

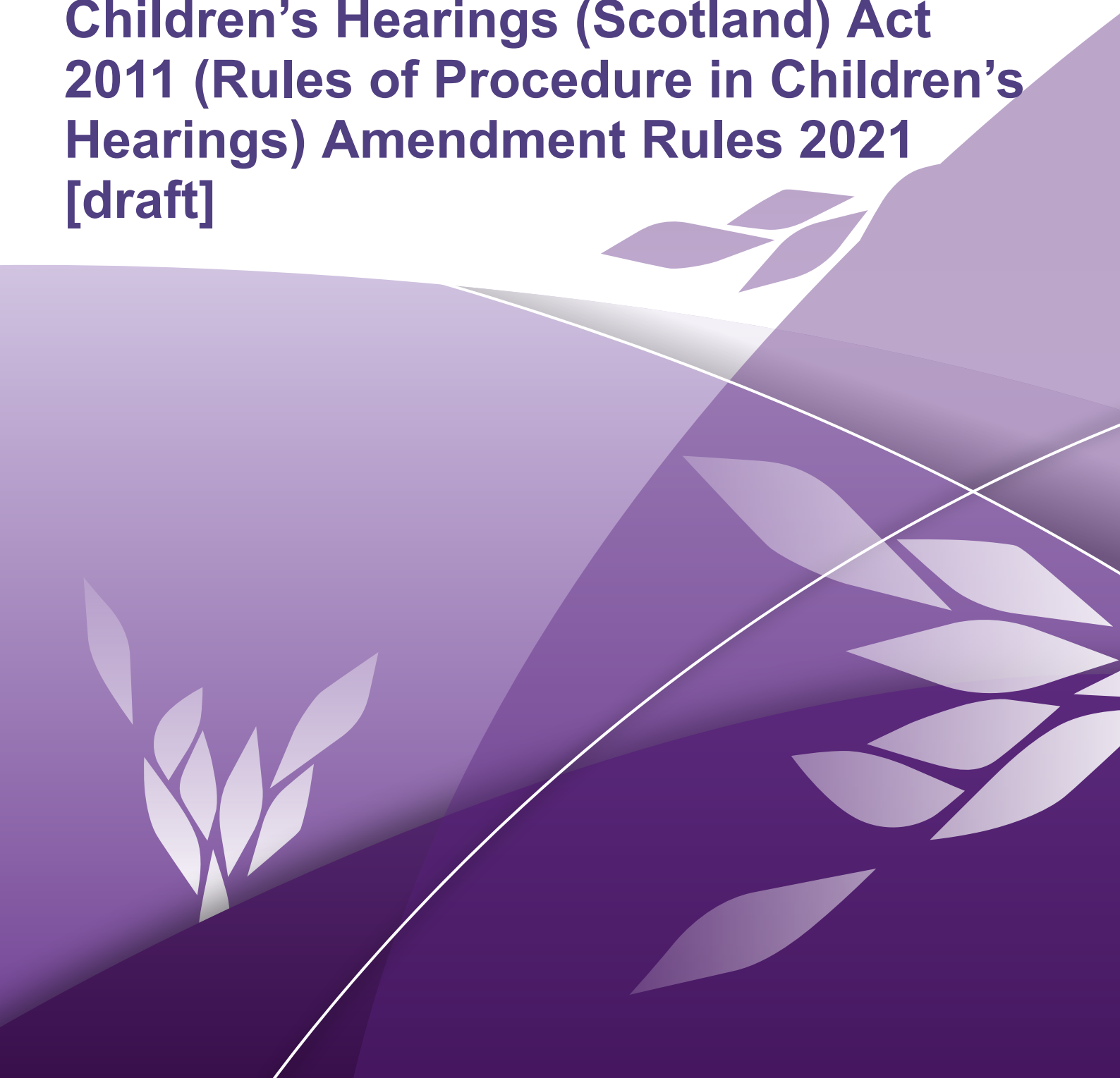


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Education and Skills Committee Comataidh Foghlam is Sgilean

Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Amendment Rules 2021 [draft]



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Education and Skills Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Education and Skills.



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Introduction

1. At its meeting on 27 January 2021, the Education and Skills Committee considered a piece of subordinate legislation which is subject to the affirmative procedure. The report summarises the purpose and the scrutiny of the instrument as well as confirming the Committee's decision.

Instrument Overview

2. [The Children's Hearings \(Scotland\) Act 2011 \(Rules of Procedure in Children's Hearings\) Amendment Rules 2021 \[draft\]](#) was laid by the Scottish Government on 18 December 2020.

3. The Purpose of the instrument as listed in the [policy note](#) is as follows -

'Section 25 of the Children (Scotland) Act 2020 introduced an opportunity for certain persons to participate in Children's Hearings without the necessity of relevant person status or deemed relevant person status.

Section 25 refers to rules made under section 177 of the Children (Hearings) Scotland Act 2011 setting the definitions of who has the opportunity to participate, to what extent and for what reasons.

Section 177 of the 2011 Act provides that the Scottish Ministers may make rules to regulate the procedure of Children's Hearings. Among other matters, the scope of these procedural rules includes specifying matters that may be determined by pre-hearing panels, the notification and arrangements for convening hearings, attendance at hearings, obtaining views before and during hearings, and the recording and transmission of any information or decisions.

These regulations therefore set out the criteria for individuals to meet in order to have an opportunity to participate.

These regulations also take the opportunity to update the drafting of the rules on exclusion from hearings and to clarify procedure on electronic signatures, virtual attendance, and sharing of reports.'

Delegated Powers and Law Reform Committee

4. The Delegated Powers and Law Reform Committee considered the instrument on [19 January 2021](#) and made no comment.

Education and Skills Committee

Consideration

5. At its meeting on 27 January 2021, the Committee considered the instrument.
6. The Minister for Children and Young People, Maree Todd MSP, outlined the purpose of the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Amendment Rules 2021 [draft], confirming that the instrument would take effect on 26 July 2021.
7. The Minister for Children and Young People Maree Todd stated-

” The central objective of the draft rules is to ensure a proper opportunity to participate for the brothers and sisters, and all those with similar relationships, of children coming before hearings. That especially applies where decisions could be made that will affect their contacts and relationships with the child who is subject to the hearing.

The draft instrument makes detailed provision for siblings around prior notification, invitation to attend and rights to make representations, to be accompanied or represented by another person and to be informed about the outcome of the hearing as it relates to their interests. That will allow a broader and more inclusive approach to be taken to siblings' involvement in children's hearings.

The rules follow the decision of the United Kingdom Supreme Court in the cases of ABC and XY last year. As the committee is aware, those cases considered siblings' participative rights in children's hearings. The Supreme Court's decision recognised that the legislative scheme behind children's hearings is compatible with children's article 8 rights, but we all want Scotland's childcare system to move from compliance towards excellence. The Government therefore lodged amendments to what became the Children (Scotland) Act 2020 to enable the changes to happen. The reform will also enable Scotland to honour important aspects of the independent care review promise on siblings.

The draft instrument refines aspects of children's hearings procedure in important additional areas. It mainstreams the electronic authentication of signatures and introduces more flexibility in electronic participation. Both those measures were important features in last April's emergency Coronavirus (Scotland) Act 2020. There is a shared appetite to hold on to those innovations for the benefit of families, decision makers and professionals.

The draft instrument empowers decision makers to exclude from hearings people whose conduct is dangerous, intimidating or disruptive. Exclusion may be necessary to obtain the views of a relevant person in, for example, a domestic abuse situation.

The draft instrument enables earlier sharing of independent reports and assessments among professionals. That is aimed at promoting better preparation and more informed and productive discussions at hearings.

Source: Education and Skills Committee 27 January 2021 [Draft], Maree Todd, contrib. 24¹

Conclusion

8. Maree Todd MSP, Minister for Children and Young People, moved:

S5M-23764— That the Education and Skills Committee recommends that the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Amendment Rules 2021 [draft] be approved.

9. The Committee agreed motion S5M-23764 unanimously.

Education and Skills Committee

Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Amendment Rules 2021 [draft], 2nd Report, 2021 (Session 5)

- [1] Education and Skills Committee 27 January 2021 [Draft], Maree Todd, contrib. 24,
<http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=13084&c=2314597>

