

Consideration of subordinate legislation by the Education, Children and Young People Committee

1. This note provides information about [The Children's Hearings \(Scotland\) Act 2011 \(Rules of Procedure in Children's Hearings\) Amendment Rules 2022](#).
2. These regulations may also be referred to by their Scottish Statutory Instrument number which is SSI 2022/264.
3. These regulations are being considered under the negative procedure.

Timeline for considering these regulations

4. These regulations were laid before the Scottish Parliament on **5 September 2022**.
5. They were considered by the Delegated Powers and Law Reform Committee (DPLRC) at its meeting on [20 September 2022](#). No points were raised.
6. These regulations will be considered by the Education, Children and Young People Committee at its meeting on **28 September 2022**.
7. If the Committee wishes to produce a report on these regulations, it must do so by **24 October 2022**.

Is there a requirement to hear evidence from the Cabinet Secretary on these regulations?

8. No.

Purpose of the regulations:

9. The purpose of the instrument is to ensure that the rules regarding the composition of prehearing panels are consistent with the Children's Hearings (Scotland) Act 2011.
10. A copy of the Scottish Government's Policy Note is included in Annexe A.

Consultation

11. The policy note states that during the development of the amendment to the 2022 Act, the Scottish Government undertook a focussed and targeted engagement exercise, requesting views from 21 key stakeholder organisations working in children's rights, protection and justice. While limited, the responses

that were received were supportive, which officials concluded was indicative of the broader support voiced by stakeholders in separate discussions.

12. As part of the process of gathering evidence to support this change, Children's Hearings Scotland undertook engagement with children and young people. They did this through in person engagement with Our Hearings, Our Voice, the independent board for children and young people from across Scotland between the ages of 8-18, who have experience of the Children's Hearings System. Furthermore, they had three face to face meetings with children and young people with experience of the hearings system and CHS. Feedback was gathered using a child friendly feedback form.
13. Of those children and young people consulted, only half were aware of the existing prescriptive requirement for a mixed gender panel. The majority of respondents had no strong feelings about the gender balance of a panel, saying either they had no preference, or it wasn't important to them. The issue of potential trauma, and creating safe spaces within hearings was raised, with some respondents alert to the need for children's views to be considered. Retaining a strict requirement for mixed gender panels was of low importance to these children.

Impact Assessment

14. The policy note states that an Equality Impact Assessment and a Child Rights and Wellbeing Impact Assessment have been undertaken in relation to this policy, encompassing the amendment to the 2022 Act and the instrument. No negative effects regarding equalities or children's rights and wellbeing have been assessed. Appropriate monitoring has been discussed with operational partners, and a process is in place for implementation. Having given due consideration to the discrete and limited effects of this change, it has not been considered necessary to undertake a Strategic Environmental Assessment (SEA), a Data Protection Impact Assessment, an Island Communities Impact Assessment (ICIA) or a Fairer Scotland Duty assessment. The change introduces an important operational flexibility, but the Scottish Government anticipates it will not be routinely used. It has no environmental effects, nor any effects specific to island communities.

Financial Impact

15. The policy note states that the Minister for Children and Young People confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Procedure

16. These regulations are being considered by the Education, Children and Young People Committee under the negative procedure.
17. This means that the regulations become law immediately, i.e. as soon as they have been laid before the Scottish Parliament. These regulations can, however, be annulled up to 40 days after this has happened.

18. Rule 10.4 of the Scottish Parliament's standing orders states that any Member of the Scottish Parliament can lodge a Parliamentary motion within the 40-day time period seeking an annulment of regulations.
19. All regulations considered under the negative procedure are scrutinised by both the Delegated Powers and Law Reform Committee (on various technical grounds) and by a lead committee (on policy grounds).
20. If a motion to annul is lodged, the lead committee will consider this and then hold a vote. If the motion is disagreed to, then the regulations will remain in their current form.
21. If, however, the majority of MSPs on the lead committee agrees the regulations should be annulled, then a further motion is lodged by the Parliamentary Bureau. This is then voted on by the whole Parliament.
22. If that is also agreed to (i.e. the majority of MSPs agree with it), then Scottish Ministers must revoke (withdraw) the instrument. It will no longer be law and the Scottish Government must lay a new set of regulations before the Scottish Parliament.
23. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.
24. The Committee is invited to consider the instrument.

Amanda Gavin
Assistant Clerk
Education, Children and Young People Committee
27 September 2022

Annexe A

POLICY NOTE

THE CHILDREN'S HEARINGS (SCOTLAND)
ACT 2011 (RULES OF PROCEDURE IN
CHILDREN'S HEARINGS) AMENDMENT
RULES 2022

SSI 2022/264

25. The above instrument was made following Rules in exercise of the powers conferred by section 177 of the Children's Hearings (Scotland) Act 2011(a) and all other powers enabling them to do so.

26. The instrument is subject to negative procedure.

Policy Objectives

27. In order to introduce flexibility to the current strict requirement for a children's hearing to have both male and female Panel Members, an amendment to the Children's Hearings (Scotland) Act 2011 passed at Stage 2 of the Coronavirus (Recovery and Reform)(Scotland) Act 2022, and will come into force on 1 November 2022. It will include the words "so far as practicable" in the requirement at section 6(3)(a) of the 2011 Act that a children's hearing includes both male and female Panel Members. Section 6(5) of the 2011 Act specifies that these requirements also apply to pre-hearing panels.

28. However, the procedural rules for selection of members of pre-hearing panels are set down separately in The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 ("the Rules").

27. Rule 3(2) of the Rules states:

*(2) In selecting members of a pre-hearing panel in terms of section 79(2)(a) (referral of certain matters for pre-hearing determination) of the Act the National Convener must ensure that the prehearing panel—
(a) includes both male and female members of the Children's Panel;
and*

(b) so far as practicable, consists only of members of the Children's Panel who live or work in the area of the local authority which is the relevant local authority for the child to whom the pre-hearing panel relates.

28. In light of section 6(5) of the 2011 Act, in order to ensure clarity this instrument removes Rule 3(2) of the Rules. This will mean that the Rules are consistent with the 2011 Act as amended.

Consultation

29. During the development of the amendment to the 2022 Act, the Scottish Government undertook a focussed and targeted engagement exercise, requesting views from 21 key stakeholder organisations working in children's rights, protection and justice. While limited, the responses that were received were supportive, which officials concluded was indicative of the broader support voiced by stakeholders in separate discussions.

30. As part of the process of gathering evidence to support this change, Children's Hearings Scotland undertook engagement with children and young people. They did this through in person engagement with Our Hearings, Our Voice, the independent board for children and young people from across Scotland between the ages of 8-18, who have experience of the Children's Hearings System. Furthermore, they had three face to face meetings with children and young people with experience of the hearings system and CHS. Feedback was gathered using a child friendly feedback form. Of those children and young people consulted, only half were aware of the existing prescriptive requirement for a mixed gender panel. The majority of respondents had no strong feelings about the gender balance of a panel, saying either they had no preference, or it wasn't important to them. The issue of potential trauma, and creating safe spaces within hearings was raised, with some respondents alert to the need for children's views to be considered. Retaining a strict requirement for mixed gender panels was of low importance to these children.

Impact Assessments

31. An Equality Impact Assessment and a Child Rights and Wellbeing Impact Assessment have been undertaken in relation to this policy, encompassing the amendment to the 2022 Act and the instrument. No negative effects regarding equalities or children's rights and wellbeing have been assessed. Appropriate monitoring has been discussed with operational partners, and a process is in place for implementation.

32. Having given due consideration to the discrete and limited effects of this change, it has not been considered necessary to undertake a Strategic Environmental Assessment (SEA), a Data Protection Impact Assessment, an Island Communities Impact Assessment (ICIA) or a Fairer Scotland Duty assessment. The change

introduces an important operational flexibility, but the Scottish Government anticipates it will not be routinely used. It has no environmental effects, nor any effects specific to island communities.

Financial Effects

33. The Minister for Children and Young People confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government

Directorate for Children and Families

September 2022