

SCHEDULE 1

MODIFICATION OF PRIMARY LEGISLATION

Children’s Hearings (Scotland) Act 2011

20.—(1) The Children’s Hearings (Scotland) Act 2011(1) is amended as follows.

(2) In section 6 (selection of members of children’s hearing), after sub-paragraph (4) insert—

“(5) In this section “children’s hearing” includes a pre-hearing panel.”.

(3) In section 26 (decisions inconsistent with section 25), in subsection (1)(a) and (b) and (2) after “children’s hearing” insert “, pre-hearing panel”.

(4) In section 27 (views of the child), in subsections (1), (3) and (5) after “children’s hearing” insert “, pre-hearing panel”.

(5) After section 29, insert—

“29A Duty to consider including contact direction

(1) A children’s hearing must, when making, varying or continuing a compulsory supervision order in relation to a child, consider whether to include in the order a measure of the type mentioned in section 83(2)(g).

(2) A sheriff must, when varying or continuing a compulsory supervision order in relation to a child, consider whether to include in the order a measure of the type mentioned in section 83(2)(g).”.

(6) In section 31(4) (sheriff: duty to consider appointing safeguarder) after “(other than this section” insert “and section 33”.

(7) In section 66 (investigation and determination by Principal Reporter)—

(a) in subsection (1)(a), after sub-paragraph (vii), insert—

“(viii) a reference from a court under section 48(1) of the Criminal Procedure (Scotland) Act 1995 (c.46)”; and

(b) after subsection (2), insert—

“(2A) In a case where a certificate is supplied under section 48(1) of the Criminal Procedure (Scotland) Act 1995, the Principal Reporter is deemed to have determined under subsection (2)(a) that the Principal Reporter considers that a section 67 ground applies in relation to the child.”.

(8) In section 67(2)(p)(i) (section 67 ground - pressure to enter into civil partnership) for “is being,” substitute “has been, is being”.

(9) In section 78 (rights of certain persons to attend children’s hearing), after sub-paragraph (6) insert—

“(7) In this section “children’s hearing” includes a pre-hearing panel.”.

(10) In section 98(1) (application for extension or variation of interim compulsory supervision order)—

(a) at the beginning of paragraph (b) insert—

“either—

(i) the current order is made under section 93(5) and”; and

(b) at the end of paragraph (b) insert—

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“, or

(ii) the current order is made under section 100(2).”.

(11) In section 115 (recall: power to refer other grounds), after subsection (4) insert—

“(5) If the sheriff makes an interim compulsory supervision order under subsection (3) specifying that the child is to reside at a place of safety, the children’s hearing must be arranged to take place no later than the third day after the day on which the child begins to reside at the place of safety.”.

(12) In section 117 (new section 67 ground established: sheriff to refer to children’s hearing), after subsection (4) insert—

“(5) If the sheriff makes an interim compulsory supervision order under subsection (3) specifying that the child is to reside at a place of safety, the children’s hearing must be arranged to take place no later than the third day after the day on which the child begins to reside at the place of safety.”.

(13) In section 140(4)(b) (interim variation of compulsory supervision order), for “an application under Part 10” substitute “an application made by virtue of section 93(2)(a) or 94(2)(a)”.

(14) In section 155(7) (procedure), for “section 32” substitute “section 34”.

(15) In section 156 (determination of appeal), after subsection (3) insert –

“(3A) If the sheriff continues or varies a compulsory supervision order under subsection (3)(b), the sheriff—

(a) must, if the order contains a movement restriction condition (or is being varied so as to include such a condition), require the order to be reviewed by a children’s hearing on a day or within a period specified in the order,

(b) may, in any other case, require the order to be so reviewed.”.

(16) In section 159 (frivolous and vexatious appeals), in each of subsections (1)(a) and (2), after “154” insert “or 161”.

(17) In section 168(2)(c) (enforcement of orders), omit sub-paragraph (ii) and the word “and” immediately preceding it.

(18) In section 175(2)(d) (sections 173 and 174: application to sheriff for order as to evidence), for “under section or whose appointment is confirmed under that section” substitute “in relation to the child by virtue of section 30”.

(19) In section 176(2)(c) (amendment of Vulnerable Witnesses (Scotland) Act 2004), in the inserted text after “section 98” insert “or 99”.

(20) In section 182(9) (publishing restrictions), before the definition of “protected information” insert—

““children’s hearing” includes a pre-hearing panel.”.

(21) In section 202 (interpretation)—

(a) in subsection (1)—

(i) in the definition of “residential establishment”, for paragraph (c), substitute—

“(c) an establishment in Northern Ireland that is—

(i) a private children’s home within the meaning of the Children (Northern Ireland) Order 1995 (S.I. 1995/755),

(ii) an authority home provided under Part VII of that Order, or

(iii) a voluntary home provided under Part VIII of that Order.”; and

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(ii) in the definition of “secure accommodation”, for the words from “in”, where it first occurs, to the end, substitute—

“for the purpose of restricting the liberty of children which—

(a) in Scotland, is provided in a residential establishment approved in accordance with regulations made under section 78(2) of the Public Services Reform (Scotland) Act 2010 (asp 8),

(b) in England, is provided in a children’s home (within the meaning of the Care Standards Act 2000 (c.14) (“the 2000 Act”)) in respect of which a person is registered under Part 2 of that Act, except that before the coming into force of section 107(2) of the Health and Social Care (Community Health Standards) Act 2003 (c.43), “secure accommodation” means accommodation in relation to England which—

(i) is provided in a children’s home (within the meaning of the 2000 Act) in respect of which a person is registered under Part 2 of that Act, and

(ii) is approved by the Secretary of State for the purpose of restricting the liberty of children,

(c) in Wales, is provided in a children’s home (within the meaning of the 2000 Act) in respect of which a person is registered under Part 2 of that Act.”; and

(b) after subsection (2), insert—

“(2A) References in this Act to a determination of a pre-hearing panel are references to a determination of a majority of the members of a pre-hearing panel.”.