

# CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 12 – Children's Hearings: General**

##### **Views of child**

##### ***Section 121 - Confirmation that child given opportunity to express views before hearing***

179. This section places a duty on the chairing member of the Children's Hearing to ask the child whether the documents provided to the child prior to the hearing (such as social work reports) accurately reflect any views expressed by the child, except where the chairing member thinks it is inappropriate to do so because the child is too young or immature.

##### **Children's advocacy services**

##### ***Section 122 - Children's advocacy services***

180. This section provides that where a Children's Hearing is being held under the Act, the chairing member is under a duty to inform the child of the availability of children's advocacy services. Subsection (4) enables the Scottish Ministers to make regulations to make provision for or in connection with the provision of children's advocacy services, qualifications to be held by, training of, and the payment of expenses, fees and allowances to, persons providing the children's advocacy service. Such regulations will be subject to affirmative procedure. Subsection (5) provides that Ministers may enter into contracts with any person other than a local authority, CHS or SCRA to provide children's advocacy services. "Children's advocacy services" is defined in subsection (7).

##### **Warrants to secure attendance**

##### ***Section 123 – General power to grant warrant to secure attendance***

181. This section provides a general power for the hearing to issue a warrant to secure the attendance of the child at a Children's Hearing which has been or is to be arranged, or a hearing in front of the sheriff which is to take place under Part 10 of this Act. This power is available to all children's hearings and so there is no need to confer specific powers on particular types of hearing.

##### **Child's age**

##### ***Section 124 – Requirement to establish child's age***

182. This section relates to determining the child's age. Subsection (2) places a duty on the chairing member to ask the person who is the subject of the hearing to declare their

age. A Children's Hearing only has jurisdiction over children within the meaning of section 199 of this Act. If the person is found not to be a child, within that meaning, the hearing may not continue with proceedings. Subsections (3) and (5) provide for the person to make further declarations about their age at any other time during the proceedings, and for the Children's Hearing to make a fresh determination of the person's age at any stage in the proceedings. Subsection (4) makes clear that the chairing member of the hearing need not ask a child their age when it would be inappropriate to ask that question based on the age and maturity of the child. Subsection (6) makes clear that the person's age is worked out either on the basis of their latest declaration or by determination by the Children's Hearing. Subsection (7) provides that any decision, warrant or order made by the hearing is not challengeable on the basis that the age determined by the hearing is not the person's true age.

## **Compulsory supervision orders: review**

### ***Section 125 – Compulsory supervision order: requirement to review***

183. This section provides for the Children's Hearing to specify a review date when making, varying or continuing a compulsory supervision order. The hearing must specify when an order is to be reviewed by a hearing when a movement restriction condition is included in the order. The hearing may set a review period when making, varying or continuing a compulsory supervision order in any other case.

## **Contact orders and permanence orders**

### ***Section 126 – Review of contact direction***

184. This section provides individuals who are not relevant persons, but who have a right of contact with the child by virtue of a contact order or a permanence order, or otherwise meet conditions specified by order by the Scottish Ministers, certain rights of participation when the Children's Hearing makes a contact direction. This section applies where the Children's Hearing makes a contact direction within a compulsory supervision order, an interim compulsory supervision order, an interim variation of a compulsory supervision order or a medical examination order which lasts more than 5 days or continues or varies a compulsory supervision order under section 138.
185. Subsection (2) provides the Scottish Ministers with the power to extend the categories of those who may be affected by a contact direction, and who could have that contact direction reviewed, by an order. That order would be subject to negative procedure. Subsection (2) also allows those who consider they meet the conditions specified in the order to seek a hearing to review that contact direction.
186. Subsection (5) provides for the hearing to take no further action if it considers the conditions specified for the purpose of subsection (2)(b) are not satisfied in relation to the individual. Subsection (6) provides that where the Children's Hearing considers the conditions for reviewing a contact order are met, it may either confirm the decision of the original hearing or vary the contact direction by varying the compulsory supervision order, interim compulsory supervision order or medical examination order. No other element of the underlying order may be varied at this hearing. Subsection (7) provides that the child and relevant person are not under a duty to attend the contact direction review hearing.

## **Referral where failure to provide education for excluded pupil**

### ***Section 127 – Referral where failure to provide education for excluded pupil***

187. This section applies where it appears to a Children's Hearing that an education authority is failing to comply with its duty under section 14(3) of the Education (Scotland) Act 1980 (duty to provide education for child excluded from school). Subsection (2)

provides that the hearing may require the National Convener to refer the matter to the Scottish Ministers. Subsection (3) provides that if the National Convener is required to refer the matter to the Scottish Ministers the National Convener must give a copy of the referral to the education authority concerned and the Principal Reporter. The Education (Scotland) Act 1980 provides powers to the Scottish Ministers to ensure the duty is complied with. A referral under this section must be in writing and may be sent in electronic form.

## **Parenting order**

### ***Section 128 – Duty to consider applying for parenting order***

188. This section applies when a Children's Hearing is satisfied that it might be appropriate for a parenting order to be made in respect of a parent of the child under section 102 of the Antisocial Behaviour etc. (Scotland) Act 2004. Subsection (2) provides that the hearing may require the Principal Reporter to consider making an application to the sheriff for a parenting order. The Reporter does not have to make such an application.