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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 150**

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

**PART 4**

**TRANSITIONAL AND SAVINGS PROVISIONS RELATING TO THE 1995 ACT**

**Consultation on local authority plans for services for children**

**12.** Where at the relevant date a local authority is consulting on a plan, or review of a plan, under section 19 of the 1995 Act (local authority plans for services for children), that authority must consult the National Convenor of Children's Hearings Scotland instead of the chairman of the children's panel for that area in fulfilling their duty under section 19(5)(d) of that Act.

**Frivolous appeals**

**13.** Where a sheriff, whether before or after the relevant date, makes or has made an order under section 51(7) of the 1995 Act (order preventing subsequent appeal in respect of a supervision requirement), that order has effect in relation to a supervision requirement which is to be treated as a compulsory supervision order under article 6 or 7 as it would have had effect in relation to the supervision requirement made under Part II of the 1995 Act.

**Reference to the Principal Reporter by court**

**14.** Despite article 2(1), where a court has referred a matter to the Principal Reporter under section 54 of the 1995 Act<sup>(1)</sup> (reference to the Principal Reporter by court), the 1995 Act applies to that matter regardless of whether relevant proceedings in relation to the child to whom the matter relates have commenced before the relevant date.

**Initial investigations by the Principal Reporter**

**15.—(1)** Where the Principal Reporter makes an initial investigation under section 56(1) of the 1995 Act<sup>(2)</sup> (initial investigation by Principal Reporter) but makes no decision under section 56(4) or (6) before the relevant date, that investigation is to be treated for all purposes after the relevant date as an investigation under section 66 of the 2011 Act (investigation and determination by Principal Reporter) and paragraph (2) applies.

(2) If it appears to the Principal Reporter that a child might be in need of protection, guidance, treatment or control, the Principal Reporter must make a determination under section 66(2) of the 2011 Act and the 2011 Act applies to that case.

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(1) Section 54 has been amended by the Civil Partnership Act 2004 (c.33), Schedule 28, paragraph 61 and the Adoption and Children (Scotland) Act 2007 (asp 4), schedule 2, paragraph 9(6).  
(2) Section 56 has been amended by the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), section 137(2).

### **Measures for the emergency protection of children**

16.—(1) Despite article 2(1), where on or after the relevant date—

- (a) (i) a children’s hearing arranged under section 59(2) of the 1995 Act (initial hearing of case of child subject to child protection order) is held; and
- (ii) the child protection order is continued by the children’s hearing under section 59(4) of that Act; or
- (b) a child protection order is continued by a sheriff under section 60(12)(d) of that Act (duration, recall or variation of child protection order),

paragraphs (2) and (3) have effect.

(2) Notice received by the Principal Reporter of the making of the child protection order under section 57 of the 1995 Act (child protection orders) is to be treated for all purposes as if it had been notice of the making of the child protection order given to the Principal Reporter under section 43 of the 2011 Act (notice of child protection order).

(3) References to section 65(2) of the 1995 Act (referral to, and proceedings at, children’s hearing) in sections 59(4) and 60(12)(d) of that Act are to be read as references to section 69(2) of the 2011 Act (determination under section 66: referral to children’s hearing) and the Principal Reporter must arrange a children’s hearing in accordance with that subsection of the 2011 Act.

(4) A children’s hearing arranged in accordance with paragraph (3) must take place no later than the eighth working day after the child protection order was implemented.

(5) The reference in paragraph (4) to the day on which the child protection order was implemented is to be construed in accordance with section 59(5)(a) and (b) of the 1995 Act.

### **Emergency protection of children – child protection order not available**

17. Section 61(5) to (8) of the 1995 Act (emergency protection of children where child protection order not available) and the Emergency Child Protection Measures (Scotland) Regulations 1996(3) continue to have effect in relation to a child who, immediately before the relevant date, was being removed to or kept in a place of safety under section 61(5) of the 1995 Act.

### **Business meetings preparatory to children’s hearing**

18. Where relevant proceedings are commenced before the relevant date and on or after the relevant date the Principal Reporter wishes to arrange a business meeting under section 64(1) of the 1995 Act (business meeting preparatory to children’s hearing), that meeting is to be arranged with members of the Children’s Panel from which the children’s hearing is to be selected in accordance with section 6 of the 2011 Act (selection of members of children’s hearing).

### **Applications for review of establishment of grounds of referral**

19.—(1) The persons described in section 85(4) of the 1995 Act (application for review of establishment of grounds of referral) may, on or after the relevant date, make an application to the sheriff under section 85(1) of that Act to review a finding under section 68(10) that grounds of referral are established and such an application is deemed to be relevant proceedings within the meaning of this Order and the 1995 Act applies, subject to paragraph (2), for the purposes of that application.

(2) In section 85(4)(b) of the 1995 Act, “relevant person” is to have the meaning given by section 200 of the 2011 Act.

(3) For the purposes of applications under section 85(1) of the 1995 Act made on or after the relevant date, section 29(12) of the 1986 Act<sup>(4)</sup> (legal aid in respect of certain proceedings relating to children) is modified to the extent that “relevant person” has the meaning given by section 200 of the 2011 Act.

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<sup>(4)</sup> Section 29 was substituted by the 1995 Act, section 92.