Justice Committee

Remit and membership

Remit:

To consider and report on:

a) the administration of criminal and civil justice, community safety and other matters falling within the responsibility of the Cabinet Secretary for Justice; and

b) the functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.

Membership:

Roderick Campbell
John Finnie
Christine Grahame (Convener)
Colin Keir
Jenny Marra (Deputy Convener)
Alison McInnes
David McLetchie
Graeme Pearson
Sandra White

Committee Clerking Team:

Irene Fleming
Joanne Clinton
Ned Sharratt
Christine Lambourne
The Committee reports to the Parliament as follows—

1. At its meeting on 4 June 2013, the Committee considered the following instrument—

   Children’s Legal Assistance (Scotland) Regulations 2013 [draft].

2. The instrument was referred to the Justice Committee as lead committee and was subject to affirmative resolution procedure. The Cabinet Secretary for Justice, Kenny MacAskill, gave evidence on the instruments and then moved the motion recommending its approval.¹

Children’s Legal Assistance (Scotland) Regulations 2013 [draft]

The draft instrument

3. The instrument amends a number of regulations relating to legal assistance and legal aid to reflect the introduction of bespoke provisions regarding children’s legal aid as a result of the Children’s Hearings (Scotland) Act 2011, which comes into force on 24 June.² The instrument therefore also comes into force on that date.

4. The policy note sets out the aims of the instrument, which are to:

   • make provision for the availability of advice and assistance, in the form of Assistance by Way of Representation (ABWOR), in certain circumstances at children’s hearings and in court proceedings for children, relevant persons and others;

   • set out processes about how to apply for children’s legal aid, reflecting the transfer of the decision-making power to grant children’s legal aid from the court to the Scottish Legal Aid Board, and making more detailed


² Policy Note on Children's Legal Assistance (Scotland) Regulations 2013 [draft], page 1. Available at: http://www.legislation.gov.uk/sdsi/2013/9780111020401/pdfs/sdsipn_9780111020401_en.pdf
provision for matters such as review, change of circumstances and termination;

- set out the definitions of disposable income and disposable capital for the purposes of contributions for children’s legal aid; and
- direct the provision by the Board of a national “duty solicitor” scheme to ensure the availability of a solicitor to a child, in certain circumstances, at children’s hearings and in sheriff court proceedings throughout Scotland.3

Consultation

5. The policy note also confirms that a draft of the Regulations was shared with key stakeholders at the start of 2013, including: the Law Society of Scotland; Scottish Legal Aid Board; Children's Hearings Scotland; Children 1st, the Scottish Children’s Reporter Administration and Scottish Women’s Aid.4

Subordinate Legislation Committee consideration

6. The Subordinate Legislation Committee (SLC) considered this instrument at its meeting on 21 May and agreed to draw it to the attention of the Parliament on the general reporting ground. In particular, Regulation 3 does not cite the title of the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003 in accordance with the Scottish Statutory Instruments Regulations 2011. In its report5 to this Committee, the SLC does however note the Scottish Government’s response that it is clear which instrument is being referred to because the footnote contains the year and SSI number of the 2003 Regulations.

Justice Committee consideration

7. In his opening remarks, the Cabinet Secretary for Justice told the Committee that the regulations “will provide a permanent and sustainable national scheme, administered by the Scottish Legal Aid Board, for the provision of state-funded legal representation in children’s hearings”.6

8. The Cabinet Secretary confirmed that the regulations form part of the implementation of the Children’s Hearings (Scotland) Act 2011, which is due to come into force on 24 June.7 The 2011 Act “strengthens and modernises the children’s hearings system, and the changes that it introduces are focused on improving outcomes for children and young people and ensuring that the system is more child and young person-friendly and that it is nationally consistent but locally delivered”.8 As part of these changes, this instrument replaces the current interim arrangements for providing legal support to children and parents in hearings, which have been in place since 2002. The Cabinet Secretary confirmed that “restrictions will continue to apply to the granting of such legal representation other

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3 Policy Note on Children’s Legal Assistance (Scotland) Regulations 2013 [draft], page 1.
4 Policy Note on Children’s Legal Assistance (Scotland) Regulations 2013 [draft], page 10.
than in urgent and emergency situations, and it will need to be apparent that a child or parent needs that support to participate effectively in the children’s hearing.  

9. Mr MacAskill moved motion S4M-6775 that the Justice Committee recommends that the Children’s Legal Assistance (Scotland) Regulations 2013 [draft] be approved. The motion was agreed to without debate or dissent.

10. The Justice Committee recommends to the Parliament that it approves the draft instrument.

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