropriate staffing arrangements to ensure the proper functioning of CHS. Paragraph 11(2) provides for CHS to appoint employees and determine terms and conditions of employment. Such terms and conditions of employment will be subject to the approval of the Scottish Ministers.
352. [Paragraphs 11\(3\)](#) provides for CHS to pay or contribute to payments for pensions, allowances or gratuities, including compensation for loss of employment to eligible employees. CHS may also provide and maintain payment schemes for pension, allowances or gratuities. Paragraph 11(4) provides for CHS to decide, subject to the approval of Ministers, which former employees should be eligible for these payments and the amount that may be paid or provided for.
353. [Paragraph 11\(5\)](#), [11\(6\)](#) and [11\(7\)](#) relate to reckonable service where a person who has participated in CHS's pension scheme as an employee later becomes a member of CHS, and provide for CHS to treat such members as employees for the purpose of a pension scheme. Any discretion which the pension scheme confers on CHS as to benefits payable must only be exercised with the approval of Ministers.

### **Area support teams: establishment and membership**

354. [Paragraph 12](#) requires the National Convener to establish and maintain committees known as area support teams for designated areas which will consist of one or more local authority areas. Those constituent local authorities must consent before the National Convener establishes the area support teams. Paragraph 12(4) specifies that area support teams must comprise a person nominated by each constituent local authority, such other persons nominated by a local authority as the National Convener considers appropriate, a member of the Children's Panel who works or lives in the area of the area support team and sufficient other persons to ensure that the number of members nominated by local authorities never totals more than one-third of the total membership of that area support team. Paragraph 12(5) stipulates that an area support team cannot include the Principal Reporter, a member of the SCRA board or an employee of SCRA. Paragraph 12(6) provides for area support teams to establish sub-committees from within their own membership.

## **Transfer of members from CPACs**

355. [Paragraph 13](#) applies when the National Convener first establishes an area support team under paragraph 12 and is a transitional provision. The National Convener must, under paragraph 13(2) notify members of existing CPACs under the 1995 Act, who have been appointed by the Scottish Ministers, that they can transfer membership from the CPAC to the area support team. Paragraph 13(3) states that this notification must state that the relevant CPAC member will become a member of the area support team unless that member notifies the National Convener that they do not wish to become a member of the area support team within 28 days of receipt of the notice of transfer. Paragraph 13(4) defines the relevant CPAC member as someone who is a member of a CPAC that falls within the area of the area support team and who was appointed to that CPAC by Scottish Ministers. Paragraph 13(5) places a duty on the National Convener to appoint relevant CPAC members to the area support team, unless that member notifies the National Convener as in paragraph 13(3). Paragraph 13(6) states that on appointment to an area support team, that person ceases to be a member of the CPAC. Paragraph 13(7) provides that an area in relation to a CPAC means the area of the local authority (or authorities) which formed the CPAC, and includes a joint advisory committee.

## **Area support teams: functions**

356. [Paragraph 14\(1\)](#) places a duty on area support teams to carry out the functions conferred on the National Convener by section 6.
357. [Paragraph 14\(2\)](#) provides for area support teams to carry out delegated functions of the National Convener, for example in relation to recruitment campaigns and the identification of training requirements. Paragraph 14(3) provides that the National Convener cannot delegate to area support teams the function of providing legal or other advice to panel members. Paragraph 14(4) places a duty on the National Convener to consult with local authorities about what functions will be carried out by an area support team for their area.
358. [Paragraph 14\(5\)](#) makes clear that if the National Convener delegates a function to a member of an area support team, the function must not be sub delegated to a person who is not a member of the area support team. Paragraph 14(6) allows the National Convener to also carry out a delegated function. Paragraphs 14(7) and 14(8) allow the National Convener to give directions to area support teams as to the carrying out of delegated functions after consulting with relevant local authorities, and requires area support teams to comply with any such directions.

## **Committees**

359. [Paragraph 15](#) provides that CHS may set up committees comprising of members of CHS only or of members and non-members. Such a committee must act in accordance with directions given by CHS. CHS must pay such remuneration and allowances to non-members as CHS, with the approval of the Scottish Ministers, determines.

## **CHS's supplementary powers**

360. [Paragraph 16](#) provides CHS with a general supplementary power to do anything for the purposes of or in connection with its functions. A non-exhaustive list of ways in which the general supplementary power may be exercised is given. This includes research, publishing, and contracting.

## **Procedure**

361. [Paragraph 17](#) provides that CHS and area support teams may determine their own procedures and quorum (and those of any of their sub-committees).

### **Delegation of CHS's functions**

362. [Paragraph 18](#) provides that CHS functions may be carried out by a CHS member, a committee, or an employee. CHS may continue to carry out any function that has been delegated to a CHS member, committee or employee.

### **Financial interests**

363. [Paragraph 19](#) provides that the Scottish Ministers must satisfy themselves from time to time that members of CHS have no financial or other interest that conflicts with their role as a member of CHS. Ministers may request information from a member in relation to conflicts of interest and the member is obliged to comply with any such request.

### **Grants**

364. [Paragraph 20](#) concerns the funding of CHS. The Scottish Ministers may determine the level of funding and make payment by grant award in keeping with terms and conditions determined by the Scottish Ministers.

### **Accounts**

365. [Paragraph 21](#) places a duty on CHS to keep proper accounts and prepare and send an annual statement of accounts for each financial year to the Scottish Ministers, which they in turn must send to the Auditor General for Scotland for auditing. [Paragraph 21\(2\)](#) provides for the Scottish Ministers to direct CHS with regard to the information to be contained in the statement of accounts, the manner of presentation, and the methods and principles according to which it is to be prepared.

### **Provision of accounts and other information to Scottish Ministers**

366. [Paragraph 22](#) provides for the Scottish Ministers to direct CHS to give them any accounts or other information in relation to CHS's property and activities or proposed activities. CHS must comply with any direction and co-operate with the requirements of any related audit and inspection.

### **CHS's annual report**

367. [Paragraph 23](#) places a duty on CHS to prepare an annual report and submit it to the Scottish Ministers after the end of each financial year. The Scottish Ministers must, in turn, lay each report before Parliament. The annual report must include information as to how CHS has fulfilled its functions during the year along with any other information that CHS considers appropriate. The report must include a copy of the annual report submitted separately to CHS by the National Convener under [paragraph 24](#) of schedule 1. Separate reports are required in the first instance to reflect the independence of functions between CHS and the National Convener.

### **National Convener's annual report**

368. [Paragraph 24](#) places a duty on the National Convener to prepare an annual report and submit it to CHS as soon as practicable after the end of the financial year for which it is prepared. The annual report must include information as to how the National Convener has fulfilled the National Convener's functions during the year. The National Convener may include any other information that they consider appropriate.

### **Validity of proceedings and actions**

369. [Paragraph 25](#) makes clear that the validity of proceedings of CHS remains unaffected by any irregularities associated with vacancies, disqualification or the process of appointments.