

# The Children's Hearings (Scotland) Act 2011

## Key Changes

The Act and a range of associated Rules and Regulations came into force on **24 June 2013**. The Act in detail can be accessed at [www.legislation.gov.uk/asp/2011/1/contents](http://www.legislation.gov.uk/asp/2011/1/contents) and more detailed materials for practitioners can be accessed at [www.clanchildlaw.org](http://www.clanchildlaw.org)

The aim of the legislation is to modernise and strengthen the children's hearings to ensure better outcomes for children and young people. In particular, the new law will:

- bolster effective **participation** of children and young people and their parents/carers;
- improve **consistency**; and
- strengthen the **implementation** of the orders made by hearings.

The principles of the hearing system remain intact but the following key changes have been made:

### Structure

1. There is a new **national Children's Panel** with a new national overarching body Children's Hearings Scotland and a National Convener. A structure of local Area Support teams allows local involvement to continue. (Part 1)
2. There is a new **national body for Safeguarders** that CHILDREN 1ST, on behalf of Scottish Ministers, administer. (Part 4) New regulations cover the appointment, training, support and monitoring of safeguarders.

### Entry to the hearing system

3. The **grounds for referral** to the Reporter have changed. All grounds, apart from solvent abuse, remain and current grounds are reworded. Domestic Abuse and Forced Marriage/Civil Partnership are now stated as grounds and a new ground relates to the conduct of the child. The term 'member of the same household' is expanded to include 'significant contact with the child'. (s. 67)
4. A child can now be **liberated from custody** by the Reporter, following a charge detaining him for a serious offence, whilst the Reporter investigates the offence and the need for a hearing. (s. 72)
5. The **Rehabilitation of Offenders Act 1974** is changed to make grounds accepted or established to be equivalent to an Alternative to Prosecution, which flies off after 3 months, unless the offence is a very serious matter. (s. 187) *This provision is still to come into force.*
6. Where a child is too young to understand grounds and the grounds are sent to court for proof, the matter can be **fast tracked by the court** back to a hearing. (s. 106)

### Who is involved in the system

7. The **definition of relevant persons** is changed and the Act now defines when a person is automatically considered to be a relevant person because of parental rights and responsibilities that they have. There is a new process for those who do not have automatic status but who 'have (or have recently had) significant involvement in the upbringing of the child' to be deemed a relevant person. Decisions about deeming a person to be a relevant person or not can be appealed. (s. 200 & Part 8)
8. Persons who have **contact orders** but who are not relevant persons, have a limited right to attend or make representations to a special hearing, convened when a hearing make any condition of contact on a compulsory supervision order. (s. 126)
9. **Legal aid** will be available for lawyers to represent a child and relevant persons at children's hearings in limited circumstances. (s.191)

### **Participation and engagement of children and families**

10. There are significant new **duties on chairs of hearings** to try to ensure understanding and participation of the child and relevant persons at hearings. (Part 12)
11. There is a new **duty on report writers** to include any views expressed by a child (including views expressed to others but passed to report writers) in reports. There is a duty on hearing chairs to check with the child that any views contained in reports accurately reflect the views of the child. (s. 121)
12. Business meetings are replaced by **pre-hearing panels** that can still consider issues such as excusing the child or relevant person from attending a hearing, but the pre-hearing panels now allow a child or relevant person to attend if they wish. (Part 8)

### **Measures available to hearings and courts**

13. Compulsory supervision orders have a **list of measures that can be attached to an order**. All hearings must consider the need for a condition of **contact** when making an order. (s. 83)
14. Warrants (apart from a warrant to secure attendance of the child) are removed and instead **interim compulsory supervision orders** can be put in place where there is urgent necessity for measures of protection, guidance, treatment and control for the child. These new interim orders can allow a child to remain in their home. (s. 86)
15. Courts, when deciding an **appeal against a hearing's decision**, whether or not the court finds the appeal to be successful, can act as a hearing and impose measures that a hearing can. (s. 156)
16. The criteria for imposing a **movement restriction condition** is changed to be the same as that for secure accommodation authorisation. Where a hearing impose a movement restriction condition, the hearing must set a date for review. (s. 84 & s. 125)
17. **Information can be withheld** where significant harm could be caused to a child and, the whereabouts of the child can be withheld where significant harm could be caused to the child or a relevant person.

### **Secure accommodation**

18. **Secure accommodation authorisation** by a hearing, must be authorised by the Chief Social Work Officer with the consent of the head of the residential unit. The Chief Social Work Officer can remove a child from secure and this ends the authorisation and prompts a review by a hearing. New regulations will provide for the process of decision making around secure placement decisions and there is new appeal process for decisions to implement or not or to remove from secure. (s. 151 & s. 162)

### **Timescales**

19. A **Child Assessment Order** is now to begin no later than 24 hours and to last no longer than 3 days (s.35)
20. A **Child Protection Order** will expire if no attempt is made to implement it within 24 hours or no removal by 6 days and an 8<sup>th</sup> working day hearing can take place within rather than on the 8<sup>th</sup> working day after the CPO. (s.52)
21. An **emergency transfer** of a child from a place of residence stated in a hearing order to another place, now prompts a review hearing within 3 days of the move. (s. 143)

### **Implementation of hearing's orders**

22. A local authority is named in compulsory supervision orders as an '**implementation authority**' and new measures allow for a process of changing that status, and for a hearing to require the National Convener rather than the Reporter to pursue an unresolved breach of duty through the courts. Implementation authorities have powers to ask for assistance with implementation from other local authorities and health boards and there is new process for enforcement of assistance if unjustifiably refused. (s. 83, s. 166 & Part 14)
23. The National Convener has rights to information from local authorities about implementation of orders made by hearings and the Convener will produce an **annual report** on this. (s.180)

*Further details on the changes brought in by the Act and materials used in training for the new Act are available free to download on [www.clanchildlaw.org](http://www.clanchildlaw.org)*