EXPLANATORY MEMORANDUM TO

THE CHILDREN'S HEARINGS (SCOTLAND) ACT 2011 (CONSEQUENTIAL PROVISIONS) ORDER 2014

2014 No. 2747

1. 1.1 This Explanatory Memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

1.2 This Memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument amends four Orders made under the Data Protection Act 1998 (c.29) ("the 1998 Act") in consequence of the Children's Hearings (Scotland) Act 2011 (asp 1) ("the 2011 Act"). The four Orders are:-

- the Data Protection (Subject Access Modification) (Health) Order 2000 (S.I. 2000/413);
- the Data Protection (Subject Access Modification) (Education) Order 2000 (S.I. 2000/414);
- the Data Protection (Subject Access Modification) (Social Work) Order 2000 (S.I. 2000/415); and
- the Data Protection (Miscellaneous Subject Access Exemptions) Order 2000 (S.I. 2000/419).

2.2 The amendments made by this instrument update these Orders to include references to the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 (S.S.I. 2013/194) ("the 2013 Rules"), which replaced the Children's Hearings (Scotland) Rules 1996 (S.I. 1996/3261) ("the 1996 Rules).

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 The Order is to be made in exercise of powers conferred by sections 104, 112(1) and 113(2) and (5) of the Scotland Act 1998. Section 104 of the Scotland Act 1998 provides for subordinate legislation to be made by the UK Government, which contains provisions that are necessary or expedient in consequence of any provision made by, or under, an Act of the Scottish Parliament. In this case, provision is required in

consequence to the 2011 Act. The Order is subject to negative resolution procedure and is to be laid in the UK Parliament.

4.2 The 2011 Act received Royal Assent on 6 January 2011 and restates and amends the law relating to children's hearings in Scotland. The 2013 Rules were made in exercise of the powers conferred by section 177(1) of the 2011 Act. These powers enable the Scottish Ministers to make rules about the procedures relating to children's hearings in Scotland and, in particular, the various matters listed in section 177(2) of the 2011 Act. The 2013 Rules came into force on 24 June 2013.

4.3 The 1998 Act allows individuals to make subject access requests for data. Provision made in each of the four Orders referred to in paragraph 2.1 specify the type of data which is exempt from the subject information provisions of Part 4 of the 1998 Act. Included is any data processed by a court in the course of any proceedings to which the 1996 Rules apply where, in accordance with a provision of those Rules, the information may be withheld by the court in whole or in part. The provisions in this Order therefore update the relevant provisions in these Orders to include where necessary references to the 2013 Rules.

4.4 The original intention was to include the provisions set out in this Order in the Children's Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013/1465) ("the previous section 104 Order"). However, at the time the previous section 104 Order was being finalised the 2013 Rules had not been made so it was not possible to include the necessary cross-references to those Rules in that Order.

5. Territorial Extent and Application

5.1 This instrument extends to all of the United Kingdom.

5.2 Article 2 applies to Scotland and Northern Ireland.

5.3 Article 3 applies to England and Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The reform of the children's hearings system is part of the Scottish Government's overall work in relation to children and young people aimed at breaking Scotland's historic cycles of poverty, under achievement and inequalities in health, income and outcomes. The key aims of the 2011 Act are to strengthen and modernise the children's hearings system, focusing on improving outcomes for children and young people by

addressing their needs and promoting their rights. The key objectives are to ensure that the children's hearings system is: focused on improving outcomes for children and young people; child and young person-friendly; nationally consistent, but locally delivered; better equipped to make effective, evidence based decisions; fully accountable for its actions and decisions, underpinned by a more independent tribunal; and European Convention on Human Rights compliant.

7.2 The 2011 Act provides for a greater range of children's hearings and there are new options as to disposals. This resulted in a need for a more detailed set of procedural rules. As well as providing a framework for the operation of children's hearings and related proceedings, the 2013 Rules introduce procedures designed to increase each child's opportunity of having his/her views considered in their hearing. These include improved information to be sent to the child and the opportunity to attend and participate in a hearing via telephone or video-link in certain circumstances. Stricter timescales have also been introduced for safeguarder reports and to ensure that the child and relevant persons receive prompt written notification of a hearing's or pre-hearing panel's decision.

8. Consultation outcome

8.1 Although there has been no general consultation specific to the amendments of this Order, all amendments contained in this Order have the approval of the Ministry of Justice and the Scottish Government.

8.2 With regard to wider consultation, the Scottish Government conducted several consultations on reform of the Children's Hearings system in Scotland. In 2004 it published *Getting it Right for Every Child: Review of the Children's Hearings system.* This was followed in 2005 by the publication of *Getting it Right for Every Child: proposals for action*. In December 2006 the Scottish Government consulted on its draft Children's Services Bill. This Bill was not subsequently introduced to the Scottish Parliament. In 2008, the Scottish Government ran its *Strengthening for the Future: A consultation on the Reform of the Children's Hearings System* from 31 July – 24 October. As a consequence of the responses to this consultation, the proposals contained within *Strengthening for the Future* were revised. This revision resulted in a draft Children's Hearings (Scotland) Bill being published for consultation in June 2009.

9. Guidance

No additional guidance is required for this Order.

10. Impact

10.1 This instrument has no impact of a regulatory nature on the private sector or civil society organisations and will not impose or reduce costs.

10.2 There will be no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

The effect of this Order is purely consequential. It does not create new policy or frameworks and therefore no monitoring or review of the effects of this Order are required.

13. Contact

Emma Lopinska at the Scotland Office (Tel: 0131 244 9016 or email: emma.lopinska@scotlandoffice.gsi.gov.uk) can answer any queries regarding the instrument.