

THE CHILDREN'S HEARINGS SYSTEM IN SCOTLAND

TRAINING RESOURCE MANUAL VOLUME 1

Legislation and Procedure



The Children's Hearings System in Scotland

TRAINING RESOURCE MANUAL Volume 1

Legislation and Procedure

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Foreword



FOREWORD

Children's panel members have a vital role in the children's hearings system. They are tasked to make decisions that are crucial to the lives of the children and their families who come before them. It is for this reason that great care is taken over their appointment and it is essential that they should be provided with first class training and good reference material that will enable them to undertake their role with confidence.

In June 2013 the Children's Hearings (Scotland) Act 2011 will come in to force and like its predecessors the Social Work (Scotland) Act 1968 and the Children (Scotland) Act 1995 there will be significant changes to hearings, however the fundamental role of panel members remains the same. In order to ensure panel members can deal with the changes the four Children's Hearings Training Units, at the request of Scottish Government, undertook a complete revision of the existing guidance manual for panel members. This revision includes other legislation which has been introduced in recent years and which has had an impact on the work of hearings as well as best practice guidance which has been developed in the light of experience.

The original Training Resource Manual has been separated into two volumes – **Volume One - Legislation and Procedures** which contains the new act and new rules, and relevant sections of all recent legislative changes and revised step by step procedures and best practice guidance **Volume Two - Children's Hearings Handbook** is primarily about children: the problems that some of them face, the environment in which they live, their needs, their rights and the services that are provided to meet those needs as well as how best to communicate with them and the adults who are present at hearings.

The panel member's task is not only to make decisions fairly and in accordance with the statutory requirements but also to take full account of the individual needs of every child who comes to a hearing. These volumes aim to provide information to

widen the understanding of panel members and enable them to make sound, well-informed decisions at hearings.

It is hoped that all who read this manual will use it as a valuable supplement to their training and as a source of constant reference during their service.

The Training Staff at the Universities of Aberdeen, Glasgow, St. Andrews and Queen Margaret's Edinburgh

Children's Hearings (Scotland) Act 2011

Act 2011





Children's Hearings (Scotland) Act 2011

2011 asp 1

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Children's Hearings (Scotland) Act 2011

2011 asp 1

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 25th November 2010 and received Royal Assent on 6th January 2011

An Act of the Scottish Parliament to restate and amend the law relating to children's hearings; and for connected purposes.

PART 1

THE NATIONAL CONVENER AND CHILDREN'S HEARINGS SCOTLAND

The National Convener and CHS

1 The National Convener

- (1) There is to be an officer to be known as the National Convener of Children's Hearings Scotland (referred to in this Act as "the National Convener").
- (2) The Scottish Ministers are to appoint a person as the first National Convener.
- (3) The Scottish Ministers must take reasonable steps to involve persons who are under 21 years of age in the process for selection of a person for appointment under subsection (2).
- (4) The period for which the person is appointed is 5 years.
- (5) The terms and conditions on which the person holds and vacates office are to be determined by the Scottish Ministers.

2 Children's Hearings Scotland

There is established a body corporate to be known as Children's Hearings Scotland (referred to in this Act as "CHS").

3 Further provision about National Convener and CHS

Schedule 1 makes further provision about the National Convener and CHS.

The Children's Panel

4 The Children's Panel

- (1) The National Convener must appoint persons to be members of a panel to be known as the Children's Panel.
- (2) The National Convener must endeavour to ensure that—
 - (a) the number of persons that the National Convener considers appropriate is appointed, and
 - (b) the panel includes persons from all local authority areas.
- (3) Schedule 2 makes further provision about the Children's Panel.

Children's hearings

5 Children's hearing

A children's hearing consists of three members of the Children's Panel selected in accordance with section 6 for the purpose of carrying out functions conferred on a children's hearing by virtue of this Act or any other enactment.

6 Selection of members of children's hearing

- (1) This section applies where a children's hearing requires to be arranged by virtue of, or for the purposes of, this Act or any other enactment.
- (2) The members of the children's hearing are to be selected by the National Convener.
- (3) The National Convener must ensure that the children's hearing—
 - (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 hearing relates.
- (4) The National Convener may select one of the members of the children's hearing to chair the hearing.

7 Holding of children's hearing

The National Convener must ensure that a children's hearing is held for the purpose of carrying out any function conferred on a children's hearing by virtue of this Act or any other enactment.

8 Provision of advice to children's hearing

- (1) The National Convener may provide advice to children's hearings about any matter arising in connection with the functions conferred on children's hearings by virtue of this Act or any other enactment.
- (2) The National Convener may in particular provide—
 - (a) legal advice,
 - (b) advice about procedural matters,
 - (c) advice about the consequences of decisions of the children's hearing,

- (d) advice about how decisions of children's hearings are implemented.
- (3) In this section, "children's hearing" includes pre-hearing panel.

9 Independence of children's hearings

Nothing in this Act authorises the National Convener or the Principal Reporter to direct or guide a children's hearing in carrying out the functions conferred on children's hearings by virtue of this Act or any other enactment.

Power to change National Convener's functions

10 Power to change National Convener's functions

- (1) The Scottish Ministers may by order—
 - (a) confer additional functions on the National Convener,
 - (b) remove functions from the National Convener,
 - (c) transfer functions from another person to the National Convener,
 - (d) transfer functions from the National Convener to another person,
 - (e) specify the manner in which, or period within which, any function conferred on the National Convener by virtue of this Act is to be carried out.
- (2) An order under this section is subject to the super-affirmative procedure (other than an order under subsection (1)(e), which is subject to the affirmative procedure).

Functions of CHS

11 Provision of assistance to National Convener

CHS must—

- (a) assist the National Convener in carrying out the functions conferred on the National Convener by virtue of this Act or any other enactment,
- (b) facilitate the carrying out of those functions.

12 Independence of National Convener

- (1) Nothing in this Act authorises CHS or any other person to direct or guide the National Convener in carrying out the functions conferred on the National Convener by virtue of this Act or any other enactment.
- (2) This section is subject to section 10(1)(e).

13 Directions

- (1) The Scottish Ministers may give CHS general or specific directions about the carrying out of its functions.
- (2) CHS must comply with a direction under subsection (1).
- (3) The Scottish Ministers may vary or revoke a direction under subsection (1) by giving a subsequent direction under that subsection.

PART 2

THE PRINCIPAL REPORTER AND THE SCOTTISH CHILDREN'S REPORTER ADMINISTRATION

The Principal Reporter and SCRA

14 The Principal Reporter

There continues to be an officer known as the Principal Reporter.

15 The Scottish Children's Reporter Administration

There continues to be a body corporate known as the Scottish Children's Reporter Administration (in this Act referred to as "SCRA").

16 Further provision about Principal Reporter and SCRA

Schedule 3 makes further provision about the Principal Reporter and SCRA.

The Principal Reporter

17 Duty as respects location of children's hearing

The Principal Reporter must ensure that, so far as practicable, a children's hearing takes place in the area of the relevant local authority for the child to whom the hearing relates.

18 Power to change Principal Reporter's functions

- (1) The Scottish Ministers may by order—
 - (a) confer additional functions on the Principal Reporter,
 - (b) remove functions from the Principal Reporter,
 - (c) transfer functions from another person to the Principal Reporter,
 - (d) transfer functions from the Principal Reporter to another person,
 - (e) specify the manner in which, or period within which, any function conferred on the Principal Reporter by virtue of this Act or the Criminal Procedure (Scotland) Act 1995 (c.46) is to be carried out.
- (2) An order under this section is subject to the super-affirmative procedure (other than an order under subsection (1)(e), which is subject to the affirmative procedure).

19 Rights of audience

- (1) The Scottish Ministers may by regulations—
 - (a) empower the Principal Reporter to conduct proceedings which by virtue of this Act require to be conducted before the sheriff or the sheriff principal,
 - (b) prescribe qualifications or experience that must be acquired or training that must be undertaken by the Principal Reporter before conducting such proceedings.
- (2) References in subsection (1) to the Principal Reporter include references to a person carrying out a function on behalf of the Principal Reporter by virtue of paragraph 10(1) of schedule 3.

Functions of SCRA

20 Assisting Principal Reporter

SCRA must—

- (a) assist the Principal Reporter in carrying out the functions conferred on the Principal Reporter by virtue of this Act or any other enactment, and
- (b) facilitate the carrying out of those functions.

21 Provision of accommodation for children's hearings

- (1) SCRA must provide suitable accommodation and facilities for children's hearings.
- (2) Accommodation and facilities must, so far as practicable, be provided in the area of each local authority.
- (3) Accommodation and facilities must be dissociated from courts exercising criminal jurisdiction and police stations.

22 Independence of Principal Reporter

- (1) Nothing in this Act authorises SCRA or any other person to direct or guide the Principal Reporter in carrying out the functions conferred on the Principal Reporter by virtue of this Act or any other enactment.
- (2) This section is subject to section 18(1)(e).

23 Directions

- (1) The Scottish Ministers may give SCRA general or specific directions about the carrying out of its functions.
- (2) SCRA must comply with a direction under subsection (1).
- (3) The Scottish Ministers may vary or revoke a direction under subsection (1) by giving a subsequent direction under that subsection.

Transfer of staff, property etc.

24 Transfer of staff, property etc.

Schedule 4 makes provision about the transfer of staff, property, rights, liabilities and obligations to CHS.

PART 3

GENERAL CONSIDERATIONS

25 Welfare of the child

- (1) This section applies where by virtue of this Act a children's hearing, pre-hearing panel or court is coming to a decision about a matter relating to a child.
- (2) The children's hearing, pre-hearing panel or court is to regard the need to safeguard and promote the welfare of the child throughout the child's childhood as the paramount consideration.

26 Decisions inconsistent with section 25

- (1) A children's hearing or a court may make a decision that is inconsistent with the requirement imposed by section 25(2) if—
 - (a) the children's hearing or court considers that, for the purpose of protecting members of the public from serious harm (whether physical or not), it is necessary that the decision be made, and
 - (b) in coming to the decision, the children's hearing or court complies with subsection (2).
- (2) The children's hearing or court is to regard the need to safeguard and promote the welfare of the child throughout the child's childhood as a primary consideration rather than the paramount consideration.

27 Views of the child

- (1) This section applies where by virtue of this Act a children's hearing or the sheriff is coming to a decision about a matter relating to a child.
- (2) This section does not apply where the sheriff is deciding whether to make a child protection order in relation to a child.
- (3) The children's hearing or the sheriff must, so far as practicable and taking account of the age and maturity of the child—
 - (a) give the child an opportunity to indicate whether the child wishes to express the child's views,
 - (b) if the child wishes to do so, give the child an opportunity to express them, and
 - (c) have regard to any views expressed by the child.
- (4) Without prejudice to the generality of subsection (3), a child who is aged 12 or over is presumed to be of sufficient age and maturity to form a view for the purposes of that subsection.
- (5) In this section "coming to a decision about a matter relating to a child", in relation to a children's hearing, includes—
 - (a) providing advice by virtue of section 50,
 - (b) preparing a report under section 141(2).

28 Children's hearing: pre-condition for making certain orders and warrants

- (1) Subsection (2) applies where a children's hearing is—
 - (a) considering whether to make a compulsory supervision order,
 - (b) considering whether to vary or continue a compulsory supervision order,
 - (c) considering whether to make an interim compulsory supervision order,
 - (d) considering whether to make an interim variation of a compulsory supervision order,
 - (e) considering whether to make a medical examination order, or
 - (f) considering whether to grant a warrant to secure attendance.

- (2) The children's hearing may make, vary or continue the order or interim variation or grant the warrant, only if the children's hearing considers that it would be better for the child if the order, interim variation or warrant were in force than not.

29 Sheriff: pre-condition for making certain orders and warrants

- (1) Subsection (2) applies where—
 - (a) the sheriff is considering making a child assessment order,
 - (b) the sheriff is considering making or varying a child protection order,
 - (c) by virtue of section 156(1)(b) or (2)(b), the sheriff is considering—
 - (i) varying or continuing a compulsory supervision order,
 - (ii) making or varying an interim compulsory supervision order or an interim variation of a compulsory supervision order,
 - (iii) varying a medical examination order, or
 - (iv) granting a warrant to secure attendance,
 - (d) the sheriff is otherwise considering—
 - (i) making an interim compulsory supervision order or an interim variation of a compulsory supervision order, or
 - (ii) granting a warrant to secure attendance, or
 - (e) the sheriff is considering extending or varying an interim compulsory supervision order under section 98 or 99.
- (2) The sheriff may make, vary, continue or extend the order or interim variation or grant the warrant, only if the sheriff considers that it would be better for the child if the order, interim variation or warrant were in force than not.

30 Children's hearing: duty to consider appointing safeguarder

- (1) A children's hearing must consider whether to appoint a person to safeguard the interests of the child to whom the children's hearing relates (a "safeguarder").
- (2) A children's hearing may appoint a safeguarder at any time when the children's hearing is still deciding matters in relation to the child.
- (3) A children's hearing must record an appointment made under subsection (2).
- (4) If a children's hearing appoints a safeguarder, it must give reasons for its decision.
- (5) Subsection (1) does not apply where a safeguarder has already been appointed.

31 Sheriff: duty to consider appointing safeguarder

- (1) This section applies where—
 - (a) proceedings are being taken before the sheriff under Part 10 or 15 in relation to a child, and
 - (b) a safeguarder has not been appointed for the child in relation to proceedings under those Parts.
- (2) The sheriff must consider whether to appoint a safeguarder for the child.

- (3) The sheriff may appoint a safeguarder for the child.
- (4) A safeguarder appointed under this section is to be treated for the purposes of this Act (other than this section) as having been appointed by a children's hearing by virtue of section 30.
- (5) An appointment under subsection (3) must be recorded.
- (6) If the sheriff appoints a safeguarder, the sheriff must give reasons for the decision.

PART 4

SAFEGUARDERS

32 The Safeguarders Panel

- (1) The Scottish Ministers must establish and maintain a panel of persons (to be known as the Safeguarders Panel) from which any appointment under this Act of a safeguarder is to be made.
- (2) The Scottish Ministers may by regulations make provision for or in connection with—
 - (a) the recruitment and selection of persons who may be appointed as members of the Safeguarders Panel,
 - (b) the appointment and removal of members of the Safeguarders Panel,
 - (c) qualifications to be held by members of the Safeguarders Panel,
 - (d) the training of members and potential members of the Safeguarders Panel,
 - (e) the payment of expenses, fees and allowances by the Scottish Ministers to members and potential members of the Safeguarders Panel,
 - (f) the operation and management of the Safeguarders Panel.
- (3) For the purpose of complying with the requirements imposed by subsection (1) and regulations under subsection (2), the Scottish Ministers may enter into arrangements (contractual or otherwise) with any person other than CHS or SCRA.

33 Functions of safeguarder

- (1) A safeguarder appointed in relation to a child by virtue of section 30 must—
 - (a) except where subsection (2) applies, on being so appointed, prepare a report setting out anything that, in the opinion of the safeguarder, is relevant to the consideration of the matter before the children's hearing,
 - (b) so far as reasonably practicable, attend the children's hearing, and
 - (c) prepare any report that the safeguarder is required to prepare by a children's hearing.
- (2) This subsection applies where the children's hearing directs the Principal Reporter under section 93(2)(a) or 94(2)(a) to make an application to the sheriff.

34 Safeguarders: regulations

- (1) The Scottish Ministers may by regulations make further provision about safeguarders.

- (2) Regulations under this section may in particular make provision for or in connection with—
 - (a) imposing additional requirements on safeguarders,
 - (b) conferring additional powers (including rights of appeal) on safeguarders,
 - (c) the termination of safeguarders' appointments.

PART 5

CHILD ASSESSMENT AND CHILD PROTECTION ORDERS

Child assessment orders

35 Child assessment orders

- (1) A local authority may apply to the sheriff for a child assessment order in respect of a child.
- (2) A child assessment order is an order authorising an officer of a local authority or a person authorised by that officer to carry out (subject to section 186) an assessment of—
 - (a) the child's health or development, or
 - (b) the way in which the child has been or is being treated or neglected.
- (3) An order may—
 - (a) require any person in a position to do so to produce the child to the officer,
 - (b) for the purpose of carrying out the assessment, authorise the taking of the child to any place and the keeping of the child at that place or any other place for a period specified in the order,
 - (c) where it contains an authorisation of the type mentioned in paragraph (b), include directions about contact between the child and any other person.
- (4) A child assessment order must specify the period during which it has effect.
- (5) That period must—
 - (a) begin no later than 24 hours after the order is granted, and
 - (b) not exceed 3 days.

36 Consideration by sheriff

- (1) This section applies where an application for a child assessment order in respect of a child is made by a local authority.
- (2) The sheriff may make the order if the sheriff is satisfied that—
 - (a) the local authority has reasonable cause to suspect—
 - (i) that the child has been or is being treated in such a way that the child is suffering or is likely to suffer significant harm, or
 - (ii) that the child has been or is being neglected and as a result of the neglect the child is suffering or is likely to suffer significant harm,

- (b) an assessment of the kind mentioned in section 35(2) is necessary in order to establish whether there is reasonable cause to believe that the child has been or is being so treated or neglected, and
 - (c) it is unlikely that the assessment could be carried out, or carried out satisfactorily, unless the order was made.
- (3) The sheriff may, instead of making a child assessment order, make a child protection order if the sheriff considers the conditions in section 38(2) are satisfied.

Child protection orders

37 Child protection orders

- (1) A person may apply to the sheriff for a child protection order in respect of a child.
- (2) A child protection order is an order doing one or more of the following—
 - (a) requiring any person in a position to do so to produce the child to a specified person,
 - (b) authorising the removal of the child by the specified person to a place of safety and the keeping of the child in that place,
 - (c) authorising the prevention of the removal of the child from any place where the child is staying (whether or not the child is resident there),
 - (d) authorising the carrying out (subject to section 186) of an assessment of—
 - (i) the child's health or development, or
 - (ii) the way in which the child has been or is being treated or neglected.
- (3) A child protection order may also include any other authorisation or requirement necessary to safeguard or promote the welfare of the child.
- (4) A child protection order may include an authorisation of the type mentioned in paragraph (d) of subsection (2) only if it also includes an authorisation of a type mentioned in paragraph (b) or (c) of that subsection.
- (5) An application for a child protection order must—
 - (a) identify the applicant,
 - (b) in so far as is practicable, identify the child in respect of whom the order is sought,
 - (c) state the grounds on which the application is made, and
 - (d) be accompanied by supporting evidence, whether documentary or otherwise, sufficient to enable the sheriff to determine the application.
- (6) In subsection (2), “specified” means specified in the order.

Consideration of application by sheriff

38 Consideration by sheriff: application by local authority only

- (1) This section applies where an application for a child protection order in respect of a child is made by a local authority.
- (2) The sheriff may make the order if the sheriff is satisfied that—

- (a) the local authority has reasonable grounds to suspect that—
 - (i) the child has been or is being treated in such a way that the child is suffering or is likely to suffer significant harm,
 - (ii) the child has been or is being neglected and as a result of the neglect the child is suffering or is likely to suffer significant harm, or
 - (iii) the child will be treated or neglected in such a way that is likely to cause significant harm to the child,
- (b) the local authority is making enquiries to allow it to decide whether to take action to safeguard the welfare of the child, or is causing those enquiries to be made,
- (c) those enquiries are being frustrated by access to the child being unreasonably denied, and
- (d) the local authority has reasonable cause to believe that access is required as a matter of urgency.

39 Consideration by sheriff: application by local authority or other person

- (1) This section applies where an application for a child protection order in respect of a child is made by a local authority or other person.
- (2) The sheriff may make the order if the sheriff is satisfied that—
 - (a) there are reasonable grounds to believe that—
 - (i) the child has been or is being treated in such a way that the child is suffering or is likely to suffer significant harm,
 - (ii) the child has been or is being neglected and as a result of the neglect the child is suffering or is likely to suffer significant harm,
 - (iii) the child is likely to suffer significant harm if the child is not removed to and kept in a place of safety, or
 - (iv) the child is likely to suffer significant harm if the child does not remain in the place at which the child is staying (whether or not the child is resident there), and
 - (b) the order is necessary to protect the child from that harm or from further harm.

Ancillary measures

40 Information non-disclosure directions

- (1) This section applies where the sheriff makes a child protection order in respect of a child.
- (2) The sheriff must consider whether to include an information non-disclosure direction in the order.
- (3) An information non-disclosure direction is a direction that—
 - (a) the location of any place of safety at which the child is being kept, and
 - (b) any other information specified in the direction relating to the child,must not be disclosed (directly or indirectly) to any person or class of person specified in the direction.

- (4) An information non-disclosure direction ceases to have effect when—
- (a) it is terminated by a children's hearing under section 47(1)(a)(ii) or the sheriff under section 51(5)(b), or
 - (b) the child protection order in which it is included ceases to have effect.

41 Contact directions

- (1) This section applies where the sheriff makes a child protection order in respect of a child.
- (2) The sheriff must consider whether to include a contact direction in the order.
- (3) A contact direction is a direction—
 - (a) prohibiting contact between the child and a person mentioned in subsection (4),
 - (b) making contact between the child and such a person subject to any conditions which the sheriff considers appropriate to safeguard and promote the welfare of the child,
 - (c) making such other provision as the sheriff considers appropriate about contact between the child and such a person.
- (4) The persons are—
 - (a) a parent of the child, person with parental responsibilities for the child or other person specified in the direction,
 - (b) a person falling within a class of person specified in the direction.
- (5) A contact direction ceases to have effect when—
 - (a) it is terminated by a children's hearing under section 47(1)(a)(ii) or the sheriff under section 51(5)(b), or
 - (b) the child protection order in which it is included ceases to have effect.

42 Parental responsibilities and rights directions

- (1) A person applying to the sheriff for a child protection order in respect of a child may, at the same time, apply to the sheriff for a parental responsibilities and rights direction.
- (2) A parental responsibilities and rights direction is a direction about the fulfilment of parental responsibilities or exercise of parental rights in relation to—
 - (a) the treatment of the child arising out of any assessment authorised by the child protection order, or
 - (b) any other matter that the sheriff considers appropriate.
- (3) A parental responsibilities and rights direction ceases to have effect when—
 - (a) it is terminated by a children's hearing under section 47(1)(a)(ii) or the sheriff under section 51(5)(b), or
 - (b) the child protection order in which it is included ceases to have effect.

Notice of order

43 Notice of child protection order

- (1) As soon as practicable after the making of a child protection order, the applicant must give notice to—
 - (a) the person specified in the order under section 37(2)(a) (unless the person is the applicant),
 - (b) the child in respect of whom it is made,
 - (c) each relevant person in relation to the child,
 - (d) the relevant local authority for the child (unless the local authority is the applicant),
 - (e) the Principal Reporter,
 - (f) any other person to whom the applicant is required to give notice under rules of court.
- (2) Where the Principal Reporter receives notice under subsection (1)(e), the Principal Reporter must give notice of the making of the order to any person (other than a relevant person in relation to the child) who the Principal Reporter considers to have (or to recently have had) a significant involvement in the upbringing of the child.

Obligations of local authority

44 Obligations of local authority

- (1) This section applies where, by virtue of a child protection order, a child is removed to a place of safety provided by a local authority.
- (2) Subject to the child protection order, the local authority has the same duties towards the child as the local authority would have by virtue of section 17 of the 1995 Act if the child were looked after by the local authority.

Review by children's hearing of certain orders

45 Review by children's hearing where child in place of safety

- (1) This section applies where—
 - (a) a child protection order is in force in respect of a child,
 - (b) the child has been taken to a place of safety by virtue of the order, and
 - (c) the Principal Reporter has not received notice under section 49 of an application to the sheriff to terminate or vary the order.
- (2) The Principal Reporter must arrange a children's hearing.
- (3) The Principal Reporter must arrange for the children's hearing to take place on the second working day after the day on which the child is taken to the place of safety.

46 Review by children's hearing where order prevents removal of child

- (1) This section applies where—
 - (a) a child protection order is in force in respect of a child,

- (b) the order authorises the prevention of the removal of the child from a place, and
 - (c) the Principal Reporter has not received notice under section 49 of an application to the sheriff to terminate or vary the order.
- (2) The Principal Reporter must arrange a children's hearing.
 - (3) The Principal Reporter must arrange for the children's hearing to take place on the second working day after the day on which the child protection order is made.

Decision of children's hearing

47 Decision of children's hearing

- (1) A children's hearing arranged under section 45 or 46 may—
 - (a) if it is satisfied that the conditions for making the order are met—
 - (i) continue the order, or
 - (ii) continue and vary the order (including by terminating, varying or including an information non-disclosure direction, a contact direction or a parental responsibilities and rights direction), or
 - (b) if it is not satisfied that those conditions are met, terminate the order.
- (2) In subsection (1), the “conditions for making the order” are—
 - (a) where the order was made under section 38, the matters mentioned in subsection (2)(a) to (d) of that section,
 - (b) where the order was made under section 39, the matters mentioned in subsection (2)(a) and (b) of that section.

Variation or termination of order by sheriff

48 Application for variation or termination

- (1) An application may be made by any of the following persons to the sheriff to vary a child protection order—
 - (a) the child in respect of whom the order is made,
 - (b) a relevant person in relation to the child,
 - (c) a person not falling within paragraph (b) who has (or recently had) a significant involvement in the upbringing of the child,
 - (d) the person who applied for the child protection order,
 - (e) the person specified in the child protection order under section 37(2)(a),
 - (f) the Principal Reporter,
 - (g) any other person prescribed by rules of court.
- (2) An application may be made by any of the persons mentioned in subsection (1)(a) to (g) (other than the Principal Reporter) to the sheriff to terminate a child protection order.
- (3) An application under this section may be made only—
 - (a) before the commencement of a children's hearing arranged under section 45 or 46,
or

- (b) if the children's hearing arranged under section 45 or 46 continues the child protection order (with or without variation), within 2 working days after the day on which the child protection order is continued.

49 Notice of application for variation or termination

A person applying under section 48 for variation or termination must, as soon as practicable after making the application, give notice of it to—

- (a) the person who applied for the child protection order (unless the person is the applicant),
- (b) the person specified in the child protection order under section 37(2)(a) (unless the person is the applicant),
- (c) the child (unless the child is the applicant),
- (d) each relevant person in relation to the child (unless the relevant person is the applicant),
- (e) the relevant local authority for the child (unless the local authority is the applicant),
- (f) the Principal Reporter (unless the Principal Reporter is the applicant), and
- (g) any other person to whom the applicant is required to give notice under rules of court.

50 Children's hearing to provide advice to sheriff in relation to application

The Principal Reporter may arrange a children's hearing for the purpose of providing any advice the children's hearing may consider appropriate to assist the sheriff in the determination of an application under section 48.

51 Determination by sheriff

- (1) This section applies where an application is made under section 48 in relation to a child protection order.
- (2) The sheriff must, before determining the application, give the following persons an opportunity to make representations—
 - (a) the applicant,
 - (b) the child in respect of whom the child protection order is made,
 - (c) each relevant person in relation to the child,
 - (d) any person not falling within paragraph (c) who the sheriff considers to have (or to recently have had) a significant involvement in the upbringing of the child,
 - (e) the applicant for the child protection order,
 - (f) the relevant local authority for the child (if the authority did not apply for the child protection order),
 - (g) the Principal Reporter.
- (3) The application must be determined within 3 working days after the day on which it is made.

- (4) The child protection order ceases to have effect at the end of that period if the application is not determined within that period.
- (5) The sheriff may—
 - (a) terminate the child protection order if the sheriff is not satisfied of—
 - (i) where the order was made under section 38, the matters mentioned in subsection (2)(a) to (d) of that section, or
 - (ii) where the order was made under section 39, the matters mentioned in subsection (2)(a) and (b) of that section,
 - (b) vary the child protection order (including by terminating, varying or including an information non-disclosure direction, a contact direction or a parental responsibilities and rights direction), or
 - (c) confirm the child protection order.
- (6) If the sheriff orders that the child protection order is to be terminated, the order ceases to have effect at the end of the hearing before the sheriff.

Termination of order

52 Automatic termination of order

- (1) This section applies where a child protection order contains an authorisation of the type mentioned in section 37(2)(b).
- (2) The order ceases to have effect at the end of the period of 24 hours beginning with the making of the order if the person specified in the order under section 37(2)(a) has not attempted to implement it within that period.
- (3) The order ceases to have effect at the end of the period of 6 days beginning with the making of the order if the child to whom the order relates has not been removed to a place of safety within that period.

53 Power of Principal Reporter to terminate order

- (1) If the Principal Reporter is satisfied that the conditions for the making of a child protection order in respect of a child are no longer satisfied, the Principal Reporter may terminate the order by giving notice to—
 - (a) the person specified in the order under section 37(2)(a), or
 - (b) where there is no such person specified, the applicant for the order.
- (2) If the Principal Reporter is satisfied that the conditions for including a relevant direction in a child protection order in respect of a child are no longer satisfied, the Principal Reporter may vary the child protection order so as to terminate the direction by giving notice to—
 - (a) the person specified in the order under section 37(2)(a), or
 - (b) where there is no such person specified, the applicant for the order.
- (3) A relevant direction is—
 - (a) an information non-disclosure direction,
 - (b) a contact direction,

- (c) a parental responsibilities and rights direction.
- (4) The Principal Reporter may not terminate or vary the order if—
 - (a) a children's hearing arranged under section 45 or 46 has commenced, or
 - (b) proceedings before the sheriff in relation to an application under section 48 have commenced.
- (5) Where the Principal Reporter terminates or varies a child protection order under subsection (1), the Principal Reporter must notify the sheriff who granted the order.

54 Termination of order after maximum of 8 working days

A child protection order in respect of a child ceases to have effect on the earliest of—

- (a) the beginning of a children's hearing arranged under section 69 in relation to the child,
- (b) the person specified in the order under section 37(2)(a) or, where there is no such person specified, the applicant for the order receiving notice under section 68(3) that the question of whether a compulsory supervision order should be made in respect of the child will not be referred to a children's hearing,
- (c) where the order contains an authorisation of the type mentioned in section 37(2)(b), the end of the period of 8 working days beginning on the day the child was removed to a place of safety, or
- (d) where the order does not contain such an authorisation, the end of the period of 8 working days beginning on the day the order was made.

Other emergency measures

55 Application to justice of the peace

- (1) A person may apply to a justice of the peace for an order in respect of a child—
 - (a) requiring any person in a position to do so to produce the child to a specified person,
 - (b) authorising the removal of the child by the specified person to a place of safety and the keeping of the child in that place,
 - (c) authorising the prevention of the removal of the child from any place where the child is staying.
- (2) A justice of the peace may make an order under this section if—
 - (a) the justice of the peace is satisfied of—
 - (i) in a case where the applicant for the order is a local authority, the matters mentioned in section 38(2)(a) to (d), or
 - (ii) in a case where the applicant for the order is a local authority or any other person, the matters mentioned in section 39(2)(a) and (b), and
 - (b) the justice of the peace is satisfied that it is not practicable in the circumstances for an application for a child protection order to be made to or considered by the sheriff.
- (3) As soon as practicable after the making of the order, the applicant must inform—

- (a) the Principal Reporter,
 - (b) the person specified in the order under subsection (1)(a) (unless the person is the applicant).
- (4) The order ceases to have effect at the end of the period of 12 hours beginning with the making of the order if—
- (a) where the order authorises the removal of the child to a place of safety, the child has not been taken, or is not being taken, to that place within that period,
 - (b) where the order authorises the prevention of the removal of the child from a place where the child is staying, arrangements have not been made within that period to prevent that removal.
- (5) Otherwise, the order ceases to have effect on the earlier of—
- (a) the end of the period of 24 hours beginning with the making of the order, or
 - (b) the determination by the sheriff of an application to the sheriff for a child protection order in respect of the child.
- (6) The Principal Reporter may, by giving notice to the applicant, terminate the order if—
- (a) the Principal Reporter is satisfied that the conditions for the making of an order under this section are no longer satisfied, or
 - (b) the Principal Reporter is satisfied that it is no longer in the best interests of the child for the order to continue to have effect.
- (7) In subsection (1), “specified” means specified in the order.

56 Constable’s power to remove child to place of safety

- (1) A constable may remove a child to a place of safety and keep the child there if—
- (a) the constable is satisfied—
 - (i) of the matters mentioned in section 39(2)(a), and
 - (ii) that the removal of the child is necessary to protect the child from the harm mentioned there or from further harm, and
 - (b) it is not practicable in the circumstances for an application for a child protection order to be made to or considered by the sheriff.
- (2) As soon as practicable after a constable removes a child under this section, the constable must inform the Principal Reporter.
- (3) The child may not be kept in a place of safety under this section for a period of more than 24 hours.
- (4) The child may not be kept in a place of safety under this section if—
- (a) a child protection order is in force in respect of the child, or
 - (b) an application has been made to the sheriff for a child protection order or to a justice of the peace for an order under section 55 on the basis of the facts before the constable and that application has been refused.
- (5) The Principal Reporter may, by giving notice to the constable, require the constable to release the child if—

- (a) the Principal Reporter is satisfied that the conditions for placing the child in a place of safety under this section are no longer satisfied, or
- (b) the Principal Reporter is satisfied that it is no longer in the best interests of the child to be kept in a place of safety.

57 Sections 55 and 56: regulations

- (1) The Scottish Ministers may by regulations make further provision in respect of a child removed to or kept in a place of safety—
 - (a) under an order under section 55,
 - (b) under section 56.
- (2) In particular, the regulations may require notice to be given to a person specified in the regulations of—
 - (a) the removal of the child to the place of safety,
 - (b) the location of the place of safety,
 - (c) an order under section 55 ceasing to have effect by virtue of subsection (4) or (5) of that section.

Implementation of orders: welfare of child

58 Implementation of orders: welfare of child

- (1) An applicant for (and any other person specified in) an order mentioned in subsection (2) may only take such steps to implement the order as the applicant (or other person) reasonably believes are necessary to safeguard or promote the welfare of the child.
- (2) The orders are—
 - (a) a child assessment order,
 - (b) a child protection order,
 - (c) an order under section 55.

Offences

59 Offences

- (1) A person who intentionally obstructs—
 - (a) a person acting under a child assessment order,
 - (b) a person acting under a child protection order,
 - (c) a person acting under an order under section 55, or
 - (d) a constable acting under section 56(1),commits an offence.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

PART 6

INVESTIGATION AND REFERRAL TO CHILDREN'S HEARING

Provision of information to Principal Reporter

60 Local authority's duty to provide information to Principal Reporter

- (1) If a local authority considers that it is likely that subsection (2) applies in relation to a child in its area, it must make all necessary inquiries into the child's circumstances.
- (2) This subsection applies where the local authority considers—
 - (a) that the child is in need of protection, guidance, treatment or control, and
 - (b) that it might be necessary for a compulsory supervision order to be made in relation to the child.
- (3) Where subsection (2) applies in relation to a child the local authority must give any information that it has about the child to the Principal Reporter.

61 Constable's duty to provide information to Principal Reporter

- (1) This section applies where a constable considers—
 - (a) that a child is in need of protection, guidance, treatment or control, and
 - (b) that it might be necessary for a compulsory supervision order to be made in relation to the child.
- (2) The constable must give the Principal Reporter all relevant information which the constable has been able to discover in relation to the child.
- (3) If the constable makes a report under section 17(1)(b) of the Police (Scotland) Act 1967 (c.77) in relation to the child, the constable must also make the report to the Principal Reporter.

62 Provision of information by court

- (1) This section applies where, in the course of relevant proceedings, a court considers that a section 67 ground (other than the ground mentioned in section 67(2)(j)) might apply in relation to a child.
- (2) The court may refer the matter to the Principal Reporter.
- (3) If the court refers the matter under subsection (2) it must give the Principal Reporter a section 62 statement.
- (4) A section 62 statement is a statement—
 - (a) specifying which of the section 67 grounds the court considers might apply in relation to the child,
 - (b) setting out the reasons why the court considers that the ground might apply, and
 - (c) setting out any other information about the child which appears to the court to be relevant.
- (5) In this section “relevant proceedings” means—
 - (a) an action for divorce,
 - (b) an action for separation,

- (c) an action for declarator of marriage,
- (d) an action for declarator of nullity of marriage,
- (e) an action for dissolution of a civil partnership,
- (f) an action for separation of civil partners,
- (g) an action for declarator of nullity of a civil partnership,
- (h) an action for declarator of parentage,
- (i) an action for declarator of non-parentage,
- (j) proceedings relating to parental responsibilities or parental rights,
- (k) an application for an adoption order (as defined in section 28(1) of the Adoption and Children (Scotland) Act 2007 (asp 4)),
- (l) an application for the making, variation or revocation of a permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007) in respect of a child who is not subject to a compulsory supervision order, or
- (m) proceedings relating to an offence under any of the following sections of the Education (Scotland) Act 1980 (c.44)—
 - (i) section 35 (failure by parent to secure regular attendance by child at a public school),
 - (ii) section 41 (failure to comply with attendance order),
 - (iii) section 42(3) (failure to permit examination of child).

63 Provision of evidence from certain criminal cases

- (1) The Lord Advocate may direct that in any specified case or class of case evidence lawfully obtained in the investigation of a crime or suspected crime must be given to the Principal Reporter.
- (2) The evidence must in that case, or in a case of that class, be given to the Principal Reporter even if the Principal Reporter has not made a request under section 172.

64 Provision of information by other persons

- (1) This section applies where a person considers—
 - (a) that a child is in need of protection, guidance, treatment or control, and
 - (b) that it might be necessary for a compulsory supervision order to be made in relation to the child.
- (2) The person may give the Principal Reporter all relevant information which the person has in relation to the child.

65 Provision of information by constable: child in place of safety

- (1) Subsection (2) applies where a constable informs the Principal Reporter under subsection (5) of section 43 of the Criminal Procedure (Scotland) Act 1995 (c.46) that—
 - (a) a child is being kept in a place of safety under subsection (4) of that section, and
 - (b) it has been decided not to proceed with the charge against the child.

- (2) The Principal Reporter may direct—
- (a) that the child be released from the place of safety, or
 - (b) that the child continue to be kept in the place of safety until the Principal Reporter makes a determination under section 66(2).

Investigation and determination by Principal Reporter

66 Investigation and determination by Principal Reporter

- (1) This section applies where—
- (a) the Principal Reporter receives in relation to a child—
 - (i) notice under section 43 of the making of a child protection order,
 - (ii) information from a local authority under section 60,
 - (iii) information or a report from a constable under section 61,
 - (iv) a section 62 statement,
 - (v) evidence under section 63,
 - (vi) information from a person under section 64,
 - (vii) information from a constable under section 43(5) of the Criminal Procedure (Scotland) Act 1995 (c.46), or
 - (b) it appears to the Principal Reporter that a child might be in need of protection, guidance, treatment or control.
- (2) The Principal Reporter must determine—
- (a) whether the Principal Reporter considers that a section 67 ground applies in relation to the child, and
 - (b) if so, whether the Principal Reporter considers that it is necessary for a compulsory supervision order to be made in respect of the child.
- (3) The Principal Reporter may make any further investigations relating to the child that the Principal Reporter considers necessary.
- (4) The Principal Reporter may require a local authority to give the Principal Reporter a report on—
- (a) the child generally,
 - (b) any particular matter relating to the child specified by the Principal Reporter.
- (5) A local authority may include in a report given to the Principal Reporter under subsection (4) information given to the local authority by another person.
- (6) The report may contain information in addition to any information given to the Principal Reporter under section 60.

67 Meaning of “section 67 ground”

- (1) In this Act “section 67 ground”, in relation to a child, means any of the grounds mentioned in subsection (2).
- (2) The grounds are that—

- (a) the child is likely to suffer unnecessarily, or the health or development of the child is likely to be seriously impaired, due to a lack of parental care,
 - (b) a schedule 1 offence has been committed in respect of the child,
 - (c) the child has, or is likely to have, a close connection with a person who has committed a schedule 1 offence,
 - (d) the child is, or is likely to become, a member of the same household as a child in respect of whom a schedule 1 offence has been committed,
 - (e) the child is being, or is likely to be, exposed to persons whose conduct is (or has been) such that it is likely that—
 - (i) the child will be abused or harmed, or
 - (ii) the child's health, safety or development will be seriously adversely affected,
 - (f) the child has, or is likely to have, a close connection with a person who has carried out domestic abuse,
 - (g) the child has, or is likely to have, a close connection with a person who has committed an offence under Part 1, 4 or 5 of the Sexual Offences (Scotland) Act 2009 (asp 9),
 - (h) the child is being provided with accommodation by a local authority under section 25 of the 1995 Act and special measures are needed to support the child,
 - (i) a permanence order is in force in respect of the child and special measures are needed to support the child,
 - (j) the child has committed an offence,
 - (k) the child has misused alcohol,
 - (l) the child has misused a drug (whether or not a controlled drug),
 - (m) the child's conduct has had, or is likely to have, a serious adverse effect on the health, safety or development of the child or another person,
 - (n) the child is beyond the control of a relevant person,
 - (o) the child has failed without reasonable excuse to attend regularly at school,
 - (p) the child—
 - (i) is being, or is likely to be, subjected to physical, emotional or other pressure to enter into a marriage or civil partnership, or
 - (ii) is, or is likely to become, a member of the same household as such a child.
- (3) For the purposes of paragraphs (c), (f) and (g) of subsection (2), a child is to be taken to have a close connection with a person if—
- (a) the child is a member of the same household as the person, or
 - (b) the child is not a member of the same household as the person but the child has significant contact with the person.
- (4) The Scottish Ministers may by order—
- (a) amend subsection (2) by—
 - (i) adding a ground,

- (ii) removing a ground for the time being mentioned in it, or
- (iii) amending a ground for the time being mentioned in it, and
- (b) make such other amendments of this section as appear to the Scottish Ministers to be necessary or expedient in consequence of provision made under paragraph (a).
- (5) An order under subsection (4) is subject to the affirmative procedure.
- (6) In this section—
 - “controlled drug” means a controlled drug as defined in section 2(1)(a) of the Misuse of Drugs Act 1971 (c.38),
 - “permanence order” has the meaning given by section 80(2) of the Adoption and Children (Scotland) Act 2007 (asp 4),
 - “schedule 1 offence” means an offence mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (c.46) (offences against children under 17 years of age to which special provisions apply).

68 Determination under section 66: no referral to children's hearing

- (1) This section applies where, having made a determination under section 66(2) in relation to a child, the Principal Reporter considers that—
 - (a) none of the section 67 grounds applies in relation to the child, or
 - (b) it is not necessary for a compulsory supervision order to be made in respect of the child.
- (2) If the child is being kept in a place of safety under section 65(2)(b) the Principal Reporter must direct that the child be released from the place of safety.
- (3) The Principal Reporter—
 - (a) must inform the persons mentioned in subsection (4) of the determination and the fact that the question of whether a compulsory supervision order should be made in respect of the child will not be referred to a children's hearing, and
 - (b) may, if the Principal Reporter considers it appropriate, inform any other person of the determination and that fact.
- (4) Those persons are—
 - (a) the child,
 - (b) each relevant person in relation to the child,
 - (c) the relevant local authority for the child,
 - (d) any person specified in a child protection order in force in relation to the child under section 37(2)(a),
 - (e) any person who has given the Principal Reporter—
 - (i) notice under section 43 of a child protection order,
 - (ii) information under section 60, 61, 64 or 66,
 - (iii) a report under section 61 or 66,
 - (iv) a section 62 statement,
 - (v) evidence under section 63, or

(vi) information under section 43(5) of the Criminal Procedure (Scotland) Act 1995 (c.46).

- (5) The Principal Reporter may refer the child to—
- (a) the relevant local authority for the child with a view to the authority providing (or making arrangements for the provision by another person or body of) advice, guidance and assistance to the child and the child's family in accordance with Chapter 1 of Part 2 of the 1995 Act (support for children and their families),
 - (b) such other person or body as may be specified by the Scottish Ministers by order for the purposes of this subsection, with a view to that person or body providing advice, guidance and assistance to the child and the child's family.
- (6) After complying with the requirements imposed by subsection (3)(a), the Principal Reporter must not refer the question of whether a compulsory supervision order should be made in respect of the child to a children's hearing unless the Principal Reporter receives new information about the child.

69 Determination under section 66: referral to children's hearing

- (1) This section applies where, having made a determination under section 66(2) in relation to a child, the Principal Reporter considers that it is necessary for a compulsory supervision order to be made in respect of the child.
- (2) The Principal Reporter must arrange a children's hearing for the purpose of deciding whether a compulsory supervision order should be made in respect of the child.
- (3) If the child is being kept in a place of safety under subsection (4) of section 43 of the Criminal Procedure (Scotland) Act 1995 (c.46) at the time the determination is made, the children's hearing must be arranged to take place no later than the third day after the Principal Reporter receives the information under subsection (5) of that section.
- (4) If the Principal Reporter has required a local authority to give the Principal Reporter a report under section 66(4), the Principal Reporter may request additional information from the local authority.
- (5) If the Principal Reporter has not required a local authority to give the Principal Reporter a report under section 66(4), the Principal Reporter must require a local authority to give the Principal Reporter a report under that section.

70 Requirement under Antisocial Behaviour etc. (Scotland) Act 2004

- (1) This section applies where—
 - (a) under section 12(1A) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) the sheriff requires the Principal Reporter to arrange a children's hearing in respect of a child, and
 - (b) a compulsory supervision order is not in force in relation to the child.
- (2) This Act applies as if—
 - (a) the requirement of the sheriff were a determination of the sheriff under section 108 that the section 67 ground specified in the statement given to the Principal Reporter under section 12 of the Antisocial Behaviour etc. (Scotland) Act 2004 was established in relation to the child, and

- (b) the sheriff had directed the Principal Reporter under section 108(2) to arrange a children's hearing.

71 Case remitted under section 49 of Criminal Procedure (Scotland) Act 1995

- (1) This section applies where under section 49 of the Criminal Procedure (Scotland) Act 1995 (c.46)—
 - (a) a court remits a case to the Principal Reporter to arrange for the disposal of the case by a children's hearing, and
 - (b) a compulsory supervision order is not in force in relation to the child or person whose case is remitted.
- (2) A certificate signed by the clerk of the court stating that the child or person whose case is remitted has pled guilty to, or been found guilty of, the offence to which the case relates is conclusive evidence for the purposes of the children's hearing that the offence was committed by the child or person.
- (3) This Act applies as if—
 - (a) the plea of guilty, or the finding of guilt, were a determination of the sheriff under section 108 that the ground in section 67(2)(j) was established in relation to the child, and
 - (b) the sheriff had directed the Principal Reporter under section 108(2) to arrange a children's hearing.

72 Child in place of safety: Principal Reporter's powers

- (1) Subsection (2) applies where—
 - (a) the Principal Reporter is required by section 69(2) to arrange a children's hearing in relation to a child, and
 - (b) the child is being kept in a place of safety under section 65(2)(b).
- (2) The Principal Reporter may direct—
 - (a) that the child be released from the place of safety, or
 - (b) that the child continue to be kept in the place of safety until the children's hearing.

PART 7

ATTENDANCE AT CHILDREN'S HEARING

73 Child's duty to attend children's hearing

- (1) This section applies where by virtue of this Act a children's hearing is, or is to be, arranged in relation to a child.
- (2) The child must attend the children's hearing unless the child is excused under subsection (3) or rules under section 177.
- (3) A children's hearing may excuse the child from attending all or part of the children's hearing if the children's hearing is satisfied that—

- (a) the hearing relates to the ground mentioned in section 67(2)(b), (c), (d) or (g) and the attendance of the child at the hearing, or that part of the hearing, is not necessary for a fair hearing,
 - (b) the attendance of the child at the hearing, or that part of the hearing, would place the child's physical, mental or moral welfare at risk, or
 - (c) taking account of the child's age and maturity, the child would not be capable of understanding what happens at the hearing or that part of the hearing.
- (4) Where the children's hearing is a grounds hearing, the children's hearing may excuse the child from attending during an explanation given in compliance with section 90(1) only if it is satisfied that, taking account of the child's age and maturity, the child would not be capable of understanding the explanation.

74 Relevant person's duty to attend children's hearing

- (1) This section applies where by virtue of this Act a children's hearing is, or is to be, arranged in relation to a child.
- (2) Each relevant person in relation to the child who is notified of the children's hearing by virtue of rules under section 177 must attend the children's hearing unless the relevant person is—
 - (a) excused under subsection (3) or rules under section 177, or
 - (b) excluded from the children's hearing under section 76(2).
- (3) A children's hearing may excuse a relevant person from attending all or part of the children's hearing if the children's hearing is satisfied that—
 - (a) it would be unreasonable to require the relevant person's attendance at the hearing or that part of the hearing, or
 - (b) the attendance of the relevant person at the hearing, or that part of the hearing, is unnecessary for the proper consideration of the matter before the hearing.
- (4) A relevant person who is required to attend a children's hearing under subsection (2) and fails to do so commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

75 Power to proceed in absence of relevant person

- (1) This section applies where a relevant person in relation to a child is required by section 74(2) to attend a children's hearing and fails to do so.
- (2) The children's hearing may, if it considers it appropriate to do so, proceed with the children's hearing in the relevant person's absence.

76 Power to exclude relevant person from children's hearing

- (1) This section applies where a children's hearing is satisfied that the presence at the hearing of a relevant person in relation to the child—
 - (a) is preventing the hearing from obtaining the views of the child, or
 - (b) is causing, or is likely to cause, significant distress to the child.
- (2) The children's hearing may exclude the relevant person from the children's hearing for as long as is necessary.

- (3) After the exclusion has ended, the chairing member of the children's hearing must explain to the relevant person what has taken place in the relevant person's absence.

77 Power to exclude relevant person's representative from children's hearing

- (1) This section applies where a children's hearing is satisfied that the presence at the hearing of a representative of a relevant person in relation to the child—
- (a) is preventing the hearing from obtaining the views of the child, or
 - (b) is causing, or is likely to cause, significant distress to the child.
- (2) The children's hearing may exclude the representative from the children's hearing for as long as is necessary.
- (3) After the exclusion has ended, the chairing member of the children's hearing must explain to the representative what has taken place in the representative's absence.

78 Rights of certain persons to attend children's hearing

- (1) The following persons have a right to attend a children's hearing—
- (a) the child (whether or not the child has been excused from attending),
 - (b) a person representing the child,
 - (c) a relevant person in relation to the child (unless that person is excluded under section 76(2)),
 - (d) a person representing a relevant person in relation to the child (unless that person is excluded under section 77(2)),
 - (e) the Principal Reporter,
 - (f) if a safeguarder is appointed under this Act in relation to the child, the safeguarder,
 - (g) a member of the Administrative Justice and Tribunals Council or the Scottish Committee of that Council (acting in that person's capacity as such),
 - (h) a member of an area support team (acting in that person's capacity as such),
 - (i) subject to subsection (5), a representative of a newspaper or news agency.
- (2) No other person may attend a children's hearing unless—
- (a) the person's attendance at the hearing is considered by the chairing member of the children's hearing to be necessary for the proper consideration of the matter before the children's hearing,
 - (b) the person is otherwise granted permission to attend by the chairing member of the children's hearing, or
 - (c) the person is authorised or required to attend by virtue of rules under section 177.
- (3) The chairing member may not grant permission to a person under subsection (2)(b) if the child or a relevant person in relation to the child objects to the person attending the children's hearing.
- (4) The chairing member must take all reasonable steps to ensure that the number of persons present at a children's hearing at the same time is kept to a minimum.

- (5) The children's hearing may exclude a representative of a newspaper or news agency from any part of the hearing where it is satisfied that—
 - (a) it is necessary to do so to obtain the views of the child, or
 - (b) the presence of that person is causing, or is likely to cause, significant distress to the child.
- (6) Where a person is excluded under subsection (5), after the exclusion has ended, the chairing member may explain to the person, where appropriate to do so, the substance of what has taken place in the person's absence.

PART 8

PRE-HEARING PANEL

79 Referral of certain matters for pre-hearing determination

- (1) This section applies where a children's hearing is to be held in relation to a child by virtue of section 69(2) or Part 9 to 11 or 13.
- (2) The Principal Reporter—
 - (a) must refer the matter of whether a particular individual should be deemed to be a relevant person in relation to the child for determination by three members of the Children's Panel selected by the National Convener (a "pre-hearing panel") if requested to do so by—
 - (i) the individual in question,
 - (ii) the child, or
 - (iii) a relevant person in relation to the child,
 - (b) may refer that matter for determination by a pre-hearing panel on the Principal Reporter's own initiative,
 - (c) may refer a matter of a type mentioned in subsection (3) for determination by a pre-hearing panel—
 - (i) on the Principal Reporter's own initiative, or
 - (ii) following a request to the Principal Reporter from the child, a relevant person in relation to the child, or if a safeguarder has been appointed for the child, the safeguarder.
- (3) Those matters are—
 - (a) whether the child should be excused from attending the children's hearing,
 - (b) whether a relevant person in relation to the child should be excused from attending the children's hearing,
 - (c) whether it is likely that the children's hearing will consider making a compulsory supervision order including a secure accommodation authorisation in relation to the child,
 - (d) a matter specified in rules under section 177(2)(a).
- (4) For the purposes of subsection (3)(a), the pre-hearing panel may excuse the child from attending the children's hearing only if—

- (a) the pre-hearing panel is satisfied that any of paragraphs (a) to (c) of section 73(3) applies, or
 - (b) the child may be excused under rules under section 177.
- (5) For the purposes of subsection (3)(b), the pre-hearing panel may excuse a relevant person in relation to the child from attending the children's hearing only if—
- (a) the pre-hearing panel is satisfied that section 74(3)(a) or (b) applies, or
 - (b) the relevant person may be excused under rules under section 177.
- (6) A member of the Children's Panel selected for a pre-hearing panel may (but need not) be a member of the children's hearing.

80 Determination of matter referred under section 79

- (1) This section applies where the Principal Reporter refers a matter to a pre-hearing panel under section 79(2).
- (2) The Principal Reporter must arrange a meeting of the pre-hearing panel for a date before the date fixed for the children's hearing.
- (3) If it is not practicable for the Principal Reporter to comply with subsection (2), the children's hearing must determine the matter referred at the beginning of the children's hearing.

81 Determination of claim that person be deemed a relevant person

- (1) This section applies where a matter mentioned in section 79(2)(a) (a "relevant person claim") is referred to a meeting of a pre-hearing panel.
- (2) Where the relevant person claim is referred along with any other matter, the pre-hearing panel must determine the relevant person claim before determining the other matter.
- (3) The pre-hearing panel must deem the individual to be a relevant person if it considers that the individual has (or has recently had) a significant involvement in the upbringing of the child.
- (4) Where the pre-hearing panel deems the individual to be a relevant person, the individual is to be treated as a relevant person for the purposes of Parts 7 to 15, 17 and 18 in so far as they relate to—
 - (a) the children's hearing,
 - (b) any subsequent children's hearing under Part 11,
 - (c) any pre-hearing panel held in connection with a children's hearing mentioned in paragraph (a), (b) or (e),
 - (d) any compulsory supervision order, interim compulsory supervision order, medical examination order, or warrant to secure attendance made by—
 - (i) a hearing mentioned in paragraph (a) or (b),
 - (ii) the sheriff in any court proceedings falling within paragraph (f),
 - (e) any children's hearing held for the purposes of reviewing a compulsory supervision order falling within paragraph (d),
 - (f) any court proceedings held in connection with a hearing mentioned in paragraph (a), (b) or (e),

- (g) any court proceedings held in connection with an order or warrant falling within paragraph (d),
 - (h) the implementation of an order or warrant falling within paragraph (d).
- (5) The Scottish Ministers may by order—
- (a) amend subsection (3),
 - (b) in consequence of provision made under paragraph (a), make such other amendments as appear to the Scottish Ministers to be necessary or expedient to—
 - (i) section 43,
 - (ii) section 48,
 - (iii) section 51,
 - (iv) this section,
 - (v) section 142.
- (6) An order under subsection (5) is subject to the affirmative procedure.
- (7) Where, by virtue of section 80(3), the children's hearing is to determine the relevant person claim, references in subsections (2) to (4) (other than paragraph (c) of subsection (4)) to the pre-hearing panel are to be read as references to the children's hearing.

82 Appointment of safeguarder

- (1) A pre-hearing panel may appoint a safeguarder for the child to whom the children's hearing relates.
- (2) A pre-hearing panel must record an appointment made under subsection (1).
- (3) If a pre-hearing panel appoints a safeguarder, it must give reasons for the decision.
- (4) Subsection (1) does not apply where a safeguarder has already been appointed.
- (5) A safeguarder appointed under this section is to be treated for the purposes of this Act (other than this section) as being appointed by a children's hearing by virtue of section 30.

PART 9

CHILDREN'S HEARING

Key definitions

83 Meaning of "compulsory supervision order"

- (1) In this Act, "compulsory supervision order", in relation to a child, means an order—
 - (a) including any of the measures mentioned in subsection (2),
 - (b) specifying a local authority which is to be responsible for giving effect to the measures included in the order (the "implementation authority"), and
 - (c) having effect for the relevant period.
- (2) The measures are—
 - (a) a requirement that the child reside at a specified place,

- (b) a direction authorising the person who is in charge of a place specified under paragraph (a) to restrict the child's liberty to the extent that the person considers appropriate having regard to the measures included in the order,
 - (c) a prohibition on the disclosure (whether directly or indirectly) of a place specified under paragraph (a),
 - (d) a movement restriction condition,
 - (e) a secure accommodation authorisation,
 - (f) subject to section 186, a requirement that the implementation authority arrange—
 - (i) a specified medical or other examination of the child, or
 - (ii) specified medical or other treatment for the child,
 - (g) a direction regulating contact between the child and a specified person or class of person,
 - (h) a requirement that the child comply with any other specified condition,
 - (i) a requirement that the implementation authority carry out specified duties in relation to the child.
- (3) A children's hearing and the sheriff must, when making a compulsory supervision order in relation to a child, consider whether to include in the order a measure of the type mentioned in subsection (2)(g).
- (4) A compulsory supervision order may include a movement restriction condition only if—
- (a) one or more of the conditions mentioned in subsection (6) applies, and
 - (b) the children's hearing or, as the case may be, the sheriff is satisfied that it is necessary to include a movement restriction condition in the order.
- (5) A compulsory supervision order may include a secure accommodation authorisation only if—
- (a) the order contains a requirement of the type mentioned in subsection (2)(a) which requires the child to reside at—
 - (i) a residential establishment which contains both secure accommodation and accommodation which is not secure accommodation, or
 - (ii) two or more residential establishments, one of which contains accommodation which is not secure accommodation,
 - (b) one or more of the conditions mentioned in subsection (6) applies, and
 - (c) having considered the other options available (including a movement restriction condition) the children's hearing or, as the case may be, the sheriff is satisfied that it is necessary to include a secure accommodation authorisation in the order.
- (6) The conditions are—
- (a) that the child has previously absconded and is likely to abscond again and, if the child were to abscond, it is likely that the child's physical, mental or moral welfare would be at risk,
 - (b) that the child is likely to engage in self-harming conduct,
 - (c) that the child is likely to cause injury to another person.

- (7) In subsection (1), “relevant period” means the period beginning with the making of the order and ending with—
- (a) where the order has not been continued, whichever of the following first occurs—
 - (i) the day one year after the day on which the order is made,
 - (ii) the day on which the child attains the age of 18 years,
 - (b) where the order has been continued, whichever of the following first occurs—
 - (i) the end of the period for which the order was last continued,
 - (ii) the day on which the child attains the age of 18 years.
- (8) In subsection (2)—
- “medical” includes psychological,
 - “specified” means specified in the order.

84 Meaning of “movement restriction condition”

In this Act, “movement restriction condition”, in relation to a child, means—

- (a) a restriction on the child’s movements in a way specified in the movement restriction condition, and
- (b) a requirement that the child comply with arrangements specified in the movement restriction condition for monitoring compliance with the restriction.

85 Meaning of “secure accommodation authorisation”

In this Act, “secure accommodation authorisation”, in relation to a child, means an authorisation enabling the child to be placed and kept in secure accommodation within a residential establishment.

86 Meaning of “interim compulsory supervision order”

- (1) In this Act “interim compulsory supervision order”, in relation to a child, means an order—
- (a) including any of the measures mentioned in section 83(2),
 - (b) specifying a local authority which is to be responsible for giving effect to the measures included in the order (“the implementation authority”), and
 - (c) having effect for the relevant period.
- (2) An interim compulsory supervision order may, instead of specifying a place or places at which the child is to reside under section 83(2)(a), specify that the child is to reside at any place of safety away from the place where the child predominantly resides.
- (3) In subsection (1), “relevant period” means the period beginning with the making of the order and ending with whichever of the following first occurs—
- (a) the next children’s hearing arranged in relation to the child,
 - (b) the disposal by the sheriff of an application made by virtue of section 93(2)(a) or 94(2)(a) in relation to the child,
 - (c) a day specified in the order,

- (d) where the order has not been extended under section 98 or 99, the expiry of the period of 22 days beginning on the day on which the order is made,
 - (e) where the order has been extended (or extended and varied) under section 98 or 99, the expiry of the period of 22 days beginning on the day on which the order is extended.
- (4) Subsections (3) to (6) (except subsection (5)(a)) of section 83 apply to an interim compulsory supervision order as they apply to a compulsory supervision order.

87 Meaning of “medical examination order”

- (1) In this Act “medical examination order”, in relation to a child, means an order authorising for the relevant period any of the measures mentioned in subsection (2).
- (2) The measures are—
- (a) a requirement that the child attend or reside at a specified clinic, hospital or other establishment,
 - (b) subject to section 186, a requirement that a specified local authority arrange a specified medical examination of the child,
 - (c) a prohibition on the disclosure (whether directly or indirectly) of a place specified under paragraph (a),
 - (d) a secure accommodation authorisation,
 - (e) a direction regulating contact between the child and a specified person or class of person,
 - (f) any other specified condition appearing to the children’s hearing to be appropriate for the purposes of ensuring that the child complies with the order.
- (3) A medical examination order may include a secure accommodation authorisation only if—
- (a) the order authorises the keeping of the child in a residential establishment,
 - (b) one of the conditions mentioned in subsection (4) applies, and
 - (c) having considered the other options available the children’s hearing is satisfied that it is necessary to do so.
- (4) The conditions are—
- (a) that the child has previously absconded and is likely to abscond again and, if the child were to abscond, it is likely that the child’s physical, mental or moral welfare would be at risk,
 - (b) that the child is likely to engage in self-harming conduct,
 - (c) that the child is likely to cause injury to another person.
- (5) In this section—
- “medical” includes psychological,
- “relevant period”, in relation to a medical examination order, means the period beginning with the making of the order and ending with whichever of the following first occurs—
- (a) the beginning of the next children’s hearing arranged in relation to the child,

- (b) a day specified in the order,
 - (c) the expiry of the period of 22 days beginning on the day on which the order is made,
- “specified” means specified in the order.

88 Meaning of “warrant to secure attendance”

- (1) In this Act, “warrant to secure attendance”, in relation to a child, means a warrant effective for the relevant period—
 - (a) authorising an officer of law—
 - (i) to search for and apprehend the child,
 - (ii) to take the child to, and detain the child in, a place of safety,
 - (iii) to bring the child before the relevant proceedings, and
 - (iv) so far as is necessary for the execution of the warrant, to break open shut and lockfast places,
 - (b) prohibiting disclosure (whether directly or indirectly) to any person specified in the warrant of the place of safety.
- (2) A warrant to secure attendance may include a secure accommodation authorisation but only if—
 - (a) the warrant authorises the keeping of the child in a residential establishment,
 - (b) one or more of the conditions mentioned in subsection (3) applies, and
 - (c) having considered the other options available the children’s hearing or sheriff is satisfied that it is necessary to do so.
- (3) The conditions are—
 - (a) that the child has previously absconded and is likely to abscond again and, if the child were to abscond, it is likely that the child’s physical, mental or moral welfare would be at risk,
 - (b) that the child is likely to engage in self-harming conduct,
 - (c) that the child is likely to cause injury to another person.
- (4) In this section—

“relevant period”, in relation to a warrant to secure attendance, means—

 - (a) where the warrant is granted by a children’s hearing, the period beginning with the granting of the warrant and ending with the earlier of—
 - (i) the beginning of the relevant proceedings, or
 - (ii) the expiry of the period of 7 days beginning with the day on which the child is first detained in pursuance of the warrant,
 - (b) where the warrant is granted by the sheriff under section 103(7), the period beginning with the granting of the warrant and ending with the earlier of—
 - (i) the beginning of the continued hearing, or
 - (ii) the expiry of the period of 14 days beginning with the day on which the child is first detained in pursuance of the warrant,

- (c) where the warrant is granted by the sheriff under any other provision in respect of attendance at proceedings under Part 10, the period beginning with the granting of the warrant and ending with the earlier of—
 - (i) the beginning of the relevant proceedings, or
 - (ii) the expiry of the period of 14 days beginning with the day on which the child is first detained in pursuance of the warrant,
- (d) where the warrant is granted by the sheriff in respect of attendance at a children's hearing arranged by virtue of section 108, 115, 117(2)(b) or 156(3)(a), the period beginning with the granting of the warrant and ending with the earlier of—
 - (i) the beginning of the relevant proceedings, or
 - (ii) the expiry of the period of 7 days beginning with the day on which the child is first detained in pursuance of the warrant,

“relevant proceedings”, in relation to a warrant to secure attendance, means the children's hearing or, as the case may be, proceedings before the sheriff in respect of which it is granted.

Statement of grounds

89 Principal Reporter's duty to prepare statement of grounds

- (1) This section applies where the Principal Reporter is required by virtue of section 69(2) to arrange a children's hearing in relation to a child.
- (2) The Principal Reporter must prepare the statement of grounds.
- (3) In this Act “statement of grounds”, in relation to a child, means a statement setting out—
 - (a) which of the section 67 grounds the Principal Reporter believes applies in relation to the child, and
 - (b) the facts on which that belief is based.

Grounds hearing

90 Grounds to be put to child and relevant person

- (1) At the opening of a children's hearing arranged by virtue of section 69(2) or 95(2) (the “grounds hearing”) the chairing member must—
 - (a) explain to the child and each relevant person in relation to the child each section 67 ground that is specified in the statement of grounds, and
 - (b) ask them whether they accept that each ground applies in relation to the child.
- (2) This section is subject to section 94.

91 Grounds accepted: powers of grounds hearing

- (1) This section applies where—
 - (a) each ground specified in the statement of grounds is accepted, or

- (b) at least one of the grounds specified in the statement of grounds is accepted and the grounds hearing considers that it is appropriate to make a decision on whether to make a compulsory supervision order on the basis of the ground or grounds that have been accepted.
- (2) If the grounds hearing considers that it is appropriate to do so, the grounds hearing may defer making a decision on whether to make a compulsory supervision order until a subsequent children's hearing.
- (3) If the grounds hearing does not exercise the power conferred by subsection (2) the grounds hearing must—
 - (a) if satisfied that it is necessary to do so for the protection, guidance, treatment or control of the child, make a compulsory supervision order, or
 - (b) if not so satisfied, discharge the referral.
- (4) In subsection (1), “accepted” means accepted by the child and (subject to sections 74 and 75) each relevant person in relation to the child.

92 Powers of grounds hearing on deferral

- (1) This section applies where under section 91(2) the grounds hearing defers making a decision in relation to a child until a subsequent children's hearing.
- (2) If the grounds hearing considers that the nature of the child's circumstances is such that for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that an interim compulsory supervision order be made, the grounds hearing may make an interim compulsory supervision order in relation to the child.
- (3) If the grounds hearing considers that it is necessary to do so for the purpose of obtaining any further information, or carrying out any further investigation, that is needed before the subsequent children's hearing, the hearing may make a medical examination order.

93 Grounds not accepted: application to sheriff or discharge

- (1) This section applies where—
 - (a) at least one of the grounds specified in the statement of grounds is accepted but the grounds hearing does not consider that it is appropriate to make a decision on whether to make a compulsory supervision order on the basis of the ground or grounds that have been accepted, or
 - (b) none of the grounds specified in the statement of grounds is accepted.
- (2) The grounds hearing must—
 - (a) direct the Principal Reporter to make an application to the sheriff for a determination on whether each ground that is not accepted by the child and (subject to sections 74 and 75) each relevant person in relation to the child is established, or
 - (b) discharge the referral.
- (3) Subsections (4) and (5) apply if the grounds hearing gives a direction under subsection (2)(a).
- (4) The chairing member must—

- (a) explain the purpose of the application to the child and (subject to sections 74 and 75) each relevant person in relation to the child, and
 - (b) inform the child that the child is obliged to attend the hearing before the sheriff unless excused by the sheriff.
- (5) If the grounds hearing considers that the nature of the child's circumstances is such that for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that an interim compulsory supervision order be made, the grounds hearing may make an interim compulsory supervision order in relation to the child.
- (6) An interim compulsory supervision order made under subsection (5) may not include a measure of the kind mentioned in section 83(2)(f)(i).
- (7) In subsection (1), "accepted" means accepted by the child and (subject to sections 74 and 75) each relevant person in relation to the child.

94 Child or relevant person unable to understand grounds

- (1) Subsection (2) applies where the grounds hearing is satisfied that the child or a relevant person in relation to the child—
- (a) would not be capable of understanding an explanation given in compliance with section 90(1) in relation to a ground, or
 - (b) has not understood the explanation given in compliance with section 90(1) in relation to a ground.
- (2) The grounds hearing must—
- (a) direct the Principal Reporter to make an application to the sheriff to determine whether the ground is established, or
 - (b) discharge the referral in relation to the ground.
- (3) In the case mentioned in subsection (1)(a), the chairing member need not comply with section 90(1) in relation to that ground as respects the person who would not be capable of understanding an explanation of the ground.
- (4) If the grounds hearing gives a direction under subsection (2)(a), the chairing member must—
- (a) in so far as is reasonably practicable comply with the requirement in paragraph (a) of section 93(4), and
 - (b) comply with the requirement in paragraph (b) of that section.
- (5) If the grounds hearing gives a direction under subsection (2)(a), section 93(5) applies.

95 Child fails to attend grounds hearing

- (1) This section applies where—
- (a) a child fails to attend a grounds hearing arranged by virtue of section 69(2) or subsection (2), and
 - (b) the child was not excused from attending the grounds hearing.
- (2) The grounds hearing may require the Principal Reporter to arrange another grounds hearing.

Children's hearing to consider need for further interim order

96 Children's hearing to consider need for further interim compulsory supervision order

- (1) This section applies where—
 - (a) under section 93(5) a grounds hearing makes an interim compulsory supervision order in relation to a child, and
 - (b) the order will cease to have effect before the disposal of the application to the sheriff to which it relates.
- (2) The Principal Reporter may arrange a children's hearing for the purpose of considering whether a further interim compulsory supervision order should be made in relation to the child.
- (3) If the children's hearing is satisfied that the nature of the child's circumstances is such that for the protection, guidance, treatment or control of the child it is necessary that a further interim compulsory supervision order be made, the children's hearing may make a further interim compulsory supervision order in relation to the child.
- (4) The children's hearing may not make a further interim compulsory supervision order in relation to the child if the effect of the order would be that the child would be subject to an interim compulsory supervision order for a continuous period of more than 66 days.

Application of Part where compulsory supervision order in force

97 Application of Part where compulsory supervision order in force

- (1) This Part has effect in relation to a child mentioned in subsection (2) with the modifications set out in subsections (3) to (6).
- (2) The child is a child in relation to whom a compulsory supervision order is in force.
- (3) References to a decision on whether to make a compulsory supervision order are to be read as references to a decision on whether to review the compulsory supervision order.
- (4) Section 91 applies as if for subsections (2) and (3) there were substituted—

“(2) The grounds hearing is to be treated as if it were a hearing to review the compulsory supervision order (and sections 138, 139 and 142 apply accordingly).”
- (5) References to an interim compulsory supervision order are to be read as references to an interim variation of the compulsory supervision order.
- (6) Section 96(4) does not apply.

PART 10

PROCEEDINGS BEFORE SHERIFF

Application for extension or variation of interim compulsory supervision order

98 Application for extension or variation of interim compulsory supervision order

- (1) This section applies where—
 - (a) a child is subject to an interim compulsory supervision order (“the current order”), and

- (b) by virtue of section 96(4) a children's hearing would be unable to make a further interim compulsory supervision order.
- (2) The Principal Reporter may, before the expiry of the current order, apply to the sheriff for an extension of the order.
- (3) The Principal Reporter may, at the same time as applying for an extension of the current order, apply to the sheriff for the order to be varied.
- (4) The current order may be extended, or extended and varied, only if the sheriff is satisfied that the nature of the child's circumstances is such that for the protection, guidance, treatment or control of the child it is necessary that the current order be extended or extended and varied.

99 Further extension or variation of interim compulsory supervision order

- (1) This section applies where an interim compulsory supervision order is—
 - (a) extended, or extended and varied, under section 98(4), or
 - (b) further extended, or further extended and varied, under subsection (4).
- (2) The Principal Reporter may, before the expiry of the order, apply to the sheriff for a further extension of the order.
- (3) The Principal Reporter may, at the same time as applying for a further extension of the order, apply to the sheriff for the order to be varied.
- (4) The sheriff may further extend, or further extend and vary, the order if the sheriff is satisfied that the nature of the child's circumstances is such that for the protection, guidance, treatment or control of the child it is necessary that the order be further extended or, as the case may be, further extended and varied.

Power to make interim compulsory supervision order

100 Sheriff's power to make interim compulsory supervision order

- (1) This section applies where—
 - (a) a child is not subject to an interim compulsory supervision order, and
 - (b) an application to the sheriff by virtue of section 93(2)(a) or 94(2)(a) in relation to the child has been made but not determined.
- (2) If the sheriff is satisfied that the nature of the child's circumstances is such that for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that an interim compulsory supervision order be made, the sheriff may make an interim compulsory supervision order in relation to the child.

Application to establish grounds

101 Hearing of application

- (1) This section applies where an application is made to the sheriff by virtue of section 93(2)(a) or 94(2)(a).
- (2) The application must be heard not later than 28 days after the day on which the application is lodged.
- (3) The application must not be heard in open court.

102 Jurisdiction and standard of proof: offence ground

- (1) This section applies where an application is to be made to the sheriff to determine whether the ground mentioned in section 67(2)(j) is established in relation to a child.
- (2) The application must be made to the sheriff who would have jurisdiction if the child were being prosecuted for the offence or offences.
- (3) The standard of proof in relation to the ground is that which applies in criminal proceedings.
- (4) It is immaterial whether the application also relates to other section 67 grounds.

103 Child's duty to attend hearing unless excused

- (1) This section applies where an application is made to the sheriff by virtue of section 93(2)(a) or 94(2)(a).
- (2) The child to whom the application relates must attend the hearing of the application unless the child is excused from doing so under subsection (3).
- (3) The sheriff may excuse the child from attending all or part of the hearing of the application where—
 - (a) the hearing relates to the ground mentioned in section 67(2)(b), (c), (d) or (g) and the attendance of the child at the hearing, or that part of the hearing, is not necessary for a fair hearing,
 - (b) the attendance of the child at the hearing, or that part of the hearing, would place the child's physical, mental or moral welfare at risk, or
 - (c) taking account of the child's age and maturity, the child would not be capable of understanding what happens at the hearing or that part of the hearing.
- (4) The child may attend the hearing of the application even if the child is excused from doing so under subsection (3).
- (5) If the child is not excused from attending the hearing but the child does not attend the sheriff may grant a warrant to secure attendance in relation to the child.
- (6) Subsection (7) applies if—
 - (a) the hearing of the application is to be continued to another day, and
 - (b) the sheriff is satisfied that there is reason to believe that the child will not attend on that day.
- (7) The sheriff may grant a warrant to secure attendance in relation to the child.

104 Child and relevant person: representation at hearing

- (1) This section applies where an application is made to the sheriff by virtue of section 93(2)(a) or 94(2)(a).
- (2) The child may be represented at the hearing of the application by another person.
- (3) A relevant person in relation to the child may be represented at the hearing of the application by another person.
- (4) A person representing the child or relevant person at the hearing need not be a solicitor or advocate.

*Ground accepted before application determined***105 Application by virtue of section 93: ground accepted before determination**

- (1) This section applies where—
 - (a) an application is made to the sheriff by virtue of section 93(2)(a) in relation to a ground, and
 - (b) before the application is determined, the ground is accepted by the child and each relevant person in relation to the child who is present at the hearing before the sheriff.
- (2) Unless the sheriff is satisfied in all the circumstances that evidence in relation to the ground should be heard, the sheriff must—
 - (a) dispense with hearing such evidence, and
 - (b) determine that the ground is established.

106 Application by virtue of section 94: ground accepted by relevant person before determination

- (1) This section applies where—
 - (a) an application to the sheriff is made by virtue of section 94(2)(a) in relation to a ground on the basis that the child would not understand, or has not understood, an explanation given in compliance with section 90(1)(a), and
 - (b) before the application is determined the ground is accepted by each relevant person in relation to the child who is present at the hearing before the sheriff.
- (2) The sheriff may determine the application without a hearing unless—
 - (a) a person mentioned in subsection (3) requests that a hearing be held, or
 - (b) the sheriff considers that it would not be appropriate to determine the application without a hearing.
- (3) The persons are—
 - (a) the child,
 - (b) a relevant person in relation to the child,
 - (c) if a safeguarder has been appointed, the safeguarder,
 - (d) the Principal Reporter.
- (4) If the sheriff determines the application without a hearing, the sheriff must do so before the expiry of the period of 7 days beginning with the day on which the application is made.

*Withdrawal of application: termination of orders etc.***107 Withdrawal of application: termination of orders etc. by Principal Reporter**

- (1) This section applies where—
 - (a) an application is made to the sheriff by virtue of section 93(2)(a) or 94(2)(a), and

- (b) before the application is determined, due to a change of circumstances or information becoming available to the Principal Reporter, the Principal Reporter no longer considers that any ground to which the application relates applies in relation to the child.
- (2) The Principal Reporter must withdraw the application.
- (3) If one or more grounds were accepted at the grounds hearing which directed the Principal Reporter to make the application, the Principal Reporter must arrange a children's hearing to decide whether to make a compulsory supervision order in relation to the child.
- (4) If none of the grounds was accepted at the grounds hearing, any interim compulsory supervision order or warrant to secure attendance which is in force in relation to the child ceases to have effect on the withdrawal of the application.

Determination of application

108 Determination: ground established

- (1) This section applies where the sheriff determines an application made by virtue of section 93(2)(a) or 94(2)(a).
- (2) If subsection (4) applies, the sheriff must direct the Principal Reporter to arrange a children's hearing to decide whether to make a compulsory supervision order in relation to the child.
- (3) In any other case, the sheriff must—
 - (a) dismiss the application, and
 - (b) discharge the referral to the children's hearing.
- (4) This subsection applies if—
 - (a) the sheriff determines that one or more grounds to which the application relates are established, or
 - (b) one or more other grounds were accepted at the grounds hearing which directed the Principal Reporter to make the application.
- (5) In subsection (4)(b), "accepted" means accepted by the child and (subject to sections 74 and 75) each relevant person in relation to the child.

109 Determination: power to make interim compulsory supervision order etc.

- (1) This section applies where the sheriff directs the Principal Reporter to arrange a children's hearing to decide whether to make a compulsory supervision order in relation to the child.
- (2) Subsection (3) applies if immediately before the hearing at which the sheriff determined the application made by virtue of section 93(2)(a) or 94(2)(a) an interim compulsory supervision order was not in force in relation to the child.
- (3) If the sheriff is satisfied that the nature of the child's circumstances is such that for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that an interim compulsory supervision order be made, the sheriff may make an interim compulsory supervision order in relation to the child.

- (4) Subsection (5) applies if immediately before the hearing at which the sheriff determined the application made by virtue of section 93(2)(a) or 94(2)(a) an interim compulsory supervision order was in force in relation to the child.
- (5) If the sheriff is satisfied that the nature of the child's circumstances is such that for the protection, guidance, treatment or control of the child it is necessary that a further interim compulsory supervision order be made, the sheriff may make a further interim compulsory supervision order in relation to the child.
- (6) If the sheriff is satisfied that there is reason to believe that the child would not otherwise attend the children's hearing, the sheriff may grant a warrant to secure attendance.
- (7) If the sheriff makes an interim compulsory supervision order under subsection (3) or (5) specifying that the child is to reside at a place of safety, the children's hearing must be arranged to take place no later than the third day after the day on which the child begins to reside at the place of safety.

Review of sheriff's determination

110 Application for review of grounds determination

- (1) This section applies where the sheriff makes a determination under section 108 that a section 67 ground (other than the ground mentioned in section 67(2)(j) if the case was remitted to the Principal Reporter under section 49 of the Criminal Procedure (Scotland) Act 1995) is established in relation to a child (a "grounds determination").
- (2) A person mentioned in subsection (3) may apply to the sheriff for a review of the grounds determination.
- (3) The persons are—
 - (a) the person who is the subject of the grounds determination (even if that person is no longer a child),
 - (b) a person who is, or was at the time the grounds determination was made, a relevant person in relation to the child.

111 Sheriff: review or dismissal of application

- (1) This section applies where an application is made under section 110.
- (2) If subsection (3) applies the sheriff must review the grounds determination.
- (3) This subsection applies if—
 - (a) there is evidence in relation to the ground that was not considered by the sheriff when making the grounds determination,
 - (b) the evidence would have been admissible,
 - (c) there is a reasonable explanation for the failure to lead that evidence before the grounds determination was made, and
 - (d) the evidence is significant and relevant to the question of whether the grounds determination should have been made.
- (4) If subsection (3) does not apply, the sheriff must dismiss the application.

112 Child's duty to attend review hearing unless excused

- (1) This section applies where—
 - (a) a hearing is to be held by virtue of section 111(2) for the purpose of reviewing a grounds determination, and
 - (b) the person who is the subject of the grounds determination is still a child.
- (2) The child must attend the hearing unless the child is excused by the sheriff on a ground mentioned in section 103(3).
- (3) The child may attend the hearing even if the child is excused under subsection (2).
- (4) If the sheriff is satisfied that there is reason to believe that the child would not otherwise attend the hearing, the sheriff may grant a warrant to secure attendance.

113 Child and relevant person: representation at review hearing

- (1) This section applies where a hearing is to be held by virtue of section 111(2) for the purpose of reviewing a grounds determination.
- (2) The person who is the subject of the grounds determination ("P") may be represented at the hearing by another person.
- (3) A relevant person in relation to P (or, where P is no longer a child, a person who was a relevant person in relation to P at the time the grounds determination was made) may be represented at the hearing by another person.
- (4) A person representing P or the relevant person (or person who was a relevant person) at the hearing need not be a solicitor or advocate.

114 Sheriff's powers on review of grounds determination

- (1) This section applies where the sheriff reviews a grounds determination by virtue of section 111(2).
- (2) If the sheriff is satisfied that the section 67 ground to which the application relates is established, the sheriff must refuse the application.
- (3) If the sheriff determines that the ground to which the application relates is not established, the sheriff must—
 - (a) recall the grounds determination, and
 - (b) make an order discharging (wholly or to the extent that it relates to the ground) the referral of the child to the children's hearing.

115 Recall: power to refer other grounds

- (1) This section applies where—
 - (a) the sheriff makes an order under section 114(3), but
 - (b) another section 67 ground specified in the same statement of grounds that gave rise to the grounds determination is accepted or established.
- (2) If the person to whom the grounds determination relates is still a child, the sheriff must direct the Principal Reporter to arrange a children's hearing for the purpose of considering whether a compulsory supervision order should be made in relation to the child.

- (3) If the sheriff is satisfied that the nature of the child's circumstances is such that for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that an interim compulsory supervision order be made, the sheriff may make an interim compulsory supervision order in relation to the child.
- (4) If the sheriff is satisfied that there is reason to believe that the child would not otherwise attend the children's hearing, the sheriff may grant a warrant to secure attendance.

116 Recall: powers where no grounds accepted or established

- (1) This section applies where—
 - (a) the sheriff makes an order under section 114(3), and
 - (b) none of the other section 67 grounds specified in the statement of grounds that gave rise to the grounds determination is accepted or established.
- (2) If a compulsory supervision order that is in force in relation to the person who is the subject of the grounds determination was in force at the time of the grounds determination, the sheriff must require a review of the compulsory supervision order.
- (3) In any other case, the sheriff must—
 - (a) terminate any compulsory supervision order that is in force in relation to the person who is the subject of the grounds determination, and
 - (b) if that person is still a child, consider whether the child will require supervision or guidance.
- (4) Where that person is still a child and the sheriff considers that the child will require supervision or guidance, the sheriff must order the relevant local authority for the child to provide it.
- (5) Where the sheriff makes such an order, the relevant local authority for the child must give such supervision or guidance as the child will accept.

117 New section 67 ground established: sheriff to refer to children's hearing

- (1) This section applies where—
 - (a) by virtue of section 110 the sheriff is reviewing a grounds determination, and
 - (b) the sheriff is satisfied that there is sufficient evidence to establish a section 67 ground that is not specified in the statement of grounds that gave rise to the grounds determination.
- (2) The sheriff must—
 - (a) determine that the ground is established, and
 - (b) if the person to whom the grounds determination relates is still a child, direct the Principal Reporter to arrange a children's hearing for the purpose of considering whether a compulsory supervision order should be made in relation to the child.
- (3) If the sheriff is satisfied that the nature of the child's circumstances is such that for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that an interim compulsory supervision order be made, the sheriff may make an interim compulsory supervision order in relation to the child.
- (4) If the sheriff is satisfied that there is reason to believe that the child would not otherwise attend the children's hearing, the sheriff may grant a warrant to secure attendance.

Application of Part where compulsory supervision order in force

118 Application of Part where compulsory supervision order in force

- (1) This Part has effect in relation to a child mentioned in subsection (2) with the modifications set out in subsections (3) to (5).
- (2) The child is a child in relation to whom a compulsory supervision order is in force.
- (3) References to an interim compulsory supervision order are to be read as references to an interim variation of the compulsory supervision order.
- (4) References to the sheriff directing the Principal Reporter to arrange a children's hearing to decide whether to make a compulsory supervision order in relation to the child are to be read as references to the sheriff requiring a review of the compulsory supervision order.
- (5) Sections 98 and 99 do not apply.

PART 11

SUBSEQUENT CHILDREN'S HEARINGS

119 Children's hearing following deferral or proceedings under Part 10

- (1) This section applies where a children's hearing is arranged by the Principal Reporter by virtue of section 91(2), 107(3), 108, 115(2) or 117(2)(b) or subsection (2).
- (2) If the children's hearing considers that it is appropriate to do so, the children's hearing may defer making a decision on whether to make a compulsory supervision order until a subsequent children's hearing.
- (3) If the children's hearing does not exercise the power conferred by subsection (2) the children's hearing must—
 - (a) if satisfied that it is necessary to do so for the protection, guidance, treatment or control of the child, make a compulsory supervision order, or
 - (b) if not so satisfied, discharge the referral.
- (4) Subsection (5) applies where—
 - (a) the child is excused by virtue of section 73(3) or 79(3)(a) or rules under section 177, or
 - (b) a relevant person in relation to the child is excused by virtue of section 74(3) or 79(3)(b) or rules under section 177.
- (5) The children's hearing may, despite the excusal, defer its decision to a subsequent children's hearing under this section without further excusing the person.

120 Powers of children's hearing on deferral under section 119

- (1) This section applies where under subsection (2) of section 119 a children's hearing defers making a decision in relation to a child until a subsequent children's hearing under that section.

- (2) Subsection (3) applies if immediately before the children's hearing which takes place under section 119 an interim compulsory supervision order was not in force in relation to the child.
- (3) If the children's hearing considers that the nature of the child's circumstances is such that for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency to make an interim compulsory supervision order, the children's hearing may make an interim compulsory supervision order in relation to the child.
- (4) Subsection (5) applies if immediately before the children's hearing which takes place under section 119 an interim compulsory supervision order was in force in relation to the child.
- (5) If the children's hearing is satisfied that the nature of the child's circumstances is such that for the protection, guidance, treatment or control of the child it is necessary that a further interim compulsory supervision order be made, the children's hearing may make a further interim compulsory supervision order in relation to the child.
- (6) If the children's hearing considers that it is necessary to do so for the purpose of obtaining any further information, or carrying out any further investigation, that is needed before the subsequent children's hearing, the hearing may make a medical examination order.

PART 12

CHILDREN'S HEARINGS: GENERAL

Views of child

121 Confirmation that child given opportunity to express views before hearing

- (1) This section applies where a children's hearing is held in relation to a child by virtue of this Act.
- (2) The chairing member of the children's hearing must ask the child whether the documents provided to the child by virtue of rules made under section 177 accurately reflect any views expressed by the child.
- (3) The chairing member need not comply with subsection (2) if, taking account of the age and maturity of the child, the chairing member considers that it would not be appropriate to do so.

Children's advocacy services

122 Children's advocacy services

- (1) This section applies where a children's hearing is held in relation to a child by virtue of this Act.
- (2) The chairing member of the children's hearing must inform the child of the availability of children's advocacy services.
- (3) The chairing member need not comply with subsection (2) if, taking account of the age and maturity of the child, the chairing member considers that it would not be appropriate to do so.
- (4) The Scottish Ministers may by regulations make provision for or in connection with—
 - (a) the provision of children's advocacy services,

- (b) qualifications to be held by persons providing children's advocacy services,
 - (c) the training of persons providing children's advocacy services,
 - (d) the payment of expenses, fees and allowances by the Scottish Ministers to persons providing children's advocacy services.
- (5) The Scottish Ministers may enter into arrangements (contractual or otherwise) with any person other than a local authority, CHS or SCRA for the provision of children's advocacy services.
- (6) Regulations under this section are subject to the affirmative procedure.
- (7) In this section, "children's advocacy services" means services of support and representation provided for the purposes of assisting a child in relation to the child's involvement in a children's hearing.

Warrants to secure attendance

123 General power to grant warrant to secure attendance

- (1) This section applies where in relation to a child—
- (a) a children's hearing has been or is to be arranged, or
 - (b) a hearing is to take place under Part 10.
- (2) On the application of the Principal Reporter, any children's hearing may on cause shown grant a warrant to secure the attendance of the child at the children's hearing or, as the case may be, the hearing under Part 10.

Child's age

124 Requirement to establish child's age

- (1) This section applies where a children's hearing is held by virtue of this Act.
- (2) The chairing member of the children's hearing must ask the person in respect of whom the hearing has been arranged to declare the person's age.
- (3) The person may make another declaration as to the person's age at any time.
- (4) The chairing member need not comply with the requirement in subsection (2) if the chairing member considers that the person would not be capable of understanding the question.
- (5) Any children's hearing may make a determination of the age of a person who is the subject of the hearing.
- (6) A person is taken for the purposes of this Act to be of the age—
- (a) worked out on the basis of the person's most recent declaration, or
 - (b) if a determination of age by a children's hearing is in effect, worked out in accordance with that determination.
- (7) Nothing done by a children's hearing in relation to a person is invalidated if it is subsequently proved that the age of the person is not that worked out under subsection (6).

*Compulsory supervision orders: review***125 Compulsory supervision order: requirement to review**

- (1) This section applies where a children's hearing is making, varying or continuing a compulsory supervision order.
- (2) Where the order being made contains a movement restriction condition (or the order is being varied so as to include such a condition), the children's hearing must require the order to be reviewed by a children's hearing on a day or within a period specified in the order.
- (3) In any other case, the children's hearing may require the order to be so reviewed.

*Contact orders and permanence orders***126 Review of contact direction**

- (1) This section applies where, in relation to a child—
 - (a) a children's hearing—
 - (i) makes a compulsory supervision order,
 - (ii) makes an interim compulsory supervision order, an interim variation of a compulsory supervision order or a medical examination order which is to have effect for more than 5 working days, or
 - (iii) continues or varies a compulsory supervision order under section 138, and
 - (b) the order contains (or is varied so as to contain) a measure of the type mentioned in section 83(2)(g) or 87(2)(e) ("a contact direction").
- (2) The Principal Reporter must arrange a children's hearing for the purposes of reviewing the contact direction—
 - (a) if an order mentioned in subsection (3) is in force, or
 - (b) if requested to do so by an individual who claims that the conditions specified for the purposes of this paragraph in an order made by the Scottish Ministers are satisfied in relation to the individual.
- (3) The orders are—
 - (a) a contact order regulating contact between an individual (other than a relevant person in relation to the child) and the child, or
 - (b) a permanence order which specifies arrangements for contact between such an individual and the child.
- (4) The children's hearing is to take place no later than 5 working days after the children's hearing mentioned in subsection (1)(a).
- (5) If a children's hearing arranged by virtue of paragraph (b) of subsection (2) considers that the conditions specified for the purposes of that paragraph are not satisfied in relation to the individual, the children's hearing must take no further action.
- (6) In any other case, the children's hearing may—
 - (a) confirm the decision of the children's hearing mentioned in subsection (1)(a), or

- (b) vary the compulsory supervision order, interim compulsory supervision order or medical examination order (but only by varying or removing the contact direction).
- (7) Sections 73 and 74 do not apply in relation to a children's hearing arranged by virtue of subsection (2).

Referral where failure to provide education for excluded pupil

127 Referral where failure to provide education for excluded pupil

- (1) This section applies where it appears to a children's hearing that—
 - (a) an education authority has a duty under section 14(3) of the Education (Scotland) Act 1980 (c.44) (education authority's duty to provide education for child excluded from school) in relation to the child to whom the children's hearing relates, and
 - (b) the authority is failing to comply with the duty.
- (2) The children's hearing may require the National Convener to refer the matter to the Scottish Ministers.
- (3) If a requirement is made under subsection (2), the National Convener must—
 - (a) make a referral to the Scottish Ministers, and
 - (b) give a copy of it to the education authority to which it relates and the Principal Reporter.

Parenting order

128 Duty to consider applying for parenting order

- (1) This section applies where a children's hearing constituted for any purpose in respect of a child is satisfied that it might be appropriate for a parenting order to be made in respect of a parent of the child under section 102 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) (the "2004 Act").
- (2) The children's hearing may require the Principal Reporter to consider whether to apply under section 102(3) of the 2004 Act for such an order.
- (3) The children's hearing must specify in the requirement—
 - (a) the parent in respect of whom it might be appropriate for the order to be made, and
 - (b) by reference to section 102(4) to (6) of the 2004 Act, the condition in respect of which the application might be made.
- (4) In this section, "parent" and "child" have the meanings given by section 117 of the 2004 Act.

PART 13

REVIEW OF COMPULSORY SUPERVISION ORDER

*Requirement for review***129 Requirement under Antisocial Behaviour etc. (Scotland) Act 2004**

- (1) Subsection (2) applies where—
 - (a) under section 12(1A) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) the sheriff requires the Principal Reporter to arrange a children's hearing in respect of a child, and
 - (b) a compulsory supervision order is in force in relation to the child.
- (2) The Principal Reporter must initiate a review of the compulsory supervision order.

130 Case remitted under section 49 of Criminal Procedure (Scotland) Act 1995

- (1) This section applies where, in relation to a child—
 - (a) a court remits a case under section 49 of the Criminal Procedure (Scotland) Act 1995 to the Principal Reporter to arrange for the disposal of the case by a children's hearing, and
 - (b) a compulsory supervision order is in force in relation to the child.
- (2) The Principal Reporter must initiate a review of the compulsory supervision order.
- (3) A certificate signed by the clerk of the court stating that the child has pled guilty to, or been found guilty of, the offence to which the case relates is conclusive evidence for the purposes of the children's hearing held for the purposes of reviewing the order that the offence was committed by the child.
- (4) This Act applies as if the plea of guilty, or the finding of guilt, were a determination of the sheriff under section 108 that the ground in section 67(2)(j) was established in relation to the child.

131 Duty of implementation authority to require review

- (1) The implementation authority must, by notice to the Principal Reporter, require a review of a compulsory supervision order in relation to a child where the authority is satisfied that one or more of the circumstances set out in subsection (2) exist.
- (2) Those circumstances are—
 - (a) the compulsory supervision order ought to be terminated or varied,
 - (b) the compulsory supervision order is not being complied with,
 - (c) the best interests of the child would be served by the authority making one of the following applications, and the authority intends to make such an application—
 - (i) an application under section 80 of the Adoption and Children (Scotland) Act 2007 (asp 4) (the "2007 Act") for a permanence order,
 - (ii) an application under section 92 of the 2007 Act for variation of such an order,
 - (iii) an application under section 93 of the 2007 Act for amendment of such an order,

- (iv) an application under section 98 of the 2007 Act for revocation of such an order,
 - (d) the best interests of the child would be served by the authority placing the child for adoption and the authority intends to place the child for adoption,
 - (e) the authority is aware that an application has been made and is pending, or is about to be made, under section 29 or 30 of the 2007 Act for an adoption order in respect of the child.
- (3) The Scottish Ministers may by regulations specify the period within which a requirement under subsection (1) must be made where the implementation authority is satisfied as to the existence of the circumstances mentioned in subsection (2)(a) to (d).
- (4) Different periods may be specified for different circumstances, or classes of circumstances.
- (5) Where an implementation authority is under a duty to require a review under subsection (1) by virtue of being satisfied as to the existence of the circumstances mentioned in subsection (2)(e), the authority must do so as soon as practicable after the authority becomes aware of the application.

132 Right of child or relevant person to require review

- (1) This section applies where a compulsory supervision order is in force in relation to a child.
- (2) The child may by giving notice to the Principal Reporter require a review of the order.
- (3) A relevant person in relation to the child may by giving notice to the Principal Reporter require a review of the order.
- (4) The order may not be reviewed—
- (a) during the period of 3 months beginning with the day on which the order is made,
 - (b) if the order is continued or varied, during the period of 3 months beginning with the day on which it is continued or varied.
- (5) The Scottish Ministers may by regulations provide that, despite subsection (4), where the order includes a secure accommodation authorisation, the order may be reviewed during a period specified in the regulations.

133 Principal Reporter's duty to initiate review

The Principal Reporter must initiate a review of a compulsory supervision order in relation to a child if—

- (a) the order will expire within 3 months, and
- (b) the order would not otherwise be reviewed before it expires.

134 Duty to initiate review if child to be taken out of Scotland

- (1) This section applies where—
- (a) a child is subject to a compulsory supervision order,
 - (b) a relevant person in relation to the child proposes to take the child to live outwith Scotland, and

- (c) the proposal is not in accordance with the order or an order under section 11 of the 1995 Act.
- (2) The relevant person must give notice of the proposal to the Principal Reporter and the implementation authority at least 28 days before the day on which the relevant person proposes to take the child to live outwith Scotland.
- (3) If the Principal Reporter receives notice under subsection (2), the Principal Reporter must initiate a review of the compulsory supervision order.

135 Duty to initiate review: secure accommodation authorisation

- (1) Subsection (2) applies where a compulsory supervision order includes a secure accommodation authorisation (which has not ceased to have effect by virtue of section 151(5)).
- (2) The Principal Reporter must initiate a review of the order—
 - (a) before the end of the period of 3 months beginning with the day on which the order is made, and
 - (b) if the order is varied or continued, before the end of the period of 3 months beginning with the day on which it is varied or continued.

136 Duty to initiate review where child transferred

The Principal Reporter must initiate a review of a compulsory supervision order in relation to a child where the child is transferred under section 143(2).

Functions of Principal Reporter and children's hearing

137 Duty to arrange children's hearing

- (1) This section applies where a compulsory supervision order is in force in relation to a child and—
 - (a) a review of the order is required or initiated by virtue of any of—
 - (i) sections 107, 108, 115 and 117 (all as modified by section 118),
 - (ii) sections 116, 125, 129 to 136 and 146, or
 - (b) the child's case is referred to the Principal Reporter under section 96(3) or 106 of the Adoption and Children (Scotland) Act 2007 (asp 4).
- (2) The Principal Reporter must arrange a children's hearing to review the compulsory supervision order.
- (3) If the review is initiated under section 136, the children's hearing must be arranged to take place before the expiry of the period of 3 working days beginning with the day on which the child is transferred.
- (4) The Principal Reporter must require the implementation authority to give the Principal Reporter any reports that the authority has prepared in relation to the child and any other information which the authority may wish to give to assist the children's hearing.
- (5) The Principal Reporter may require the implementation authority to give the Principal Reporter a report on—
 - (a) the child generally,

- (b) any particular matter relating to the child specified by the Principal Reporter.
- (6) The implementation authority may include in a report given to the Principal Reporter under subsection (4) or (5) information given to the authority by another person.

138 Powers of children's hearing on review

- (1) This section applies where a children's hearing is carrying out a review of a compulsory supervision order in relation to a child.
- (2) If the children's hearing considers that it is appropriate to do so, the children's hearing may defer making a decision about the compulsory supervision order until a subsequent children's hearing under this section.
- (3) Otherwise, the children's hearing may—
 - (a) terminate the compulsory supervision order,
 - (b) vary the compulsory supervision order,
 - (c) continue the compulsory supervision order for a period not exceeding one year.
- (4) The children's hearing may vary or continue a compulsory supervision order only if the children's hearing is satisfied that it is necessary to do so for the protection, guidance, treatment or control of the child.
- (5) If the children's hearing varies or continues a compulsory supervision order, the children's hearing must consider whether to include a measure of the type mentioned in section 83(2)(g).
- (6) If the children's hearing terminates the compulsory supervision order, the children's hearing must—
 - (a) consider whether supervision or guidance is needed by the child, and
 - (b) if so, make a statement to that effect.
- (7) If the children's hearing states that supervision or guidance is needed by the child, it is the duty of the relevant local authority for the child to give such supervision or guidance as the child will accept.
- (8) Subsection (9) applies where—
 - (a) a child or relevant person in relation to the child is excused under section 73(2), 74(2) or 79 from attending the children's hearing, and
 - (b) the hearing defers its decision until a subsequent children's hearing.
- (9) The children's hearing need not excuse the child or relevant person in relation to the child from attending the subsequent children's hearing.

139 Powers of children's hearing on deferral under section 138

- (1) This section applies where under subsection (2) of section 138 a children's hearing defers making a decision about the compulsory supervision order in relation to a child until a subsequent children's hearing under that section.
- (2) The children's hearing may continue the compulsory supervision order until the subsequent children's hearing.

- (3) If the children's hearing considers that the nature of the child's circumstances is such that for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that the compulsory supervision order be varied, the children's hearing may make an interim variation of the compulsory supervision order.

140 Interim variation of compulsory supervision order

- (1) In this Act, "interim variation", in relation to a compulsory supervision order made in relation to a child, means a variation of the order having effect for the relevant period.
- (2) An interim variation may vary the order so that, instead of specifying a place or places at which the child is to reside under section 83(2)(a), the order specifies that the child is to reside at any place of safety away from the place where the child predominantly resides.
- (3) Section 83(5)(a) does not apply to the varied order.
- (4) In subsection (1), the "relevant period" means the period beginning with the variation of the order and ending with whichever of the following first occurs—
- (a) the next children's hearing arranged in relation to the child,
 - (b) the disposal by the sheriff of an application under Part 10 relating to the child,
 - (c) a day specified in the variation,
 - (d) the expiry of the period of 22 days beginning with the day on which the order is varied.

141 Preparation of report in circumstances relating to permanence order or adoption

- (1) This section applies where a review of a compulsory supervision order in relation to a child is required under subsection (1) of section 131 in the circumstances mentioned in subsection (2)(c), (d) or (e) of that section.
- (2) On determining the review under section 138(3), the children's hearing must prepare a report providing advice about the circumstances to which the review relates for—
- (a) the implementation authority, and
 - (b) any court that requires (or may subsequently require) to come to a decision about an application of the type mentioned in section 131(2)(c) or (e).
- (3) The report must be in such form as the Scottish Ministers may determine.
- (4) If an application of the type mentioned in section 131(2)(c) or (e) is (or has been) made, the court must have regard to the report when coming to its decision about the application.

Review of relevant person determination

142 Review of determination that person be deemed a relevant person

- (1) This section applies where, in relation to a child—
- (a) a children's hearing determines a review of a compulsory supervision order by varying or continuing the order,
 - (b) an individual is deemed to be a relevant person by virtue of section 81, and

- (c) it appears to the children's hearing that the individual may no longer have (nor recently have had) a significant involvement in the upbringing of the child.
- (2) The children's hearing must review whether the individual should continue to be deemed to be a relevant person in relation to the child.
- (3) If the children's hearing considers that it is appropriate to do so, the children's hearing may defer determining the review under subsection (2) until a subsequent children's hearing under this section.
- (4) Otherwise, if the children's hearing determines that the individual does not have (and has not recently had) a significant involvement in the upbringing of the child then—
 - (a) the children's hearing must direct that the individual is no longer to be deemed to be a relevant person, and
 - (b) section 81(4) ceases to apply in relation to the individual (except in relation to any appeal arising from the determination mentioned in subsection (1)(a)).

PART 14

IMPLEMENTATION OF ORDERS

Power to transfer child in cases of urgent necessity

143 Transfers in cases of urgent necessity

- (1) Subsection (2) applies where a child is residing at a particular place by virtue of a compulsory supervision order or interim compulsory supervision order containing a measure of the type mentioned in section 83(2)(a).
- (2) If it is in the interests of the child or another child in the place that the child be moved out of the place as a matter of urgent necessity then, despite the order, the chief social work officer may transfer the child to another place.

Implementation of compulsory supervision order

144 Implementation of compulsory supervision order: general duties of implementation authority

- (1) The implementation authority must give effect to a compulsory supervision order.
- (2) The implementation authority must in particular comply with any requirements imposed on it in relation to the child by the compulsory supervision order.
- (3) The duties which an implementation authority may be required to carry out under a compulsory supervision order include securing or facilitating the provision for the child of services of a kind which the implementation authority does not provide.

145 Duty where order requires child to reside in certain place

- (1) Subsection (2) applies where, under a compulsory supervision order, a child is required to reside—
 - (a) in accommodation provided by the parents or relatives of the child, or by any person associated with them or the child, or
 - (b) in any other accommodation not provided by a local authority.

- (2) The implementation authority must from time to time—
 - (a) investigate whether, while the child is resident in that accommodation, any conditions imposed under the compulsory supervision order are being complied with, and
 - (b) if the authority considers that conditions are not being complied with, take such steps as the authority considers reasonable.

146 Breach of duties imposed by sections 144 and 145

- (1) This section applies where, on determining the review of a compulsory supervision order under section 138(3), it appears to the children's hearing that the implementation authority is in breach of a duty in relation to the child imposed on the authority under section 144 or 145.
- (2) The children's hearing may direct the National Convener to give the authority notice in accordance with subsection (3) of an intended application by the National Convener to enforce the authority's duty.
- (3) The notice must—
 - (a) set out the respects in which the authority is in breach of its duty in relation to the child, and
 - (b) state that if the authority does not perform that duty before the expiry of the period of 21 days beginning with the day on which the notice is given, the National Convener, on the direction of the children's hearing, is to make an application to enforce the authority's duty.
- (4) The National Convener must, at the same time as giving the notice, send a copy of the notice to—
 - (a) the child,
 - (b) each relevant person in relation to the child.
- (5) If a children's hearing gives a direction under subsection (2), the children's hearing must require that a further review of the compulsory supervision order take place on or as soon as is reasonably practicable after the expiry of the period of 28 days beginning on the day on which the notice is given.
- (6) If, on that further review, it appears to the children's hearing carrying out the further review that the authority continues to be in breach of its duty, the children's hearing may direct the National Convener to make an application under section 147.
- (7) In determining whether to direct the National Convener to make an application under section 147 to enforce the authority's duty, the children's hearing must not take into account any factor relating to the adequacy of the means available to the authority to enable it to comply with the duty.

147 Application for order

- (1) The National Convener must, if directed to do so under section 146(6), apply to the relevant sheriff principal for an order to enforce an implementation authority's duty in relation to a child.
- (2) The relevant sheriff principal is the sheriff principal of the sheriffdom in which the principal office of the implementation authority is situated.

- (3) The National Convener may not make such an application, despite the direction given under section 146(6), unless—
 - (a) the National Convener has given the authority notice in relation to the duty in compliance with a direction given under section 146(2), and
 - (b) the authority has failed to carry out the duty within the period specified in the notice.
- (4) The application is to be made by summary application.

148 Order for enforcement

- (1) The sheriff principal may, on an application by the National Convener under section 147, make an order requiring the implementation authority that is in breach of a duty imposed by virtue of a compulsory supervision order to carry out that duty.
- (2) Such an order is final.

Compulsory supervision orders etc.: further provision

149 Compulsory supervision orders etc.: further provision

- (1) The Scottish Ministers may by regulations make provision about—
 - (a) the transmission of information relating to a child who is the subject of an order or warrant mentioned in subsection (2) to any person who, by virtue of the order or warrant, has or is to have control over the child,
 - (b) the provision of temporary accommodation for the child,
 - (c) the taking of the child to any place in which the child is required to reside under the order or warrant,
 - (d) the taking of the child to—
 - (i) a place of safety under section 169 or 170,
 - (ii) a place to which the child falls to be taken to under section 169(2), or
 - (iii) a person to whom the child falls to be taken to under section 170(2).
- (2) The orders and warrants are—
 - (a) a compulsory supervision order,
 - (b) an interim compulsory supervision order,
 - (c) a medical examination order,
 - (d) a warrant to secure attendance.

Movement restriction conditions: regulations etc.

150 Movement restriction conditions: regulations etc.

- (1) The Scottish Ministers may by regulations prescribe—
 - (a) restrictions, or
 - (b) monitoring arrangements,that may be imposed as part of a movement restriction condition.

- (2) Regulations under subsection (1) may in particular—
 - (a) prescribe the maximum period for which a restriction may have effect,
 - (b) prescribe methods of monitoring compliance with a movement restriction condition,
 - (c) specify devices that may be used for the purpose of that monitoring,
 - (d) prescribe the person or class of person who may be designated to carry out the monitoring, and
 - (e) require that the condition be varied to designate another person if the person designated ceases to be prescribed, or fall within a class of person, prescribed under paragraph (d).
- (3) Regulations under subsection (1) are subject to the affirmative procedure.
- (4) The Scottish Ministers may—
 - (a) make arrangements (contractual or otherwise) to secure the services of such persons as they think fit to carry out monitoring, and
 - (b) make those arrangements in a way that provides differently for different areas or different forms of monitoring.
- (5) Nothing in any enactment or rule of law prevents the disclosure to a person providing a service under an arrangement made under subsection (4) of information relating to a child where the disclosure is made for the purposes only of the full and proper provision of monitoring.

Secure accommodation

151 Implementation of secure accommodation authorisation

- (1) Subsections (3) and (4) apply where a relevant order or warrant made in relation to a child includes a secure accommodation authorisation.
- (2) A relevant order or warrant is—
 - (a) a compulsory supervision order,
 - (b) an interim compulsory supervision order,
 - (c) a medical examination order,
 - (d) a warrant to secure attendance.
- (3) The chief social work officer may implement the authorisation only with the consent of the person in charge of the residential establishment containing the secure accommodation in which the child is to be placed (the “head of unit”).
- (4) The chief social work officer must remove the child from secure accommodation if—
 - (a) the chief social work officer considers it unnecessary for the child to be kept there, or
 - (b) the chief social work officer is required to do so by virtue of regulations made under subsection (6).
- (5) A secure accommodation authorisation ceases to have effect once the child is removed from secure accommodation under subsection (4).
- (6) The Scottish Ministers may by regulations make provision in relation to decisions—

- (a) by the chief social work officer—
 - (i) whether to implement a secure accommodation authorisation,
 - (ii) whether to remove a child from secure accommodation,
 - (b) by the head of unit whether to consent under subsection (3).
- (7) Regulations under subsection (6) may in particular—
- (a) specify—
 - (i) the time within which a decision must be made,
 - (ii) the procedure to be followed,
 - (iii) the criteria to be applied,
 - (iv) matters to be taken into account or disregarded,
 - (v) persons who must be consulted,
 - (vi) persons who must consent before a decision has effect,
 - (b) make provision about—
 - (i) notification of decisions,
 - (ii) the giving of reasons for decisions,
 - (iii) reviews of decisions,
 - (iv) the review of the order or warrant containing the secure accommodation authorisation where the head of unit does not consent.
- (8) Regulations under subsection (6) are subject to the affirmative procedure.

152 Secure accommodation: placement in other circumstances

- (1) The Scottish Ministers may by regulations make provision specifying circumstances in which a child falling within subsection (3) may be placed in secure accommodation.
- (2) Regulations under subsection (1) may in particular include provision for and in connection with—
 - (a) the procedure to be followed in deciding whether to place a child in secure accommodation,
 - (b) the notification of decisions,
 - (c) the giving of reasons for decisions,
 - (d) the review of decisions,
 - (e) the review of placements by a children's hearing.
- (3) A child falls within this subsection if—
 - (a) a relevant order or warrant is in force in relation to the child, and
 - (b) the relevant order or warrant does not include a secure accommodation authorisation.
- (4) A relevant order or warrant is—
 - (a) a compulsory supervision order,
 - (b) an interim compulsory supervision order,

- (c) a medical examination order,
 - (d) a warrant to secure attendance.
- (5) Regulations under subsection (1) are subject to the affirmative procedure.

153 Secure accommodation: regulations

- (1) The Scottish Ministers may by regulations make provision about children placed in secure accommodation by virtue of this Act.
- (2) Regulations under subsection (1) may in particular include provision—
 - (a) imposing requirements on the Principal Reporter,
 - (b) imposing requirements on the implementation authority in relation to a compulsory supervision order or an interim compulsory supervision order,
 - (c) imposing requirements on the relevant local authority for a child in relation to a medical examination order or a warrant to secure attendance,
 - (d) in connection with the protection of the welfare of the children.
- (3) Regulations under subsection (1) are subject to the affirmative procedure.

PART 15

APPEALS

Appeal against decision of children's hearing

154 Appeal to sheriff against decision of children's hearing

- (1) A person mentioned in subsection (2) may appeal to the sheriff against a relevant decision of a children's hearing in relation to a child.
- (2) The persons are—
 - (a) the child,
 - (b) a relevant person in relation to the child,
 - (c) a safeguarder appointed in relation to the child by virtue of section 30.
- (3) A relevant decision is—
 - (a) a decision to make, vary or continue a compulsory supervision order,
 - (b) a decision to discharge a referral by the Principal Reporter,
 - (c) a decision to terminate a compulsory supervision order,
 - (d) a decision to make an interim compulsory supervision order,
 - (e) a decision to make an interim variation of a compulsory supervision order,
 - (f) a decision to make a medical examination order, or
 - (g) a decision to grant a warrant to secure attendance.
- (4) An appeal under subsection (1) may be made jointly by two or more persons mentioned in subsection (2).
- (5) An appeal under subsection (1) must be made before the expiry of the period of 21 days beginning with the day on which the decision is made.

155 Procedure

- (1) This section applies where an appeal under section 154 is made.
- (2) The Principal Reporter must lodge with the sheriff clerk a copy of—
 - (a) the decision, and the reasons for the decision, of the children's hearing,
 - (b) all information provided by virtue of rules under section 177 to the children's hearing, and
 - (c) the report of the children's hearing.
- (3) The appeal must not be heard in open court.
- (4) The sheriff may (but need not) hear evidence before determining the appeal.
- (5) The sheriff may hear evidence from—
 - (a) the child,
 - (b) a relevant person in relation to the child,
 - (c) an author or compiler of a report or statement provided to the children's hearing that made the decision,
 - (d) the Principal Reporter,
 - (e) where the appeal is against a decision to make, grant, vary or continue an order or warrant including a secure accommodation authorisation in respect of the child—
 - (i) the person in charge of the secure accommodation specified in the secure accommodation authorisation, and
 - (ii) the chief social work officer, and
 - (f) any other person who the sheriff considers may give material additional evidence.
- (6) The sheriff may require any person to give a report to the sheriff for the purpose of assisting the sheriff in determining the appeal.
- (7) Subsection (6) applies in relation to a safeguarder only if regulations under section 32 so provide.

156 Determination of appeal

- (1) If satisfied that the decision to which an appeal under section 154 relates is justified, the sheriff—
 - (a) must confirm the decision, and
 - (b) may take one or more of the steps mentioned in subsection (3) if satisfied that the circumstances of the child in relation to whom the decision was made have changed since the decision was made.
- (2) In any other case, the sheriff—
 - (a) must—
 - (i) where the decision is a decision to grant a warrant to secure attendance, recall the warrant,
 - (ii) where the decision is a decision to make an interim compulsory supervision order or a medical examination order, terminate the order,

- (b) may take one or more of the steps mentioned in subsection (3).
- (3) Those steps are—
 - (a) require the Principal Reporter to arrange a children's hearing for any purpose for which a hearing can be arranged under this Act,
 - (b) continue, vary or terminate any order, interim variation or warrant which is in effect,
 - (c) discharge the child from any further hearing or other proceedings in relation to the grounds that gave rise to the decision,
 - (d) make an interim compulsory supervision order or interim variation of a compulsory supervision order, or
 - (e) grant a warrant to secure attendance.
- (4) If the sheriff discharges a child under subsection (3)(c), the sheriff must also terminate any order or warrant which is in effect in relation to the child.
- (5) The fact that a sheriff makes, continues or varies an order, or grants a warrant, under subsection (1)(b) or (2)(b) does not prevent a children's hearing from continuing, varying or terminating the order or warrant.

157 Time limit for disposal of appeal against certain decisions

- (1) This section applies where an appeal under section 154 relates to a decision of a children's hearing to—
 - (a) make a compulsory supervision order including a secure accommodation authorisation or movement restriction condition,
 - (b) make an interim compulsory supervision order,
 - (c) make an interim variation of a compulsory supervision order,
 - (d) make a medical examination order, or
 - (e) grant a warrant to secure attendance.
- (2) The appeal must be heard and disposed of before the expiry of the period of 3 days beginning the day after the day on which the appeal is made.
- (3) If the appeal is not disposed of within that period, the authorisation, condition, order, variation or, as the case may be, warrant ceases to have effect.

Compulsory supervision order: suspension pending appeal

158 Compulsory supervision order: suspension pending appeal

- (1) This section applies where—
 - (a) an appeal is made under section 154 against a decision to make, vary, continue or terminate a compulsory supervision order, and
 - (b) the person making the appeal requests the Principal Reporter to arrange a children's hearing to consider whether the decision should be suspended pending the determination of the appeal.

- (2) As soon as practicable after the request is made, the Principal Reporter must arrange a children's hearing to consider whether the decision should be suspended pending the determination of the appeal.

Frivolous and vexatious appeals

159 Frivolous and vexatious appeals

- (1) This section applies where the sheriff—
 - (a) determines an appeal under section 154 by confirming a decision of a children's hearing to vary or continue a compulsory supervision order, and
 - (b) is satisfied that the appeal was frivolous or vexatious.
- (2) The sheriff may order that, during the period of 12 months beginning on the day of the order, the person who appealed must obtain leave from the sheriff before making another appeal under section 154 against a decision of a children's hearing in relation to the compulsory supervision order.

Other appeals

160 Appeal to sheriff against relevant person determination

- (1) A person mentioned in subsection (2) may appeal to the sheriff against—
 - (a) a determination of a pre-hearing panel or children's hearing that an individual is or is not to be deemed a relevant person in relation to a child,
 - (b) a determination of a review under section 142(2) that an individual is to continue to be deemed, or no longer to be deemed, a relevant person in relation to a child.
- (2) The persons are—
 - (a) the individual in question,
 - (b) the child,
 - (c) a relevant person in relation to the child,
 - (d) two or more persons mentioned in paragraphs (a) to (c) acting jointly.
- (3) If satisfied that the determination to which the appeal relates is justified, the sheriff must confirm the determination.
- (4) If not satisfied, the sheriff must—
 - (a) quash the determination, and
 - (b) where the determination is a determination of a pre-hearing panel or children's hearing under section 81 that the individual should not be deemed a relevant person in relation to the child, make an order deeming the individual to be a relevant person in relation to the child.
- (5) Where the sheriff makes an order under subsection (4)(b), section 81(4) applies to the individual as if a pre-hearing panel had deemed the individual to be a relevant person.
- (6) An appeal under this section must be—
 - (a) made before the expiry of the period of 7 days beginning with the day on which the determination is made,

- (b) heard and disposed of before the expiry of the period of 3 days beginning with the day on which the appeal is made.

161 Appeal to sheriff against decision affecting contact or permanence order

- (1) A person mentioned in subsection (2) may appeal to the sheriff against a relevant decision of a children's hearing in relation to a child.
- (2) The person is an individual (other than a relevant person in relation to the child) in relation to whom—
 - (a) a contact order is in force regulating contact between the individual and the child,
 - (b) a permanence order is in force which specifies arrangements for contact between the individual and the child, or
 - (c) the conditions specified for the purposes of section 126(2)(b) are satisfied.
- (3) A relevant decision is a decision under section 126(6) relating to a compulsory supervision order.
- (4) If the sheriff is satisfied that the relevant decision is justified, the sheriff must confirm the decision.
- (5) If not satisfied, the sheriff must vary the compulsory supervision order by varying or removing the measure contained in the order under section 83(2)(g).
- (6) An appeal under this section must be—
 - (a) made before the expiry of the period of 21 days beginning with the day on which the relevant decision is made,
 - (b) heard and disposed of before the expiry of the period of 3 days beginning with the day on which the appeal is made.

162 Appeal to sheriff against decision to implement secure accommodation authorisation

- (1) This section applies where a relevant order or warrant made in relation to a child includes a secure accommodation authorisation.
- (2) A relevant order or warrant is—
 - (a) a compulsory supervision order,
 - (b) an interim compulsory supervision order,
 - (c) a medical examination order,
 - (d) a warrant to secure attendance.
- (3) The child or a relevant person in relation to the child may appeal to the sheriff against a relevant decision in relation to the authorisation.
- (4) A relevant decision is a decision by the chief social work officer—
 - (a) to implement the authorisation,
 - (b) not to implement the authorisation,
 - (c) to remove the child from secure accommodation.
- (5) An appeal under subsection (3) may be made jointly by—

- (a) the child and one or more relevant persons in relation to the child, or
 - (b) two or more relevant persons in relation to the child.
- (6) An appeal must not be held in open court.
- (7) The Scottish Ministers may by regulations make further provision about appeals under subsection (3).
- (8) Regulations under subsection (7) may in particular—
- (a) specify the period within which an appeal may be made,
 - (b) make provision about the hearing of evidence during an appeal,
 - (c) make provision about the powers of the sheriff on determining an appeal,
 - (d) provide for appeals to the sheriff principal and Court of Session against the determination of an appeal.
- (9) Regulations under subsection (7) are subject to the affirmative procedure.

Appeals to sheriff principal and Court of Session

163 Appeals to sheriff principal and Court of Session: children's hearings etc.

- (1) A person mentioned in subsection (3) may appeal by stated case to the sheriff principal or the Court of Session against—
- (a) a determination by the sheriff of—
 - (i) an application to determine whether a section 67 ground (other than the ground mentioned in section 67(2)(j) if the case was remitted to the Principal Reporter under section 49 of the Criminal Procedure (Scotland) Act 1995) is established,
 - (ii) an application under section 110(2) for review of a finding that a section 67 ground is established,
 - (iii) an appeal against a decision of a children's hearing,
 - (iv) an application under section 98 for an extension of an interim compulsory supervision order,
 - (v) an application under section 99 for a further extension of an interim compulsory supervision order,
 - (b) a decision of the sheriff under section 100 to—
 - (i) make an interim compulsory supervision order,
 - (ii) make an interim variation of a compulsory supervision order.
- (2) A person mentioned in subsection (3) may, with leave of the sheriff principal, appeal by stated case to the Court of Session against the sheriff principal's decision in an appeal under subsection (1).
- (3) The persons are—
- (a) the child,
 - (b) a relevant person in relation to the child,
 - (c) a safeguarder appointed in relation to the child by virtue of section 30,
 - (d) two or more persons mentioned in paragraphs (a) to (c) acting jointly, and

- (e) the Principal Reporter.
- (4) Despite subsections (1) and (2), a safeguarder may not—
 - (a) appeal against a determination by the sheriff of a type mentioned in subsection (1)(a)(i) or (ii), or a decision of the sheriff of a type mentioned in subsection (1)(b),
 - (b) appeal to the Court of Session against the sheriff principal's decision in such an appeal.
- (5) Despite subsection (1), the Principal Reporter may not appeal against a determination by the sheriff confirming a decision of a children's hearing.
- (6) Subsection (7) applies in relation to—
 - (a) an appeal against a determination by the sheriff of an application under section 110(2) for review of a finding that a section 67 ground is established,
 - (b) an appeal to the Court of Session against the sheriff principal's decision in such an appeal.
- (7) In subsection (3)(a) and (b)—
 - (a) the references to the child are to the person in relation to whom the section 67 ground was established (even if that person is no longer a child),
 - (b) the reference to a relevant person in relation to the child includes a person who was, at the time the section 67 ground was established, a relevant person in relation to the child.
- (8) An appeal under this section must be made before the expiry of the period of 28 days beginning with the day on which the determination or decision appealed against was made.
- (9) An appeal under this section may be made—
 - (a) on a point of law, or
 - (b) in respect of any procedural irregularity.
- (10) On deciding an appeal under subsection (1), the sheriff principal or the Court of Session must remit the case to the sheriff for disposal in accordance with such directions as the court may give.
- (11) A decision in an appeal under subsection (1) or (2) by the Court of Session is final.
- (12) In subsection (1)(a)(ii), the reference to a determination by the sheriff of an application under section 110(2) for review of a finding that a section 67 ground is established includes a reference to a determination under section 117(2)(a) that a ground is established.

164 Appeals to sheriff principal and Court of Session: relevant persons

- (1) A person mentioned in subsection (3) may appeal by stated case to the sheriff principal or the Court of Session against a decision of the sheriff in an appeal against a determination of a pre-hearing panel or children's hearing that an individual is or is not to be deemed a relevant person in relation to the child.
- (2) A person mentioned in subsection (3) may, with leave of the sheriff principal, appeal by stated case to the Court of Session against the sheriff principal's decision in an appeal under subsection (1).

- (3) The persons are—
 - (a) the individual in question,
 - (b) the child,
 - (c) a relevant person in relation to the child,
 - (d) two or more persons mentioned in paragraphs (a) to (c) acting jointly.
- (4) An appeal under this section must be made before the expiry of the period of 28 days beginning with the day on which the decision appealed against is made.
- (5) An appeal under this section may be made—
 - (a) on a point of law, or
 - (b) in respect of any procedural irregularity.
- (6) On deciding an appeal under subsection (1), the sheriff principal or the Court of Session must remit the case to the sheriff for disposal in accordance with such directions as the court may give.
- (7) A decision in an appeal under subsection (1) or (2) by the Court of Session is final.

165 Appeals to sheriff principal and Court of Session: contact and permanence orders

- (1) A person mentioned in subsection (3) may appeal by stated case to the sheriff principal or the Court of Session against a decision of the sheriff in an appeal under section 161.
- (2) A person mentioned in subsection (3) may, with leave of the sheriff principal, appeal by stated case to the Court of Session against the sheriff principal's decision in an appeal under subsection (1).
- (3) The person is an individual (other than a relevant person in relation to the child) in relation to whom—
 - (a) a contact order is in force regulating contact between the individual and the child,
 - (b) a permanence order is in force which specifies arrangements for contact between the individual and the child, or
 - (c) the conditions specified for the purposes of section 126(2)(b) are satisfied.
- (4) An appeal under this section must be made before the expiry of the period of 28 days beginning with the day on which the decision appealed against was made.
- (5) An appeal under this section may be made—
 - (a) on a point of law,
 - (b) in respect of any procedural irregularity.
- (6) On deciding an appeal under subsection (1), the sheriff principal or the Court of Session must remit the case to the sheriff for disposal in accordance with such directions as the court may give.
- (7) A decision in an appeal under subsection (1) or (2) by the Court of Session is final.

Requirement imposed on local authority: review and appeal

166 Review of requirement imposed on local authority

- (1) This section applies where a duty is imposed on a local authority by virtue of—

- (a) a compulsory supervision order,
 - (b) an interim compulsory supervision order, or
 - (c) a medical examination order.
- (2) If the local authority is satisfied that it is not the relevant local authority for the child in respect of whom the duty is imposed, the local authority may apply to the sheriff for a review of the decision or determination to impose the duty on it.
- (3) The sheriff may review the decision or determination to impose the duty with or without hearing evidence.
- (4) The sheriff may hear evidence from—
 - (a) any local authority,
 - (b) the National Convener,
 - (c) the child in respect of whom the duty is imposed,
 - (d) a person representing that child,
 - (e) a relevant person in relation to that child,
 - (f) a person representing that person.
- (5) Where the duty is imposed on the local authority by a children's hearing, the sheriff may require the Principal Reporter to lodge with the sheriff clerk a copy of the decision (and reasons) of the children's hearing.
- (6) The sheriff must determine which local authority is the relevant local authority for the child.
- (7) Where the local authority that made the application under subsection (2) is the relevant local authority for the child, the sheriff must confirm the decision of the children's hearing or the determination of the sheriff.
- (8) Where another local authority is the relevant local authority for the child, the sheriff—
 - (a) must vary the order which imposed the duty so that the duty falls on that local authority, and
 - (b) may make an order for that local authority to reimburse such sums as the sheriff may determine to the local authority which made the application under subsection (2) for any costs incurred in relation to the duty.

167 Appeals to sheriff principal: section 166

- (1) A local authority may appeal by stated case to the sheriff principal against—
 - (a) the determination by the sheriff under section 166(6) of which local authority is the relevant local authority for a child,
 - (b) the making of an order by the sheriff under section 166(8)(b).

- (2) A person mentioned in subsection (3) may appeal by stated case to the sheriff principal against the determination by the sheriff under section 166(6) of which local authority is the relevant local authority for a child.
- (3) The persons are—
 - (a) the child to whom the determination relates,
 - (b) a person representing that child,
 - (c) a relevant person in relation to that child,
 - (d) a person representing that person.
- (4) An appeal under this section must be made before the expiry of the period of 28 days beginning with the day on which the determination or, as the case may be, order was made.
- (5) An appeal under this section may be made—
 - (a) on a point of law, or
 - (b) in respect of any procedural irregularity.
- (6) On determining an appeal under this section, the sheriff principal must remit the case to the sheriff for disposal in accordance with such directions as the court may give.
- (7) A determination of an appeal under this section is final.

PART 16

ENFORCEMENT OF ORDERS

168 Enforcement of orders

- (1) Subsection (2) applies where a relevant order authorising the keeping of a child in a particular place (an “authorised place”) is in force in relation to a child.
- (2) An officer of law may enforce the order—
 - (a) by searching for and apprehending the child,
 - (b) by taking the child to the authorised place,
 - (c) where—
 - (i) it is not reasonably practicable to take the child immediately to the authorised place, and
 - (ii) the authorised place is not a place of safety,by taking the child to and detaining the child in a place of safety for as short a period of time as is practicable, and
 - (d) so far as is necessary, by breaking open shut and lockfast places.
- (3) In this section, “relevant order” means—
 - (a) a child assessment order,
 - (b) a child protection order,
 - (c) an order under section 55,
 - (d) a compulsory supervision order,

- (e) an interim compulsory supervision order,
- (f) a medical examination order.

169 Child absconding from place

- (1) This section applies where—
 - (a) a child requires to be kept in a particular place by virtue of—
 - (i) a child assessment order,
 - (ii) a child protection order,
 - (iii) an order under section 55,
 - (iv) section 56,
 - (v) section 65,
 - (vi) a compulsory supervision order,
 - (vii) an interim compulsory supervision order,
 - (viii) a medical examination order,
 - (ix) a warrant to secure attendance, or
 - (x) section 143, and
 - (b) the child absconds from that place or, at the end of a period of leave, fails to return to that place.
- (2) The child may be arrested without warrant and taken to that place.
- (3) If a court is satisfied that there are reasonable grounds for believing that the child is within premises, the court may grant a warrant authorising an officer of law to—
 - (a) enter premises, and
 - (b) search for the child.
- (4) The court may authorise the officer of law to use reasonable force for those purposes.
- (5) Where the child is returned to the place mentioned in subsection (1), but the occupier of that place is unwilling or unable to receive the child—
 - (a) the officer of law returning the child must immediately notify the Principal Reporter of that fact, and
 - (b) the child must be kept in a place of safety until the occurrence of the relevant event.
- (6) In subsection (5), the relevant event is—
 - (a) in the case mentioned in sub-paragraph (i) of subsection (1)(a), the end of the period specified in the child assessment order,
 - (b) in the case mentioned in sub-paragraph (ii) of that subsection, whichever of the following first occurs—
 - (i) the children's hearing arranged under section 45 or 69,
 - (ii) the termination of the child protection order,
 - (c) in the case mentioned in sub-paragraph (iii) of that subsection, whichever of the following first occurs—

- (i) the order ceasing to have effect under section 55(4) or (5),
 - (ii) the determination by the sheriff of an application for a child protection order in respect of the child,
- (d) in the case mentioned in sub-paragraph (iv) of that subsection, whichever of the following first occurs—
- (i) the giving of notice under subsection (5) of section 56, or
 - (ii) the end of the period mentioned in subsection (3) of that section,
- (e) in the case mentioned in sub-paragraph (v) of that subsection, whichever of the following first occurs—
- (i) the giving of a direction by the Principal Reporter under section 68(2) or 72(2)(a), or
 - (ii) the children's hearing arranged by virtue of section 69(2),
- (f) in the case mentioned in sub-paragraph (vi) of that subsection, the children's hearing arranged by virtue of section 131(2)(b),
- (g) in the cases mentioned in sub-paragraphs (vii) and (ix) of that subsection whichever of the following first occurs—
- (i) the next children's hearing that has been arranged in relation to the child,
 - (ii) the next hearing before the sheriff relating to the child that is to take place by virtue of this Act,
- (h) in the cases mentioned in sub-paragraphs (viii) and (x) of that subsection, the next children's hearing that has been arranged in relation to the child.

170 Child absconding from person

- (1) This section applies where—
- (a) a person has (or is authorised to have) control of a child by virtue of—
 - (i) a child assessment order,
 - (ii) a child protection order,
 - (iii) an order under section 55,
 - (iv) section 56,
 - (v) section 65,
 - (vi) a compulsory supervision order,
 - (vii) an interim compulsory supervision order,
 - (viii) a medical examination order,
 - (ix) a warrant to secure attendance, or
 - (x) section 143, and
 - (b) the child absconds from that person.
- (2) The child may be arrested without warrant and taken to that person.
- (3) If a court is satisfied that there are reasonable grounds for believing that the child is within premises, the court may grant a warrant authorising an officer of law to—

- (a) enter premises, and
 - (b) search for the child.
- (4) The court may authorise the officer of law to use reasonable force for those purposes.
- (5) Where the child is returned to the person mentioned in subsection (1), but the person is unwilling or unable to receive the child—
- (a) the officer of law returning the child must immediately notify the Principal Reporter of that fact, and
 - (b) the child must be kept in a place of safety until the occurrence of the relevant event.
- (6) In subsection (5), the relevant event is—
- (a) in the case mentioned in sub-paragraph (i) of subsection (1)(a), the end of the period specified in the child assessment order,
 - (b) in the case mentioned in sub-paragraph (ii) of that subsection, whichever of the following first occurs—
 - (i) the children's hearing arranged under section 45 or 69,
 - (ii) the termination of the child protection order,
 - (c) in the case mentioned in sub-paragraph (iii) of that subsection, whichever of the following first occurs—
 - (i) the order ceasing to have effect under section 55(4) or (5),
 - (ii) the determination by the sheriff of an application for a child protection order in respect of the child,
 - (d) in the case mentioned in sub-paragraph (iv) of that subsection, whichever of the following first occurs—
 - (i) the giving of notice under subsection (5) of section 56, or
 - (ii) the end of the period mentioned in subsection (3) of that section,
 - (e) in the case mentioned in sub-paragraph (v) of that subsection, whichever of the following first occurs—
 - (i) the giving of a direction by the Principal Reporter under section 68(2) or 72(2)(a), or
 - (ii) the children's hearing arranged by virtue of section 69(2),
 - (f) in the case mentioned in sub-paragraph (vi) of that subsection, the children's hearing arranged by virtue of section 131(2)(b),
 - (g) in the cases mentioned in sub-paragraphs (vii) and (ix) of that subsection whichever of the following first occurs—
 - (i) the next children's hearing that has been arranged in relation to the child,
 - (ii) the next hearing before the sheriff relating to the child that is to take place by virtue of this Act,
 - (h) in the cases mentioned in sub-paragraphs (viii) and (x) of that subsection, the next children's hearing that has been arranged in relation to the child.

171 Offences related to absconding

- (1) This section applies where—
 - (a) a child requires to be kept in a particular place by virtue of—
 - (i) a child assessment order,
 - (ii) a child protection order,
 - (iii) a compulsory supervision order,
 - (iv) an interim compulsory supervision order,
 - (v) a medical examination order, or
 - (vi) a warrant to secure attendance, or
 - (b) a person has (or is authorised to have) control of a child by virtue of such an order or warrant.
- (2) A person commits an offence if the person—
 - (a) knowingly assists or induces the child to abscond from the place or person,
 - (b) knowingly harbours or conceals a child who has absconded from the place or person, or
 - (c) knowingly prevents a child from returning to the place or person.
- (3) The person is liable on summary conviction to a fine not exceeding level 5 on the standard scale, to imprisonment for a term not exceeding 6 months or to both.
- (4) This section is subject to—
 - (a) section 38(3) and (4) of the 1995 Act,
 - (b) section 51(5) and (6) of the Children Act 1989 (c.41), and
 - (c) Article 70(5) and (6) of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)).

PART 17

PROCEEDINGS UNDER PART 10: EVIDENCE

172 Use of evidence obtained from prosecutor

- (1) This section applies where an application is made to the sheriff—
 - (a) to determine whether a section 67 ground is established, or
 - (b) to review a grounds determination.
- (2) The Principal Reporter may request a prosecutor to give the Principal Reporter evidence held by the prosecutor in connection with the investigation of a crime or suspected crime if the Principal Reporter considers that the evidence might assist the sheriff in determining the application.
- (3) The request may relate only to evidence lawfully obtained in the course of the investigation.
- (4) The prosecutor may refuse to comply with the request if the prosecutor reasonably believes that it is necessary to retain the evidence for the purposes of any proceedings in respect of a crime (whether or not the proceedings have already commenced).

173 Cases involving sexual behaviour: evidence

- (1) This section applies where—
 - (a) an application is made to the sheriff—
 - (i) to determine whether a section 67 ground is established, or
 - (ii) to review a grounds determination, and
 - (b) the ground involves sexual behaviour engaged in by any person.
- (2) In hearing the application the sheriff must not, unless the sheriff makes an order under section 175, admit evidence, or allow questioning of a witness designed to elicit evidence, which shows or tends to show one or more of the circumstances mentioned in subsection (3) in relation to a person mentioned in subsection (4).
- (3) The circumstances are that the person—
 - (a) is not of good character (whether in relation to sexual matters or otherwise),
 - (b) has, at any time, engaged in sexual behaviour not forming part of the subject-matter of the ground,
 - (c) has, at any time (other than shortly before, at the same time as or shortly after the acts which form part of the subject-matter of the ground), engaged in behaviour (not being sexual behaviour) that might found an inference that the person is not credible or the person's evidence is not reliable,
 - (d) has, at any time, been subject to any condition or predisposition that might found the inference that the person is not credible or the person's evidence is not reliable.
- (4) The persons are—
 - (a) the child,
 - (b) a person giving evidence for the purposes of the hearing,
 - (c) any other person evidence of whose statements is given for the purposes of the hearing.
- (5) In subsection (4)(c), "statements" includes any representations, however made or expressed, of fact or opinion.
- (6) In this section and section 174, references to sexual behaviour engaged in include references to having undergone or been made subject to any experience of a sexual nature.

174 Cases involving sexual behaviour: taking of evidence by commissioner

- (1) Subsection (2) applies where—
 - (a) a commissioner is appointed under section 19 of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3) to take evidence for the purposes of a hearing before the sheriff—
 - (i) to determine whether a section 67 ground is established, or
 - (ii) to review a grounds determination, and
 - (b) the ground involves sexual behaviour engaged in by any person.

- (2) The commissioner must not, unless the sheriff makes an order under section 175, take evidence which shows or tends to show one or more of the circumstances mentioned in section 173(3) in relation to a person mentioned in section 173(4).

175 Sections 173 and 174: application to sheriff for order as to evidence

- (1) On the application of a person mentioned in subsection (2), the sheriff may, if satisfied as to the matters mentioned in subsection (3) make an order—
 - (a) admitting evidence of the kind mentioned in section 173(2),
 - (b) allowing questioning of the kind mentioned in that section,
 - (c) enabling evidence of the kind mentioned in section 174(2) to be taken.
- (2) Those persons are—
 - (a) the child,
 - (b) a relevant person in relation to the child,
 - (c) the Principal Reporter,
 - (d) a safeguarder appointed under section or whose appointment is confirmed under that section.
- (3) Those matters are—
 - (a) the evidence or questioning will relate only to—
 - (i) a specific occurrence or specific occurrences of sexual behaviour or other behaviour demonstrating the character of the person,
 - (ii) specific facts demonstrating the character of the person,
 - (iii) a specific occurrence or specific occurrences of sexual behaviour or other behaviour demonstrating a condition or predisposition to which the person is or has been subject, or
 - (iv) specific facts demonstrating a condition or predisposition to which the person is or has been subject,
 - (b) the occurrence, occurrences or facts are relevant to establishing the ground, and
 - (c) the probative value of the evidence is significant and is likely to outweigh any risk of prejudice to the proper administration of justice arising from its being admitted or elicited.
- (4) References in this section to an occurrence or occurrences of sexual behaviour include references to undergoing or being made subject to any experience of a sexual nature.
- (5) In this section “proper administration of justice” includes—
 - (a) appropriate protection of the person’s dignity and privacy, and
 - (b) ensuring the facts and circumstances of which the sheriff is made aware are relevant to an issue to be put before the sheriff and commensurate with the importance of that issue to the sheriff’s decision on the question whether the ground is established.

176 Amendment of Vulnerable Witnesses (Scotland) Act 2004

- (1) The Vulnerable Witnesses (Scotland) Act 2004 (asp 3) is amended as follows.

- (2) In section 11 (interpretation of Part 2 of Act), in subsection (5)—
- (a) after “Part—” insert—

““the 2011 Act” means the Children’s Hearings (Scotland) Act 2011 (asp 1),”
 - (b) in the definition of “civil proceedings”, for the words from “any proceedings” to the end substitute “relevant proceedings”, and
 - (c) after the definition of “court” insert—

““relevant proceedings” means proceedings under Part 10 of the 2011 Act (other than section 98),”.
- (3) In section 12 (order authorising the use of special measures for vulnerable witnesses), after subsection (7) add—
- “(8) In the case of relevant proceedings, the child witness notice or vulnerable witness application—
- (a) must be lodged or made before the commencement of the hearing at which the child or, as the case may be, vulnerable witness is to give evidence,
 - (b) on cause shown, may be lodged or made after the commencement of that hearing.”.
- (4) After section 16 insert—
- “16A Relevant proceedings: Principal Reporter’s power to act for party to proceedings**
- (1) Subsection (2) applies where a child witness or other person who is giving or is to give evidence in or for the purposes of relevant proceedings (referred to in this section as “the party”) is a party to the proceedings.
 - (2) The Principal Reporter may, on the party’s behalf—
 - (a) lodge a child witness notice under section 12(2),
 - (b) make a vulnerable witness application for an order under section 12(6),
 - (c) make an application under section 13(1)(a) for review of the current arrangements for taking a witness’s evidence.”.
- (5) After section 22 insert—
- “22A Giving evidence in chief in the form of a prior statement**
- (1) This section applies to proceedings in relation to—
 - (a) an application made by virtue of section 93 or 94 of the 2011 Act to determine whether the ground mentioned in section 67(2)(j) of that Act is established, or
 - (b) an application under section 110 of that Act for review of a finding that the ground mentioned in section 67(2)(j) of that Act is established.
 - (2) The special measures which may be authorised by virtue of section 12 or 13 for the purpose of taking the evidence of a vulnerable witness at a hearing to consider such an application include (in addition to those listed in section 18(1)) the giving of evidence in chief in the form of a prior statement in accordance with subsections (3) to (10).

- (3) Where that special measure is to be used, a statement made by the vulnerable witness (a “prior statement”) may be lodged in evidence for the purposes of this section by or on behalf of the party citing the vulnerable witness.
- (4) A prior statement is admissible as the witness’s evidence in chief, or as part of the witness’s evidence in chief, without the witness being required to adopt or otherwise speak to the statement in giving evidence.
- (5) A prior statement is admissible as evidence of any matter stated in it of which direct oral evidence by the vulnerable witness would be admissible if given at the hearing.
- (6) A prior statement is admissible under this section only if—
 - (a) it is contained in a document, and
 - (b) at the time the statement was made, the vulnerable witness would have been a competent witness for the purposes of the hearing.
- (7) Subsection (6) does not apply to a prior statement—
 - (a) contained in a precognition on oath, or
 - (b) made in other proceedings (whether criminal or civil and whether taking place in the United Kingdom or elsewhere).
- (8) A prior statement of a type mentioned in subsection (7) is not admissible for the purposes of this section unless it is authenticated in such manner as may be prescribed by regulations made by statutory instrument by the Scottish Ministers.
- (9) This section does not affect the admissibility of any statement made by any person which is admissible otherwise than by virtue of this section.
- (10) In this section—

“document” has the meaning given by section 262(3) of the Criminal Procedure (Scotland) Act 1995 (c.46),

“statement”—

 - (a) includes—
 - (i) any representation, however made or expressed, of fact or opinion, and
 - (ii) any part of a statement, but
 - (b) does not include a statement in a precognition other than a precognition on oath.
- (11) For the purposes of this section, a statement is contained in a document where the person who makes it—
 - (a) makes the statement in the document personally,
 - (b) makes a statement which is, with or without the person’s knowledge, embodied in a document by whatever means or by any person who has direct personal knowledge of the making of the statement, or
 - (c) approves a document as embodying the statement.
- (12) A statutory instrument containing regulations under subsection (8) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

PART 18

MISCELLANEOUS

Children's hearings: procedural rules

177 Children's hearings: procedural rules

- (1) The Scottish Ministers may make rules about the procedure relating to children's hearings.
- (2) Rules may in particular make provision for or in connection with—
 - (a) specifying matters that may be determined by pre-hearing panels,
 - (b) constituting children's hearings,
 - (c) arranging children's hearings,
 - (d) notifying persons about children's hearings,
 - (e) attendance of persons at children's hearings,
 - (f) specifying circumstances in which persons may be excused from attending children's hearings,
 - (g) specifying circumstances in which persons may be excluded from children's hearings,
 - (h) obtaining the views of the child to whom a children's hearing relates,
 - (i) provision of specified documents to—
 - (i) members of children's hearings,
 - (ii) the child to whom a children's hearing relates,
 - (iii) relevant persons in relation to the child to whom a children's hearing relates,
 - (iv) any other specified persons,
 - (j) withholding of specified documents from persons mentioned in paragraph (i),
 - (k) prescribing the form of the statement of grounds,
 - (l) the recording and transmission of information,
 - (m) representation of persons at children's hearings,
 - (n) payment of expenses,
 - (o) appeals.
- (3) In making rules in pursuance of subsection (2)(i)(i), the Scottish Ministers must ensure that any views expressed by the child to whom a children's hearing relates are reflected in a specified document.
- (4) Rules containing provision of the type mentioned in subsection (2)(a), (e), (f), (g), (j) or (m) are subject to the affirmative procedure.
- (5) In this section—

“children's hearing” includes pre-hearing panel,

“specified” means specified in the rules.

Disclosure of information

178 Children's hearing: disclosure of information

- (1) A children's hearing need not disclose to a person any information about the child to whom the hearing relates or about the child's case if disclosure of that information to that person would be likely to cause significant harm to the child.
- (2) Subsection (1) applies despite any requirement under an enactment (including this Act and subordinate legislation made under it) or rule of law for the children's hearing—
 - (a) to give the person an explanation of what has taken place at proceedings before the hearing, or
 - (b) to provide the person with—
 - (i) information about the child or the child's case, or
 - (ii) reasons for a decision made by the hearing.

179 Sharing of information: prosecution

- (1) This section applies where—
 - (a) by virtue of this Act, the Principal Reporter, a children's hearing or the sheriff has determined, is determining or is to determine any matter relating to a child,
 - (b) criminal proceedings have been commenced against an accused,
 - (c) the proceedings have not yet been concluded, and
 - (d) the child is connected in any way with the circumstances that gave rise to the proceedings, the accused or any other person connected in any way with those circumstances.
- (2) The Principal Reporter must make available to the Crown Office and Procurator Fiscal Service any information held by the Principal Reporter relating to the prosecution which the Service requests for the purpose of—
 - (a) the prevention or detection of crime, or
 - (b) the apprehension or prosecution of offenders.

180 Sharing of information: panel members

- (1) A local authority must comply with a request from the National Convener to provide to the National Convener information about the implementation of compulsory supervision orders by the authority.
- (2) The National Convener may disclose information provided by a local authority under subsection (1) to members of the Children's Panel.

Implementation of compulsory supervision orders: annual report

181 Implementation of compulsory supervision orders: annual report

- (1) The National Convener must, as soon as is reasonably practicable after the end of each financial year, prepare and submit to the Scottish Ministers a report about implementation of compulsory supervision orders during the year—

- (a) in Scotland as a whole, and
 - (b) in each local authority area.
- (2) The National Convener must give a copy of the report to each member of the Children's Panel.
 - (3) The Scottish Ministers must lay the report before the Scottish Parliament.
 - (4) For the purposes of preparing the report, the National Convener may require each local authority to provide to the National Convener for each financial year—
 - (a) information about—
 - (i) the number of compulsory supervision orders for which the authority is the implementation authority,
 - (ii) changes in the circumstances that led to the making of the orders,
 - (iii) the ways in which the overall wellbeing of children who are subject to the orders has been affected by them, and
 - (b) such other information relating to the implementation of the orders as the National Convener may require.
 - (5) Information provided under subsection (4) must not identify (or enable the identification of) a particular child.
 - (6) In this section, “financial year” has the meaning given by paragraph 24(3) of schedule 1.

Publishing restrictions

182 Publishing restrictions

- (1) A person must not publish protected information if the publication of the information is intended, or is likely, to identify—
 - (a) a child mentioned in the protected information, or
 - (b) an address or school as being that of such a child.
- (2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (3) It is a defence for a person (“P”) charged with a contravention of subsection (1) to show that P did not know or have reason to suspect that the publication of the protected information was likely to identify a child mentioned in the protected information, or, as the case may be, an address or school of such a child.
- (4) In relation to proceedings before a children's hearing, the Scottish Ministers may in the interests of justice—
 - (a) dispense with the prohibition in subsection (1), or
 - (b) relax it to such extent as they consider appropriate.
- (5) In relation to proceedings before the sheriff under Part 10 or 15, the sheriff may in the interests of justice—
 - (a) dispense with the prohibition in subsection (1), or
 - (b) relax it to such extent as the sheriff considers appropriate.

- (6) In relation to proceedings in an appeal to the Court of Session under this Act, the Court may in the interests of justice—
 - (a) dispense with the prohibition in subsection (1), or
 - (b) relax it to such extent as the Court considers appropriate.
- (7) The prohibition in subsection (1) does not apply in relation to the publication by or on behalf of a local authority or an adoption agency of information about a child for the purposes of making arrangements in relation to the child under this Act or the Adoption and Children (Scotland) Act 2007 (asp 4).
- (8) In subsection (7), “adoption agency” has the meaning given by the Adoption and Children (Scotland) Act 2007.
- (9) In this section—

“protected information” means—

 - (a) information in relation to—
 - (i) a children’s hearing,
 - (ii) an appeal against a decision of a children’s hearing,
 - (iii) proceedings before the sheriff under Part 10 or 15, or
 - (iv) an appeal from any decision of the sheriff or sheriff principal made under this Act, or
 - (b) information given to the Principal Reporter in respect of a child in reliance on, or satisfaction of, a provision of this Act or any other enactment,

“publish” includes in particular—

 - (a) to publish matter in a programme service, as defined by section 201 of the Broadcasting Act 1990 (c.42), and
 - (b) to cause matter to be published.

Mutual assistance

183 Mutual assistance

- (1) A person mentioned in subsection (2) must comply with a request by another such person for assistance in the carrying out of functions conferred by virtue of this Act.
- (2) The persons are—
 - (a) CHS,
 - (b) the National Convener,
 - (c) SCRA,
 - (d) the Principal Reporter.
- (3) A person mentioned in subsection (4) must comply with a request by a local authority for assistance in the carrying out of the local authority’s functions under this Act.
- (4) The persons are—
 - (a) another local authority,
 - (b) a health board constituted under section 2 of the National Health Service (Scotland) Act 1978 (c.29).

- (5) A request under this section must specify the assistance that is required.
- (6) Nothing in this section requires a person to comply with a request if—
 - (a) it would be incompatible with any function (whether conferred by statute or otherwise) of the person to whom it is directed, or
 - (b) it would unduly prejudice the carrying out by the person to whom the request is directed of the person's functions.

184 Enforcement of obligations on health board under section 183

- (1) This section applies where—
 - (a) the implementation authority in relation to a compulsory supervision order has made a request for assistance from a health board under section 183(3),
 - (b) the request is in connection with the implementation of the compulsory supervision order, and
 - (c) the implementation authority is satisfied that the health board has unreasonably failed to comply with the request.
- (2) The implementation authority may refer the matter to the Scottish Ministers.
- (3) On receiving a reference under subsection (2), the Scottish Ministers may, if they are satisfied that the health board has unreasonably failed to comply with the request, direct the health board to comply with the request.
- (4) The health board must comply with a direction under subsection (3).

Proceedings before sheriff under Act

185 Amendment of section 32 of Sheriff Courts (Scotland) Act 1971

- (1) Section 32 of the Sheriff Courts (Scotland) Act 1971 (c.58) (power of Court of Session to regulate civil procedure in sheriff court) is amended as follows.
- (2) In subsection (1)—
 - (a) after paragraph (eb) insert—
 - “(ec) enabling a witness (including a witness who is outwith Scotland) in proceedings under Part 10 or 15 of the Children's Hearings (Scotland) Act 2011 to give evidence by a means specified in the act of sederunt that does not require the witness to be physically present in court in such circumstances, and subject to such conditions, as may be specified in the act of sederunt,
 - (ed) prescribing circumstances in which a party to proceedings under Part 10 or 15 of the Children's Hearings (Scotland) Act 2011 may be prohibited from personally conducting the examination of witnesses,”
 - (b) after paragraph (i) insert—
 - “(ia) permitting a party to proceedings under the Children's Hearings (Scotland) Act 2011 to be represented (including through the making of oral submissions to the sheriff on the party's behalf), in such circumstances as may be specified in the act of sederunt, by a person who is neither an advocate nor a solicitor,” and

(c) after paragraph (k) insert—

“(ka) prescribing functions of safeguarders appointed by the sheriff in relation to proceedings under Part 10 or 15 of the Children’s Hearings (Scotland) Act 2011,

(kb) prescribing rights of safeguarders appointed by the sheriff in relation to proceedings under Part 10 or 15 of the Children’s Hearings (Scotland) Act 2011 to information relating to the proceedings,”.

(3) After subsection (4) add—

“(5) In subsection (1), “civil proceedings” includes proceedings under the Children’s Hearings (Scotland) Act 2011.”.

Consent of child to medical examination or treatment

186 Consent of child to medical examination or treatment

(1) Nothing in this Act prejudices any capacity of a child enjoyed by virtue of section 2(4) of the Age of Legal Capacity (Scotland) Act 1991 (c.50) (capacity of child with sufficient understanding to consent to surgical, medical or dental procedure or treatment).

(2) In particular, where—

(a) under an order mentioned in subsection (3) any examination or treatment is arranged for the child, and

(b) the child has the capacity mentioned in section 2(4) of the Age of Legal Capacity (Scotland) Act 1991,

the examination or treatment may be carried out only if the child consents to it.

(3) Those orders are—

(a) a child assessment order,

(b) a child protection order,

(c) a compulsory supervision order,

(d) an interim compulsory supervision order,

(e) a medical examination order.

Rehabilitation of offenders

187 Rehabilitation of Offenders Act 1974: treatment of certain disposals by children’s hearings

(1) The Rehabilitation of Offenders Act 1974 (c.53) is amended as follows.

(2) In section 8B (protection afforded to spent alternatives to prosecution: Scotland)—

(a) after subsection (1) insert—

“(1A) For the purposes of this Act, a person has also been given an alternative to prosecution in respect of an offence if (whether before or after the commencement of this section) in proceedings before a children’s hearing to which subsection (1B) applies—

- (a) a compulsory supervision order (as defined in section 83 of the 2011 Act) has been made or, as the case may be, varied or continued in relation to the person, or
 - (b) the referral to the children's hearing has been discharged (whether wholly or in relation to the ground that the person committed the offence).
- (1B) This subsection applies to proceedings if the proceedings were taken in relation to the person on the ground (whether alone or with other grounds) that the person had committed the offence and—
- (a) the ground was accepted for the purposes of the 2011 Act by—
 - (i) the person, and
 - (ii) any person who was a relevant person as respects those proceedings, or
 - (b) the ground was established or treated as established for the purposes of the 2011 Act.
- (1C) In subsections (1A) and (1B)—
- “the 2011 Act” means the Children's Hearings (Scotland) Act 2011,
- “relevant person”—
- (a) has the meaning given by section 200 of the 2011 Act, and
 - (b) includes a person who was deemed to be a relevant person by virtue of section 81(3), 160(4)(b) or 164(6) of that Act.
- (1D) For the purposes of this Act, a person has also been given an alternative to prosecution in respect of an offence if (whether before or after the commencement of this section) in proceedings before a children's hearing to which subsection (1E) applies—
- (a) a supervision requirement has been made or, as the case may be, varied or continued under the Children (Scotland) Act 1995 (“the 1995 Act”) in relation to the person, or
 - (b) the referral to the children's hearing has been discharged (whether wholly or in relation to the ground that the person committed the offence).
- (1E) This subsection applies to proceedings if the proceedings were taken in relation to the person on the ground (whether alone or with other grounds) that the person had committed the offence and—
- (a) the ground was accepted for the purposes of the 1995 Act by the person and, where necessary, the relevant person (as defined in section 93(2) of that Act), or
 - (b) the ground was established, or deemed to have been established, for the purposes of that Act.”, and
- (b) in subsection (2), for “subsection (1)” substitute “subsections (1), (1A) and (1D)”.
- (3) In Schedule 3 (protection for spent alternatives to prosecution: Scotland), after subparagraph (1)(a) of paragraph 1 insert—
- “(aa) in the case of—

- (i) a compulsory supervision order referred to in paragraph (a) of subsection (1A) of that section, the period of 3 months beginning on the day the compulsory supervision order is made or, as the case may be, varied or continued, or
 - (ii) a discharge referred to in paragraph (b) of subsection (1A) of that section, the period of 3 months beginning on the day of the discharge,
- (ab) in the case of—
- (i) a supervision requirement referred to in paragraph (a) of subsection (1D) of that section, the period of 3 months beginning on the day the supervision requirement is made or, as the case may be, varied or continued, or
 - (ii) a discharge referred to in paragraph (b) of subsection (1D) of that section, the period of 3 months beginning on the day of the discharge.”.

Criminal record certificates

188 Criminal record certificates

In section 113A of the Police Act 1997 (c.50) (criminal record certificates)—

- (a) in subsection (6), in the definition of “relevant matter”, after paragraph (b) insert—
 - “(ba) an alternative to prosecution of the type mentioned in section 8B(1A) or (1D) of that Act which relates to an offence specified in an order made by the Scottish Ministers by statutory instrument, including any such alternative to prosecution which so relates and which is spent under Schedule 3 to that Act,
 - (bb) a supervision requirement made in relation to a person by a children’s hearing under section 44 of the Social Work (Scotland) Act 1968 in the circumstances mentioned in subsection (6A) if the supervision requirement relates to an offence specified in an order under paragraph (ba),
 - (bc) the discharge under section 43 of the Social Work (Scotland) Act 1968 of the referral of a person to a children’s hearing in the circumstances mentioned in subsection (6A) if the discharge relates to an offence specified in an order under paragraph (ba),”and
- (b) after that subsection, insert—
 - “(6A) The circumstances are—
 - (a) the person was referred to the children’s hearing on the ground (whether alone or among other grounds) mentioned in section 32(2)(g) of the Social Work (Scotland) Act 1968 (commission of offence), and
 - (b) the ground was accepted by the person and, where necessary, by the person’s parent or established to the satisfaction of the sheriff under section 42 of that Act.

- (6B) An order under paragraph (ba) of the definition of “relevant matter” in subsection (6) may specify an offence by reference to a particular degree of seriousness.
- (6C) A statutory instrument containing an order under paragraph (ba) of the definition of “relevant matter” in subsection (6) may not be made unless a draft of the instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.”.

Places of safety

189 Places of safety: restrictions on use of police stations

- (1) This section applies where a person is authorised or required under this Act to keep or detain a child in a place of safety.
- (2) A child may be kept or detained in a police station only if it is not reasonably practicable to keep or detain the child in a place of safety which is not a police station.
- (3) Where a child is being kept or detained in a police station, the person must take steps to identify a place of safety which is not a police station and transfer the child to that place as soon as is reasonably practicable.

Orders made outwith Scotland

190 Effect of orders made outwith Scotland

- (1) The Scottish Ministers may by regulations make provision for a specified non-Scottish order which appears to them to correspond to a compulsory supervision order to have effect as if it were such an order.
- (2) Regulations under subsection (1)—
 - (a) may provide that a non-Scottish order is to have such effect only—
 - (i) in specified circumstances,
 - (ii) for specified purposes,
 - (b) may modify the following enactments in their application by virtue of the regulations to a non-Scottish order—
 - (i) the Social Work (Scotland) Act 1968,
 - (ii) this Act,
 - (c) are subject to affirmative procedure.
- (3) In this section—

“non-Scottish order” means an order made by a court in England and Wales or in Northern Ireland,

“specified” means specified in the regulations.

PART 19

LEGAL AID AND ADVICE

191 Legal aid and advice

After section 28A of the Legal Aid (Scotland) Act 1986 (c.47) insert—

“PART 5A

CHILDREN'S LEGAL AID

28B Children's legal aid

- (1) This Part applies to children's legal aid.
- (2) In this Act, “children's legal aid” means representation by a solicitor and, where appropriate, by counsel in proceedings mentioned in subsection (3), on the terms provided for in this Act, and includes all such assistance as is usually given by a solicitor or counsel in the steps preliminary to or incidental to those proceedings.
- (3) The proceedings are—
 - (a) proceedings before the sheriff in relation to an application under section 48 of the 2011 Act (application for variation or termination of child protection order),
 - (b) proceedings before a children's hearing arranged by virtue of section 45 or 46 of the 2011 Act (children's hearing following making of child protection order),
 - (c) proceedings before a children's hearing or a pre-hearing panel if the children's hearing or the panel considers that it might be necessary to make a compulsory supervision order including a secure accommodation authorisation in relation to the child to whom the proceedings relate,
 - (d) proceedings before a children's hearing to which section 69(3) of the 2011 Act applies (children's hearing following arrest of child and detention in place of safety),
 - (e) proceedings under Part 10 or 15 of the 2011 Act.
- (4) In this Part—

“compulsory supervision order” has the meaning given by section 83 of that Act,

“pre-hearing panel” has the meaning given by section 79 of that Act,

“secure accommodation authorisation” has the meaning given by section 85 of that Act.

28C Circumstances where children's legal aid automatically available

- (1) Subsection (2) applies where—
 - (a) an application is made under section 48 of the 2011 Act for variation or termination of a child protection order,
 - (b) a children's hearing is arranged in relation to a child by virtue of section 45 or 46 of the 2011 Act,
 - (c) a children's hearing or a pre-hearing panel considers that it might be necessary to make a compulsory supervision order including a secure accommodation authorisation in relation to a child, or
 - (d) a children's hearing to which section 69(3) of the 2011 Act applies is arranged in relation to a child.

- (2) If assistance by way of representation has not been made available to the child, children's legal aid is available to the child for the purposes of—
 - (a) proceedings before the sheriff in relation to the application mentioned in paragraph (a) of subsection (1),
 - (b) the children's hearing mentioned in paragraph (b) or, as the case may be, (c) or (d) of that subsection, and
 - (c) if that children's hearing is deferred, any subsequent children's hearing held under Part 11 of the 2011 Act.
- (3) The Scottish Ministers may by regulations—
 - (a) modify subsection (1),
 - (b) modify subsection (2) and section 28B(3) and (4) in consequence of modifications made under paragraph (a).

28D Availability of children's legal aid: child

- (1) Subsection (2) applies in relation to proceedings under Part 10 or 15 of the 2011 Act (other than an appeal to the sheriff principal or the Court of Session).
- (2) Children's legal aid is available to the child to whom the proceedings relate if, on an application made to the Board, the Board is satisfied that the conditions in subsection (3) are met.
- (3) The conditions are—
 - (a) that it is in the best interests of the child that children's legal aid be made available,
 - (b) that it is reasonable in the particular circumstances of the case that the child should receive children's legal aid, and
 - (c) that, after consideration of the disposable income and disposable capital of the child, the expenses of the case cannot be met without undue hardship to the child.
- (4) Subsection (5) applies in relation to an appeal to the sheriff principal or the Court of Session under Part 15 of the 2011 Act.
- (5) Children's legal aid is available to the child to whom the proceedings relate if, on an application made to the Board, the Board is satisfied that—
 - (a) the conditions in subsection (3) are met, and
 - (b) the child has substantial grounds for making or responding to the appeal.

28E Availability of children's legal aid: relevant person

- (1) Subsection (2) applies in relation to—
 - (a) proceedings before the sheriff in relation to an application under section 48 of the 2011 Act (application for variation or termination of child protection order), and
 - (b) proceedings under Part 10 or 15 of the 2011 Act (other than an appeal to the sheriff principal or the Court of Session).
- (2) Children's legal aid is available to a relevant person in relation to the child to whom the proceedings relate if, on an application made to the Board, the Board is satisfied that the conditions in subsection (3) are met.

- (3) The conditions are—
 - (a) that it is reasonable in the particular circumstances of the case that the relevant person should receive children's legal aid, and
 - (b) that, after consideration of the disposable income and disposable capital of the relevant person, the expenses of the case cannot be met without undue hardship to the relevant person.
- (4) Subsection (5) applies in relation to an appeal to the sheriff principal or the Court of Session under Part 15 of the 2011 Act.
- (5) Children's legal aid is available to a relevant person in relation to the child to whom the appeal relates if, on an application made to the Board, the Board is satisfied that—
 - (a) the conditions in subsection (3) are met, and
 - (b) the relevant person has substantial grounds for making or responding to the appeal.
- (6) In this Part, "relevant person"—
 - (a) has the meaning given by section 200 of the 2011 Act, and
 - (b) includes a person deemed to be a relevant person by virtue of section 81(3), 160(4)(b) or 164(6) of that Act.

28F Availability of children's legal aid: appeals relating to deemed relevant person

- (1) Subsection (2) applies in relation to—
 - (a) an appeal under section 154 or 163(1)(a)(iii) or (2) of the 2011 Act arising from a determination of a children's hearing mentioned in section 142(1)(a) if by virtue of section 142(4)(b) an individual is no longer to be deemed to be a relevant person,
 - (b) an appeal to the sheriff under section 160(1)(a) of that Act against a determination of a pre-hearing panel or children's hearing that an individual is not to be deemed a relevant person in relation to a child,
 - (c) an appeal to the sheriff under section 160(1)(b) of that Act against a direction under section 142(4)(a) that an individual is no longer to be deemed a relevant person in relation to a child,
 - (d) an appeal to the sheriff principal or the Court of Session under section 164(1) of that Act against a decision of the sheriff in an appeal under section 160(1)—
 - (i) confirming a determination that an individual is not to be deemed a relevant person in relation to a child, or
 - (ii) quashing a determination that an individual is to be deemed a relevant person in relation to a child, and
 - (e) an appeal to the Court of Session under section 164(2) of that Act against a determination of the sheriff principal where the effect of the sheriff principal's determination is that an individual is not to be deemed a relevant person in relation to a child.

- (2) Children's legal aid is available to the individual if, on an application made to the Board, the Board is satisfied—
- (a) that it is reasonable in the particular circumstances of the case that the individual should receive children's legal aid,
 - (b) that, after consideration of the disposable income and disposable capital of the individual, the expenses of the case cannot be met without undue hardship to the individual, and
 - (c) that—
 - (i) in relation to an appeal mentioned in paragraph (a) of subsection (1), the individual has substantial grounds for making or, as the case may be, responding to the appeal,
 - (ii) in relation to an appeal mentioned in any other paragraph of that subsection, the individual has substantial grounds for making the appeal.

28G Conditions

The Board may make the grant of children's legal aid subject to such conditions as the Board considers expedient; and such conditions may be imposed at any time.

28H Board to establish review procedures

- (1) The Board must establish a procedure under which a person whose application for children's legal aid has been refused may apply to the Board for a review of the application.
- (2) The Board must establish a procedure under which any person receiving children's legal aid which is subject to conditions by virtue of section 28G may apply to the Board for a review of any such condition.

28J Board's power to require compliance with conditions

The Board may require a person receiving children's legal aid to comply with such conditions as it considers expedient to enable it to satisfy itself from time to time that it is reasonable for the person to continue to receive children's legal aid.

28K Contributions to the Fund

- (1) A person in receipt of children's legal aid (the "assisted person") may be required by the Board to contribute to the Fund in respect of any proceedings in connection with which the assisted person is granted children's legal aid.
- (2) A contribution under subsection (1) is to be determined by the Board and may include—
 - (a) if the assisted person's disposable income exceeds £3,355 a year, a contribution in respect of income which is not to be more than one-third of the excess (or such other proportion of the excess, or such amount, as may be prescribed by regulations made under this section), and
 - (b) if the assisted person's disposable capital exceeds £7,504, a contribution in respect of capital which is not to be more than the excess (or such proportion of the excess or such lesser amount as may be prescribed by regulations made under this section).

- (3) Regulations under this section may prescribe different proportions or amounts for different amounts of disposable income and for different cases or classes of case.

28L Power of Scottish Ministers to modify circumstances in which children's legal aid to be available

- (1) The Scottish Ministers may by regulations modify this Part so as to—
 - (a) extend or restrict the types of proceedings before a children's hearing in connection with which children's legal aid is to be available, and
 - (b) specify the persons to whom children's legal aid is to be available.
- (2) If regulations are made making children's legal aid available to a child, the regulations must include provision—
 - (a) requiring the Board to be satisfied that—
 - (i) one of the conditions in subsection (3) is met, and
 - (ii) the conditions in section 28D(3) are met before children's legal aid is made available, and
 - (b) requiring the Board, in determining for the purposes of subsection (3)(b)(ii) whether the child would be able to participate effectively in the proceedings, to take into account in particular the matters mentioned in subsection (4).
- (3) The conditions are—
 - (a) that it might be necessary for the children's hearing to decide whether a compulsory supervision order or, as the case may be, an interim compulsory supervision order should include or (where a compulsory supervision order is being reviewed) continue to include a secure accommodation authorisation, and
 - (b) that—
 - (i) the condition in paragraph (a) is not met, and
 - (ii) for the purpose of enabling the child to participate effectively in the proceedings before the children's hearing, it is necessary that the child be represented by a solicitor or counsel.
- (4) The matters are—
 - (a) the nature and complexity of the case (including any points of law),
 - (b) the ability of the appropriate person, with the assistance of any accompanying person, to consider and challenge any document or information before the children's hearing,
 - (c) the ability of the appropriate person, with the assistance of any accompanying person, to give the appropriate person's views at the children's hearing in an effective manner.
- (5) If regulations are made making children's legal aid available to a person other than the child to whom the proceedings relate, the regulations must include provision—
 - (a) requiring the Board to be satisfied that the conditions in subsection (6) are met before children's legal aid is made available, and

- (b) requiring the Board, in determining for the purposes of the condition in subsection (6)(a) whether the person would be able to participate effectively in the proceedings, to take into account in particular the matters mentioned in subsection (4).
- (6) The conditions are—
 - (a) that, for the purpose of enabling the person to participate effectively in the proceedings before the children's hearing, it is necessary that the person be represented by a solicitor or counsel,
 - (b) that it is reasonable in the particular circumstances of the case that the person should receive children's legal aid, and
 - (c) that, after consideration of the disposable income and disposable capital of the person, the expenses of the case cannot be met without undue hardship to the person or the dependants of the person.
- (7) In subsection (4)—
 - “accompanying person” means a person entitled to accompany the child or other person to the children's hearing by virtue of rules under section 177 of the 2011 Act,
 - “appropriate person” means—
 - (a) for the purposes of subsection (2)(b), the child,
 - (b) for the purposes of subsection (5)(b), the other person.
- (8) The Scottish Ministers may by regulations modify—
 - (a) the matters for the time being set out in subsection (4),
 - (b) the definition of “accompanying person” for the time being set out in subsection (7).

PART 5B

CHILDREN'S LEGAL ASSISTANCE

28M Register of solicitors and firms eligible to provide children's legal assistance

- (1) The Board must establish and maintain a register of—
 - (a) solicitors who are eligible to provide children's legal assistance, and
 - (b) the firms with which such solicitors are connected.
- (2) A sole solicitor who wishes to provide children's legal assistance must be included in the register maintained under this section both as a solicitor and as a firm.
- (3) Only those solicitors who are included in the register maintained under this section may provide children's legal assistance.
- (4) Subject to subsection (5), a solicitor may provide children's legal assistance only when working in the course of a connection with a firm included in the register maintained under this section.
- (5) Where the Board employs a solicitor under sections 26 and 27 to provide children's legal assistance—

- (a) the Board may only employ a solicitor who is included in the register maintained under this section,
 - (b) the entry in the register relating to the solicitor's name must include a note that the solicitor is so employed,
 - (c) the Board is not to be regarded as a firm for the purposes of this section and is not required to be included in the register.
- (6) The Scottish Ministers may by regulations make provision about qualifications to be held by persons who may be included in the register maintained under this section.
- (7) Subsections (5) to (15) of section 25A apply in relation to the register maintained under this section as they apply in relation to the Register subject to the modifications mentioned in subsection (8).
- (8) Those modifications are—
- (a) subsections (8) and (9) are to be read as if references to the code were references to the code of practice under section 28N for the time being in force, and
 - (b) subsection (9) is to be read as if the reference to criminal legal assistance were a reference to children's legal assistance.

28N Code of practice

- (1) The Board must prepare a draft code of practice in relation to the carrying out by solicitors of their functions with regard to the provision of children's legal assistance.
- (2) Different provision may be made for different cases or classes of case.
- (3) Subsections (3) to (8) of section 25B apply in relation to a draft code prepared under subsection (1) above as they apply in relation to a draft code prepared under subsection (1) of that section.

28P Duty to comply with code of practice

- (1) Solicitors and firms included in the register maintained under section 28M(1) must comply with the requirements of the code of practice under section 28N for the time being in force.
- (2) The Board must monitor the carrying out by those solicitors and firms of their duty under subsection (1).
- (3) For the purpose of carrying out its duty under subsection (2) the Board may use the powers conferred on it by sections 35A and 35B.

28Q Non-compliance with code of practice

- (1) Section 25D applies in relation to a solicitor or firm included in the register maintained under section 28M(1) and the code of practice under section 28N for the time being in force as it applies in relation to a registered solicitor or registered firm and the code subject to the modifications mentioned in subsection (2).
- (2) Those modifications are—
 - (a) references to the Register are to be read as if they were references to the register maintained under section 28M(1),

- (b) subsection (6) is to be read as if the references to criminal legal assistance were references to children's legal assistance.

28R Further provision as to removal of name from register

- (1) Subsection (2) applies where the Board is satisfied (whether on being informed by the solicitor concerned or otherwise) that a solicitor who is included in the register maintained under section 28M(1)—
- (a) has become connected with a firm whose name is not included in that register, and
 - (b) is no longer connected with a firm whose name is included in that register.
- (2) The Board must remove the solicitor's name from the register.
- (3) Subsections (6) to (9) of section 25D (as applied by section 28Q) apply in relation to a solicitor whose name is removed from the register under subsection (2) above as they apply in relation to a solicitor whose name is removed from the register under subsection (4) of that section (as applied by section 28Q).

28S Publication of register etc.

Section 25F applies in relation to the register maintained under section 28M(1) as it applies in relation to the Register.”.

192 Power to make regulations about contracts for provision of children's legal aid

After section 33A of the Legal Aid (Scotland) Act 1986 insert—

“Contracts for the provision of children's legal assistance

33B Contracts for the provision of children's legal assistance

- (1) The Scottish Ministers may by regulations made under this section empower the Board to enter into contracts with relevant firms for the provision by relevant solicitors connected with those firms of children's legal assistance.
- (2) Regulations under this section may prescribe—
- (a) the procedures to be followed by the Board in awarding any such contract, and
 - (b) subject to subsection (3), any terms and conditions which are to be included in any such contract.
- (3) Regulations under this section must provide that any contract entered into by virtue of this section must include a provision that, in the event of the termination of the contract, or a breach of it by the relevant firm concerned, the Board may—
- (a) withhold payments under the contract, and
 - (b) require the firm to secure the transfer to a relevant solicitor of—
 - (i) any work currently being undertaken by any solicitor connected with them for any client by way of children's legal assistance, and

- (ii) notwithstanding any lien to which any such solicitor might otherwise be entitled, any documents connected with any such work.
- (4) Regulations under this section may provide that where the Board has by virtue of this section entered into contracts with any relevant firms for the provision of children’s legal assistance in any area, then, unless it seems to the Board to be inappropriate in a particular case, any person seeking such assistance in that area is to be required to instruct a relevant solicitor connected with one of those firms.
- (5) Any money due to a firm under a contract made by virtue of this section is to be paid to the firm—
 - (a) firstly, out of any amount payable by the client in accordance with section 11(2),
 - (b) secondly, by the Board out of the Fund.
- (6) For the purposes of sections 32 and 33, the money paid to a firm, as provided in subsection (5) above, in respect of a contract made by virtue of this section is to be taken to be a payment made in accordance with this Act, and no solicitor connected with such a firm is entitled to any other payment out of the Fund in respect of any work done by the solicitor by virtue of such a contract.
- (7) In this section—
 - “relevant firm” means a firm included in the register maintained under section 28M(1),
 - “relevant solicitor” means a solicitor included in the register maintained under section 28M(1).”.

PART 20

GENERAL

Formal communications

193 Formal communications

- (1) The following are formal communications—
 - (a) a notice,
 - (b) a determination,
 - (c) a direction,
 - (d) a report,
 - (e) a statement,
 - (f) a referral under section 127.
- (2) A formal communication must be in writing.
- (3) That requirement is satisfied by a formal communication in electronic form which is—
 - (a) sent by electronic means, and
 - (b) capable of being reproduced in legible form.

- (4) A formal communication sent in accordance with subsection (3) is to be taken to be received on the day it is sent.

Forms

194 Forms

- (1) The Scottish Ministers may determine—
 - (a) the form of documents produced by virtue of this Act, and
 - (b) the manner in which those documents are to be conveyed.
- (2) The Scottish Ministers may in particular determine that documents may be conveyed by electronic means.

Subordinate legislation

195 Subordinate legislation

- (1) Any power of the Scottish Ministers to make subordinate legislation under this Act is exercisable by statutory instrument.
- (2) Any such power includes power to make—
 - (a) such incidental, supplementary, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
 - (b) different provision for different purposes.
- (3) Except in any case where subordinate legislation under this Act is subject to the affirmative procedure or the super-affirmative procedure, subordinate legislation under this Act is subject to the negative procedure.
- (4) Subsections (2) and (3) do not apply to an order under section 206(2).

196 Negative procedure

- (1) Subsection (2) applies where subordinate legislation under this Act is subject to the negative procedure.
- (2) The statutory instrument containing the subordinate legislation is subject to annulment in pursuance of a resolution of the Scottish Parliament.

197 Affirmative procedure

- (1) Subsection (2) applies where subordinate legislation under this Act is subject to the affirmative procedure.
- (2) The subordinate legislation must not be made unless a draft of the statutory instrument containing the subordinate legislation has been laid before, and approved by resolution of, the Scottish Parliament.

198 Super-affirmative procedure

- (1) Subsections (2) to (6) apply where subordinate legislation under this Act is subject to the super-affirmative procedure.
- (2) The subordinate legislation must not be made unless a draft of the statutory instrument containing the subordinate legislation has been laid before, and approved by resolution of, the Scottish Parliament.
- (3) Before laying a draft instrument before the Parliament under subsection (2), the Scottish Ministers must consult—
 - (a) such persons who are under 21 years of age as they consider appropriate, and
 - (b) such other persons as they consider appropriate.
- (4) For the purposes of such a consultation, the Scottish Ministers must—
 - (a) lay a copy of the proposed draft instrument before the Parliament,
 - (b) publish in such a manner as the Scottish Ministers consider appropriate a copy of the proposed draft instrument, and
 - (c) have regard to any representations about the proposed draft instrument that are made to them within 60 days of the date on which the copy of the proposed draft instrument is laid before the Parliament.
- (5) In calculating any period of 60 days for the purposes of subsection (4)(c), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.
- (6) When laying a draft instrument before the Parliament under subsection (2), the Scottish Ministers must also lay before the Parliament an explanatory document giving details of—
 - (a) the consultation carried out under subsection (3),
 - (b) any representations received as a result of the consultation, and
 - (c) the changes (if any) made to the proposed draft instrument as a result of those representations.

Interpretation

199 Meaning of “child”

- (1) In this Act, “child” means a person who is under 16 years of age (but subject to subsections (2) to (9)).
- (2) In paragraph (o) of section 67(2) and the other provisions of this Act in their application in relation to that paragraph, “child” means a person who is of school age.
- (3) Subsection (4) applies where a person becomes 16 years of age—
 - (a) after section 66 applies in relation to the person, but
 - (b) before a relevant event.
- (4) For the purposes of the application of this Act to the person, references in this Act to a child include references to the person until a relevant event occurs.
- (5) A relevant event is—
 - (a) the making of a compulsory supervision order in relation to the person,

- (b) the notification of the person under section 68(3) that the question of whether a compulsory supervision order should be made in respect of the person will not be referred to a children's hearing, or
- (c) the discharge of the referral.
- (6) Subsection (7) applies if—
 - (a) a compulsory supervision order is in force in respect of a person on the person's becoming 16 years of age, or
 - (b) a compulsory supervision order is made in respect of a person on or after the person becomes 16 years of age.
- (7) For the purposes of the application of the provisions of this Act relating to that order, references in this Act to a child include references to the person until whichever of the following first occurs—
 - (a) the order is terminated, or
 - (b) the person becomes 18 years of age.
- (8) Subsection (9) applies where a case is remitted to the Principal Reporter under section 49(7)(b) of the Criminal Procedure (Scotland) Act 1995.
- (9) For the purposes of the application of this Act to the person whose case is remitted, references in this Act to a child include references to the person until whichever of the following first occurs—
 - (a) a children's hearing or the sheriff discharges the referral,
 - (b) a compulsory supervision order made in respect of the person is terminated, or
 - (c) the person becomes 18 years of age.

200 Meaning of “relevant person”

- (1) In this Act, “relevant person”, in relation to a child, means—
 - (a) a parent or guardian having parental responsibilities or parental rights in relation to the child under Part 1 of the 1995 Act,
 - (b) a person in whom parental responsibilities or parental rights are vested by virtue of section 11(2)(b) of the 1995 Act,
 - (c) a person having parental responsibilities or parental rights by virtue of section 11(12) of the 1995 Act,
 - (d) a parent having parental responsibility for the child under Part 1 of the Children Act 1989 (c.41) (“the 1989 Act”),
 - (e) a person having parental responsibility for the child by virtue of—
 - (i) section 12(2) of the 1989 Act,
 - (ii) section 14C of the 1989 Act, or
 - (iii) section 25(3) of the Adoption and Children Act 2002 (c.38),
 - (f) a person in whom parental responsibilities or parental rights are vested by virtue of a permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007 (asp 4)),
 - (g) any other person specified by order made by the Scottish Ministers.

- (2) For the purposes of subsection (1)(a), a parent does not have parental responsibilities or rights merely by virtue of an order under section 11(2)(d) or (e) of the 1995 Act.
- (3) An order made under subsection (1)(g) is subject to the affirmative procedure.

201 Meaning of “relevant local authority”

- (1) In this Act, “relevant local authority”, in relation to a child, means—
 - (a) the local authority in whose area the child predominantly resides, or
 - (b) where the child does not predominantly reside in the area of a particular local authority, the local authority with whose area the child has the closest connection.
- (2) For the purposes of subsection (1)(a), no account is to be taken of—
 - (a) any period of residence in a residential establishment,
 - (b) any other period of residence, or residence in any other place, prescribed by the Scottish Ministers by regulations.
- (3) For the purposes of subsection (1)(b), no account is to be taken of—
 - (a) any connection with an area that relates to a period of residence in a residential establishment,
 - (b) any other connection prescribed by the Scottish Ministers by regulations.

202 Interpretation

- (1) In this Act, unless the context otherwise requires—
 - “the 1995 Act” means the Children (Scotland) Act 1995 (c.36),
 - “affirmative procedure” is to be construed in accordance with section 197,
 - “CHS” means Children’s Hearings Scotland,
 - “chief social work officer” means the officer appointed under section 3 of the Social Work (Scotland) Act 1968 (c.49) by—
 - (a) in relation to a compulsory supervision order or an interim compulsory supervision order, the implementation authority,
 - (b) in relation to a medical examination order or a warrant to secure attendance, the relevant local authority for the child to whom the order or warrant relates,
 - “child assessment order” means an order mentioned in section 35,
 - “child protection order” means an order mentioned in section 37,
 - “compulsory supervision order” has the meaning given by section 83,
 - “contact order” has the meaning given by section 11(2)(d) of the 1995 Act,
 - “crime” has the meaning given in section 307(1) of the Criminal Procedure (Scotland) Act 1995 (c.46),
 - “functions” includes powers and duties; and “confer”, in relation to functions, includes impose,
 - “grounds determination” has the meaning given by section 110(1),
 - “grounds hearing” has the meaning given by section 90,

“implementation authority”—

- (a) in relation to a compulsory supervision order, has the meaning given by section 83(1)(b),
- (b) in relation to an interim compulsory supervision order, has the meaning given by section 86(1)(b),

“interim compulsory supervision order” has the meaning given by section 86,

“interim variation”, in relation to a compulsory supervision order, has the meaning given by section 140,

“medical examination order” has the meaning given by section 87,

“movement restriction condition” has the meaning given by section 84,

“negative procedure” is to be construed in accordance with section 196,

“officer of law” has the meaning given by section 307(1) of the Criminal Procedure (Scotland) Act 1995 (c.46),

“parental responsibilities” has the meaning given by section 1(3) of the 1995 Act,

“parental rights” has the meaning given by section 2(4) of the 1995 Act,

“permanence order” has the meaning given by section 80(2) of the Adoption and Children (Scotland) Act 2007 (asp 4),

“place of safety”, in relation to a child, means—

- (a) a residential or other establishment provided by a local authority,
- (b) a community home within the meaning of section 53 of the Children Act 1989 (c.41),
- (c) a police station,
- (d) a hospital or surgery, the person or body of persons responsible for the management of which is willing temporarily to receive the child,
- (e) the dwelling-house of a suitable person who is so willing, or
- (f) any other suitable place the occupier of which is so willing,

“pre-hearing panel” has the meaning given by section 79(2)(a),

“prosecutor” has the meaning given by section 307(1) of the Criminal Procedure (Scotland) Act 1995 (c.46),

“residential establishment” means—

- (a) an establishment in Scotland (whether managed by a local authority, a voluntary organisation or any other person) which provides residential accommodation for children for the purposes of this Act, the 1995 Act or the Social Work (Scotland) Act 1968 (c.49),
- (b) a home in England or Wales that is—
 - (i) a community home within the meaning of section 53 of the Children Act 1989 (c.41),
 - (ii) a voluntary home within the meaning of that Act, or
 - (iii) a private children's home within the meaning of that Act, or
- (c) a home in Northern Ireland that is—

- (i) provided under Part VIII of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)),
- (ii) a voluntary home within the meaning of that Order, or
- (iii) a registered children's home within the meaning of that Order,

“safeguarder” has the meaning given by section 30(1),

“school age” has the meaning given by section 31 of the Education (Scotland) Act 1980 (c.44),

“secure accommodation” means accommodation provided in a residential establishment, approved in accordance with regulations made under section 29 of the Regulation of Care (Scotland) Act 2001 (asp 8) or section 22(8)(a) of the Care Standards Act 2000 (c.14), for the purpose of restricting the liberty of children,

“secure accommodation authorisation” has the meaning given by section 85,

“statement of grounds” has the meaning given by section 89(3),

“subordinate legislation” means—

- (a) an order,
- (b) regulations, or
- (c) rules,

“super-affirmative procedure” is to be construed in accordance with section 198,

“warrant to secure attendance” has the meaning given by section 88, and

“working day” means every day except—

- (a) Saturday and Sunday,
- (b) 25 and 26 December,
- (c) 1 and 2 January.

- (2) References in this Act to a decision of a children's hearing are references to a decision of a majority of the members of a children's hearing.
- (3) References in this Act to varying a compulsory supervision order, an interim compulsory supervision order or a medical examination order include varying the order by adding or removing measures.

General

203 Consequential amendments and repeals

- (1) Schedule 5 contains minor amendments and amendments consequential on the provisions of this Act.
- (2) The enactments specified in schedule 6, which include enactments that are spent, are repealed to the extent specified.

204 Ancillary provision

- (1) The Scottish Ministers may by order make such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

- (2) An order under subsection (1) may modify any enactment (including this Act).
- (3) An order under this section containing provisions which add to, replace or omit any part of the text of an Act is subject to the affirmative procedure.

205 Transitional provision etc.

- (1) The Scottish Ministers may by order make such provision as they consider necessary or expedient for transitory, transitional or saving purposes in connection with the coming into force of any provision of this Act.
- (2) An order under subsection (1) may modify any enactment (including this Act).

206 Short title and commencement

- (1) This Act may be cited as the Children's Hearings (Scotland) Act 2011.
- (2) The provisions of this Act, other than sections 193 to 202, 204, 205 and this section, come into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under subsection (2) may contain transitional, transitory or saving provision in connection with the coming into force of this Act.

SCHEDULE 1
(introduced by section 3)

CHILDREN'S HEARINGS SCOTLAND

Status

- 1 (1) CHS—
- (a) is not a servant or agent of the Crown, and
 - (b) does not enjoy any status, immunity or privilege of the Crown.
- (2) CHS's property is not property of, or property held on behalf of, the Crown.

Membership

- 2 (1) The members of CHS are to be appointed by the Scottish Ministers.
- (2) There are to be no fewer than five and no more than eight members.
- (3) The Scottish Ministers may by order amend sub-paragraph (2) so as to substitute for the numbers of members for the time being specified there different numbers of members.
- (4) A member holds and vacates office on terms and conditions determined by the Scottish Ministers.
- (5) The Scottish Ministers may appoint a person to be a member only if satisfied that the person has knowledge and experience relevant to the functions of CHS and the National Convener.
- (6) The Scottish Ministers may appoint a person to be a member only if satisfied that the person, after appointment, will have no financial or other interest that is likely to prejudicially affect the performance of the person's functions as a member of CHS.
- (7) The Scottish Ministers may reappoint as a member a person who has ceased to be a member.

Persons disqualified from membership

- 3 A person is disqualified from appointment, and from holding office, as a member if the person is or becomes—
- (a) a member of the House of Commons,
 - (b) a member of the Scottish Parliament, or
 - (c) a member of the European Parliament.

Resignation of members

- 4 A member of CHS may resign office by giving notice in writing to the Scottish Ministers.

Removal of members

- 5 (1) The Scottish Ministers may revoke the appointment of a member of CHS if—
- (a) the member becomes insolvent,

- (b) the member is incapacitated by physical or mental illness,
 - (c) the member has been absent from meetings of CHS for a period longer than 3 months without the permission of CHS,
 - (d) the member is otherwise unfit to be a member or unable for any reason to discharge the functions of a member.
- (2) For the purposes of sub-paragraph (1)(a) a member becomes insolvent when—
- (a) a voluntary arrangement proposed by the member is approved,
 - (b) the member is adjudged bankrupt,
 - (c) the member's estate is sequestrated,
 - (d) the member's application for a debt payment programme is approved under section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), or
 - (e) the member grants a trust deed for creditors.

Remuneration, allowances etc.

- 6 (1) CHS must pay to its members—
- (a) such remuneration as the Scottish Ministers may determine, and
 - (b) such allowances in respect of expenses properly incurred by members in the performance of their functions as may be so determined.
- (2) CHS must—
- (a) pay to or in respect of any person who is or has been a member of CHS such pension, allowances or gratuities as the Scottish Ministers may determine, or
 - (b) make such payments as the Scottish Ministers may determine towards provision for the payment of a pension, allowance or gratuity to or in respect of such a person.
- (3) Sub-paragraph (4) applies where—
- (a) a person ceases to be a member otherwise than on the expiry of the person's term of office, and
 - (b) it appears to the Scottish Ministers that there are circumstances which make it right for the person to receive compensation.
- (4) CHS must make a payment to the person of such amount as the Scottish Ministers may determine.

Chairing meetings

- 7 (1) The Scottish Ministers must appoint one of the members of CHS to chair meetings of CHS (the "chairing member").
- (2) The chairing member holds and vacates that office on terms and conditions determined by the Scottish Ministers.

- (3) If a person is appointed as the chairing member for a period that extends beyond the period of the person's appointment as a member, the person's appointment as a member is taken to have been extended so that it ends on the same day as the period of appointment as chairing member ends.
- (4) The chairing member may resign that office by giving notice in writing to the Scottish Ministers.
- (5) If the chairing member is for any reason unable to chair a meeting of members, a majority of the members present at the meeting may elect one of those members to chair the meeting.

The National Convener

- 8 (1) CHS is, with the approval of the Scottish Ministers, to appoint a person as the National Convener (other than the first National Convener).
- (2) CHS may, with the approval of the Scottish Ministers, reappoint a person as the National Convener.
- (3) CHS must take reasonable steps to involve persons who are under 21 years of age in the process for selection of a person for appointment or reappointment under this paragraph.
- (4) The period for which a person is appointed or reappointed under this paragraph is 5 years.
- (5) A person appointed or reappointed under this paragraph holds and vacates office on terms and conditions determined by CHS and approved by the Scottish Ministers.
- (6) The Scottish Ministers may by regulations prescribe qualifications that must be held by the National Convener.
- (7) A person is disqualified from appointment, and from holding office, as the National Convener if the person is or becomes—
 - (a) a member of the House of Commons,
 - (b) a member of the Scottish Parliament, or
 - (c) a member of the European Parliament.
- (8) The National Convener may appeal to the Scottish Ministers against dismissal by CHS.
- (9) CHS is the respondent in an appeal under sub-paragraph (8).
- (10) The Scottish Ministers may by regulations make provision about—
 - (a) the procedure to be followed in appeals under sub-paragraph (8),
 - (b) the effect of making such an appeal,
 - (c) the powers of the Scottish Ministers for disposing of such appeals (including powers to make directions about liability for expenses),
 - (d) the effect of the exercise of those powers.

Supplementary powers of National Convener

- 9 The National Convener may do anything that the National Convener considers appropriate for the purposes of or in connection with the functions conferred on the National Convener by virtue of this Act or any other enactment.

Delegation of National Convener's functions

- 10 (1) The functions of the National Convener conferred by virtue of this Act or any other enactment (other than the functions mentioned in sub-paragraph (2)) may be carried out on the National Convener's behalf by a person who is—
- (a) authorised (whether specially or generally) by the National Convener for the purpose, or
 - (b) a person of a class of person authorised (whether specially or generally) by the National Convener for the purpose.
- (2) The functions are—
- (a) the function conferred by paragraph 24,
 - (b) functions conferred by paragraph 1(2) to (6) of schedule 2.
- (3) The National Convener may not under sub-paragraph (1) authorise the Principal Reporter, SCRA or a local authority to carry out a function on behalf of the National Convener.
- (4) The National Convener may not under sub-paragraph (1) authorise a person employed by SCRA or a local authority to carry out the function conferred on the National Convener by section 8.
- (5) If under sub-paragraph (1) the National Convener delegates the function conferred on the National Convener by section 8, the National Convener may not delegate any other function to the same person under that sub-paragraph.
- (6) Nothing in sub-paragraph (1) prevents the National Convener from carrying out any function delegated under that sub-paragraph.
- (7) The Scottish Ministers may by regulations prescribe the qualifications to be held by a person to whom a function, or a function of a class, specified in the regulations is delegated.
- (8) A person to whom a function is delegated under sub-paragraph (1) must comply with a direction given to the person by the National Convener about the carrying out of the function.
- (9) CHS may pay to a person to whom a function is delegated under sub-paragraph (1) such expenses and allowances as the Scottish Ministers may determine.

Staff

- 11 (1) CHS may employ any staff necessary to ensure the carrying out of CHS's functions.
- (2) Staff are employed on terms and conditions determined by CHS and approved by the Scottish Ministers.
- (3) CHS may—
- (a) pay a pension, allowance or gratuity, including by way of compensation for loss of employment, to or in respect of an eligible person,
 - (b) make payments towards the provision of a pension, allowance or gratuity, including by way of compensation for loss of employment, to or in respect of an eligible person,

- (c) provide and maintain schemes (whether contributory or not) for the payment of a pension, allowance or gratuity, including by way of compensation for loss of employment, to or in respect of an eligible person.
- (4) CHS may, with the approval of the Scottish Ministers, determine—
 - (a) who, of the persons who are or have ceased to be employees of CHS, are to be eligible persons, and
 - (b) the amount that may be paid or provided for.
- (5) Sub-paragraphs (6) and (7) apply where—
 - (a) a person employed by CHS becomes a member of CHS, and
 - (b) the person was (because the person was an employee of CHS) a participant in a pension scheme established and administered by CHS for the benefit of its employees.
- (6) CHS may determine that the person's service as a member of CHS is to be treated for the purposes of the scheme as service as an employee of CHS whether or not any benefits are to be payable to or in respect of the person under paragraph 6.
- (7) Any discretion which the scheme confers on CHS as to the benefits payable to or in respect of the person is to be exercised only with the approval of the Scottish Ministers.

Area support teams: establishment and membership

- 12 (1) The National Convener must establish and maintain a committee (to be known as an area support team) for each area that the National Convener designates for the purposes of this paragraph.
- (2) An area designated under sub-paragraph (1) is to consist of one or more local authority areas.
- (3) Before establishing an area support team, the National Convener must obtain the consent of each constituent authority.
- (4) The National Convener must appoint as members of an area support team—
 - (a) one person nominated by each constituent authority (if the authority chooses to make a nomination),
 - (b) such other persons nominated by constituent authorities as the National Convener considers appropriate,
 - (c) a member of the Children's Panel who lives or works in the area of the area support team, and
 - (d) sufficient other persons so that the number of members nominated by a local authority is no more than one third of the total number of members.
- (5) An area support team may not include the Principal Reporter or a member or employee of SCRA.
- (6) An area support team may establish sub-committees consisting of persons who are members of the area support team.
- (7) In this paragraph and paragraphs 13 and 14 "constituent authority", in relation to an area support team (or a proposed area support team), means a local authority whose area falls within the area of the area support team.

Transfer of members from CPACs

- 13 (1) This paragraph applies where the National Convener establishes an area support team under paragraph 12(1).
- (2) The National Convener must notify each relevant CPAC member of the National Convener's intention to transfer the member to the area support team.
- (3) A notice under sub-paragraph (2) must state that the relevant CPAC member will become a member of the area support team unless the member notifies the National Convener within 28 days of receiving the notice that the person does not wish to become a member of the area support team.
- (4) A relevant CPAC member is a person who—
- (a) at the time of the establishment of the area support team, is a member of a Children's Panel Advisory Committee whose area falls wholly within the area of the area support team, and
 - (b) was nominated as such by the Scottish Ministers (or, as the case may be, by the Secretary of State) under paragraph 3 or 4(a) of Schedule 1 to the 1995 Act.
- (5) The National Convener must appoint each relevant CPAC member as a member of the area support team unless the member notifies the National Convener in accordance with sub-paragraph (3).
- (6) On appointment as a member of the area support team under sub-paragraph (5), a relevant CPAC member ceases to be a member of the Children's Panel Advisory Committee.
- (7) In this paragraph—
- “area”, in relation to a Children's Panel Advisory Committee, means the area of the local authority (or authorities) which formed the Children's Panel Advisory Committee,
 - “Children's Panel Advisory Committee” includes a joint advisory committee within the meaning of paragraph 8 of Schedule 1 to the 1995 Act.

Area support teams: functions

- 14 (1) An area support team is to carry out for its area the functions conferred on the National Convener by section 6.
- (2) The National Convener may delegate to an area support team to carry out for its area—
- (a) a function conferred on the National Convener by paragraph 1(1) of schedule 2,
 - (b) other functions of the National Convener specified for the purpose by the National Convener.
- (3) The National Convener may not specify for the purpose of sub-paragraph (2)(b) the functions conferred on the National Convener by section 8.
- (4) Before delegating a function under sub-paragraph (2) to be carried out by an area support team the National Convener must consult each constituent authority.
- (5) A function to be carried out by an area support team by virtue of sub-paragraph (1) or (2) may not be delegated by the area support team to a person who is not a member of the area support team.

- (6) Nothing in sub-paragraph (1) or (2) prevents the National Convener from carrying out any function mentioned in those sub-paragraphs.
- (7) An area support team must comply with a direction given to it by the National Convener about—
 - (a) the carrying out of the functions mentioned in sub-paragraph (1),
 - (b) the carrying out of a function delegated to it under sub-paragraph (2).
- (8) Before giving a direction to an area support team as mentioned in sub-paragraph (7) the National Convener must consult each constituent authority.

Committees

- 15 (1) CHS may establish committees.
- (2) The members of committees may include persons who are not members of CHS.
- (3) A committee must not consist entirely of persons who are not members of CHS.
- (4) CHS must pay to a person who is not a member of CHS and who is appointed to a committee such remuneration and allowances as CHS may, with the approval of the Scottish Ministers, determine.
- (5) A committee must comply with any directions given to it by CHS.
- (6) In this paragraph, only sub-paragraph (4) applies in relation to area support teams.

CHS's supplementary powers

- 16 (1) CHS may do anything that it considers appropriate for the purposes of or in connection with its functions.
- (2) CHS may in particular—
 - (a) acquire and dispose of land and other property,
 - (b) enter into contracts,
 - (c) carry out research relating to the functions conferred on it by virtue of this Act or any other enactment,
 - (d) publish, or assist in the publication of, materials relating to those functions,
 - (e) promote, or assist in the promotion of, publicity relating to those functions.

Procedure

- 17 (1) CHS may determine—
 - (a) its own procedure (including quorum), and
 - (b) the procedure (including quorum) of any of its committees.
- (2) An area support team may determine—
 - (a) its own procedure (including quorum), and
 - (b) the procedure (including quorum) of any of its sub-committees.

Delegation of CHS's functions

- 18 (1) Any function of CHS (whether conferred by virtue of this Act or any other enactment) may be carried out on its behalf by—
- (a) a member of CHS,
 - (b) a committee of CHS, or
 - (c) a person employed by CHS.
- (2) Nothing in sub-paragraph (1) prevents CHS from carrying out any function delegated under that sub-paragraph.

Financial interests

- 19 (1) The Scottish Ministers must from time to time satisfy themselves that the members of CHS have no financial or other interest that is likely to prejudicially affect the performance of their functions as members of CHS.
- (2) A member must comply with a requirement of the Scottish Ministers to give them any information that the Scottish Ministers consider necessary to enable them to comply with sub-paragraph (1).

Grants

- 20 (1) The Scottish Ministers may make grants to CHS of amounts that they determine.
- (2) A grant is made subject to any conditions specified by the Scottish Ministers (including conditions about repayment).

Accounts

- 21 (1) CHS must—
- (a) keep proper accounts and accounting records,
 - (b) prepare for each financial year a statement of accounts, and
 - (c) send a copy of each statement of accounts to the Scottish Ministers by such time as they may direct.
- (2) Each statement of accounts must comply with any directions given by the Scottish Ministers as to—
- (a) the information to be contained in it,
 - (b) the manner in which the information is to be presented,
 - (c) the methods and principles according to which the statement is to be prepared.
- (3) The Scottish Ministers must send a copy of each statement of accounts to the Auditor General for Scotland for auditing.
- (4) In this paragraph, “financial year” means—
- (a) the period beginning on the date on which CHS is established and ending—
 - (i) on 31 March next occurring, or
 - (ii) if that period is of less than 6 months' duration, on 31 March next occurring after that, and

- (b) each subsequent period of a year ending on 31 March.

Provision of accounts and other information to Scottish Ministers

- 22 (1) The Scottish Ministers may direct CHS to give them accounts or other information specified in the direction relating to CHS's property and activities or proposed activities.
- (2) CHS must—
- (a) give the Scottish Ministers accounts or any other information that it is directed to give under sub-paragraph (1),
 - (b) give the Scottish Ministers facilities for the verification of the information given,
 - (c) permit any person authorised by the Scottish Ministers to inspect and make copies of accounts and any other documents of CHS for the purposes of verifying the information given, and
 - (d) give the person an explanation, reasonably required by the person, of anything that the person is entitled to inspect.

CHS's annual report

- 23 (1) CHS must, as soon as is reasonably practicable after the end of each financial year, prepare and submit to the Scottish Ministers a report on the carrying out of its functions during the year.
- (2) The report must include a copy of so much of the report made to CHS by the National Convener as relates to the year.
- (3) CHS may include in the report any other information that it considers appropriate.
- (4) The Scottish Ministers must lay before the Scottish Parliament each report submitted to them.
- (5) In this paragraph, "financial year" means—
- (a) the period beginning on the date on which CHS is established and ending—
 - (i) on 31 March next occurring, or
 - (ii) if that period is of less than 6 months' duration, on 31 March next occurring after that, and
 - (b) each subsequent period of a year ending on 31 March.

National Convener's annual report

- 24 (1) The National Convener must, as soon as is reasonably practicable after the end of each financial year, prepare and submit to CHS a report on the carrying out during the year of the functions conferred on the National Convener by virtue of this Act or any other enactment.
- (2) The National Convener may include in the report any other information that the National Convener considers appropriate.
- (3) In this paragraph, "financial year" means—
- (a) the period beginning with the appointment of the first National Convener and ending—

- (i) on 31 March next occurring, or
 - (ii) if that period is of less than 6 months' duration, on 31 March next occurring after that, and
- (b) each subsequent period of a year ending on 31 March.

Validity of proceedings and actions

- 25 The validity of proceedings or actions of CHS (including proceedings or actions of any of its committees) is not affected by—
- (a) any vacancy in the membership of CHS or any of its committees,
 - (b) any defect in the appointment of a member of CHS or any of its committees, or
 - (c) the disqualification of a person as a member of CHS after appointment.

SCHEDULE 2
(introduced by section 4)

THE CHILDREN'S PANEL

Recruitment and tenure of panel members

- 1 (1) The National Convener may make arrangements for the recruitment of persons as members of the Children's Panel (a person appointed as a member being referred to in this schedule as a "panel member").
- (2) It is for the National Convener to appoint persons as panel members from those recruited under sub-paragraph (1).
- (3) The National Convener must reappoint as a panel member a person whose appointment has ceased unless—
- (a) the person declines to be reappointed, or
 - (b) the National Convener is satisfied that sub-paragraph (4) applies.
- (4) This sub-paragraph applies if the person is unfit to be a panel member by reason of—
- (a) inability,
 - (b) conduct, or
 - (c) failure without reasonable excuse to comply with any training requirements imposed by the National Convener.
- (5) The period for which a person is appointed or reappointed as a panel member is 3 years.
- (6) The National Convener may, with the consent of the Lord President of the Court of Session, remove a panel member during the period mentioned in sub-paragraph (5) if satisfied that sub-paragraph (4) applies.

List of panel members

- 2 (1) The National Convener must publish a list setting out in relation to each panel member—
- (a) the member's name,

- (b) the local authority area in which the member resides, and
 - (c) if the member works, the local authority area in which the member works.
- (2) The National Convener must make the list available for public inspection.

Training

- 3 (1) The National Convener may train, or make arrangements for the training of, panel members and potential panel members.
- (2) The National Convener must take reasonable steps to involve persons who are under 25 years of age and in respect of whom a children's hearing has been held in the development and delivery of training under sub-paragraph (1).
- (3) The National Convener must, in training (or making arrangements for the training of) panel members under sub-paragraph (1), have regard to the need to provide training on how panel members may best elicit the views of a child to whom a children's hearing relates.
- (4) The National Convener may monitor the performance of panel members.

Allowances

- 4 (1) The National Convener may, with the approval of the Scottish Ministers, determine the allowances to be paid to—
- (a) panel members,
 - (b) potential panel members.
- (2) Different determinations may be made for different cases or different classes of case.
- (3) The National Convener may pay to panel members and potential panel members allowances determined under sub-paragraph (1).

SCHEDULE 3 *(introduced by section 16)*

THE SCOTTISH CHILDREN'S REPORTER ADMINISTRATION

Status

- 1 (1) SCRA—
- (a) is not a servant or agent of the Crown, and
 - (b) does not enjoy any status, immunity or privilege of the Crown.
- (2) SCRA's property is not property of, or property held on behalf of, the Crown.

Membership

- 2 (1) The members of SCRA are to be appointed by the Scottish Ministers.
- (2) There are to be no fewer than five and no more than eight members.
- (3) The Scottish Ministers may by order amend sub-paragraph (2) so as to substitute for the numbers of members for the time being specified there different numbers of members.

- (4) A member holds and vacates office on terms and conditions determined by the Scottish Ministers.
- (5) The Scottish Ministers may appoint a person to be a member only if satisfied that the person has knowledge or experience relevant to the functions of SCRA and the Principal Reporter.
- (6) The Scottish Ministers may appoint a person to be a member only if satisfied that the person, after appointment, will have no financial or other interest that is likely to prejudicially affect the performance of the person's functions as a member of SCRA.
- (7) The Scottish Ministers may reappoint as a member a person who has ceased to be a member.

Persons disqualified from membership

- 3 A person is disqualified from appointment, and from holding office, as a member if the person is or becomes—
 - (a) a member of the House of Commons,
 - (b) a member of the Scottish Parliament, or
 - (c) a member of the European Parliament.

Resignation of members

- 4 A member of SCRA may resign office by giving notice in writing to the Scottish Ministers.

Removal of members

- 5 (1) The Scottish Ministers may revoke the appointment of a member of SCRA if—
 - (a) the member becomes insolvent,
 - (b) the member is incapacitated by physical or mental illness,
 - (c) the member has been absent from meetings of SCRA for a period longer than 3 months without the permission of SCRA,
 - (d) the member is otherwise unfit to be a member or unable for any reason to discharge the functions of a member.
- (2) For the purposes of sub-paragraph (1)(a) a member becomes insolvent when—
 - (a) a voluntary arrangement proposed by the member is approved,
 - (b) the member is adjudged bankrupt,
 - (c) the member's estate is sequestrated,
 - (d) the member's application for a debt payment programme is approved under section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), or
 - (e) the member grants a trust deed for creditors.

Remuneration, allowances etc.

- 6 (1) SCRA must pay to its members—
 - (a) such remuneration as the Scottish Ministers may determine, and
 - (b) such allowances in respect of expenses properly incurred by members in the performance of their functions as may be so determined.
- (2) SCRA must—
 - (a) pay to or in respect of any person who is or has been a member of SCRA such pension, allowances or gratuities as the Scottish Ministers may determine, or
 - (b) make such payments as the Scottish Ministers may determine towards provision for the payment of a pension, allowance or gratuity to or in respect of such a person.
- (3) Sub-paragraph (4) applies where—
 - (a) a person ceases to be a member otherwise than on the expiry of the person's term of office, and
 - (b) it appears to the Scottish Ministers that there are circumstances which make it right for the person to receive compensation.
- (4) SCRA must make a payment to the person of such amount as the Scottish Ministers may determine.

Chairing meetings

- 7 (1) The Scottish Ministers must appoint one of the members of SCRA to chair meetings of SCRA (the "chairing member").
- (2) The chairing member holds and vacates that office on terms and conditions determined by the Scottish Ministers.
- (3) If a person is appointed as the chairing member for a period that extends beyond the period of the person's appointment as a member, the person's appointment as a member is taken to have been extended so that it ends on the same day as the period of appointment as chairing member ends.
- (4) The chairing member may resign that office by giving notice in writing to the Scottish Ministers.
- (5) If the chairing member is for any reason unable to chair a meeting of members, a majority of the members present at the meeting may elect one of those members to chair the meeting.

The Principal Reporter

- 8 (1) The Principal Reporter is to be appointed by SCRA with the approval of the Scottish Ministers.
- (2) SCRA must take reasonable steps to involve persons who are under 21 years of age in the process for selection of a person for appointment under sub-paragraph (1).
- (3) The Principal Reporter holds and vacates that office on terms and conditions determined by SCRA and approved by the Scottish Ministers.

- (4) The Scottish Ministers may by regulations prescribe qualifications that must be held by the Principal Reporter.
- (5) A person is disqualified from appointment, and from holding office, as the Principal Reporter if the person is or becomes—
 - (a) a member of the House of Commons,
 - (b) a member of the Scottish Parliament, or
 - (c) a member of the European Parliament.
- (6) The Principal Reporter may appeal to the Scottish Ministers against dismissal by SCRA.
- (7) SCRA is the respondent in an appeal under sub-paragraph (6).
- (8) The Scottish Ministers may by regulations make provision about—
 - (a) the procedure to be followed in appeals under sub-paragraph (6),
 - (b) the effect of making such an appeal,
 - (c) the powers of the Scottish Ministers for disposing of such appeals (including powers to make directions about liability for expenses),
 - (d) the effect of the exercise of those powers.
- (9) Nothing in this paragraph affects any appointment in force on the commencement of this paragraph.

Supplementary powers of Principal Reporter

- 9 The Principal Reporter may do anything that the Principal Reporter considers appropriate for the purposes of or in connection with the functions conferred on the Principal Reporter by virtue of this Act or any other enactment.

Delegation of Principal Reporter's functions

- 10 (1) The functions of the Principal Reporter conferred by virtue of this Act or any other enactment (other than the duty imposed by paragraph 22) may be carried out on the Principal Reporter's behalf by a person employed by SCRA who is—
 - (a) authorised (whether specially or generally) by the Principal Reporter for the purpose, or
 - (b) a member of a class of person authorised (whether specially or generally) by the Principal Reporter for the purpose.
- (2) Nothing in sub-paragraph (1) prevents the Principal Reporter from carrying out any function delegated under that sub-paragraph.
- (3) The Scottish Ministers may by regulations prescribe the qualifications to be held by a person employed by SCRA to whom a function, or a function of a class, specified in the regulations is delegated.
- (4) A function of the Principal Reporter may not be delegated to a person who is employed by both SCRA and a local authority unless SCRA consents to the delegation.
- (5) The Principal Reporter may give directions about the carrying out of a delegated function.
- (6) The persons to whom the function is delegated must comply with the direction.

Staff

- 11 (1) SCRA may employ any staff necessary to ensure the carrying out of SCRA's functions.
- (2) Staff are employed on terms and conditions determined by SCRA and approved by the Scottish Ministers.
- (3) SCRA may—
 - (a) pay a pension, allowance or gratuity, including by way of compensation for loss of employment, to or in respect of an eligible person,
 - (b) make payments towards the provision of a pension, allowance or gratuity, including by way of compensation for loss of employment, to or in respect of an eligible person,
 - (c) provide and maintain schemes (whether contributory or not) for the payment of a pension, allowance or gratuity, including by way of compensation for loss of employment, to or in respect of an eligible person.
- (4) SCRA may, with the approval of the Scottish Ministers, determine—
 - (a) who, of the persons who are or have ceased to be employees of SCRA, are to be eligible persons, and
 - (b) the amount that may be paid or provided for.
- (5) Sub-paragraphs (6) and (7) apply where—
 - (a) a person employed by SCRA becomes a member of SCRA, and
 - (b) the person was (because the person was an employee of SCRA) a participant in a pension scheme established and administered by SCRA for the benefit of its employees.
- (6) SCRA may determine that the person's service as a member of SCRA is to be treated for the purposes of the scheme as service as an employee of SCRA whether or not any benefits are to be payable to or in respect of the person under paragraph 6.
- (7) Any discretion which the scheme confers on SCRA as to the benefits payable to or in respect of the person is to be exercised only with the approval of the Scottish Ministers.

Appeals against dismissal

- 12 (1) A person employed by SCRA who is of a description or class specified in regulations made by the Scottish Ministers may appeal to the Scottish Ministers against dismissal by SCRA.
- (2) SCRA is the respondent in an appeal under this paragraph.
- (3) Regulations under sub-paragraph (1) may make provision about—
 - (a) the procedure for appeals under this paragraph,
 - (b) the effect of making such an appeal,
 - (c) the powers of the Scottish Ministers to dispose of such appeals (including powers to make directions about liability for expenses),
 - (d) the effect of the exercise of those powers.

Committees

- 13 (1) SCRA may establish committees.
- (2) The members of committees may include persons who are not members of SCRA.
 - (3) A committee must not consist entirely of persons who are not members of SCRA.
 - (4) SCRA must pay to a person who is not a member of SCRA and who is appointed to a committee such remuneration and allowances as SCRA may, with the approval of the Scottish Ministers, determine.
 - (5) A committee must comply with any directions given to it by SCRA.

SCRA's supplementary powers

- 14 (1) SCRA may do anything that it considers appropriate for the purposes of or in connection with its functions.
- (2) SCRA may in particular—
- (a) acquire and dispose of land and other property,
 - (b) enter into contracts,
 - (c) carry out research relating to the functions conferred on it by virtue of this Act or any other enactment,
 - (d) publish, or assist in the publication of, materials relating to those functions,
 - (e) promote, or assist in the promotion of, publicity relating to those functions.

Procedure

- 15 SCRA may determine—
- (a) its own procedure (including quorum), and
 - (b) the procedure (including quorum) of any of its committees.

Delegation of SCRA's functions

- 16 (1) Any function of SCRA (whether conferred by virtue of this Act or any other enactment) may be carried out on its behalf by—
- (a) a member of SCRA,
 - (b) a committee of SCRA,
 - (c) a person employed by SCRA,
 - (d) any other person authorised (whether specially or generally) by it for the purpose.
- (2) Nothing in sub-paragraph (1) prevents SCRA from carrying out any function delegated under that sub-paragraph.

Financial interests

- 17 (1) The Scottish Ministers must from time to time satisfy themselves that the members of SCRA have no financial or other interest that is likely to prejudicially affect the performance of their functions as members of SCRA.

- (2) A member must comply with a requirement of the Scottish Ministers to give them any information that the Scottish Ministers consider necessary to enable them to comply with sub-paragraph (1).

Grants

- 18 (1) The Scottish Ministers may make grants to SCRA of amounts that they determine.
- (2) A grant is made subject to any conditions specified by the Scottish Ministers (including conditions about repayment).

Accounts

- 19 (1) SCRA must—
 - (a) keep proper accounts and accounting records,
 - (b) prepare for each financial year a statement of accounts, and
 - (c) send a copy of each statement of accounts to the Scottish Ministers by such time as they may direct.
- (2) Each statement of accounts must comply with any directions given by the Scottish Ministers as to—
 - (a) the information to be contained in it,
 - (b) the manner in which the information is to be presented,
 - (c) the methods and principles according to which the statement is to be prepared.
- (3) The Scottish Ministers must send a copy of each statement of accounts to the Auditor General for Scotland for auditing.
- (4) In this paragraph, “financial year” means each period of a year ending on 31 March.

Provision of accounts and other information to Scottish Ministers

- 20 (1) The Scottish Ministers may direct SCRA to give them accounts or other information specified in the direction relating to SCRA's property and activities or proposed activities.
- (2) SCRA must—
 - (a) give the Scottish Ministers accounts or any other information that it is directed to give under sub-paragraph (1),
 - (b) give the Scottish Ministers facilities for the verification of the information given,
 - (c) permit any person authorised by the Scottish Ministers to inspect and make copies of accounts and any other documents of SCRA for the purposes of verifying the information given, and
 - (d) give the person an explanation, reasonably required by the person, of anything that the person is entitled to inspect.

SCRA's annual report

- 21 (1) SCRA must, as soon as is reasonably practicable after the end of each financial year, prepare and submit to the Scottish Ministers a report on the carrying out of its functions during the year.
- (2) The report must include a copy of so much of the report made to SCRA by the Principal Reporter as relates to the year.
- (3) SCRA may include in the report any other information that it considers appropriate.
- (4) The Scottish Ministers must lay before the Scottish Parliament each report submitted to them.
- (5) In this section, "financial year" means each period of a year ending on 31 March.

Principal Reporter's annual report

- 22 (1) The Principal Reporter must, as soon as is reasonably practicable after the end of each financial year, prepare and submit to SCRA a report on the carrying out during the year of the functions conferred on the Principal Reporter by virtue of this Act or any other enactment.
- (2) The Principal Reporter may include in the report any other information that the Principal Reporter considers appropriate.
- (3) In this paragraph, "financial year" means each period of a year ending on 31 March.

Validity of proceedings and actions

- 23 The validity of proceedings or actions of SCRA (including proceedings or actions of any of its committees) is not affected by—
- (a) any vacancy in the membership of SCRA or any of its committees,
- (b) any defect in the appointment of a member of SCRA or any of its committees, or
- (c) the disqualification of a person as a member of SCRA after appointment.

SCHEDULE 4
(introduced by section 24)

TRANSFER OF STAFF AND PROPERTY TO CHS

Interpretation

- 1 In this schedule—
- "recognised" has the meaning given by section 178(3) of the Trade Union and Labour Relations (Consolidation) Act 1992 (c.52),
- "trade union" has the meaning given by section 1 of that Act, and
- "transfer day", in relation to a person, means the day on which a staff transfer order comes into force in relation to the person.

Staff transfer orders

- 2 (1) The Scottish Ministers may by order (a "staff transfer order") make provision for or in connection with—

- (a) the transfer of persons employed by SCRA to CHS,
 - (b) the transfer of persons employed by local authorities from authorities to CHS.
- (2) A staff transfer order may in particular—
- (a) prescribe rules by which the transfer of persons, or classes of person, specified in the order can be determined,
 - (b) require—
 - (i) in relation to persons employed by SCRA, SCRA and CHS acting jointly, or
 - (ii) in relation to persons employed by a local authority specified in the order, the local authority and CHS acting jointly,to make a scheme in relation to the transfer of the persons to whom the order relates.
- (3) Sub-paragraphs (4) and (5) apply where—
- (a) an order includes a requirement of the sort mentioned in sub-paragraph (2)(b)(i) and SCRA and CHS are unable to comply with the requirement, or
 - (b) an order includes a requirement of the sort mentioned in sub-paragraph (2)(b)(ii) and the local authority and CHS are unable to comply with the requirement.
- (4) The Scottish Ministers may determine the content of the scheme.
- (5) The scheme is to be treated as if made in accordance with the requirement imposed by the order.

Schemes for transfer of staff: consultation

- 3 (1) Sub-paragraph (2) applies where a staff transfer order includes a requirement of the type mentioned in paragraph 2(2)(b)(i).
- (2) SCRA must consult the persons mentioned in sub-paragraph (3) about the content of the scheme.
- (3) Those persons are—
- (a) persons employed by SCRA,
 - (b) the Principal Reporter,
 - (c) representatives of any trade union recognised by SCRA.
- (4) Sub-paragraph (5) applies where a staff transfer order includes a requirement of the type mentioned in paragraph 2(2)(b)(ii).
- (5) The local authority must consult the persons mentioned in sub-paragraph (6) about the content of the scheme.
- (6) Those persons are—
- (a) persons employed by the local authority,
 - (b) representatives of any trade union recognised by the local authority.

Effect on existing contracts of employment

- 4 (1) This paragraph applies where—

- (a) a person is to be transferred by virtue of a staff transfer order, and
 - (b) immediately before the transfer day the person has a contract of employment with the relevant employer.
- (2) On and after the transfer day the contract of employment has effect as if originally made between the person and CHS.
 - (3) On the transfer day the rights, powers, duties and liabilities of the relevant employer under or in connection with the contract of employment of the person are transferred to CHS.
 - (4) Anything done before the transfer day by or in relation to the relevant employer in respect of the contract of employment or the person is to be treated on and after that day as having been done by or in relation to CHS.
 - (5) If, before the transfer day, the person gives notice to CHS or the relevant employer that the person objects to becoming a member of staff of CHS—
 - (a) the contract of employment with the relevant employer is, on the day immediately preceding the day that would, but for the objection, have been the transfer day, terminated, and
 - (b) the person is not to be treated (whether for the purpose of any enactment or otherwise) as having been dismissed by virtue of the giving of such notice.
 - (6) Nothing in this schedule prejudices any right of the person to terminate the contract of employment if a substantial detrimental change in the person's working conditions is made.
 - (7) The person has the right to terminate the contract of employment if—
 - (a) the identity of the relevant employer changes by virtue of the making of the staff transfer order, and
 - (b) it is shown that, in all the circumstances, the change is significant and detrimental to the person.
 - (8) In this paragraph "relevant employer", in relation to a person, means—
 - (a) where the person has a contract of employment with SCRA, SCRA,
 - (b) where the person has a contract of employment with a local authority, the local authority.

Transfer of property etc. to CHS

- 5 (1) The Scottish Ministers may make a transfer scheme.
- (2) A transfer scheme is a scheme making provision for or in connection with the transfer to CHS of property, rights, liabilities and obligations of any of the following—
 - (a) SCRA,
 - (b) a local authority,
 - (c) the Scottish Ministers.
- (3) A transfer scheme must specify a date (the "transfer date") on which the transfer is to take effect.
- (4) A transfer scheme may—

- (a) specify different dates in relation to different property, rights, liabilities and obligations,
 - (b) make different provision in relation to different cases or classes of case.
- (5) On the transfer date—
 - (a) any property or rights to which a transfer scheme applies transfer to and vest in CHS,
 - (b) any liabilities or obligations to which such a scheme applies become liabilities or obligations of CHS.
- (6) A transfer scheme may make provision for the creation of rights, or the imposition of liabilities, in relation to the property, rights, liabilities or obligations transferred by virtue of the scheme.
- (7) A certificate issued by the Scottish Ministers that any property, right, liability or obligation has, or has not, been transferred by virtue of a transfer scheme is conclusive evidence of the transfer or the fact that there has not been a transfer.
- (8) A transfer scheme may in particular make provision about the continuation of legal proceedings.
- (9) A transfer scheme may make provision for CHS to make any payment which—
 - (a) before a day specified in the scheme could have been made by a person specified in sub-paragraph (2)(a) or (b), but
 - (b) is not a liability which can become a liability of CHS by virtue of a transfer scheme.
- (10) A transfer scheme may make provision for the payment by CHS of compensation in respect of property and rights transferred by virtue of the scheme.
- (11) Before making a transfer scheme, the Scottish Ministers must consult—
 - (a) CHS,
 - (b) the person mentioned in sub-paragraph (2)(a) or (b) whose property, rights, liabilities and obligations (or any of them) are to be transferred by virtue of the scheme, and
 - (c) any other person with an interest in the property, rights, liabilities or obligations which are to be so transferred.

SCHEDULE 5
(introduced by section 203(1))

MINOR AND CONSEQUENTIAL AMENDMENTS

Legal Aid (Scotland) Act 1986 (c.47)

- 1 (1) The Legal Aid (Scotland) Act 1986 is amended as follows.
- (2) In section 4 (Scottish Legal Aid Fund)—
 - (a) in subsection (2)—
 - (i) in paragraph (aza), after sub-paragraph (ii) insert—
“(ia) children’s legal assistance;”, and

- (ii) after paragraph (aza) insert—
 - “(azb) any sums payable by the Board under contracts made by virtue of section 33B;”, and
- (b) in subsection (3), after paragraph (cb) insert—
 - “(cc) any contribution payable to the Board by any person in pursuance of section 28K of this Act;”.
- (3) In section 4A (Scottish Legal Aid Board’s power to make grants in respect of provision of civil legal aid etc.)—
 - (a) in subsection (2)—
 - (i) in paragraph (a) for the words from “aid” to “matters” substitute “aid, advice and assistance in relation to civil matters or children’s legal assistance”,
 - (ii) in paragraph (b) after “matters” insert “or children’s matters”, and
 - (iii) in paragraph (c) at the end add “or children’s matters”,
 - (b) in subsection (13)—
 - (i) for the words “aid or advice and assistance” substitute “aid, advice and assistance or children’s legal aid”, and
 - (ii) at the end add “or children’s legal aid”, and
 - (c) in subsection (14), at the end add “and
 - “children’s matters” means matters relating to children’s hearings, pre-hearing panels (as defined in section 79(2)(a) of the 2011 Act) or proceedings under Part 10 or 15 of the 2011 Act”.
- (4) In subsection (1A) of section 31 (selection of solicitors and counsel)—
 - (a) after paragraph (a), insert—
 - “(aa) section 28M(3);”,
 - (b) after paragraph (d), insert—
 - “(da) regulations made under section 33B(4);”, and
 - (c) in the full-out, after “assistance” insert “or children’s legal assistance”.
- (5) In section 35A (Board’s powers to obtain information from solicitors in certain cases)—
 - (a) after subsection (1) insert—
 - “(1A) The Board may, for the purpose of determining whether—
 - (a) a solicitor, an employee of the solicitor or an employee of the solicitor’s firm may be committing a criminal offence in connection with children’s legal assistance,
 - (b) a solicitor may be seeking, in relation to children’s legal assistance, to recover from the Fund money to which the solicitor is not entitled, as, for example, by performing unnecessary work, or
 - (c) a solicitor or firm whose name appears on the register maintained under section 28M(1) is or may not be complying with the code of practice under section 28N for the time being in force,

require the solicitor or firm to produce such information and documents relating wholly or partly to the provision of children's legal assistance as it may specify, at such time and place as it may specify.”, and

- (b) in subsection (2), after “(1)” insert “or (1A)”.
- (6) In section 35B (Board's powers of entry)—
- (a) in subsection (1), after paragraph (c) insert “or
 - (ca) a solicitor whose name appears on the register maintained under section 28M(1) may not be complying with the code of practice under section 28N for the time being in force;”,
 - (b) in subsection (2)—
 - (i) in paragraph (b), at the beginning insert “in the case mentioned in subsection (2A),”, and
 - (ii) after paragraph (b) insert—
 - “(ba) in the case mentioned in subsection (2B), take possession of any documents which appear to him to relate, wholly or partly, to any children's legal assistance provided in or from those premises;”, and
 - (c) after subsection (2) insert—
 - “(2A) The case mentioned in subsection (2)(b) is where the warrant is issued in pursuance of—
 - (a) paragraph (a), (b) or (c) of subsection (1), or
 - (b) paragraph (d) of subsection (1) where the requirement to produce the documents was made under subsection (1) of section 35A.
 - (2B) The case mentioned in subsection (2)(ba) is where the warrant is issued in pursuance of—
 - (a) paragraph (ca) of subsection (1), or
 - (b) paragraph (d) of subsection (1) where the requirement to produce the documents was made under subsection (1A) of section 35A.”.
- (7) In section 37(2) (regulations under Act which require to be laid in draft and approved by the Scottish Parliament before being made), after “24(4)” insert “, 28C(3), 28K(2), 28L(1) or (8),”.
- (8) In section 41 (interpretation)—
- (a) after “requires—” insert—
 - ““the 2011 Act” means the Children's Hearings (Scotland) Act 2011 (asp 1);”,
 - (b) after the definition of “the Board” insert—
 - ““children's legal aid” has the meaning given to it in section 28B(2) of this Act;
 - “children's legal assistance” means—
 - (a) children's legal aid, and

- (b) advice and assistance in relation to children's hearings, pre-hearing panels (as defined in section 79(2)(a) of the 2011 Act) or proceedings under Part 10 or 15 of the 2011 Act;”, and
- (c) in the definition of “legal aid”—
 - (i) after “aid,”, where it third occurs, insert “children's legal aid”, and
 - (ii) the words from “or”, where it second occurs, to the end of the definition are repealed.
- (9) In section 42 (disposable income and disposable capital: regulations), after subsection (3) insert—
 - “(4) Regulations under this section may make different provision for—
 - (a) children's legal aid and legal aid other than children's legal aid,
 - (b) advice and assistance in relation to children's matters and advice and assistance other than advice and assistance in relation to children's matters.
 - (5) In subsection (4)(b), “children's matters” has the meaning given by section 4A(14).”.

Children (Scotland) Act 1995 (c.36)

- 2 (1) The Children (Scotland) Act 1995 is amended as follows.
- (2) In section 12 (restrictions on certain decrees)—
 - (a) in subsection (1), for “or 54 of this Act” substitute “of this Act or section 62 of the Children's Hearings (Scotland) Act 2011”,
 - (b) in subsection (2)(a), for “or 54 of this Act” substitute “of this Act or section 62 of the Children's Hearings (Scotland) Act 2011”.
- (3) In section 16 (welfare of child and consideration of views)—
 - (a) in subsection (1)—
 - (i) the words “a children's hearing decide, or” are repealed,
 - (ii) the words “their or” are repealed,
 - (b) in subsection (2), the words “a children's hearing or as the case may be” are repealed,
 - (c) in subsection (3)—
 - (i) for “(4)(a)(i) or (ii) or (b)” substitute “(4)”,
 - (ii) the words “requirement or”, in both places where they occur, are repealed,
 - (iii) the words “the children's hearing consider, or as the case may be” are repealed,
 - (d) for subsection (4) substitute—
 - “(4) The circumstances to which subsection (2) refers are that the sheriff is considering whether to make, vary or discharge an exclusion order.”,
 - (e) in subsection (5)—
 - (i) paragraph (a) is repealed,

- (ii) in paragraph (b), for “Chapters 1 to 3” substitute “Chapter 1 or 3”.
- (4) In section 17 (duty of local authority to child looked after by them)—
 - (a) in subsection (6), for paragraph (b) substitute—
 - “(b) who is subject to a compulsory supervision order or an interim compulsory supervision order and in respect of whom they are the implementation authority (within the meaning of the Children’s Hearings (Scotland) Act 2011);”
 - (b) subsection (6)(c) is repealed,
 - (c) in subsection (6)(d), for “such responsibilities” substitute “responsibilities as respects the child”.
- (5) In section 19 (local authority plans for services for children)—
 - (a) in subsection (2), after paragraph (a) insert—
 - “(aa) the Children’s Hearings (Scotland) Act 2011;”
 - (b) in subsection (5)—
 - (i) in paragraph (c), the words “appointed under section 127 of the Local Government etc. (Scotland) Act 1994” are repealed,
 - (ii) for paragraph (d) substitute—
 - “(d) the National Convener of Children’s Hearings Scotland;”
- (6) In section 33 (effect of orders etc. made in different parts of the United Kingdom)—
 - (a) in subsection (1)—
 - (i) the words “or to a supervision requirement” are repealed,
 - (ii) the words “or, as the case may be, as if it were a supervision requirement” are repealed,
 - (b) in subsection (2)—
 - (i) paragraph (b) is repealed,
 - (ii) in the full-out, the words “or requirement” are repealed,
 - (c) subsection (4) is repealed,
 - (d) in subsection (5)(b), the words “or to a supervision requirement” are repealed,
 - (e) in subsection (5)(c), the words “or to a supervision requirement” are repealed.
- (7) In section 38(4) (limited disapplication of certain enactments while child being provided with refuge), for “section 83 of this Act” substitute “section 171 of the Children’s Hearings (Scotland) Act 2011”.
- (8) In section 75 (powers in relation to secure accommodation)—
 - (a) in subsection (1)(b), for “supervision requirement” substitute “compulsory supervision order, interim compulsory supervision order, medical examination order or warrant to secure attendance (all within the meaning of the Children’s Hearings (Scotland) Act 2011);”
 - (b) after subsection (2) insert—

- “(2A) In subsection (2), “relevant person” has the meaning given by section 200 of the Children’s Hearings (Scotland) Act 2011 and includes a person deemed to be a relevant person by virtue of section 81(3), 160(4)(b) or 164(6) of that Act.”, and
- (c) for subsection (4) substitute—
- “(4) A child may not be kept in secure accommodation by virtue of regulations made under this section for a period exceeding 66 days from the day when the child was first taken to the secure accommodation.”.
- (9) In section 76(8) (making of child protection order instead of exclusion order)—
- (a) in paragraph (b), for “section 57 of this Act” substitute “Part 5 of the Children’s Hearings (Scotland) Act 2011”,
- (b) in the full-out—
- (i) for “an order under that section” substitute “a child protection order”,
- (ii) after “that” insert “Part”.
- (10) In section 93(1) (interpretation), in the definition of “children’s hearing”, for “section 39(3); but does not include a business meeting arranged under section 64, of this Act” substitute “section 5 of the Children’s Hearings (Scotland) Act 2011”.
- (11) In section 93(2)(b) (meaning of “child”), for the definition of “child” substitute—
- ““child” means—
- (i) in relation to section 75, a person under the age of 18 years,
- (ii) in relation to any other section, a person under the age of 16 years;”.

Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)

- 3 In section 12 of the Antisocial Behaviour etc. (Scotland) Act 2004 (sheriff’s power to refer child to children’s hearing where antisocial behaviour order made etc.), for subsection (1) substitute—
- “(1) This section applies where—
- (a) the sheriff makes an antisocial behaviour order or an interim order in respect of a child, and
- (b) the sheriff considers that a section 67 ground (other than the ground mentioned in section 67(2)(j)) applies in relation to the child.
- (1A) The sheriff may require the Principal Reporter to arrange a children’s hearing.
- (1B) The sheriff must give the Principal Reporter a section 12 statement if—
- (a) the sheriff makes a requirement under subsection (1A), and
- (b) a compulsory supervision order is not in force in relation to the child.
- (1C) A section 12 statement is a statement—
- (a) specifying which of the section 67 grounds the sheriff considers applies in relation to the child,
- (b) setting out the reasons why the sheriff considers the ground applies, and

(c) setting out any other information about the child which appears to the sheriff to be relevant.

(1D) In this section—

“compulsory supervision order” has the meaning given by section 83 of the Children’s Hearings (Scotland) Act 2011,

“section 67 ground” means a ground mentioned in section 67(2) of that Act.”.

SCHEDULE 6
(introduced by section 203(2))

REPEALS

<i>Enactment</i>	<i>Extent of repeal</i>
Rehabilitation of Offenders Act 1974 (c.53)	Section 3. In section 5, in subsection (3), paragraph (b) and the word “and” immediately preceding it; in subsection (5), paragraph (f); and, in subsection (10), the words “, or a supervision requirement under the Children (Scotland) Act 1995,”.
Legal Aid (Scotland) Act 1986 (c.47)	Section 29.
Tribunals and Inquiries Act 1992 (c.53)	In Part 2 of Schedule 1, paragraph 61(a) and the title (“Social work”) relating to it.
Local Government etc. (Scotland) Act 1994 (c.39)	Sections 127 to 138. Schedule 12.
Children (Scotland) Act 1995 (c.36)	Sections 39 to 74. In section 75(1), paragraph (a) and the word “or” immediately following it. Section 75(5). Sections 75A and 75B. Sections 81 to 85. Section 90. Section 91(3)(a) to (c). Section 92. In section 93, in subsection (1), the definitions of “chief social work officer”, “child assessment order”, “child protection order”, “compulsory measures of supervision”, “education authority”, “local government area”, “place of safety”, “the Principal Reporter”, “relevant local authority”, “supervision requirement” and “working day”;

<i>Enactment</i>	<i>Extent of repeal</i>
	<p>and, in subsection (2)(b), the definition of “relevant person”.</p> <p>In section 101(1), in paragraph (a), the words “or under section 87(4) of this Act”; and paragraph (c) and the word “and” immediately preceding it.</p> <p>Section 101(4).</p> <p>In section 105, in subsection (8), the words “44, 70(4), 74, 82, 83”; and subsection (10).</p> <p>Schedule 1.</p> <p>In Schedule 4, paragraph 23(2) and (3).</p>
Vulnerable Witnesses (Scotland) Act 2004 (asp 3)	Section 23.
Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)	Section 12(2) to (5).
Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5)	Section 72(4) to (6).

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The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013

RULES 2013



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Draft Rules laid before the Scottish Parliament under sections 177(4) and 197 of the Children's Hearings (Scotland) Act 2011, for approval by resolution of the Scottish Parliament.

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2013 No.

CHILDREN AND YOUNG PERSONS

The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013

Made - - - - 2013

Coming into force in accordance with rule 1

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98. Authentication of documents
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100. Service of notification and documents

The Scottish Ministers make the following Rules in exercise of the powers conferred by sections 177 and 195 of the Children's Hearings (Scotland) Act 2011(a) and all other powers enabling them to do so(b).

(a) 2011 asp 1.

(b) The powers to make these Rules are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10.)

In accordance with section 177(4) and 197 of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

In accordance with paragraph 24(1) and (3) and Schedule 7 to the Tribunals, Courts and Enforcement Act 2007^(a) the Scottish Ministers have consulted the Administrative Justice and Tribunals Council and it has consulted its Scottish Committee.

PART 1

Introductory and General

Citation and commencement

1. These Rules may be cited as the Children’s Hearings (Scotland) Act 2011 (Rules of Procedure in Children’s Hearings) Rules 2013 and come into force on the same day as section 177 (children’s hearings: procedural rules) of the Act.

Interpretation

2. In these Rules—

“the Act” means the Children’s Hearings (Scotland) Act 2011;

“chairing member” means the member of the Children’s Panel selected to chair a pre-hearing panel or children’s hearing, as the case may be;

“a contact direction” has the same meaning as in section 126(1) (review of contact direction) of the Act;

“National Convener” means the National Convener of Children’s Hearings Scotland;

“member of the pre-hearing panel” and “member of the children’s hearing” means a member of the Children’s Panel selected under section 6 (selection of members of children’s hearing) of the Act, in relation to that hearing or pre-hearing, and “member” is to be construed accordingly;

“relevant person” means a relevant person in relation to a child and includes a person deemed to be a relevant person under section 81 (determination of claim that person be deemed a relevant person) or section 160(4)(b) (appeal to sheriff against relevant person determination) of the Act;

“Reporter” means the Principal Reporter or any person carrying out a function on behalf of the Principal Reporter by virtue of paragraph 10(1) (delegation of Principal Reporter’s functions) of schedule 3 to the Act;

“section 62 statement” has the same meaning as in section 62(4) (provision of information by court) of the Act.

(a) 2007 c.15. Children’s Hearings under the Act were added into the list of listed Tribunals for the purposes of Schedule 7 to the 2007 Act by virtue of S.S.I. 2011/405.

PART 2

Selection of children's hearings and pre-hearing panel members and Duties of members

Selection of members of children's hearing and pre-hearing panel - supplementary

3.—(1) Where a children's hearing is held in relation to a child, by virtue of the Act or any other enactment, the children's hearing may request that the National Convener select, where practicable, one of the members of that children's hearing to be a member of the next children's hearing to be arranged in relation to that child.

(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 pre-hearing 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.

Selection of chairing member for pre-hearing panels and children's hearings

4.—(1) Paragraph (2) applies where a pre-hearing panel or children's hearing has been arranged by virtue of the Act or any other enactment and the National Convener or relevant area support team has not selected a chairing member for that pre-hearing panel or children's hearing.

(2) Immediately before beginning the pre-hearing panel or children's hearing, as the case may be, the members of that pre-hearing panel or children's hearing must determine which of their number is to chair the pre-hearing panel or children's hearing, as the case may be.

(3) A member may only be selected to chair a children's hearing if that member has successfully completed the relevant training provided by or on behalf of the National Convener relating to chairing a children's hearing.

Duties of members of the pre-hearing panel or children's hearing relating to documents and information

5.—(1) Any documents which are given to a member of the pre-hearing panel or children's hearing by the Reporter under, or by virtue of, the Act or these Rules must be kept securely in that member's custody and returned to the Reporter at the conclusion of the pre-hearing panel or children's hearing to which those documents relate.

(2) The member must not cause or permit any information which they have obtained by virtue of their involvement in a pre-hearing panel or children's hearing to be disclosed, except as permitted by the Act or these Rules.

Duties of chairing member of a pre-hearing panel or children's hearing

6.—(1) The chairing member of the children's hearing or pre-hearing panel must—

- (a) take reasonable steps to ensure that the child and each relevant person are able to—
 - (i) understand the proceedings, and
 - (ii) participate in those proceedings;
- (b) where, during the proceedings, the child wishes to express a view, make reasonable arrangements to enable the child to express those views in the manner preferred by the child;
- (c) ensure that a record is made of—

- (i) the decisions or determinations made by the children’s hearing or pre-hearing panel, as the case may be, and
- (ii) the reasons for those decisions or determinations;
- (d) sign and date the record of the decisions or determinations.

(2) Any requirement on the chairing member to inform those attending a children’s hearing of the substance of any report, document or information or to explain any matter is subject to any decision of the children’s hearing to withhold information under section 178 (children’s hearing: disclosure of information) of the Act.

Procedure at children’s hearings and pre-hearing panels where not otherwise specified

7.—(1) The procedure at any children’s hearing or pre-hearing panel required to be held by virtue of the Act or any other enactment, unless that procedure is provided for under the Act or these Rules, is to be determined by the chairing member.

(2) The children’s hearing or pre-hearing panel, if it considers it appropriate to do so, may adjourn the children’s hearing or pre-hearing panel, as the case may be—

- (a) on the initiative of the children’s hearing or pre-hearing panel, or
- (b) on the request of any person attending the hearing.

(3) Where a children’s hearing or pre-hearing panel has been adjourned it must re-convene on the same day as the adjournment was made.

PART 3

Duties and roles of persons attending or preparing documents for children’s hearings and pre-hearing panels

Requirement to include child’s views in documents

8. Where any document is to be given to members of the children’s hearing or pre-hearing panel under, or by virtue of, the Act, or these Rules, the document must contain any views expressed by the child which have been given to the person who has prepared that document.

Duties of Safeguarder in respect of information and documents

9.—(1) Any documents which are given to a safeguarder by the Reporter under, or by virtue of, the Act or any other enactment must be kept securely in the safeguarder’s custody and returned to the Reporter on the termination of the safeguarder’s appointment.

(2) The safeguarder must not cause or permit any information which they have obtained by virtue of their appointment as a safeguarder under the Act to be disclosed, except as permitted by virtue of the Act or any other enactment.

Attendance at children’s hearings by member of the Administrative Justice and Tribunals Council or the Scottish Committee of that Council or a member of an Area Support Team

10.—(1) Any documents which are given to members of the children’s hearing or pre-hearing panel must be given by the Reporter to any of the following persons attending the children’s hearing or pre-hearing panel where that person so requests—

- (a) a member of the Administrative Justice and Tribunals Council or the Scottish Committee of that Council (acting in that person’s capacity as such);
- (b) a member of an area support team (acting in that person’s capacity as such).

(2) Where documents are given to a person under paragraph (1) those documents must be kept securely in that person’s custody and returned to the Reporter at the conclusion of the children’s hearing or pre-hearing panel to which they relate.

(3) The person to whom the documents are given under paragraph (1) must not cause or permit any information which they have obtained by virtue of their attendance at a pre-hearing panel or children's hearing to be disclosed, except as permitted by the Act or these Rules.

Role of representative of the child, relevant person or deemed relevant person

11.—(1) Where the child or relevant person, or any person who wishes to be deemed to be a relevant person (referred to in this rule as “the accompanied person”) is accompanied at a children's hearing or pre-hearing panel by a representative that representative may assist the accompanied person to discuss any issues arising for discussion before the children's hearing or pre-hearing panel.

(2) The right of the accompanied person to be represented at the children's hearing or pre-hearing panel is without prejudice to any right of the accompanied person to legal representation by a solicitor or counsel.

PART 4

General Duties of the Reporter

Record keeping by the Reporter of investigation and determination

12.—(1) This rule applies where section 66(1) (investigation and determination by Principal Reporter) of the Act applies.

(2) The Reporter must keep a record of—

- (a) the name and address (if available) of any person providing the notice, information, statement or evidence;
- (b) the details of any investigation carried out by the Reporter under section 66 of the Act;
- (c) the determination made by the Reporter under section 66(2) of the Act; and
- (d) the details of any action taken by the Reporter under sections 68(2), 68(5) (determination under section 66: no referral to children's hearing) or 72(2) (child in place of safety: Principal Reporter's powers) of the Act.

(3) Where the Reporter is required to arrange a children's hearing under section 69(2) (determination under section 66: referral to children's hearing) of the Act the Reporter must notify—

- (a) where the information was provided under section 60 (local authority's duty to provide information to Principal Reporter) of the Act, the local authority which provided the information;
- (b) where the information was provided under section 61 (constable's duty to provide information to Principal Reporter) of the Act or section 43(5) (arrangements where children arrested) of the Criminal Procedure (Scotland) Act 1995(a), the chief constable of the police force to which the constable who provided the information belongs.

Record keeping duties of the Reporter in relation to children's hearings

13.—(1) The Reporter must keep a record of the proceedings at each children's hearing and pre-hearing panel held by virtue of the Act or any other enactment.

(2) The record to be kept by the Reporter must include the information mentioned in paragraph (3) and such other information about the proceedings as the Reporter considers appropriate.

(3) That information is—

(a) 1995 c.46.

- (a) the particulars of the place and date of the children’s hearing or pre-hearing panel;
- (b) the full name and address, date of birth and sex of the child in relation to whom the children’s hearing or pre-hearing panel is held;
- (c) the full name and address of each relevant person;
- (d) which of the persons mentioned in sub-paragraphs (b) and (c) attended the children’s hearing or pre-hearing panel;
- (e) the full name and address of any representative attending the children’s hearing or pre-hearing panel;
- (f) the full name and address of any safeguarder attending the children’s hearing or pre-hearing panel;
- (g) the details of any other person attending the children’s hearing or pre-hearing panel;
- (h) the details of any decision or determination made by the children’s hearing or pre-hearing panel or any other course of action taken by the children’s hearing or pre-hearing panel;
- (i) where the children’s hearing to which the record relates is a grounds hearing—
 - (i) the details of any section 67 ground which is accepted, or not accepted, or is not understood and by whom,
 - (ii) the detail of any direction given by the grounds hearing under section 93(2)(a) (grounds not accepted: application to sheriff or discharge) or 94(2)(a) (child or relevant person unable to understand grounds) of the Act to the Reporter to make an application to the sheriff.

The statement of grounds

14. Where the statement of grounds prepared by the Reporter under section 89 (Principal Reporter’s duty to prepare statement of grounds) of the Act includes a ground mentioned in section 67(2)(j) (the child has committed an offence) the facts relating to that ground must have the same degree of specification as is required by section 138(4) (complaints) of, and Schedule 3 (indictments and complaints) to, the Criminal Procedure (Scotland) Act 1995 in a charge in a complaint, and the statement of grounds must also specify the nature of the offence in question.

Duties of Reporters where information to be withheld from a person

15.—(1) Where information is to be withheld from a person under the Act or these Rules the Reporter must ensure that the relevant information is removed from the report or other document or information to be given under the Act, or these Rules, to the person from whom that information is to be withheld.

(2) Where information is withheld under the Act or these Rules the Reporter must inform the persons to whom the report or other document or information has been given under the Act, or these Rules, of the identity of the person from whom the information is being withheld, and what information is being withheld from that person.

Withholding of specified documents and information by the Reporter

16.—(1) This rule applies where a children’s hearing or pre-hearing panel is to be held or has been held in relation to a child by virtue of the Act or these Rules and the Reporter is arranging the hearing, notifying persons of the hearing or issuing information or documents for the hearing or is taking any action required as a consequence of the hearing.

(2) Where the Reporter is carrying out the functions referred to in paragraph (1) and considers that disclosing the whereabouts of the child to whom the children’s hearing or pre-hearing panel relates, or of any relevant person, would be likely to cause significant harm to the child or any relevant person then the Reporter may withhold that information.

(3) Where the address of the child or relevant person is withheld under paragraph (2) the Reporter will give the address of the child or relevant person as that of the Reporter.

Duties of the Reporter where a child is detained under a warrant to secure the attendance of the child

17.—(1) This rule applies where the children’s hearing has granted a warrant to secure the attendance of the child at a children’s hearing under section 123 (general power to grant warrant to secure attendance) of the Act and the child is being kept in a place of safety under that warrant.

(2) The Reporter must, wherever practicable, arrange the children’s hearing to take place on the first working day after the child was first detained in pursuance of the warrant.

Notification and provision of information to a young child

18.—(1) This rule applies where, under the Act or these Rules, the Reporter must—

- (a) notify a child of the date, time and place of a children’s hearing or pre-hearing panel to be held in relation to that child or
- (b) provide a child with any information, confirmation, report or other document in relation to a children’s hearing or pre-hearing panel.

(2) The Reporter need not so notify the child or provide the information, confirmation, report or other document where, taking account of the child’s age and maturity, the child would not be capable of understanding the notification, information, confirmation, report or other document.

PART 5

Attendance at Hearings

Further provision in relation to the attendance of the child and relevant person at a children’s hearing or pre-hearing panel

19.—(1) Paragraph (2) applies where the Reporter has been advised that the child, or relevant person, or an individual who wants to be deemed to be a relevant person, wishes to attend a pre-hearing panel or children’s hearing or part of a children’s hearing and—

- (a) the child or the relevant person, as the case may be, has been excused from attending that children’s hearing or that part of the children’s hearing; or
- (b) the child, relevant person or individual in question wishes to attend a pre-hearing panel or children’s hearing which by virtue of section 80 (determination of matter referred under section 79) of the Act is to determine a matter referred under section 79 (referral of certain matters for pre-hearing determination) of the Act.

(2) The Scottish Children’s Reporter Administration must take all reasonable steps to enable the child, relevant person, or the individual in question, as the case may be, to attend the pre-hearing panel, children’s hearing or that part of the children’s hearing by way of telephone, through video link or by using any other method of communication, if requested to do so by the child, relevant person or individual in question, and if the Reporter is satisfied that the child, relevant person or individual in question has good reason for not attending in person.

Attendance at a children’s hearing

20.—(1) The persons mentioned in paragraph (2) are authorised to attend a pre-hearing panel and children’s hearing.

(2) Those persons are a constable, prison officer or other person who has in their lawful custody a person who has to attend a pre-hearing panel or children’s hearing.

PART 6

Arranging children's hearings – general

Application of Part

21. This part does not apply where rule 29 or 36 applies.

Notification of children's hearings - general

22.—(1) Where a children's hearing is to be held in relation to a child by virtue of section 69(2) (determination under section 66: referral to children's hearing) or Parts 9 to 11 (children's hearing; proceedings before sheriff; subsequent children's hearings) or 13 (review of compulsory supervision order) of the Act the Reporter must notify the persons mentioned in paragraph (2) of the date, time and place of the children's hearing, as soon as practicable and no later than 7 days before the intended date of the children's hearing.

(2) Those persons are—

- (a) the child;
- (b) each relevant person;
- (c) any individual who appears to the Reporter to have (or recently have had) significant involvement in the upbringing of the child;
- (d) any appointed safeguarder;
- (e) the chief social work officer of the relevant local authority for the child;
- (f) the National Convener.

Other information to be given with notification of a children's hearing to the child and each relevant person

23. The Reporter must when issuing the notice under rule 22(1) to the child and each relevant person also give to the child and each relevant person—

- (a) information on availability to the child and relevant person of legal advice;
- (b) confirmation of the child's duty to attend the children's hearing under section 73 (child's duty to attend children's hearing) of the Act;
- (c) confirmation of the relevant person's duty to attend the children's hearing under section 74 (relevant person's duty to attend children's hearing) of the Act;
- (d) confirmation of the right of the child and each relevant person to request a pre-hearing panel or children's hearing to determine whether –
 - (i) a particular individual should be deemed to be a relevant person,
 - (ii) the child or relevant person should be excused from all or part of the children's hearing,
 - (iii) it is likely that the children's hearing will consider making a compulsory supervision order including a secure accommodation authorisation in relation to the child;
- (e) information on the means by which the child may express views to the children's hearing;
- (f) confirmation of the right of the child and each relevant person to give any report or other document for the consideration of the children's hearing or pre-hearing panel.

Other information to be given with notification of a children's hearing to certain other persons

24.—(1) Where rule 22 applies, when issuing the notification required under that rule the Reporter must also give to any individual who appears to the Reporter to have (or recently have

had) significant involvement in the upbringing of the child the information mentioned in paragraph (2).

(2) That information is confirmation of the right of the individual to require a pre-hearing panel or a children's hearing to determine whether the individual should be deemed to be a relevant person.

Information to be sent to the members of the children's hearing

25. Wherever practicable 7 days before, and no later than 3 days before, the intended date of the children's hearing the Reporter must give to the three members of the children's hearing notification of the date, time and place of the hearing.

Provision of information prior to children's hearing

26.—(1) Where the child or any relevant person wish to give to a children's hearing to be held by virtue of section 69(2) (determination under section 66: referral to children's hearing) or Parts 9 to 11 (children's hearing; proceedings before sheriff; subsequent children's hearings), or 13 (review of compulsory supervision order) of the Act any report or other document for the consideration of the children's hearing the child or relevant person, as the case may be, must give a copy of the report or other document to the Reporter, so far as practicable, no later than 4 days before the intended date of the hearing.

(2) Wherever practicable the Reporter must give a copy of any report or other document given under paragraph (1) to the persons mentioned in paragraph (4) (except where that person gave the report or other document to the Reporter) no later than 3 days before the intended date of the hearing.

(3) Where the Reporter obtains any information (including any views of the child given orally to the Reporter) or document which is material to the children's hearing and has not previously been given to the persons mentioned in paragraph (4) the Reporter must give that information or a copy of the document to those persons as soon as possible before the beginning of the children's hearing.

(4) Those persons are—

- (a) the child;
- (b) each relevant person;
- (c) any appointed safeguarder;
- (d) the three members of the children's hearing.

PART 7

Specific provision for arranging grounds hearings

Additional information to be given to the child and each relevant person in relation to a grounds hearing

27.—(1) Where the Reporter is required to arrange a grounds hearing, when notifying the date, time and place of the intended children's hearing under rule 22 the Reporter must give to the persons mentioned in paragraph (2) the information mentioned in paragraph (3).

(2) Those persons are—

- (a) the child;
- (b) each relevant person; and
- (c) any appointed safeguarder (except the information mentioned in paragraph (3)(b)).

(3) That information is—

- (a) a copy of the statement of grounds prepared under section 89 (Principal Reporter's duty to prepare statement of grounds) of the Act in relation to the child;
- (b) information relating to the retention of the child's DNA and other records kept in connection with the acceptance by the child and relevant person, or the establishment by the sheriff, of an offence specified in an order made by the Scottish Ministers under section 113A(6)(ba) (criminal record certificates) of the Police Act 1997(a);
- (c) a copy of any relevant requirement made by a sheriff under section 156(3)(a) (determination of appeal) of the Act.

(4) Where the Reporter is required to arrange a grounds hearing, no later than 3 days before the intended date of the hearing the Reporter must also give to the persons mentioned in paragraph (5) the information mentioned in paragraph (6).

(5) Those persons are—

- (a) the child;
- (b) each relevant person; and
- (c) any appointed safeguarder (except the information mentioned in paragraph (6)(a)).

(6) That information is—

- (a) a copy of any available report or interim report prepared by a safeguarder under section 33(1)(a) (functions of safeguarder) of the Act;
- (b) a copy of any report or information provided by the local authority to the Reporter under section 66(4) (investigation and determination by Principal Reporter) or 69(4) (determination under section 66: referral to children's hearing) of the Act;
- (c) a copy of any views of the child given to the Reporter by the child or any other person;
- (d) a copy of any other report or other document material to the children's hearing's consideration;

(7) This rule does not apply when rule 29 applies.

Information to be given to the members of the grounds hearing

28.—(1) Wherever practicable 7 days before, and no later than 3 days before, the intended date of the grounds hearing the Reporter must give to the three members of the children's hearing a copy of the statement of grounds.

(2) No later than 3 days before the intended date of the grounds hearing the Reporter must give to the three members of the children's hearing—

- (a) a copy of any relevant requirement made by a sheriff under section 156(3)(a) (determination of appeal) of the Act;
- (b) a copy of any available report or interim report prepared by a safeguarder under section 33(1)(a) (functions of safeguarder) of the Act;
- (c) a copy of any report or information provided by the local authority to the Reporter under section 66(4) (investigation and determination by Principal Reporter) or 69(4) (determination under section 66: referral to children's hearing) of the Act;
- (d) a copy of any views of the child given to the Reporter by the child or any other person;
- (e) a copy of any other report or other document material to the children's hearing's consideration;

(3) This rule does not apply where rule 29 applies.

Provision of information for a grounds hearing where section 69(3) (determination under section 66: referral to children's hearing) of the Act applies or following the making of a

(a) 1997 c.50. Section 113A(6)(ba) is inserted by section 188 of the Act.

child protection order under section 38 (consideration by sheriff: application by local authority only) or 39 (consideration by sheriff: application by local authority or other person) of the Act

29.—(1) This rule applies where—

- (a) section 69(3) of the Act applies; or
- (b) following receipt of a notice under section 43 (notice of child protection order) of the Act of the making of a child protection order the Reporter is required to arrange a children's hearing under section 69(2) of the Act which is to be held no later than—
 - (i) where the order contains an authorisation of the type mentioned in section 37(2)(b) (child protection orders) of the Act, the end of the period of 8 working days beginning on the day the child was removed to a place of safety; or
 - (ii) where the order does not contain such an authorisation, the end of the period of 8 working days beginning on the day the order was made.

(2) As soon as practicable before the beginning of the grounds hearing, the Reporter must notify the persons mentioned in paragraph (3) of the date, time and place of the hearing.

(3) Those persons are—

- (a) the child;
- (b) each relevant person ;
- (c) any appointed safeguarder;
- (d) any individual who appears to the Reporter to have (or recently have had) significant involvement in the upbringing of the child;
- (e) the three members of the children's hearing;
- (f) the National Convener.

(4) As soon as practicable before the beginning of the hearing, the Reporter must give to the persons mentioned in paragraph (3)(a) to (c) such of the information mentioned in paragraph (5) as is available.

(5) That information is the information mentioned in rules 23, 26, 27 and where applicable rule 30.

(6) As soon as practicable before the beginning of the hearing, the Reporter must give to the persons mentioned in paragraph (3)(e) the information mentioned in paragraph (7) as is available.

(7) That information is—

- (a) the information mentioned in rules 26, 28 and where applicable rule 30;
- (b) a copy of any relevant child protection order made in relation to the child under section 38 or 39 of the Act.

(8) As soon as practicable before the beginning of the hearing, the Reporter must give to the persons mentioned in paragraph (3)(d) the information mentioned in rule 24.

Arranging a grounds hearing where a compulsory supervision order is already in force in relation to the child

30.—(1) This rule applies where a grounds hearing is to be arranged and a compulsory supervision order is already in force in relation to the child to whom the hearing relates.

(2) No later than 3 days before the intended date of the children's hearing the Reporter must in addition to the information to be given under this Part give to the persons mentioned in paragraph (3) the information mentioned in paragraph (4).

(3) Those persons are—

- (a) the child;
- (b) each relevant person;
- (c) any appointed safeguarder;

- (d) the three members of the children’s hearing.
- (4) That information is—
- (a) copies of all decisions and reasons for those decisions made by all pre-hearing panels and children’s hearings arranged in relation to the child;
 - (b) a copy of any notice by the implementation authority under section 131 (duty of implementation authority to require review) of the Act.
- (5) This rule does not apply when rule 29 applies.

PART 8

Specific provision for arranging a children’s hearing to be held under section 119 (children’s hearing following deferral or proceedings under Part 10) of the Act

Provision of information to the child, relevant persons and any appointed safeguarder for a children’s hearing to which section 119 (children’s hearing following deferral or proceedings under Part 10) of the Act applies

31.—(1) Where the Reporter is required to arrange a children’s hearing to which section 119 of the Act applies, as soon as practicable, and at least 3 days before the intended date of the children’s hearing, the Reporter must give to the following persons the information mentioned in paragraph (2)—

- (a) the child;
 - (b) each relevant person;
 - (c) any appointed safeguarder (except the information mentioned in paragraph (2)(a)).
- (2) That information is—
- (a) any available report or interim report prepared by the safeguarder under section 33(1)(a) or (c) (functions of safeguarder) of the Act or these Rules;
 - (b) any report prepared by the local authority;
 - (c) a copy of any relevant direction by a sheriff under section 108 (determination: ground established), 115 (recall: power to refer other grounds) or 117 (new section 67 ground established: sheriff to refer to children’s hearing) of the Act;
 - (d) a copy of any relevant remit by a court under section 49 (reference or remit to children’s hearing) of the Criminal Procedure (Scotland) Act 1995;
 - (e) a copy of any relevant statement by a sheriff under section 12(1B) (sheriff’s power to refer case to children’s hearing) of the Antisocial Behaviour etc. (Scotland) Act 2004(a);
 - (f) a copy of any relevant requirement made by a sheriff under section 156(3)(a) (determination of appeal) of the Act;
 - (g) copies of all decisions and reasons for those decisions made by all pre-hearing panels and children’s hearings arranged in relation to the child;
 - (h) any other report, document or information relevant to the matter to be considered by the children’s hearing.
- (3) This rule does not apply where rule 33 applies.

(a) 2004 asp 8. Section 12(1B) was inserted by paragraph 3 of Schedule 5 to the Children’s Hearings (Scotland) Act 2011.

Information to be given to the members of the children's hearing to which section 119 (children's hearing following deferral or proceedings under Part 10) of the Act applies

32. Where rule 31 applies, wherever practicable 7 days before, and no later than 3 days before, the intended date of the children's hearing the Reporter must give to the three members of the children's hearing—

- (a) a copy of the statement of grounds;
- (b) any available report or interim report prepared by the safeguarder under section 33(1)(a) or (c) (functions of safeguarder) of the Act or these Rules;
- (c) any report prepared by the local authority;
- (d) a copy of any relevant direction by a sheriff under section 108 (determination: ground established), 115 (recall: power to refer other grounds) or 117 (new section 67 ground established: sheriff to refer to children's hearing) of the Act;
- (e) a copy of any relevant remit by a court under section 49 (reference or remit to children's hearing) of the Criminal Procedure (Scotland) Act 1995;
- (f) a copy of any relevant statement by a sheriff under section 12(1B) (sheriff's power to refer case to children's hearing) of the Antisocial Behaviour etc. (Scotland) Act 2004;
- (g) a copy of any relevant requirement made by a sheriff under section 156(3)(a) (determination of appeal) of the Act;
- (h) copies of all decisions and reasons for those decisions made by all pre-hearing panels and children's hearings arranged in relation to the child;
- (i) a copy of any decision of a pre-hearing panel or children's hearing held in relation to the child and the reasons for that decision;
- (j) any other report, document or information relevant to the matter to be considered by the children's hearing
- (k) a copy of any relevant child protection order made in relation to the child under section 38 (consideration by sheriff: application by local authority only) or 39 (consideration by sheriff: application by local authority or other person) of the Act.

(2) This rule does not apply where rule 33 applies.

Provision of information for children's hearing to which section 119 (children's hearing following deferral or proceedings under Part 10) of the Act applies where section 109(7) (determination: power to make interim compulsory supervision order etc.), 115(5) (recall: power to refer other grounds) or 117(5) (new section 67 ground established: sheriff to refer to children's hearing) of the Act also applies.

33.—(1) This rule applies where section 109(7), 115(5) or 117(5)(a) of the Act applies.

(2) As soon as practicable before the beginning of the children's hearing, the Reporter must notify the persons mentioned in paragraph (3) of the date, time and place of the hearing.

(3) Those persons are—

- (a) the child;
- (b) each relevant person;
- (c) any appointed safeguarder;
- (d) any individual who appears to the Reporter to have (or recently have had) significant involvement in the upbringing of the child;
- (e) the three members of the children's hearing.

(a) Section 115(5) and 117(5) are inserted into the Act by the Children's Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (S.S.I. 2013/....).

(4) As soon as practicable before the beginning of the hearing, the Reporter must give to the persons mentioned in paragraph (3)(a) to (c) such of the information mentioned in rules 23, 26 and 31 as is available.

(5) As soon as practicable before the beginning of the hearing, the Reporter must give to the persons mentioned in paragraph (3)(e) such of the information mentioned in rules 26 and 32 as is available.

(6) As soon as practicable before the beginning of the hearing, the Reporter must give to the persons mentioned in paragraph (3)(d) the information mentioned in rule 24.

PART 9

Specific provision for arranging a children's hearing to which section 137 (duty to arrange children's hearing) of the Act applies

Provision of information to the child and relevant persons for a children's hearing to which section 137 (duty to arrange children's hearing) of the Act applies

34.—(1) Where the Reporter is required to arrange a children's hearing by virtue of section 137(2) of the Act, as soon as practicable and no later than 7 days before the intended date of the children's hearing the Reporter must also give to the persons mentioned in paragraph (2) the information mentioned in paragraph (3).

(2) Those persons are—

- (a) the child;
- (b) each relevant person;
- (c) any appointed safeguarder.

(3) That information is—

- (a) a copy of the compulsory supervision order to be reviewed;
- (b) copies of all decisions and reasons for those decisions made by all pre-hearing panels and children's hearings arranged in relation to the child;
- (c) a copy of any relevant remit by a court under section 49 (reference or remit to children's hearing) of the Criminal Procedure (Scotland) Act 1995;
- (d) a copy of any relevant requirement by a sheriff under section 12(1A) (sheriff's power to refer case to children's hearing) of the Antisocial Behaviour etc. (Scotland) Act 2004;
- (e) a copy of any relevant requirement made by a sheriff under section 156(3)(a) (determination of appeal) of the Act;
- (f) a copy of any notice by the implementation authority under section 131 (duty of implementation authority to require review) of the Act.

(4) No later than 3 days before the intended date of the hearing the Reporter must also give to the persons mentioned in paragraph (5) the information mentioned in paragraph (6).

(5) Those persons are—

- (a) the child;
- (b) each relevant person;
- (c) any appointed safeguarder.

(6) That information is—

- (a) a copy of any available report or interim report prepared by a safeguarder under section 33(1)(a) or (c) (functions of safeguarder) of the Act;
- (b) a copy of any report or other information provided by the local authority under section 137(4) or (5) (duty to arrange children's hearing) of the Act;
- (c) a copy of any views of the child given to the Reporter by the child or any other person;

- (d) a copy of any other report or other document material to the children's hearing's consideration.
- (7) This rule does not apply when rule 36 applies.

Information to be given to the members of the children's hearing to which section 137 (duty to arrange children's hearing) of the Act applies

35.—(1) Where rule 34 applies no later than 3 days before the intended date of the children's hearing to which section 137 of the Act applies, the Reporter must give to the three members of that children's hearing—

- (a) a copy of the compulsory supervision order to be reviewed;
- (b) copies of all decisions and reasons for those decisions made by all pre-hearing panels and children's hearings arranged in relation to the child;
- (c) a copy of any relevant remit by a court under section 49 (reference or remit to children's hearing) of the Criminal Procedure (Scotland) Act 1995;
- (d) a copy of any relevant requirement by a sheriff under section 12(1A) (sheriff's power to refer case to children's hearing) of the Antisocial Behaviour etc. (Scotland) Act 2004;
- (e) a copy of any relevant requirement made by a sheriff under section 156(3)(a) (determination of appeal) of the Act;
- (f) a copy of any notice by the implementation authority under section 131 (duty of implementation authority to require review) of the Act;
- (g) a copy of any available report or interim report prepared by a safeguarder under section 33(1)(a) or (c) (functions of safeguarder) of the Act;
- (h) a copy of any report or other information provided by the local authority under section 137(4) or (5) (duty to arrange children's hearing) of the Act;
- (i) a copy of any views of the child given to the Reporter by the child or any other person;
- (j) a copy of any other report or other document material to the children's hearing's consideration.

- (2) This rule does not apply when rule 36 applies.

Provision of information for a review hearing where section 136 (duty to initiate review where child transferred) of the Act applies

36.—(1) This rule applies where section 136 of the Act applies.

(2) As soon as practicable before the beginning of the children's hearing, the Reporter must notify the persons mentioned in paragraph (3) of the date, time and place of the hearing.

(3) Those persons are—

- (a) the child;
- (b) each relevant person ;
- (c) any appointed safeguarder;
- (d) any individual who appears to the Reporter to have (or recently have had) significant involvement in the upbringing of the child;
- (e) the three members of the children's hearing;
- (f) the National Convener.

(4) As soon as practicable before the beginning of the hearing, the Reporter must give to the persons mentioned in paragraph (3)(a) to (c) such of the information mentioned in rules 23, 26 and 34 as is available.

(5) As soon as practicable before the beginning of the hearing, the Reporter must give to the persons mentioned in paragraph (3)(e) such of the information mentioned in rules 26 and 35 as is available.

(6) As soon as practicable before the beginning of the hearing, the Reporter must give to the persons mentioned in paragraph (3)(d) the information mentioned in rule 24.

PART 10

Arranging a grounds hearing where grounds hearing or review hearing has deferred or application made to the sheriff

Papers to be sent when new grounds presented after grounds hearing deferred or application made to the sheriff

37.—(1) This rule applies where—

- (a) a grounds hearing deferred making a decision on whether to make a compulsory supervision order until a subsequent children's hearing under section 91(2) (grounds accepted: powers of grounds hearing) of the Act or directed the Reporter under section 93(2)(a) (grounds not accepted: application to sheriff or discharge) or 94(2)(a) (child or relevant person unable to understand grounds) of the Act to make an application to the sheriff; or
- (b) a children's hearing to which section 119 (children's hearing following deferral or proceedings under Part 10) of the Act applies is to be arranged by the Reporter;

and in either case the Reporter is required by virtue of section 69(2) (determination under section 66: referral to children's hearing) of the Act to arrange a further grounds hearing in relation to that child.

(2) In addition to complying with Part 7 of these Rules the Reporter must also comply, so far as practicable, with Part 8.

Papers to be sent when new grounds presented after review hearing deferred

38.—(1) This rule applies where—

- (a) the Reporter is required by virtue of section 137(2) (duty to arrange children's hearing) of the Act to arrange a children's hearing in relation to the child; and
- (b) the Reporter is required by virtue of section 69(2) (determination under section 66: referral to children's hearing) of the Act to arrange a grounds hearing in relation to that child.

(2) In addition to complying with Part 7 of these Rules the Reporter must also comply, so far as practicable, with Part 9.

PART 11

Arranging other children's hearings

Arranging a children's hearing under section 45 (review by children's hearing where child in place of safety) or 46 (review by children's hearing where order prevents removal of child) of the Act – 2nd working day hearing

39.—(1) This rule applies where section 45(2) or 46(2) of the Act applies.

(2) As soon as practicable before the beginning of the children's hearing, the Reporter must notify the persons mentioned in paragraph (3) of the date, time and place of the children's hearing.

(3) Those persons are—

- (a) the child;
- (b) each relevant person;

- (c) any individual who appears to the Reporter to have (or recently have had) significant involvement in the upbringing of the child;
- (d) the person who applied for the child protection order or child assessment order, as the case may be;
- (e) the person specified in the child protection order under section 37(2)(a) (child protection orders) of the Act;
- (f) any other person prescribed by rules of court for the purposes of section 48 (application for variation or termination) or 49 (notice of application for variation or termination) of the Act;
- (g) the three members of the children's hearing;
- (h) any appointed safeguarder;
- (i) the chief social work officer of the relevant local authority for the child;
- (j) the National Convener.

(4) As soon as practicable before the beginning of the hearing, the Reporter must give to the persons mentioned in paragraph (3)(a) to (i) such of the information mentioned in paragraph (5) as is available.

(5) That information is—

- (a) a copy of the child protection order;
- (b) a copy of the application for the child protection order, or child assessment order, as the case may be;
- (c) a copy of any report or other document which is relevant to the children's hearing's consideration.

Arranging a children's hearing under section 50 (children's hearing to provide advice to sheriff in relation to application) of the Act

40.—(1) Where a hearing is to be arranged under section 50 of the Act, as soon as practicable after determining to arrange the hearing the Reporter must notify the persons mentioned in paragraph (2) of the date, time and place of the children's hearing.

(2) Those persons are—

- (a) the child;
- (b) each relevant person;
- (c) any individual who appears to the Reporter to have (or recently have had) significant involvement in the upbringing of the child;
- (d) the person who applied for the child protection order, or child assessment order, as the case may be;
- (e) the person who applied for the child protection order to be varied or terminated;
- (f) the person specified in the child protection order under section 37(2)(a) (child protection orders) of the Act;
- (g) any other person, to whom the applicant for variation or termination of a child protection order is required to give notice of the making of the application, prescribed by rules of court for the purposes of section 48 (application for variation or termination) or 49 (notice of application for variation or termination) of the Act;
- (h) the three members of the children's hearing;
- (i) any appointed safeguarder;
- (j) the chief social work officer of the relevant local authority for the child;
- (k) the National Convener.

(3) As soon as practicable before the beginning of the hearing, the Reporter must give to the persons mentioned in paragraph (2)(a) to (j) such of the information mentioned in paragraph (4) as is available.

(4) That information is—

- (a) a copy of the child protection order;
- (b) a copy of the application for the child protection order or child assessment order, as the case may be;
- (c) a copy of the application under section 48 of the Act for the variation or termination of the child protection order;
- (d) any other relevant document or information.

Provision of information for a children’s hearing under section 96(2) (children’s hearing to consider need for further interim compulsory supervision order)

41.—(1) This rule applies where a children’s hearing under section 96(2) of the Act is to be arranged by the Reporter.

(2) Wherever practicable when issuing notice under rule 22 and in all cases no later than 7 days before the intended date of the children’s hearing, the Reporter must give to the persons mentioned in paragraph (3) the information mentioned in paragraph (4).

(3) Those persons are—

- (a) the child;
- (b) each relevant person;
- (c) any appointed safeguarder;
- (d) the three members of the children’s hearing;

(4) That information is—

- (a) copies of all decisions and reasons for those decisions made by all pre-hearing panels and children’s hearings arranged in relation to the child;
- (b) a copy of any interim compulsory supervision order made in relation to the child;
- (c) any relevant document or other information for the consideration of the children’s hearing.

Arranging a children’s hearing under section 126 (review of contact direction) of the Act

42.—(1) Where section 126 of the Act applies, the Reporter must, as soon as practicable and no later than 3 days after the children’s hearing mentioned in section 126(1)(a) of the Act, inform those persons mentioned in paragraph (2) of the place, date and time of any children’s hearing to be held under section 126(2)(a) or (2)(b) of the Act and the right of those mentioned in paragraph (2)(a) to (g) to attend that hearing.

(2) Those persons are—

- (a) the child;
- (b) each relevant person;
- (c) any person who appears to the Reporter to have established family life with the child;
- (d) any person who has a contact order regulating contact between the individual and the child;
- (e) any person having a right of contact with the child under a permanence order;
- (f) any person who requested a children’s hearing be held under section 126(2)(b) of the Act;
- (g) any appointed safeguarder;
- (h) the three members of the children’s hearing;

- (i) the chief social work officer of the implementation authority or relevant local authority for the child as the case may be;
- (j) the National Convener.

(3) Wherever possible when informing the persons mentioned in paragraph 2(a) to (h) and in all cases no later than 3 days prior to the intended date of the children's hearing under section 126 of the Act, the Reporter must give to those persons—

- (a) a copy of the contact direction in the relevant order made by the children's hearing mentioned in section 126(1) of the Act and the reasons for that contact direction;
- (b) any document or part of any document which is relevant to the children's hearing to be held under section 126 of the Act.

(4) In this rule "relevant order" means-

- (a) a compulsory supervision order,
- (b) an interim compulsory supervision order,
- (c) a medical examination order.

Arranging a children's hearing under section 142 (review of determination that person be deemed a relevant person)

43.—(1) This rule applies where a children's hearing under section 142(3) of the Act deferred determining the review under section 142(2) of the Act until a subsequent children's hearing.

(2) Wherever practicable when issuing notice under rule 22 and in all cases as soon as practicable before the beginning of the children's hearing to be held by virtue of section 142 of the Act, the Reporter must give to the persons mentioned in paragraph (3) any relevant document or other information for the consideration of the children's hearing.

(3) Those persons are—

- (a) the child;
- (b) any relevant person;
- (c) any appointed safeguarder;
- (d) the three members of the children's hearing.

Arranging a children's hearing for the purposes of section 49 (reference or remit to children's hearing) of the Criminal Procedure (Scotland) Act 1995

44.—(1) Where a children's hearing is required to provide a report under section 49(1)(b), (3) or (6) of the Criminal Procedure (Scotland) Act 1995(a), as soon as practicable and no later than 7 days before the intended date of the hearing the Reporter must notify the persons mentioned in paragraph (2) of the date, time and place of the hearing.

(2) Those persons are—

- (a) the child;
- (b) each relevant person;
- (c) any appointed safeguarder;
- (d) the three members of the children's hearing;
- (e) the chief social work officer of the relevant local authority for the child;
- (f) the National Convener.

(3) As soon as practicable and no later than 3 days before the intended date of the hearing, the Reporter must give to the persons mentioned in paragraph (2)(a) to (c) such of the information mentioned in paragraph (4) as is available.

(a) 1995 c. 46.

(4) That information is—

- (a) a copy of any relevant remit by a court under section 49 of the Criminal Procedure (Scotland) Act 1995;
- (b) copies of all decisions and reasons for those decisions made by all pre-hearing panels and children's hearings arranged in relation to the child;
- (c) confirmation of the child's duty to attend the children's hearing under section 73 (child's duty to attend children's hearing) of the Act;
- (d) confirmation of the relevant person's duty to attend the children's hearing under section 74 (relevant person's duty to attend children's hearing) of the Act;
- (e) information on the means by which the child may express views to the children's hearing;
- (f) confirmation of the right of the child and each relevant person to give any report or other document for the consideration of the children's hearing.

(5) As soon as practicable and no later than 3 days before the intended date of the hearing, the Reporter must give to the persons mentioned in paragraph (2)(d) such of the information mentioned in paragraph (4)(a) and (b) as is available.

PART 12

Pre-hearing panels and determination of matters which may be referred to pre-hearing panels

Arranging pre – hearing panel - determination of relevant person status

45.—(1) Where a pre-hearing panel is to be arranged by virtue of section 79(2)(a) or (b) (referral of certain matters for pre-hearing determination) of the Act (whether or not it is also to determine any matter mentioned in section 79(3)), wherever practicable at least 5 days before the intended date of the pre-hearing panel the Reporter must give notice of the pre-hearing panel to the persons mentioned in paragraph (2).

(2) Those persons are—

- (a) the child;
- (b) each relevant person;
- (c) any individual requesting a determination that they be deemed a relevant person under section 79(2)(a) of the Act;
- (d) any individual who appears to the Reporter to have (or recently have had) significant involvement in the upbringing of the child;
- (e) any appointed safeguarder;
- (f) the three members of the pre-hearing panel;
- (g) the National Convener.

(3) The notice must inform—

- (a) the persons mentioned in paragraph (2) of the date, time and place of the pre-hearing panel;
- (b) the persons mentioned in paragraph (2)(a) to (e) that they—
 - (i) have the right to attend the pre-hearing panel,
 - (ii) may make representations (orally or in writing) to the pre-hearing panel relating to whether the individual mentioned in paragraph (2)(c) or (d) should be deemed to be a relevant person,
 - (iii) may give any report or other document relevant to that matter for the consideration of the pre-hearing panel,

- (iv) have the right to request that the Reporter takes all reasonable steps to enable the child, each relevant person, or the individual in question, as the case may be, to attend the pre-hearing panel by way of telephone, through video link or by using any other method of communication; and
 - (c) the individual mentioned in paragraph (2)(c) or (d) that the individual, if deemed a relevant person under section 81(3) (determination of claim that person be deemed a relevant person) of the Act after that determination has been made, may request the pre-hearing panel to determine any matter mentioned in section 79(3) of the Act.
- (4) Where the pre-hearing panel will also determine any other matter referred under section 79(2)(c) of the Act the notice must state that fact and—
- (a) inform the individual mentioned in paragraph (2)(c) or (d) that the individual will not be entitled to take part in any discussion on that matter unless they are deemed to be a relevant person; and
 - (b) inform the persons mentioned in (2)(a), (b) or (e) that they may—
 - (i) make representations (orally or in writing) to the pre-hearing panel in relation to any matter to be determined by the panel; and
 - (ii) give any report or other document relevant to those matters for the consideration of the pre-hearing panel.

Arranging pre-hearing panels to determine matter in section 79(3) (referral of certain matters for pre-hearing determination) of the Act

46.—(1) Where a pre-hearing panel is to be arranged by virtue only of section 79(2)(c) of the Act wherever practicable at least 5 days before the intended date of the pre-hearing panel the Reporter must give notice of the pre-hearing panel to the persons mentioned in paragraph (2).

- (2) Those persons are—
- (a) the child;
 - (b) each relevant person;
 - (c) any appointed safeguarder;
 - (d) the three members of the pre-hearing panel;
 - (e) the National Convener.
- (3) The notice must inform—
- (a) the persons mentioned in paragraph (2) of the date, time and place of the pre-hearing panel;
 - (b) the persons mentioned in paragraph (2)(a) to (d) of the matters to be determined by the pre-hearing panel; and
 - (c) the persons mentioned in paragraph (2)(a) to (c) that they—
 - (i) have the right to attend the pre-hearing panel,
 - (ii) may make representations (orally or in writing) to the pre-hearing panel,
 - (iii) may give any report or other document for the consideration of the pre-hearing panel,
 - (iv) have the right to request that the Reporter takes all reasonable steps to enable the child, each relevant person, or the individual in question as the case may be, to attend the pre-hearing panel by way of telephone, through video link or by using any other method of communication.

Provision of information to pre-hearing panel

47.—(1) Where any person mentioned in rule 45(2)(a) to (e) or 46(2)(a) to (c), as the case may be, wishes to make written representations or give any report or other document for the consideration of the pre-hearing panel, as soon as possible and wherever practicable no later than

4 days before the intended date of the pre-hearing panel, that person must give those representations, report or other document to the Reporter.

(2) Subject to the provisions of paragraphs (6) and (7), where the Reporter receives any representations, report or other document under paragraph (1), wherever practicable no later than 3 days before the intended date for the pre-hearing panel the Reporter must give a copy of that information to the persons mentioned in rule 45(2)(a) to (f) or 46(2)(a) to (d), as the case may be, (unless that person gave the information in question to the Reporter).

(3) Where any person mentioned in rule 45(2)(a) to (e) or 46(2)(a) to (c), as the case may be, is unable to attend the pre-hearing panel and wishes to make oral representations for the consideration of the pre-hearing panel that person may make those representations to the Reporter.

(4) The Reporter must make a record of any representations given under paragraph (3) and give a copy of that record to those persons mentioned in rule 45(2)(a) to (f) or 46(2)(a) to (d), as the case may be, as soon as possible before the beginning of the pre-hearing panel.

(5) As soon as possible before the beginning of the pre-hearing panel the Reporter must also give the persons mentioned in rule 45(2)(a) to (f) or 46(2)(a) to (d), as the case may be, any other document, or part of a document, that is relevant to the issues to be determined by the pre-hearing panel and is in the possession of the Reporter.

(6) Where the matter referred to a pre-hearing panel concerns the question of whether a particular person should be deemed to be a relevant person, the obligation under paragraph (2) shall only apply to such material as the Reporter considers relevant to the question of whether that person should be deemed to be a relevant person.

(7) The provisions of Part 19 of these Rules apply to any representations, report or other document received by the Reporter under paragraph (1) as they apply to any document relating to a children's hearing.

Procedure at pre-hearing panel determination of whether to deem an individual to be a relevant person

48.—(1) At the beginning of the pre-hearing panel the chairing member must explain the purpose of the pre-hearing panel.

(2) The pre-hearing panel, despite a referral not having been made under section 79(2) (referral of certain matters for pre-hearing determination) of the Act, must consider whether to deem an individual, who is present at the pre-hearing panel, to be a relevant person on the request of—

- (a) the child,
- (b) any relevant person;
- (c) the individual in question.

(3) Where the pre-hearing panel is to consider whether to deem an individual to be a relevant person under paragraph (2) the provisions of the Act (other than section 81(2) (determination of claim that person be deemed a relevant person)) and these Rules apply as if the matter had been referred under section 79 of the Act.

(4) Where the pre-hearing panel is to determine the matter of whether any individual should be deemed to be a relevant person, the chairing member—

- (a) must invite any of the persons mentioned in paragraph (5), who is in attendance, to give to the pre-hearing panel any representations (orally or in writing) or any other document or information in addition to any given under these Rules that the person wishes to give for the consideration of the pre-hearing panel; and
- (b) may invite any other person that the pre-hearing panel consider appropriate to do so.

(5) Those persons are—

- (a) the child;
- (b) any relevant person;
- (c) any individual in relation to whom the determination is sought.

(6) Each member of the pre-hearing panel must state their determination on that matter under paragraph (2) and the reasons for that determination.

(7) Once each member of the pre-hearing panel has stated their determination on that matter the chairing member must confirm the determination of the pre-hearing panel in respect of the matter and the reasons for that determination.

(8) Where the pre-hearing panel has made a determination under section 81(3) of the Act the chairing member must inform the persons mentioned in paragraph (9) of their right to appeal that determination under section 160 of the Act.

(9) Those persons are—

- (a) the child;
- (b) each relevant person;
- (c) any individual in respect of whom the pre-hearing panel determined that the individual is not to be deemed a relevant person.

Procedure at pre-hearing panel determination of any other matter

49.—(1) Where the pre-hearing panel is to determine any matter of a type mentioned in section 79(3) (referral of certain matters for pre-hearing determination) of the Act, the chairing member—

- (a) must invite any of the persons mentioned in rule 48(4)(a) and (b), who is in attendance, to give to the pre-hearing panel any representations (orally or in writing) or any other document or information in addition to any given under these Rules that the person wishes to give for the consideration of the pre-hearing panel; and
- (b) may invite any other person that the pre-hearing panel consider appropriate to do so.

(2) Each member of the pre-hearing panel must state their determination on each matter and the reasons for that determination.

(3) Once each member of the pre-hearing panel has stated their determination on each matter the chairing member must confirm the determination of the pre-hearing panel in respect of each matter and the reasons for that determination.

Notice of pre-hearing panel determination

50.—(1) As soon as practicable after the pre-hearing panel the Reporter must give notice of any determination of the pre-hearing panel and the reasons for that determination to the persons mentioned in paragraph (2) as regards—

- (a) whether any individual should or should not be deemed to be a relevant person; and
- (b) any other matter referred to the pre-hearing panel.

(2) Those persons are—

- (a) the child;
- (b) each relevant person;
- (c) any appointed safeguarder;
- (d) the chief social work officer of the relevant local authority for the child.

(3) Where a pre-hearing panel determined that an individual is not to be deemed a relevant person, as soon as practicable after the pre-hearing panel the Reporter must give notice of that determination to the individual in question and the reasons for that determination.

(4) When issuing the notice under paragraph (1) or (3) the Reporter must also give notice of any relevant right of appeal of the recipient of the notice under section 160 (appeal to sheriff against relevant person determination) of the Act.

(5) Where the pre-hearing panel has determined that a child or relevant person is to be excused from attending all or part of the children's hearing, the Reporter must inform the child and relevant person as the case may be, that—

- (a) the child or relevant person has been excused;
- (b) the child or relevant person has the right to attend the hearing; and
- (c) they have the right to request that the Reporter make arrangements to enable the child, or the relevant person, as the case may be, to attend the children's hearing or part of the children's hearing by way of telephone, video link or any other method of communication.

(6) Where the pre-hearing panel has determined that it is likely that a children's hearing will consider making a compulsory supervision order or an interim compulsory supervision order including a secure accommodation authorisation in relation to the child, the Reporter must, as soon as possible after that determination, notify the Scottish Legal Aid Board of that fact and the name and address of the child.

(7) Where the pre-hearing panel has determined that—

- (a) for the purpose of enabling a child or any relevant person to participate effectively in the proceedings before the children's hearing it is necessary that the child or relevant person be represented by a solicitor or counsel; and
- (b) it is unlikely that the child or relevant person will arrange to be represented by a solicitor or counsel,

the Reporter must, as soon as possible after that determination, notify the Scottish Legal Aid Board of that fact and the name and address of the child or relevant person.

Provision of information to persons deemed to be relevant persons

51. Where the pre-hearing panel deems a person to be a relevant person under section 81(3) (determination of claim that person be deemed a relevant person) of the Act, as soon as practicable after that determination, the Reporter must give to that person all information given under these Rules which is to be given to each relevant person.

Notification of matter to be determined under section 79 (referral of certain matters for pre-hearing determination) where not practicable to arrange a pre-hearing panel before the date fixed for the children's hearing

52.—(1) Where section 80(3) (determination of matter referred under section 79) of the Act applies, as soon as practicable, the Reporter must give notice to the persons mentioned in paragraph (2) that the matter to be referred to a pre-hearing panel under section 79(2) of the Act will be referred to the children's hearing.

(2) Those persons are—

- (a) the child;
- (b) each relevant person;
- (c) any individual requesting a determination that they be deemed a relevant person;
- (d) any individual who appears to the Reporter to have (or recently have had) significant involvement in the upbringing of the child;
- (e) any appointed safeguarder;
- (f) the three members of the children's hearing.

(3) The notice under paragraph (1) must inform—

- (a) the persons mentioned in paragraph (2)(a) to (e)—
 - (i) of the date, time and place of the children's hearing,
 - (ii) of the matters to be determined by the children's hearing by virtue of section 80(3) of the Act,
 - (iii) that they have the right to attend that part of the children's hearing,
 - (iv) that they have the right to request that the Reporter takes all reasonable steps to enable the child, relevant person, or the person mentioned in paragraph (2)(c) or (d),

as the case may be, to attend the children's hearing by way of telephone, through video link or by using any other method of communication,

- (v) that they may make representations (orally or in writing) to the children's hearing relating to any matter referred under section 79 of the Act, except where paragraph (4) applies,
 - (vi) that they may give any report or other document relevant to that matter for the consideration of the children's hearing, and
- (b) the individual mentioned in paragraph (2)(c) or (d), that the individual, where deemed to be a relevant person under section 81(3) (determination of claim that person be deemed a relevant person) of the Act, may request the children's hearing to determine any matter mentioned in section 79(3) of the Act.

(4) Where the children's hearing will also determine any matter referred under section 79(2)(c) of the Act the notice must inform the individual mentioned in paragraph (2)(c) or (d) that the individual will not be entitled to take part in any discussion on that matter unless they are deemed to be a relevant person.

Provision of information relating to matter referred under section 79 (referral of certain matters for pre-hearing determination) of the Act to the children's hearing

53.—(1) Where any person mentioned in rule 52(2)(a) to (e) wishes to make written representations or give any report or other document for the consideration of the children's hearing, as soon as practicable, and wherever practicable no later than 4 days before the date fixed for the children's hearing that person must give those representations, report or other document to the Reporter.

(2) Where the Reporter receives any representations, reports or other document under paragraph (1), as soon as practicable before the beginning of the children's hearing, the Reporter must give a copy of that information to the persons mentioned in rule 52(2) (unless that person gave the information in question to the Reporter).

(3) Where any person mentioned in rule 52(2)(a) to (e) is unable to attend the children's hearing and wishes to make oral representations for the consideration of the children's hearing that person may make those representations to the Reporter.

(4) The Reporter must make a record of any representations given under paragraph (3) and give a copy of that record to those persons mentioned in rule 52(2) as soon as practicable before the beginning of the children's hearing.

(5) As soon as possible before the beginning of the children's hearing the Reporter must also give the persons mentioned in rule 52(2) any other document or part of a document that is relevant to the issues under section 79 of the Act to be determined by the children's hearing and is in the possession of the Reporter.

Children's hearing determining a matter referred under section 79 (referral of certain matters for pre-hearing determination) of the Act

54. Where by virtue of section 80(3) (determination of matter referred under section 79) of the Act the children's hearing is to determine a matter referred under section 79 of the Act—

- (a) rules 48(2) to (9) and 49 apply; and
- (b) references in those rules to the pre-hearing panel are to be read as references to the children's hearing.

Children's hearings' power to determine whether a person should be deemed to be a relevant person where no referral made under section 79 (referral of certain matters for pre-hearing determination) of the Act

55.—(1) A children's hearing held in relation to a child by virtue of section 69(2) (determination under section 66: referral to children's hearing) or Part 9 to 11 (children's hearing; proceedings

before sheriff; subsequent children's hearings) or 13 (review of compulsory supervision order) of the Act, despite a referral not having been made under section 79 of the Act, must consider whether to deem an individual who is present at the hearing to be a relevant person on the request of—

- (a) the child;
- (b) any relevant person;
- (c) the individual in question.

(2) Where the children's hearing is to consider whether to deem an individual to be a relevant person under paragraph (1) the provisions of the Act (other than section 80 (determination of matter referred under section 79) and these Rules apply as if the matter had been referred under section 79 of the Act.

PART 13

Appointment of safeguarder and safeguarders' reports

Appointment of safeguarder by pre-hearing panel or children's hearing

56.—(1) Where the pre-hearing panel appoint a safeguarder for the child the Reporter must—

- (a) inform the safeguarder of the date, time and place (if known) of the next children's hearing to be held in relation to the child ; and
- (b) give to the safeguarder the information mentioned in paragraph (3), as soon as practicable before the intended date of the hearing.

(2) Where the children's hearing appoint a safeguarder for the child the Reporter must—

- (a) inform the safeguarder of the date, time and place (if known) of the next children's hearing to be held in relation to the child, or the hearing to take place under Part 10 (proceedings before sheriff) of the Act, as the case may be, and
- (b) give to the safeguarder the information mentioned in paragraph (3) as soon as practicable and no later than 7 days before the intended date of the hearing.

(3) That information is—

- (a) any information given to the three members of the children's hearing under these Rules;
- (b) a copy of the pre-hearing panel's or the children's hearing's decision and the reasons for that decision; and
- (c) the reasons for the decision by the pre-hearing panel or the children's hearing to appoint a safeguarder.

(4) A safeguarder is not required to prepare a report under section 33(1)(a) (functions of safeguarder) of the Act where the safeguarder is appointed by—

- (a) a pre-hearing panel before a grounds hearing; or
- (b) a children's hearing held by virtue of section 45 (review by children's hearing where child in place of safety), 46 (review by children's hearing where order prevents removal of child), 50 (children's hearing to provide advice to sheriff in relation to application), 96 (children's hearing to consider need for further interim compulsory supervision order), 123 (general power to grant warrant to secure attendance), 126 (review of contact direction) or 158 (compulsory supervision order: suspension pending appeal) of the Act.

(5) Where the safeguarder is required to prepare a report under section 33(1)(a) (functions of safeguarder) of the Act, within 35 days of being appointed the safeguarder must prepare and give a report or interim report to the Reporter.

(6) Where an interim report is given to the Reporter under paragraph (5) the safeguarder must also give to the Reporter—

- (a) a statement explaining the reasons for the production of an interim report;

- (b) details of further investigations or information to be sought by the safeguarder; and
- (c) an estimate of how much more time the safeguarder requires to complete the report.

Duty of Reporter on receipt of report from safeguarder

57.—(1) Where the Reporter receives from a safeguarder any report or interim report prepared under section 33(1)(a) or (c) (functions of safeguarder) of the Act, as soon as practicable after receiving that report or interim report the Reporter must arrange a children’s hearing to decide whether to make a compulsory supervision order or to review the compulsory supervision order in effect in relation to the child, as the case may be.

(2) Where the Reporter arranges a children’s hearing under paragraph (1) and the children’s hearing is to make a decision on whether to make a compulsory supervision order the provisions of section 119 (children’s hearing following deferral or proceedings under Part 10) of the Act apply to that hearing as if it was arranged by virtue of section 119(2) of the Act.

(3) Where the Reporter arranges a children’s hearing under paragraph (1) and the children’s hearing is to review the compulsory supervision order in effect in relation to the child section 137 (duty to arrange children’s hearing) of the Act applies to that hearing as if it was arranged by virtue of section 137(2) of the Act.

PART 14

Procedure at children’s hearings – general

Children’s hearings procedure - general

58.—(1) At the beginning of a children’s hearing the chairing member must—

- (a) introduce the members of the children’s hearing and explain the purpose of the hearing;
- (b) ask whether the child, each relevant person and any appointed safeguarder has received all relevant information and documents sent under these Rules;
- (c) confirm whether the child, each relevant person and any appointed safeguarder has had the opportunity to review the information and documents sent under these Rules and whether these have been understood by the child and each relevant person.

(2) Where, in response to the chairing member’s query under section 121 (confirmation that child given opportunity to express views before hearing) of the Act, the child confirms that the documents provided to the child do not accurately reflect the child’s views the chairing member must endeavour to clarify the child’s views on the relevant matter.

PART 15

Procedure at grounds hearing and children’s hearings to which section 119 (children’s hearing following deferral or proceedings under Part 10) or 137 (duty to arrange children’s hearing) of the Act applies

Procedure at a grounds hearing - grounds put to the child and relevant person

59.—(1) When complying with section 90 (grounds to be put to child and relevant person) of the Act, and without prejudice to sections 76 (power to exclude relevant person from children’s hearing) and 77 (power to exclude relevant person’s representative from children’s hearing) of the Act, the chairing member may exclude any relevant person if satisfied that the presence at the hearing of that person is preventing the children’s hearing obtaining the acceptance or denial of a section 67 ground specified in the statement of grounds from any person who is required to accept or deny the grounds.

(2) After the exclusion has ended, the chairing member of the children's hearing must explain to the relevant person what has taken place in the relevant person's absence.

(3) Paragraph (4) applies where the child or any relevant person accept a section 67 ground specified in the statement of grounds but do not accept all of the facts relating to that ground narrated in the statement of grounds.

(4) The children's hearing may, where it considers it appropriate to do so, amend the statement of grounds by removing any facts denied or otherwise amending the facts narrated in the statement of grounds.

(5) Where paragraph (4) applies the children's hearing may not amend the section 67 ground specified in the statement of grounds.

(6) Where paragraph (4) applies the children's hearing must be satisfied that any amendments to the facts narrated in the statement of grounds do not call into question the acceptance of a section 67 ground by the child or any relevant person.

Procedure where section 91(1) (grounds accepted: powers of grounds hearing), 119(1) (children's hearing following deferral or proceedings under Part 10), or 138(1) (powers of children's hearing on review) of the Act applies

60.—(1) This rule applies where section 91(1), 119(1) or 138(1) of the Act apply.

(2) The chairing member—

- (a) must inform those present at the hearing of the substance of any relevant report or other relevant document;
- (b) must take all reasonable steps to obtain the views of the child, each relevant person and any appointed safeguarder in relation to—
 - (i) any relevant report, document or matter being considered by the hearing; and
 - (ii) what, if any, measures would be in the best interests of the child;
- (c) may invite any other person present at the hearing, as the children's hearing considers appropriate, to express their views on, or provide any other information relevant to, any matter or action being considered by the hearing.

(3) Where the children's hearing has been given an interim report and statement prepared by the safeguarder under these Rules the hearing must consider that interim report and statement.

(4) After considering the interim report and statement the children's hearing may set a further date up to a maximum of 35 days for the provision of the report from the safeguarder and defer making a decision on whether to make a compulsory supervision order until a subsequent children's hearing.

Procedure when proceedings under section 91(2) (grounds accepted: powers of grounds hearing), 119(2) (children's hearing following deferral or proceedings under Part 10) or 138(2) (powers of children's hearing on review) of the Act

61.—(1) Where the children's hearing proceeds under section 91(2), 119(2) or 138(2) of the Act, without prejudice to the powers of the children's hearing in section 92 (powers of grounds hearing on deferral), 120 (powers of children's hearing on deferral under section 119) or 139 (powers of children's hearing on deferral under section 138) of the Act, the children's hearing may—

- (a) appoint a safeguarder if one has not already been appointed;
- (b) require the Reporter to obtain any report from any person which the children's hearing considers would be relevant to any matter to be determined by the hearing;
- (c) set a date for the subsequent children's hearing to be held under section 119 or 139 of the Act, as the case may be;
- (d) determine that—

- (i) for the purpose of enabling a child or any relevant person to participate effectively in the proceedings before the children’s hearing it is necessary that the child or relevant person be represented by a solicitor or counsel; and
 - (ii) it is unlikely that the child or relevant person will arrange to be represented by a solicitor or counsel;
 - (e) require the Reporter, as soon as possible after the determination in paragraph (1)(d), to notify the Scottish Legal Aid Board of that determination, the reasons for that determination and the name and address of the child or relevant person;
 - (f) require the Reporter to make arrangements for an interpreter for the child or any relevant person or take any other step with a view to securing participation of the child or any relevant person in the hearing;
 - (g) give any other direction on any other matter as is necessary to enable the hearing to make a decision on whether to make a compulsory supervision order and if so the measures to be included in that order.
- (2) Each member of the children’s hearing must—
- (a) state their decision on the exercise of the power conferred by section 91(2), 119(2) or 138(2) of the Act, as the case may be, and the reason for that decision;
 - (b) state their decision on the exercise of the power conferred by section 92(2) or (3), 120(3), (5) or (6), 123 (general power to grant warrant to secure attendance) or 139(3) (powers of children’s hearing on deferral under section 138) of the Act as the case may be, and the reasons for that decision;
 - (c) where the decision is to make an interim compulsory supervision order, interim variation of a compulsory supervision order, medical examination order or to grant a warrant to secure attendance, state the member’s decision in relation to any measure to be contained in the order or warrant and the reasons for the inclusion of the proposed measure; and
 - (d) where any other decision is made to exercise any other power, give any direction or impose any requirement, state their decision on that matter and reasons for that decision.
- (3) The chairing member must—
- (i) confirm and explain the decision of the children’s hearing,
 - (ii) state the reasons for that decision, and
 - (iii) subject to sections 73 (child’s duty to attend children’s hearing), 74 (relevant person’s duty to attend children’s hearing), 75 (power to proceed in absence of relevant person) and 79 (referral of certain matters for pre-hearing determination) of the Act, inform the child, each relevant person and any safeguarder appointed of the right to appeal the children’s hearing’s decision to make an interim compulsory supervision order, interim variation of a compulsory supervision order, medical examination order or to grant a warrant to secure the attendance under section 154 (appeal to sheriff against decision of children’s hearing) of the Act within 21 days of that decision.

Procedure where section 91(3) (grounds accepted: powers of grounds hearing), 119(3) (children’s hearing following deferral or proceedings under Part 10) or 138(3) (powers of children’s hearing on review) of the Act applies

62.—(1) This rule applies where the children’s hearing is required to proceed under section 91(3), 119(3) or 138(3) of the Act.

- (2) Each member of the children’s hearing must—
- (a) state their decision on whether to make a compulsory supervision order or to terminate, vary or continue the compulsory supervision order, as the case may be, and the reason for that decision; and

- (b) where the decision is to make a compulsory supervision order, continue or vary the compulsory supervision order, state the member's decision in relation to any measure to be contained in the order and the reasons for the inclusion of the proposed measure.
- (3) The chairing member must—
- (i) confirm and explain the decision of the children's hearing,
 - (ii) state the reasons for that decision,
 - (iii) subject to sections 73 (child's duty attend children's hearing), 74 (relevant person's duty to attend children's hearing), 75 (power to proceed in absence of relevant person) and 79 (referral of certain matters for pre-hearing determination) of the Act, inform the child, each relevant person and any safeguarder appointed of the right to appeal the children's hearing's decision to make a compulsory supervision order, or discharge the referral or terminate, vary or continue the compulsory supervision order under section 154 (appeal to sheriff against decision of children's hearing) of the Act within 21 days of that decision, and
 - (iv) where the decision of the children's hearing is to make a compulsory supervision order, or terminate, vary or continue the compulsory supervision order, subject to sections 73, 74, 75 and 79 of the Act, inform the child, each relevant person and any appointed safeguarder of the right to seek a suspension of the children's hearing's decision under section 158 (compulsory supervision order: suspension pending appeal) of the Act.

Grounds hearing procedures where section 93 (grounds not accepted: application to sheriff or discharge) or 94 (child or relevant person unable to understand grounds) of the Act applies

- 63.**—(1) This rule applies where section 93 or 94 of the Act applies.
- (2) Each member of the children's hearing must—
- (a) state their decision on whether to proceed under section 93(2)(a) or (b), or 94(2)(a) or (b), of the Act as the case may be, and the reason for that decision;
 - (b) state any decision on the exercise of the power conferred by section 93(5) or 123 (general power to grant warrant to secure attendance) of the Act and the reasons for that decision;
 - (c) where the decision is to make an interim compulsory supervision order or grant a warrant to secure attendance state the member's decision in relation to any measure to be contained in the order or warrant and the reasons for the inclusion of the proposed measure.
- (3) The chairing member must—
- (i) confirm and explain the decision of the children's hearing;
 - (ii) state the reasons for that decision; and
 - (iii) subject to sections 73 (child's duty to attend children's hearing), 74 (relevant person's duty to attend children's hearing), 75 (power to proceed in absence of relevant person) and 79 (referral of certain matters for pre-hearing determination) of the Act, inform the child, each relevant person and any safeguarder appointed of the right to appeal the children's hearing's decision to discharge the referral, make an interim compulsory supervision order, or grant a warrant to secure attendance under section 154 (appeal to sheriff against decision of children's hearing) of the Act within 21 days of that decision.

Procedure where section 95 (child fails to attend grounds hearing) of the Act applies

64.—(1) Where section 95(1) of the Act applies each member of the children's hearing must state their decision on whether to require the Reporter under section 95(2) of the Act to arrange another grounds hearing and their reasons for that decision.

- (2) The chairing member must—

- (a) confirm and explain the decision of the children's hearing; and
- (b) state the reasons for that decision;

(3) Where the children's hearing do not require the Reporter to arrange another grounds hearing under section 95(2) of the Act the children's hearing must discharge the referral.

(4) Where paragraph (3) applies, subject to sections 73 (child's duty to attend children's hearing), 74 (relevant person's duty to attend children's hearing), 75 (power to proceed in absence of relevant person) and 79 (referral of certain matters for pre-hearing determination) of the Act, the chairing member must inform each relevant person and any appointed safeguarder of the right to appeal the children's hearing's decision to discharge the referral under section 154 (appeal to sheriff against decision of children's hearing) of the Act within 21 days of that decision.

Procedure where report required under section 141 (preparation of report in circumstances relating to permanence order or adoption) of the Act

65.—(1) Where a children's hearing is required to produce a report under section 141 of the Act, subject to sections 73 (child's duty to attend children's hearing), 74 (relevant person's duty to attend children's hearing), 75 (power to proceed in absence of relevant person) and 79 (referral of certain matters for pre-hearing determination) of the Act, the chairing member must—

- (a) explain to the child and each relevant person the purpose of the report to be prepared;
- (b) inform the child and each relevant person of the substance of any document or information which is material to the advice to be contained in the report to be prepared by the children's hearing.

(2) Before preparing the report the children's hearing must subject to sections 73, 74, 75 and 79 of the Act,—

- (a) discuss the case with the child and each relevant person and any safeguarder appointed,
- (b) seek the views of the child, each relevant person and the safeguarder on the arrangements which would be in the best interests of the child, and
- (c) confirm the advice to be contained in the report.

(3) The chairing member must—

- (a) make, or cause to be made, a report of the advice;
- (b) sign and date the report; and
- (c) give the report to the Reporter at the conclusion of the hearing.

(4) The Reporter must give a copy of the report within 5 days of receiving it under paragraph (3) to—

- (a) the child;
- (b) each relevant person;
- (c) any appointed safeguarder;
- (d) the court which requires to come to a decision about an application of the type mentioned in section 131(2)(c) or (e) (duty of implementation authority to require review) of the Act;
- (e) the chief social work officer of the implementation authority;
- (f) the couple making the application under section 29 (adoption by certain couples) of the Adoption and Children (Scotland) Act 2007(a) or the person making the application under section 30 (adoption by one person) of that Act, as the case may be.

(a) 2007 asp 4.

Procedure where there is a review of determination that person be deemed a relevant person

66.—(1) Where the children’s hearing is reviewing whether an individual should continue to be deemed to be a relevant person under section 142(2) (review of determination that person be deemed a relevant person) of the Act the chairing member must inform those present of the purpose of the review.

(2) The chairing member—

- (a) must invite the child, each relevant person and any appointed safeguarder to express their views in relation to whether the individual should continue to be deemed to be a relevant person;
- (b) may invite any other person present at the hearing, as the children’s hearing considers appropriate, to express their views on that matter.

(3) Where the children’s hearing exercises the power under section 142(3) of the Act—

- (a) each member of the children’s hearing must state their decision and the reasons for that decision;
- (b) the chairing member must confirm and explain the decision of the children’s hearing on the exercise of that power and the reasons for it;
- (c) the chairing member must confirm that the individual will continue to be deemed to be a relevant person.

(4) Where the children’s hearing determine the review under section 142(2) of the Act—

- (a) each member of the children’s hearing must state their determination on the matter and the reasons for that determination;
- (b) the chairing member must—
 - (i) confirm and explain the determination of the children’s hearing;
 - (ii) state the reasons for the determination; and
 - (iii) subject to sections 73 (child’s duty to attend children’s hearing), 74 (relevant person’s duty to attend children’s hearing), 75 (power to proceed in absence of relevant person) and 79 (referral of certain matters for pre-hearing determination) of the Act, inform the child, each relevant person, the individual in relation to whom the determination was made and any safeguarder appointed of the right to appeal the children’s hearing’s decision under section 160 (appeal to sheriff against relevant person determination) of the Act within 7 days of that determination;

(5) As soon as practicable and no later than 2 working days from the day of the children’s hearing the Reporter must give to the persons mentioned in paragraph (6) the information mentioned in paragraph (7).

(6) Those persons are—

- (a) the child;
- (b) each relevant person;
- (c) the individual in relation to whom the determination was made.

(7) That information is—

- (a) a copy of the determination of the children’s hearing in relation to whether the individual should continue to be deemed to be a relevant person and the reasons for that determination; and
- (b) details of the rights of the child, each relevant person and the individual in relation to whom the determination was made, to appeal that decision under section 160 of the Act.

Breach of duties imposed by sections 144 (implementation of compulsory supervision order: general duties of implementation authority) or 145 (duty where order requires child to reside in certain place) of the Act

67.—(1) Where the children’s hearing direct the National Convener under section 146(2) (breach of duties imposed by sections 144 and 145) of the Act the chairing member—

- (a) must include in the record of the decision of the children’s hearing details of the ways in which the implementation authority is in breach of its duty in relation to the child; and
- (b) may prepare a report for the National Convener providing such additional information on that matter as the children’s hearing considers appropriate.

(2) As soon as practicable after the children’s hearing the Reporter must give to the National Convener—

- (a) a copy of the children’s hearing’s decision; and
- (b) any report prepared under paragraph (1)(b).

(3) Where it appears to the children’s hearing at the further review of the compulsory supervision order to be held by virtue of section 146(5) of the Act that the implementation authority continues to be in breach of its duty and the children’s hearing under section 146(6) of the Act directs the National Convener to make an application under section 147 (application for order) of the Act the chairing member—

- (a) must include in the record of the decision of the children’s hearing details of the ways in which the implementation authority continues to be in breach of its duty in relation to the child; and
- (b) may prepare a further report for the National Convener providing such additional information on that matter as the children’s hearing considers appropriate.

(4) As soon as practicable after the children’s hearing the Reporter must give to the National Convener—

- (a) a copy of the children’s hearing’s decision; and
- (b) any report prepared under paragraph (3)(b).

PART 16

Procedure where Part 10 of these Rules applies

Procedure where rule 37 applies

68.—(1) This rule applies where rule 37 applies.

(2) In relation to the further grounds hearing referred to in rule 37, section 91 (grounds accepted: powers of grounds hearing) of the Act applies as if for subsections (2) and (3) there were substituted—

“(2) The grounds hearing is to be treated as if it were a hearing to which section 119 of the Act applies.”.

(3) Where the further grounds hearing proceeds under section 93(2)(a) (grounds not accepted: application to sheriff or discharge) or 94(2)(a) (child or relevant person unable to understand grounds) of the Act, sections 93 and 96 (children’s hearing to consider need for further interim compulsory supervision order) of the Act apply as if they were modified as follows—

- (a) in section 93 of the Act—
 - (i) after subsection (4) there were inserted—

“(4A) Subsection (5) applies if immediately before the grounds hearing an interim compulsory supervision order was not in force in relation to the child.”; and
 - (ii) after subsection (5) there were inserted—

“(5A) Subsection (5B) applies if immediately before the grounds hearing an interim compulsory supervision order was in force in relation to the child.

(5B) If the children’s hearing is satisfied that the nature of the child’s circumstances is such that for the protection, guidance, treatment or control of the child it is necessary that a further interim compulsory supervision order be made, the children’s hearing may make a further interim compulsory supervision order in relation to the child.”.

(iii) in subsection (6) after “subsection (5)” there were inserted “or (5B)”,

(b) in section 96 of the Act in subsection (1)(a) for “a grounds hearing” there were substituted “or 93(5B) a grounds hearing”.

(4) Where the further grounds hearing proceeds under section 93(2)(b) or 94(2)(b) of the Act the children’s hearing may proceed, where appropriate, as if the hearing was a hearing to which section 119 (children’s hearing following deferral or proceedings under Part 10) applies in relation to any section 67 ground previously accepted or determined by the sheriff to be established under section 108 (determination: ground established) or 117 (new section 67 ground established: sheriff to refer to children’s hearing) of the Act.

(5) In paragraph (4) “accepted” has the same meaning as in section 93(7) (grounds not accepted: application to sheriff or discharge) of the Act.

Procedure where rule 38 applies

69.—(1) This rule applies where rule 38 applies.

(2) Where the further grounds hearing proceeds under section 93(2)(a) (grounds not accepted: application to sheriff or discharge) or 94(2)(a) (child or relevant person unable to understand grounds) of the Act the grounds hearing may continue the compulsory supervision order until the subsequent children’s hearing.

(3) Where the further grounds hearing proceeds under section 93(2)(b) or 94(2)(b) of the Act the children’s hearing may proceed, where appropriate, to review the compulsory supervision order under section 138 (powers of children’s hearing on review) of the Act.

PART 17

Procedure at other children’s hearings

Procedure at a children’s hearing held under section 45 (review by children’s hearing where child in place of safety) or 46 (review by children’s hearing where order prevents removal of child) of the Act

70.—(1) This rule applies where a children’s hearing is held by virtue of section 45 or 46 of the Act.

(2) The chairing member—

- (a) must inform those present at the hearing of the substance of any relevant report or other relevant document;
- (b) must take all reasonable steps to obtain the views of the child, each relevant person and any appointed safeguarder in relation to—
 - (i) any report, document or matter being considered by the hearing; and
 - (ii) what, if any, measures would be in the best interests of the child;
- (c) may invite any other person present at the hearing, as the children’s hearing considers appropriate, to express their views on, or provide any other information relevant to, any matter or action being considered by the hearing.

(3) Each member of the children’s hearing must—

- (a) state their decision on whether the conditions for making the child protection order are met and the reasons for that decision; and
 - (b) where the decision is that the conditions are met state the member's decision in relation to whether the order should be varied and if so the authorisation or requirement to be included in the varied order and the reasons for the inclusion of the proposed authorisation or requirement.
- (4) The chairing member must—
- (a) confirm and explain the decision of the children's hearing,
 - (b) state the reasons for that decision, and
 - (c) where the children's hearing decide to continue the child protection order, subject to sections 73 (child's duty to attend children's hearing), 74 (relevant person's duty to attend children's hearing), 75 (power to proceed in absence of relevant person) and 79 (referral of certain matters for pre-hearing determination) of the Act, inform the child, each relevant person and the other persons in section 48(1) (application for variation or termination) of the Act of the right to make an application to the sheriff under section 48(1) to vary the order or under section 48(2) of the Act to terminate the order, as the case may be.

Procedure where Reporter receives notice under section 49 (notice of application for variation or termination) of the Act after arranging hearing under section 45 or 46 (review by children's hearing where child in place of safety or order prevents removal of child) of the Act

71.—(1) Where the Reporter receives notice under section 49 of the Act of an application to vary or terminate the child protection order, after issuing the notice under rule 39 but before that hearing begins, the Reporter must, as soon as practicable before the beginning of the children's hearing, notify the persons mentioned in paragraph (2)—

- (a) that the Reporter has received notice under section 49 of the Act; and
 - (b) that the hearing will proceed as if it was arranged by virtue of section 50 (children's hearing to provide advice to sheriff in relation to application) of the Act.
- (2) Those persons are—
- (a) the child in respect of whom the child protection order is made;
 - (b) each relevant person ;
 - (c) any individual who appears to the Reporter to have (or recently have had) significant involvement in the upbringing of the child;
 - (d) the person who applied for the child protection order or child assessment order, as the case may be;
 - (e) the person who applied for the child protection order to be varied or terminated;
 - (f) the person specified in the child protection order under section 37(2)(a) (child protection orders) of the Act
 - (g) any other person to whom the applicant for variation or termination of the child protection order is required to give notice of the making of the application under rules of court;
 - (h) the three members of the children's hearing;
 - (i) any appointed safeguarder;
 - (j) the chief social work officer of the relevant local authority for the child;
 - (k) the National Convener.

Procedure where hearing held by virtue of section 50 (children’s hearing to provide advice to sheriff in relation to application) of the Act

- 72.—(1) This rule applies where a children’s hearing is held by virtue of section 50 of the Act.
- (2) The chairing member—
- (a) must inform those present at the hearing of the substance of any relevant report or other relevant document;
 - (b) must take all reasonable steps to obtain the views of the child, each relevant person and any appointed safeguarder in relation to—
 - (i) any report, document or matter being considered by the hearing; and
 - (ii) what, if any, advice would be in the best interests of the child;
 - (c) may invite any other person present at the hearing as the children’s hearing considers appropriate, to express their views on, or provide any other information relevant to, any matter or advice being considered by the hearing; and
 - (d) must confirm to the child, each relevant person, the person who applied for the child protection order, the person who applied for the order to be varied or terminated, and any appointed safeguarder the advice to be given to the sheriff to assist the sheriff in the determination of the application under section 48 (application for variation or termination) of the Act.
- (3) The chairing member must—
- (a) make, or cause to be made, a report of the advice;
 - (b) sign and date the report; and
 - (c) give the report to the Reporter at the conclusion of the hearing.
- (4) As soon as possible following receipt of the report the Reporter must give a copy of the report to—
- (a) the child in respect of whom the child protection order is made;
 - (b) each relevant person;
 - (c) any appointed safeguarder;
 - (d) the sheriff who is to determine the application under section 48 of the Act;
 - (e) the person who applied for the child protection order, or child assessment order, as the case may be;
 - (f) the person who applied for the child protection order to be varied or terminated;
 - (g) the person specified in the child protection order under section 37(2)(a) (child protection orders) of the Act;
 - (h) any person who appears to the Reporter to have (or recently have had) significant involvement in the upbringing of the child;
 - (i) any other person to whom the applicant for variation or termination of the child protection order is required to give notice of the making of the application under rules of court;
 - (j) the chief social work officer of the relevant local authority for the child.

Procedure at a children’s hearing arranged under section 96(2) (children’s hearing to consider need for further interim compulsory supervision order) of the Act

- 73.—(1) This rule applies where a children’s hearing is held by virtue of section 96(2) of the Act.
- (2) The chairing member—
- (a) must inform those present of the substance of any relevant report or other relevant document;

- (b) must take all reasonable steps to obtain the views of the child, each relevant person and any appointed safeguarder in relation to—
 - (i) any report, document or matter being considered by the hearing; and
 - (ii) what, if any, measures would be in the best interests of the child; and
 - (c) may invite any other person present at the hearing, as the children’s hearing considers appropriate, to express their views on, or provide any other information relevant to, any matter or action being considered by the hearing.
- (3) Each member of the children’s hearing must—
- (a) state their decision on any exercise of the power conferred by section 96(3) of the Act and the reason for that decision;
 - (b) where the decision is to make a further interim compulsory supervision order state the member’s decision and the reasons in relation to any measure to be included in the order.
- (4) The chairing member must—
- (a) confirm the decision of the children’s hearing;
 - (b) state the reasons for that decision; and
 - (c) subject to sections 73 (child’s duty to attend children’s hearing), 74 (relevant person’s duty to attend children’s hearing), 75 (power to proceed in absence of relevant person) and 79 (referral of certain matters for pre-hearing determination) of the Act, inform the child, each relevant person and any appointed safeguarder of the right to appeal the children’s hearing’s decision to make an interim compulsory supervision order, under section 154 (appeal to sheriff against decision of children’s hearing) of the Act within 21 days of that decision.

Procedure at a children’s hearing held under section 126 (review of contact direction) of the Act

- 74.—**(1) This rule applies where a children’s hearing is held by virtue of section 126 of the Act.
- (2) Where an individual claims that the conditions specified for the purposes of section 126(2)(b) of the Act are satisfied in relation to the individual, the children’s hearing must consider that claim before reviewing the contact direction.
- (3) Each member of the children’s hearing must state whether the member considers that the conditions specified for the purposes of section 126(2)(b) of the Act are satisfied in relation to the individual and the reasons for reaching that view.
- (4) The chairing member must confirm whether the children’s hearing considers that the conditions specified for the purposes of section 126(2)(b) of the Act are satisfied in relation to the individual and the reason for reaching that view.
- (5) After considering, where applicable, whether the conditions specified for the purposes of section 126(2)(b) are satisfied the children’s hearing must, where proceeding to review a contact direction, seek views on the contact direction from—
- (a) the child,
 - (b) each relevant person;
 - (c) any appointed safeguarder;
 - (d) any individual satisfying the conditions specified in an order under section 126(2)(b) of the Act;
 - (e) any individual who has a contact order regulating contact between the individual and the child;
 - (f) any individual who has a permanence order which specifies arrangements for contact between the individual and the child.
- (6) Each member of the children’s hearings must state their decision in relation to the contact direction and their reasons for that decision.

- (7) The chairing member must—
- (a) confirm and explain the decision of the children’s hearing in relation to the contact direction;
 - (b) state the reasons for that decision; and
 - (c) inform any individual of any applicable right of appeal of the children’s hearing’s decision under section 126(6) of the Act which that individual has under section 161 (appeal to sheriff against decision affecting contact or permanence order) of the Act.

Procedure where advice required under section 49 (reference or remit to children’s hearing) of the Criminal Procedure (Scotland) Act 1995

75.—(1) This rule applies where a children’s hearing is held following a request to the Reporter under section 49(1)(b), (3) or (6) of the Criminal Procedure (Scotland) Act 1995.

- (2) The chairing member—
- (a) must inform those present at the hearing of the substance of any relevant report or other relevant document;
 - (b) must take all reasonable steps to obtain the views of the child, each relevant person and any appointed safeguarder in relation to—
 - (i) any report, document or matter being considered by the hearing; and
 - (ii) what, if any, advice or measures would be in the best interests of the child;
 - (c) may invite any other person present at the hearing, as the children’s hearing considers appropriate, to express their views on, or provide any other information relevant to, any matter or advice being considered by the hearing; and
 - (d) must confirm to the child, each relevant person, and any appointed safeguarder the advice to be given to the court.
- (3) The chairing member must—
- (a) make, or cause to be made, a report of the advice;
 - (b) sign and date the report; and
 - (c) give the report to the Reporter at the conclusion of the hearing.
- (4) As soon as possible following receipt of the report the Reporter must give a copy of the report to—
- (a) the child;
 - (b) each relevant person;
 - (c) any appointed safeguarder;
 - (d) the court which made the request for advice under section 49 of the Criminal Procedure (Scotland) Act 1995;
 - (e) the chief social work officer of the relevant local authority for the child.

Procedure where application to suspend the decision of the children’s hearing made under section 158 (compulsory supervision order: suspension pending appeal) of the Act

76.—(1) Where the Reporter is required under section 158(2) of the Act to arrange a children’s hearing, as soon as practicable the Reporter must give notice of the date, time and place of the children’s hearing at which the application for the suspension of the children’s hearing’s decision will be considered, to the persons mentioned in paragraph (2).

- (2) Those persons are—
- (a) the child;
 - (b) any relevant person;
 - (c) any appointed safeguarder;

- (d) the three members of the children’s hearing;
- (e) the chief social work officer of the implementation authority for the child;
- (f) the National Convener.

(3) If the person who applied for the suspension of the children’s hearing’s decision under section 158 of the Act is required by section 73(2) (child’s duty to attend children’s hearing) or 74(2) (relevant person’s duty to attend children’s hearing) of the Act to attend the hearing and fails to do so the children’s hearing may, if it considers it appropriate, take no further action in relation to the application.

(4) Before making any decision on the application under section 158 of the Act the children’s hearing must invite the child, any relevant person and any appointed safeguarder present at the hearing to make such representations as they wish to make.

(5) Each member of the children’s hearing must state their decision on the suspension of the children’s hearing’s decision under section 158 of the Act, and the reasons for that decision.

(6) The chairing member must confirm the decision of the children’s hearing and the reasons for that decision.

Procedure at a children’s hearing where a report is required under section 95(2) of the Adoption and Children (Scotland) Act 2007

77.—(1) This rule applies where a children’s hearing is required to prepare a report by virtue of section 95(2) of the Adoption and Children (Scotland) Act 2007(a) (permanence orders – duty of children’s hearing to prepare report for court).

(2) The chairing member must explain to the child, any relevant person and any appointed safeguarder the purpose of the report to be prepared.

(3) The report must be prepared when the children’s hearing have considered the case of the child and determined whether to make a compulsory supervision order or to vary, or vary and continue, the compulsory supervision order, as the case may be.

(4) Before preparing the report the chairing member must explain to the child, any relevant person and any appointed safeguarder—

- (a) that the hearing has determined to make a compulsory supervision order or to vary, or vary and continue, the compulsory supervision order, as the case may be;
- (b) the reasons for reaching that determination; and
- (c) that the hearing is unable to make a decision to make a compulsory supervision order or to vary, or vary and continue, the compulsory supervision order, pending the decision of the sheriff on the permanence order application or to remit the case under section 96 (application: effect on compulsory supervision order) of the Adoption and Children (Scotland) Act 2007(b).

(5) The chairing member must—

- (a) make, or cause to be made, a report of the advice;
- (b) sign and date the report; and
- (c) give the report to the Reporter.

(6) The Reporter must, within 5 days of the hearing, give the report to—

- (a) the court which requires to come to a decision on the permanence order application;
- (b) the child;
- (c) any relevant person;

(a) 2007 asp 4. Section 95 is amended by the Children’s Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (S.S.I. 2013/).

(b) Section 96 is amended by the Children’s Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (S.S.I. 2013/).

- (d) any appointed safeguarder;
- (e) the chief social work officer of the implementation authority for the child.

PART 18

General issues for children's hearings

Procedure where a warrant to secure attendance may be granted under section 123 (general power to grant warrant to secure attendance) of the Act

78.—(1) This rule applies where the children's hearing, on the application of the Reporter, is under section 123 of the Act considering granting a warrant to secure the attendance of the child at a children's hearing or a hearing to take place under Part 10 (proceedings before sheriff) of the Act.

(2) The children's hearing must seek the views of the child, each relevant person, and any appointed safeguarder, if present at the hearing.

(3) Where a warrant to secure the attendance of the child is granted, the Reporter must as soon as practicable give to the child, each relevant person and any appointed safeguarder—

- (a) a copy of the warrant; and
- (b) details of the rights of the child, each relevant person and the safeguarder to appeal the grant of the warrant under section 154 (appeal to sheriff against decision of children's hearing) of the Act.

Procedure where advice sought by children's hearing from National Convener under section 8 (provision of advice to children's hearing) of the Act

79.—(1) This rule applies where a children's hearing seeks advice under section 8 of the Act from the National Convener.

(2) Where a children's hearing defers making a decision or determination on any matter until a subsequent children's hearing and seeks advice from the National Convener under section 8 of the Act the chairing member must—

- (a) prepare a request for advice setting out the nature of the advice to be provided and such other details as the children's hearing considers appropriate;
- (b) include in the record of the children's hearing decision details of the request for advice and reasons for that request;
- (c) give that request for advice to the Reporter; and
- (d) direct the Reporter to forward to the National Convener the request for advice and a copy of the children's hearing decision and the reasons for that decision.

(3) Where the children's hearing has directed the Reporter to forward a request for advice to the National Convener the Reporter must, as soon as practicable and within 5 days of receiving the request prepared under paragraph (2), forward it to the National Convener.

(4) The National Convener must respond to any request for advice forwarded under paragraph (3) within 14 days of receiving the request.

(5) The children's hearing must give the advice received from the National Convener under paragraph (4) to all those present at the hearing.

Requirements where compulsory supervision order to be made

80. The children's hearing may not make a compulsory supervision order requiring a child to reside at a place where the child would be under the charge or control of a person who is not a relevant person or vary any compulsory supervision order so that it includes such a requirement unless the children's hearing has—

- (a) received and considered a report or information provided by the local authority or implementation authority under section 66(4) (investigation and determination by Principal Reporter), 69(4) (determination under section 66: referral to children's hearing), 137(4) or (5) (duty to arrange children's hearing) of the Act, as the case may be, which provides the local authority's or implementation authority's recommendations on—
 - (i) the needs of the child,
 - (ii) the suitability to meet those needs of the place or places in which the child is to reside by virtue of the compulsory supervision order,
 - (iii) the suitability to meet those needs of the person who is to have charge or control over the child, and
- (b) the local authority or implementation authority as the case may be have confirmed that in compiling the report they have carried out the procedures and gathered the information described in regulations 3 and 4 of the Looked After Children (Scotland) Regulations 2009(a).

Requirements where section 126 (review of contact direction) of the Act applies

81.—(1) This rule applies where—

- (a) section 69(2) or (3) of the Act applies;
- (b) Parts 9 to 11 or 13 of the Act apply;
- (c) following receipt of a notice under section 43 of the Act of the making of a child protection order the Reporter is required to arrange a children's hearing under section 69(2) of the Act which is to be held no later than—
 - (i) where the order contains an authorisation of the type mentioned in section 37(2)(b) of the Act, the end of the period of 8 working days beginning on the day the child was removed to a place of safety; or
 - (ii) where the order does not contain such an authorisation, the end of the period of 8 working days beginning on the day the order was made.

(2) Where this rule applies and a children's hearing is to be held in relation to a child the Reporter must notify the persons mentioned in paragraph (3) that a children's hearing is to be held in relation to a child and, when issuing that notification, also give those persons the information mentioned in paragraphs (4) and (5).

(3) Those persons are—

- (a) any individual who appears to the Reporter to have established family life with the child;
- (b) any individual who has a contact order regulating contact between the individual and the child;
- (c) any individual who has a permanence order which specifies arrangements for contact between the individual and the child.

(4) That information is confirmation that, where a children's hearing—

- (a) makes, continues or varies a compulsory supervision order, or
- (b) makes an interim compulsory supervision order, interim variation of a compulsory supervision order or a medical examination order which is to have effect for more than 5 working days,

and the order contains (or is varied so as to contain) a contact direction, that the Reporter must arrange a children's hearing under section 126 of the Act for the purposes of reviewing the contact direction if—

- (i) a contact order or permanence order mentioned in section 126(3) of the Act is in force, or

(a) SSI 2009/210.

- (ii) the Reporter is requested to arrange a hearing by an individual who claims to have established family life with the child.

(5) That information is confirmation that, where a children's hearing is arranged under section 126 of the Act, they will have the right to attend.

Requirements where section 127 (referral where failure to provide education for excluded pupil) of the Act applies

82.—(1) Where the children's hearing requires the National Convener under section 127(2) of the Act to make a referral to the Scottish Ministers, the chairing member—

- (a) must include in the record of the decision of the children's hearing details of the ways in which the education authority is in breach of its duty under section 14(3) (education for children unable to attend school etc.) of the Education (Scotland) Act 1980(a) in relation to the child; and
- (b) may make, or cause to be made, a report for the National Convener providing such additional information on that matter as the children's hearing considers appropriate.

(2) As soon as practicable after the children's hearing the Reporter must give to the National Convener—

- (a) a copy of the children's hearing's decision and the reasons for the decision; and
- (b) any report made under paragraph (1)(b).

Requirements where section 128 (duty to consider applying for parenting order) of the Act applies

83. Where the children's hearing requires the Reporter under section 128(2) of the Act to consider whether to apply under section 102(3) (applications) of the Antisocial Behaviour etc. (Scotland) Act 2004(b) for a parenting order in respect of a parent of the child, the chairing member—

- (a) must include in the record of the decision of the children's hearing details of the reasons why the children's hearing considers that it might be appropriate for a parenting order to be made in respect of that parent of the child; and
- (b) may make, or cause to be made a report for the Reporter providing such additional information on that matter as the children's hearing considers appropriate.

PART 19

Procedure at a pre-hearing panel or a children's hearing where a non-disclosure request is made

Non-disclosure requests

84.—(1) In this Part a “non-disclosure request” is a request made by any person, that any document part of a document or information contained in a document relating to a pre-hearing panel or to a children's hearing should be withheld from a specified person falling within the categories specified in section 177(2)(i)(ii) to (iv) of the Act on the grounds that disclosure of that document or part of the document or any information contained in it would be likely to cause significant harm to the child to whom the hearing relates.

(2) The following documents may not be the subject of a non-disclosure request—

- (a) the statement of grounds;

(a) 1980 c.44.
(b) 2004 asp 8.

- (b) a copy of any relevant remit by a court under section 49 of the Criminal Procedure (Scotland) Act 1995;
 - (c) a copy of any relevant requirement by a sheriff under section 12(1A) or statement under section 12(1B) of the Antisocial Behaviour etc. (Scotland) Act 2004;
 - (d) any order or warrant to which the child is subject under the Act or these Rules.
- (3) A non-disclosure request must—
- (a) specify the document parts of the document or information for which non-disclosure is requested and give reasons in each instance for non-disclosure; and
 - (b) specify the persons to whom the document part of the document or information is not to be disclosed and give reasons in each instance for non-disclosure.
- (4) In this Part reference to “children’s hearing” includes pre-hearing panel, where the non-disclosure request relates to documents or information to be considered at a pre-hearing panel.

Determination of a non-disclosure request

85.—(1) The Reporter must refer any non-disclosure request received from any person to a children’s hearing for determination.

(2) The Reporter may submit a non-disclosure request to a children’s hearing for determination at the Reporter’s own initiative.

Procedure following receipt of a non-disclosure request made prior to a children’s hearing

86.—(1) A children’s hearing must, except in the case of a grounds hearing, consider any non-disclosure request made prior to that hearing at the beginning of the children’s hearing.

(2) Where a non-disclosure request has been made prior to a grounds hearing, the non-disclosure request may be determined by the grounds hearing before making a decision on whether to make a compulsory supervision order.

(3) Where the children’s hearing requires to consider a request in accordance with paragraph (1) or paragraph (2) it may exclude from the children’s hearing the person to whom the documents are requested not to be disclosed where it considers that the presence of that person would prevent proper consideration of the non-disclosure request.

(4) The children’s hearing must consider and determine the non-disclosure request.

(5) The person excluded under paragraph (3) must be invited to return to the children’s hearing and advised of the children’s hearing’s determination under paragraph (4).

(6) Where the non-disclosure request is rejected under paragraph (4) the children’s hearing must ensure that the document part of the document or information is given to the excluded person at such time, and in such manner, as it considers appropriate having regard to the best interests of the child to whom the hearing relates.

Procedure following receipt of a non-disclosure request made during a children’s hearing

87.—(1) A non-disclosure request may be made during a children’s hearing by the child, any relevant person, any appointed safeguarder the Reporter or the author of any document that is the subject of the non-disclosure request.

(2) Where such a request is made the children’s hearing may exclude from the children’s hearing the person to whom the documents are requested not to be disclosed where it considers that the presence of that person would prevent proper consideration of the non-disclosure request.

(3) The children’s hearing must consider and determine the non-disclosure request.

(4) The person excluded under paragraph (2) must be invited to return to the children’s hearing and advised of the children’s hearing’s determination under paragraph (3).

(5) Where the non-disclosure request is rejected under paragraph (3) the children’s hearing must ensure that the document part of the document or information is given to the excluded person at

such time, and in such manner, as it considers appropriate having regard to the best interests of the child to whom the hearing relates.

PART 20

Notifying decisions

Notifying decision of a children's hearing to the child, relevant person and appointed safeguarder

88.—(1) Where by virtue of the Act or any other enactment a children's hearing has been held in relation to a child the Reporter must give to the persons mentioned in paragraph (2) the information mentioned in paragraph (3) within 5 days of the children's hearing.

(2) Those persons are—

- (a) the child;
- (b) each relevant person;
- (c) any appointed safeguarder.

(3) That information is—

- (a) the decision of the children's hearing;
- (b) the reasons for that decision;
- (c) a copy of any compulsory supervision order, interim compulsory supervision order, medical examination order made, or warrant to secure attendance granted;
- (d) a notice of any right to appeal the children's hearing's decision under section 154 (appeal to sheriff against decision of children's hearing) or 160 (appeal to sheriff against relevant person determination) of the Act;
- (e) where the child or any relevant person is subject to an order under section 159 (frivolous and vexatious appeals) of the Act, confirmation of the need for that person to seek leave from the sheriff to appeal the decision;
- (f) details of any right to seek a suspension of the children's hearing's decision to make, vary, continue or terminate a compulsory supervision order under section 158 (compulsory supervision order: suspension pending appeal) of the Act;
- (g) details of the child's and each relevant person's right to seek a review of a compulsory supervision order under, or by virtue of, section 132 (right of child or relevant person to require review) of the Act.

(4) This rule does not apply where rules 66(7), 91, 92, 93 or 96 apply.

Information to be given to the implementation authority and others

89.—(1) Where rule 88 applies within 5 days of the children's hearing the Reporter must give to the persons mentioned in paragraph (2) the information mentioned in rule 88(3)(a) to (c).

(2) Those persons are—

- (a) the chief social work officer of the implementation authority where the decision was to make a compulsory supervision order or interim compulsory supervision order and in any other case the chief social work officer of the relevant local authority for the child;
- (b) any person who under the compulsory supervision order, interim compulsory supervision order, medical examination order or warrant to secure attendance is responsible for providing any service, support, or accommodation in respect of the child.

(3) Where by virtue of any compulsory supervision order, interim compulsory supervision order or medical examination order the person with whom the child is required to reside is a person other than the implementation authority or a relevant person paragraph (4) applies.

- (4) The Reporter must give the information mentioned in rule 88(3)(a) to (c)—
- (a) where a social work officer from the implementation authority or relevant local authority for the child, as the case may be, attended the children’s hearing resulting in the order in question, and it is reasonably practicable to do so, to that social work officer immediately following the children’s hearing;
 - (b) in any other case, to the chief social work officer of the implementation authority, or relevant local authority for the child, as the case may be, no later than the end of the working day following the conclusion of the children’s hearing.

Information to be given to the chief constable and use of that information

90.—(1) Where rule 88 applies and the grounds hearing has proceeded under section 91(3) (grounds accepted: powers of grounds hearing) of the Act or, where rule 68 applies, section 119(3) (children’s hearing following deferral or proceedings under Part 10) of the Act, the Reporter must notify the children’s hearing’s decision to the chief constable of the police area to which the constable who provided information to the Reporter under section 61 (constable’s duty to provide information to Principal Reporter) of the Act or section 43(5) (arrangements where children arrested) of the Criminal Procedure (Scotland) Act 1995 belongs (or belonged at the time of supplying that information).

(2) Where rule 88 applies and the decision of the children’s hearing is to make a compulsory supervision order in respect of a person aged 16 years or older, as soon as reasonably practicable, the Reporter must notify the chief constable of the area in which the person resides.

(3) When a child subject to a compulsory supervision order reaches the age of 16 years, the Reporter must, as soon as reasonably practicable, notify the chief constable of the area in which the child resides.

(4) Where section 199(3) and (4) (meaning of “child”) of the Act applies to a person, the Reporter must, as soon as reasonably practicable, notify the chief constable of the area in which the person resides of—

- (a) the application of section 199(3) and (4) of the Act to that person; and
- (b) when a relevant event in section 199(5) of the Act has taken place in relation to that person.

(5) When a person under paragraph (2), (3) or (4) is no longer subject to a compulsory supervision order, the Reporter must, as soon as reasonably practicable, notify the chief constable of the area in which that person resides.

(6) Information disclosed to the chief constable under paragraph (1), (2), (3), (4) or (5) may be used by the chief constable and police forces only for the purpose of—

- (a) enabling or assisting them to perform their functions under or by virtue of this Act, the Police Act 1997(a), or the Protection of Vulnerable Groups (Scotland) Act 2007(b);
- (b) the prevention or detection of crime;
- (c) the apprehension or prosecution of offenders, or
- (d) the protection of children.

Notifying decision of section 45 or 46 (review of children’s hearing where child in place of safety or order prevents removal of child) hearing

91.—(1) The Reporter must as soon as practicable after the hearing held by virtue of section 45 or 46 of the Act must give to the persons mentioned in paragraph (2) the information mentioned in paragraph (3).

(2) Those persons are—

(a) 1997 c.50.
(b) 2007 asp 14.

- (a) the child in respect of whom the child protection order is made;
 - (b) each relevant person;
 - (c) any individual who appears to the Reporter to have (or recently have had) significant involvement in the upbringing of the child;
 - (d) the person who applied for the child protection order or child assessment order, as the case may be;
 - (e) the person specified in the child protection order under section 37(2)(a) (child protection orders) of the Act;
 - (f) any other person prescribed by rules of court for the purposes of section 48 (application for variation or termination) or 49 (notice of application for variation or termination) of the Act;
 - (g) any appointed safeguarder.
- (3) That information is—
- (a) the decision of the children’s hearing;
 - (b) the reasons for that decision;
 - (c) where the children’s hearing’s decision was to continue the child protection order, the right of those persons in paragraph (2) to make an application to the sheriff under section 48(1) of the Act to vary the order or under section 48(2) of the Act to terminate the order.
- (4) The Reporter must give to the persons mentioned in paragraph (5) the information mentioned in paragraph (3)(a) and (b).
- (5) Those persons are—
- (a) the chief social work officer of the relevant local authority for the child;
 - (b) any person who under the child protection order is responsible for providing any service, support, or accommodation in respect of the child

Notifying decision of section 126 (review of contact direction) hearing

92.—(1) Within 5 days of the children’s hearing held under section 126 of the Act the Reporter must give to the persons mentioned in paragraph (2) the information mentioned in paragraph (3).

- (2) Those persons are—
- (a) the child;
 - (b) each relevant person;
 - (c) any safeguarder appointed to the child;
 - (d) any individual who has a contact order regulating contact between the individual and the child;
 - (e) any individual who has a permanence order which specifies arrangement for contact between the individual and the child;
 - (f) any person who requested a children’s hearing be held under section 126(2)(b) of the Act.
- (3) That information is—
- (a) details of the decision of the children’s hearing;
 - (b) the reasons for that decision;
 - (c) notice of any right to appeal the children’s hearing’s decision under section 161 (appeal to sheriff against decision affecting contact or permanence order) of the Act;
 - (d) where the person is subject to an order under section 159 (frivolous and vexatious appeals) of the Act, confirmation of the need for that person to seek leave from the sheriff to appeal the decision.
- (4) The Reporter must give to the persons mentioned in paragraph (5) the information mentioned in paragraph (3)(a) and (b).

(5) Those persons are—

- (a) the implementation authority where the decision was to make a compulsory supervision order or interim compulsory supervision order and in any other case the relevant local authority for the child;
- (b) any person who under the compulsory supervision order, interim compulsory supervision order, medical examination order or warrant to secure attendance is responsible for providing any service, support or accommodation in respect of the child.

Notifying decision of section 158 (compulsory supervision order: suspension pending appeal) hearing

93.—(1) Where a children’s hearing has been held by virtue of section 158 of the Act the Reporter must give to the persons mentioned in paragraph (2) the information mentioned in paragraph (3) within 5 days of the children’s hearing.

(2) Those persons are—

- (a) the child;
- (b) each relevant person;
- (c) any appointed safeguarder.

(3) That information is—

- (a) the decision of the children’s hearing;
- (b) the reasons for that decision.

PART 21

Specific provision for children’s hearings arranged under the Children’s Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013

Provision of information for review of secure accommodation authorisation

94.—(1) This rule applies where a children’s hearing is to be arranged by virtue of regulation 10 of the Children’s Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013(a) (“the 2013 Regulations”).

(2) As soon as practicable before the beginning of the children’s hearing, the Reporter must notify the persons mentioned in paragraph (3) of the date, time and place of the hearing.

(3) Those persons are-

- (a) the child;
- (b) each relevant person;
- (c) the chief social work officer who made the decision under regulation 4 or 7 of the 2013 Regulations;
- (d) the head of unit who made the decision under regulation 6 of the 2013 Regulations;
- (e) any appointed safeguarder;
- (f) any individual who appears to the Reporter to have (or recently have had) a significant involvement in the upbringing of the child;
- (g) the three members of the children’s hearing; and
- (h) the National Convener.

(a) S.S.I. 2013/

(4) The Reporter must, when issuing the notice under paragraph (2), provide those persons mentioned in paragraph (3)(a) to (g) with a copy of—

- (a) all decisions and reasons for those decisions made by all pre-hearing panels and children’s hearings arranged in relation to the child;
- (b) the decision of the chief social work officer made under regulation 5 of the 2013 Regulations; and
- (c) the decision of the head of unit made under regulation 6 of the 2013 Regulations.

Procedure where children’s hearing to review secure accommodation authorisation

95.—(1) This rule applies where a children’s hearing is to be held by virtue of regulation 10 of the Children’s Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013 (“the 2013 Regulations”).

(2) The children’s hearing must provide the following persons with the opportunity to make representations if they are present at the hearing:—

- (a) the child;
- (b) each relevant person;
- (c) any appointed safeguarder
- (d) the chief social work officer who made the decision under regulation 4 or 7 of the 2013 Regulations; and
- (e) the head of unit who made the decision under regulation 6 of the 2013 Regulations.

(3) Each member of the children’s hearing must state their decision in relation to the secure accommodation authorisation and the reasons for that decision.

(4) The chairing member must—

- (a) confirm and explain the decision of the children’s hearing in relation to the secure accommodation authorisation;
- (b) state the reasons for that decision; and
- (c) inform the child, each relevant person and any safeguarder appointed of any applicable right to appeal the children’s hearing’s decision under section 154 (appeal to sheriff against decision of children’s hearing) of the Act within 21 days of that decision.

Notifying decision of review of secure accommodation authorisation

96.—(1) Within 5 days of the children’s hearing held under regulation 10 of the Children’s Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013 (“the 2013 Regulations”) the Reporter must give to the persons mentioned in paragraph (2) the information mentioned in paragraph (3).

(2) Those persons are—

- (a) the child;
- (b) each relevant person;
- (c) any appointed safeguarder;
- (d) the chief social work officer who made the decision under regulation 4 or 7 of the 2013 Regulations;
- (e) the head of unit who made the decision under regulation 6 of the 2013 Regulations.

(3) The information is—

- (a) the decision of the children’s hearing;
- (b) the reasons for that decision;
- (c) notice of any right to appeal the children’s hearing’s decision under section 154 (appeal to sheriff against decision of children’s hearing) of the Act.

PART 22

Miscellaneous

Travelling and subsistence expenses

97.—(1) The persons mentioned in paragraph (2) may make a claim, to the relevant local authority for the child, in respect of that person's attendance at a pre-hearing panel or children's hearing.

(2) Those persons are—

- (a) the child;
- (b) any relevant person;
- (c) any person representing the child or any relevant person;
- (d) any interpreter acting on behalf of the child or any relevant person;
- (e) any individual who claimed to have (or recently have had) significant involvement in the upbringing of the child;
- (f) any person who claimed to have established family life with the child;
- (g) any individual who has a contact order regulating contact between the individual and the child;
- (h) any individual who has a permanence order which specifies arrangements for contact between the individual and the child.

(3) Where a claim is made to the relevant local authority for the child under paragraph (1) the local authority must pay to the claimant travelling expenses and such other expenses and subsistence as have, in the opinion of the local authority, been reasonably incurred by the claimant.

(4) This rule does not apply to a solicitor or counsel representing the child or any relevant person at a pre-hearing panel or children's hearing.

Authentication of documents

98.—(1) Any order, warrant to secure the attendance of a child, notice, report, record or other writing required to be made, granted, given or kept by the children's hearing or pre-hearing panel or chairing member of that hearing under or by virtue of these Rules is sufficiently authenticated if it is signed by the chairing member of the relevant children's hearing or pre-hearing panel.

(2) Any document or notice authorised or required by these Rules to be kept or given by the Reporter is sufficiently authenticated if it is signed by the Reporter.

(3) Any copy of a document to be given to any person by the Reporter may be certified a true copy by the Reporter.

Written communications

99. Section 193 (formal communications) of the Act applies to these Rules and any type of communication made or given under these Rules is also a formal communication and section 193(2) to (4) applies to them.

Service of notification and documents

100. Any notice or other document authorised or required under these Rules to be given by the Reporter to any person may be given by the Reporter or by any police constable.

St Andrew's House,
Edinburgh

2013

[Member of the Scottish Government/
Authorised to sign by the Scottish Ministers]

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Introduction



INTRODUCTION

Most of the legal provisions which govern children's hearings are contained in the Children's Hearings (Scotland) Act 2011, which will be referred to as 'the Act' and the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) 2013, which will be referred to as 'the Rules'. Reference may be made to the Children (Scotland) Act 1995 which will be referred to as 'the 1995 Act' as certain provisions remain in force today. Any other rules and regulations will be referred to as they arise in the context of this document.

Throughout this document references will be made to sections of the Act and/or the specific Rules at the right hand side of the text. Only the main provisions from the legislation have been included so that panel members can implement these with accuracy.

This manual is divided into sections so that in the event of new legislation coming into force or developing case-law, sections may be replaced individually ensuring that the manual is kept fully up to date.

The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) 2013 is not a public document and should not be shared. As yet, the Rules are not fully agreed and may be subject to amendment following parliamentary procedure.

Legal Framework and Best Practice



LEGAL FRAMEWORK AND BEST PRACTICE

Children's hearings can never be more than relatively informal, when compared with courts. Often, children and their families have little knowledge or understanding of their rights or of the procedures to be followed at a hearing. During the course of the hearing all panel members should be alert to this issue and do what they can to make the proceedings as user friendly as possible. While panel members are not expected to be legal experts, they need to be equipped with a competent understanding of the system's legal framework and how it operates in practice.

Panel members are members of a legal tribunal and act independently of the State to protect children. They make decisions within the context of a hearing, with the welfare of the child as their paramount consideration. Therefore, panel members need to operate in such a way that they take steps to protect children whilst balancing the rights of all of the individuals concerned in the process. It is crucial to remember that the children's hearing process must be fair, transparent and balanced when reaching decisions in the child's best interests.

In terms of human rights legislation and developing caselaw, there can be challenging situations because of the competing rights of parents and children which need to be balanced. Hearings, pre-hearing panels and courts must assess and consider these rights and interests fairly and openly while bearing in mind their duty to regard the welfare of the child as their paramount consideration.

It is the skill of panel members to implement procedures, through best practice principles, which ensures the protection of rights and enables children and families to participate fully in the discussion and the decision making process.

Whilst the Act provides a legislative framework, the Rules provide an operational framework for panel members who may use their discretion in certain circumstances when interpreting the Rules. There is therefore an important distinction between what **must** be done, what **may** be done and what is considered to be desirable practice.

The Children's Hearings (Scotland) Act 2011



CONTENTS

- 1 The Structure of the Act**
- 2 Fundamental Principles of the Act**

THE CHILDREN’S HEARINGS (SCOTLAND) ACT 2011

Noted below is a list of the different parts of the Act and what is covered within this section. Further information on the parts is given later in this section of the Manual.

1 STRUCTURE OF THE ACT

Part 1	The National Convener and Children’s Hearings Scotland
Part 2	The Principal Reporter and the Scottish Children’s Reporter Administration
Part 3	General Considerations
Part 4	Safeguarders
Part 5	Child Assessment Orders and Child Protection Orders
Part 6	Investigation and Referral to a Children’s Hearing
Part 7	Attendance at Hearings
Part 8	Pre-Hearing Panels
Part 9	Children’s Hearings
Part 10	Proceedings before a Sheriff
Part 11	Subsequent Children’s Hearings
Part 12	Children’s Hearings -General
Part 13	Review of Compulsory Supervision Order
Part 14	Implementation of Orders
Part 15	Appeals
Part 16	Enforcement of orders
Part 17	Evidence
Part 18	Miscellaneous
Part 19	Legal Aid and Advice
Part 20	General

2 FUNDAMENTAL PRINCIPLES OF THE ACT

There are three child centred principles which are fundamental to the children's hearing system and apply when either a pre-hearing panel or a children's hearing is coming to a decision about a child. They are contained in s 25 – 28 of the Act.

A pre-hearing panel or children's hearing must

- Have regard to the need to safeguard and promote the welfare of the child throughout the child's childhood as their paramount consideration. The one exception to this being when it is necessary that a decision is made to protect the public from serious harm. Even then the child's welfare remains the primary concern.
- Give the child an opportunity to indicate whether they wish to express a view, and if they do, give them the opportunity to do so and have regard to any views expressed by the child. A child over the age of twelve is presumed to have sufficient maturity to express a view but this is not to say that younger children are not capable of forming and expressing a view.
- Only make or vary an order or grant a warrant if the children's hearing considers it would be better for the child than not to do so - the beneficial principle.

It is important to remember that whilst children of twelve and over are presumed to have sufficient maturity to form and express an opinion, children under the age of twelve should also be asked if they wish to express a view and if they do, this information should be considered when reaching a decision. There are references throughout both the Act and the Rules about the importance of seeking the child's views and there is also an obligation on panel members to ask the child whether the paperwork made available to the hearing accurately reflects their views. If the child does confirm their views have been accurately reflected, the hearing must take these views into consideration whilst discussing the case and when they reach a decision.

If, however, the child confirms that the reports do not accurately reflect their views, the chairing member must try to clarify what the child's views are at the hearing. Panel members should be aware that whilst there is a duty on panel members to seek and consider the child's views, there is no obligation on the child to express a view.

The fundamental principles noted above also apply to courts as well as hearings and a sheriff has a duty to have regard to these principles when considering any matter in relation to issuing any order or warrant in relation to a child.

Throughout the Act mention is frequently made of 'protection, guidance, treatment and control'. Panel members should be mindful of these criteria when considering whether the child is in need of a compulsory supervision order and what form of support is required to safeguard and promote the welfare of the child not only for the present time but throughout their childhood.

Throughout the Act, there are references to the Principal Reporter. In practice the Principal Reporter's powers and duties are delegated to other reporters and staff employed by the Scottish Children's Reporter Administration, SCRA. (See Volume 2 - Roles, Responsibilities and Resources)

Children, Parents and Guardians



CONTENTS

- 1 Parental responsibilities - s 1 of the 1995 Act**
- 2 Residence and contact orders - s 11 of the 1995 Act.**
- 3 Consent to medical treatment - s 186 of the 2011 Act**
- 4 Instructing a solicitor**

CHILDREN, PARENTS AND GUARDIANS

The Children (Scotland) Act 1995, Part 1, deals with the private law aspects of the relationship between parents and children and is still pertinent today. (Part 1 has not been repealed or replaced by the Children's Hearings (Scotland) Act 2011.)

It sets out the responsibilities and the rights of parents and guardians towards children and covers decisions about various family matters. It provides the framework for the relationship in law between parents and their children. These provisions are decided upon by a court following an application being made.

1 Parental Rights and Responsibilities

Parental responsibilities - s 1 of the 1995 Act

These responsibilities must be implemented only as far as is practicable and in the interests of the child.

Parents have a number of responsibilities in respect of their children which are:

- To safeguard and promote the child's welfare until the child reaches the age of sixteen.
- To provide direction and guidance in a manner appropriate to the stage of development of the child up to the age of eighteen.
- To maintain personal relations and contact with the child on a regular basis (even if the child is not living with the parent) up to the age of sixteen.
- To act as the child's legal representative until the child is sixteen.

Parental rights - s 2 of the 1995 Act

Parents have a number of rights which flow from parental responsibilities:

- To have the child living with the parent or otherwise regulate the child's residence.

- To control, direct or guide the child's upbringing in a manner appropriate to the stage of development of the child.
- To maintain personal relationships and direct contact on a regular basis if the child is not living with the parent.
- To act as the child's legal representative.

It is clear from the above that parental rights and responsibilities are closely linked and flow from and into each other. In order to be able to exercise parental rights, the parental responsibilities must be met: parental rights exist in order to allow the parent to fulfil their parental responsibilities.

Parental responsibilities and rights

The concept of parental responsibilities and rights underpins the position that children are best looked after by their parents and both parents should share an active role in raising children, even if parents separate or divorce.

People who hold or may gain parental responsibilities and rights

The 1995 Act covers a number of people who hold parental responsibilities automatically and those who gain rights by agreement or order of court:

- A mother who gives birth to a child.
- A father if married to the mother at the time of conception or thereafter.
- An unmarried father who by agreement with the mother has been registered in the Books of Council and Session as the child's father under section 4 of the 1995 Act.
- An unmarried father who is registered as the father of the child on or after 04/05/06.
- A guardian who is appointed by a parent to act in the parents place in the event of his/her death under section 7 of the 1995 Act.
- A person in whom parental responsibilities or parental rights has been vested in terms of s 11(2)(b) of the 1995 Act.
- A person having parental responsibilities or rights for a child in terms of s 11(12) of the 1995 Act.

- A person in whom parental responsibilities and right are vested by way of a permanence order or adoptive parents.

Responsibilities or rights will be held **unless** removed by an order of court.

The 1995 Act states that any person who has parental responsibilities and rights is not entitled to:

- act in any way which would be incompatible with any court order or any order imposed by a children's hearing.
- abdicate to anyone else the responsibilities or rights but may make arrangements for some or all of the responsibilities or rights to be exercised on his/her behalf.

s3(4-5)1995 Act

Applications for parental responsibilities and rights - S 11 of the 1995 Act

An application can be made to court by any person with an interest in the child for an order awarding some or all of the parental responsibilities or rights in terms of section 11 of the Children's (Scotland) Act 1995. A court may make an order depriving a person of some or all of his parental rights in relation to a child. It can also make an order giving some or all parental responsibilities or rights to another person. These orders may be reviewed again by application to court and can last until the child is sixteen. In addition a permanence order may authorise the sharing of responsibilities and rights.

A parent only loses parental responsibilities and rights in relation to their child in specific circumstances i.e. if they are removed by order of court under section 11, by virtue of a Permanence Order or by adoption.

2 Applications for residence and contact orders - s 11 of the 1995 Act.

A residence order regulates the arrangements made about where the child lives. This could include arrangements that the child should reside at different times with each of his or her parents and not just with one parent all of the time. It may also include residence with other people such as grandparents or with other extended family.

Contact orders set down the arrangements which should ensure the child has contact with people with whom he or she is not living. This could be a parent or members of the family. An order limiting or amending a parent's right to maintain personal relations and contact with a child will only be made by the court if it is in the child's best interests. Residence and contact orders last until the child is sixteen.

3 Consent to medical treatment (s 186)

Under the Age of Legal Capacity (Scotland) Act 1991, reinforced by the Children's Hearings (Scotland) Act 2011, children under the age of sixteen have the capacity to consent to (or refuse) medical examination and treatment where, in the opinion of the attending qualified medical practitioner, the child is capable of understanding the nature and possible consequences of the examination or treatment.

Notwithstanding the provisions of the Act, where a decision has been made that an examination or treatment of the child should be carried out in terms of:

- A child assessment order.
- A child protection order.
- A compulsory supervision order.
- An interim compulsory supervision order.
- A medical examination order.

such examination or treatment may only be carried out if the child consents to it.

4 Instructing a solicitor

Children under sixteen, who have a general understanding of what it means to do so, may instruct a solicitor in connection with any civil matter and can apply for Legal Aid in their own right. They are able to do this under the Age of Legal Capacity (Scotland) Act 1991 as amended by the Children (Scotland) Act 1995. A person of twelve years or more is presumed to be of sufficient age and maturity to have such understanding but even below that age some children may be sufficiently mature.

One of the key responsibilities and rights a parent has in relation to their child is to act as the child's legal representative until the child is sixteen. This might occur in a situation where a child, for whatever reason, is unable to instruct a solicitor: the parent could secure legal advice or assistance on behalf of the child from a solicitor if it is in the child's best interests.

The situation in relation to Legal Aid and legal assistance within the hearing is discussed in greater depth in Section 12 of the Legislation and Procedure Handbook.

Promotion of Children's Welfare



CONTENTS

- 1 Local Authorities and their Duties**
- 2 Relevant Local Authority**
- 3 Implementation Authority**
- 4 General Purpose of a Children's Hearing**
- 5 The Provision of Advice to a Children's Hearing by the
National Convener**
- 6 Definitions**
- 7 Advocacy for Children**

1 LOCAL AUTHORITY AND THEIR DUTIES

Local authorities have a range of general and specific duties to provide support for children and their families in their area including the provision of services, advice and assistance for children/young persons formerly looked after by the local authority and a number of miscellaneous and general duties for children. The specific duties of the local authority are contained within the section on Roles, Responsibilities and Resources in the Children's Hearings Handbook Volume 2.

Protection of children in their area

A local authority **must** make all necessary enquiries into a child's circumstances if they consider that the child is in need of protection, guidance, treatment or control and that a compulsory supervision order may be necessary. In these circumstances the local authority **must** give any information to the reporter so that the reporter can make an investigation into the referral if appropriate. (s 60)

This may result in the reporter making a decision to arrange a children's hearing if there is enough evidence to support at least one of the s67 grounds and that it is necessary that a compulsory supervision order be made in respect of the child.

Emergency protection of children in their area

A local authority may make an application to the sheriff for a child protection order (CPO). The sheriff may make an order if satisfied that

- the child has been, or is being, treated in such a way that the child is suffering or is likely to suffer significant harm
- the child has been, or is being, neglected and as a result of the neglect the child is suffering or is likely to suffer significant harm
- the child will be treated or neglected in such a way that it is likely to cause significant harm to the child. (s 38)

The local authority has the same duties towards a child who is subject to child protection order and has been removed by them to a place of safety as they would towards a child who is looked after by them: this includes safeguarding and

promoting their welfare, making services available to them and taking such steps to promote contact. (s.44)

A CPO allows the child to be protected immediately. For more information on emergency protection of children see section 10 of the Legislation and Procedure Handbook.

2 RELEVANT LOCAL AUTHORITY

A 'relevant local authority' is defined as the authority where the child generally lives. If the child does not actually live most of the time within a particular local authority area, then the relevant local authority will be the one which the child has the closest connection with. This will not include a local authority where the child happens to be placed in residential establishment within that area. (s 201)

Panel members will have to be clear about which authority is the relevant authority as they will need to name an implementation authority when making a decision about a compulsory supervision order. In most situations this will be very apparent i.e. where the child normally lives with their family. If the child was placed out in a residential establishment away from their own local authority area, this new authority would not be the relevant local authority. The real issues arise in situations where it cannot be determined which local authority the child has the closest connection with i.e. where the child and their family frequently change homes from one local authority area to another or have no fixed abode and are moving between local authorities laying down no firm roots. Panel members in these circumstances must make a decision and name the implementation authority based on the representations made at the children's hearing and the discussion which takes place.

3 IMPLEMENTATION AUTHORITY

An 'implementation authority' is an authority which has the responsibility to give effect to any order made by a children's hearing.

When a children's hearing makes a compulsory supervision order, an interim compulsory supervision order or a medical examination order, as part of their decision making process they **must** name the relevant local authority as the implementation authority. The implementation authority has the responsibility of giving effect to the order and the measures contained within it.

Although not directly the concern of panel members, there may be occasions when a disagreement arises between local authorities about who should or should not be the implementation authority. Being the implementation authority has financial implications and after a decision has been made by a children's hearing to impose a duty on the local authority, the local authority may make an application to the sheriff for the decision to be reviewed in terms of which authority should be the implementation authority. If this is the case, the sheriff must then make a decision about which local authority is the relevant authority. The sheriff has the power to vary the order relating to the implementation authority. The sheriff may also make an order in favour of the local authority to reimburse them for any sum that they may have incurred in relation to their duty. (s 166)

There is provision for a further appeal by the local authority to the Sheriff Principal by stated case. (s 167)

Duties of an implementation authority

- To safeguard and promote the child's welfare.
- Give effect to the compulsory supervision order.
- Comply with any requirements imposed in connection with any order in relation to the child.
- Secure or facilitate the provision of services for the child even if they do not normally provide them.

- To require a review of the compulsory supervision order where appropriate.
- To take steps wherever practicable and appropriate to promote, on a regular basis contact between the child and anyone with parental responsibilities.

s 17 of the 1995 Act.

When reviewing a child's situation, if a hearing considers that an implementing local authority is in breach of their duty towards a child who is subject to compulsory supervision order, they may refer the matter to the National Convener see Section 13 of the Legislation and Procedure Handbook.

4 GENERAL PURPOSE OF CHILDREN'S HEARINGS

The fundamental purpose of a children's hearing is to make decisions in relation to a child which are in the child's best interests. Children's hearings have been given extensive powers to make these decisions about children who may be in need of compulsory supervision order. They may make a compulsory supervision order if they are satisfied that it is necessary to do so for the protection, guidance, treatment or control of the child. If a children's hearing is not satisfied that it is necessary to make a compulsory supervision order (CSO) they must discharge the referral.

(s 91(3))

In exercise of their duties, it should be noted that children's hearings are an entirely independent legal tribunal and neither the National Convener nor the Principal Reporter is empowered to influence the decision making process of any children's hearing.

(s 9)

5 THE PROVISION OF ADVICE TO A CHILDREN'S HEARING BY THE NATIONAL CONVENER

The 2011 Act gives the National Convener the power to provide advice to children's hearings. Advice may be provided in relation to any matter in connection with the functions of a children's hearing. In normal circumstances, this will be in response to questions of law and/or procedure but it may also include issues of practice. The National Convener must not, however, direct or guide a children's hearing.

There is a staged approach in relation to provision of advice by the National Convener: panel members are encouraged to follow the step by step approach as follows:

1 Preparation before the hearing

General advice can be provided by the National Convener to individual panel members prior to their attendance at the hearing centre. The National Convener will make available a range of information to assist with preparation and panel members will also have training materials to consult. In addition, an advisor will be available for panel members to telephone or email. The National Convener is not able to provide advice in relation to specific hearings at this stage. It is anticipated that most questions which would require the advice of the National Convener can be answered at this stage.

2 Discussion with fellow panel members prior to the beginning of the hearing

It is open to panel members to discuss the query with fellow panel members directly prior to the actual hearing at the stage when panel members are setting the agenda for discussion. A fellow panel member may be able to clarify the situation. It is important to note that only clarification and potential options can be discussed and not the substance of the case at this stage. All discussion about the substance of the case and decision making arising out of this must take place within the hearing itself in the presence of the child and their family.

3 Seeking the views of those present at the hearing

In relation to the query, panel members may seek the views of those present at the hearing which may include the reporter, legal representative, other professional and/or the child and their family. The provision of advice by the National Convener is intended to complement the existing roles within a children's hearing, not to replace them. Any person who attends a children's hearing can offer their views on legal or procedural matters. The reporter can clarify or offer a view to a hearing on any legal or procedural matter in line with SCRA's practice instruction for reporters. Any advice provided by the National Convener holds the same weight as an opinion offered by any other person and panel members may choose to disregard the advice from the National Convener or anyone else including the reporter, if they wish to do so.

In the vast majority of situations a combination of good preparation before the hearing and consideration of the views of those present during the hearing should be able to avoid or resolve any matters requiring National Convener advice. However, there will be a very small number of situations where stages 4 and 5 are required. These will likely be highly complex situations which are likely to become apparent from the paperwork made available to the children's hearing or from the discussion which takes place at the hearing particularly if there are conflicting views expressed or no view expressed about the query in question.

4 Adjourning the hearing to refer to the written materials available within the hearing centre.

Written materials will be available in every hearing centre for panel members, or any of the hearing participants, to refer to during a short adjournment of the hearing if required. The Training Resource Manual will also be available which includes:

- the Legislation and Procedure Handbook
- the Children's Hearings Handbook.

5 Deferring the decision of the children's hearing to another day and formally requesting written advice from the National Convener.

This should be a decision of last resort when all other options have been exhausted. In the very small number of situations where specific written advice of the National Convener is required by a children's hearing, the hearing will be deferred and the chairing member will need to complete a form, with the assistance of their fellow panel members, setting out the advice that is required. The children's hearing will then give it to the reporter who will send the completed form to the National Convener within five days of receiving the request. The National Convener must respond to any request for advice within fourteen days and this advice will be made available to all those entitled to receive papers for the next hearing. (Rule 79)

Reflection and Self Assessment

Sometimes individual panel members will have general questions when reflecting on their experiences of being a panel member. The materials provided by the National Convener may answer the question, or the advisor can be contacted by telephone or email for advice of a general nature.

6 DEFINITIONS

Definition of child

(s 199)

A child for the purposes of a hearing is a person who is:

- A person under 16 years of age.
- A person who is of school age and has been referred to a hearing on the ground that he or she has failed to attend regularly at school.
- A person who becomes 16 years of age while an investigation by the reporter is taking place but before a decision has been made.
- A person who becomes 16 years of age and a compulsory supervision order is in force in respect of that person until they are 18.
- A person who becomes 16 years of age and a compulsory supervision order is made in respect of a person on or after their 16th birthday until they are 18.

A child includes any person whose case has been remitted by the court under the Criminal Procedure (Scotland) Act 1995 until either:

- a. A children's hearing or the sheriff has discharged the case.
- b. A compulsory supervision order made in respect of the child is terminated.
- c. The person becomes 18 years of age.

In summary, a child for the purposes of a children's hearing is someone who was under 16 at the point of referral to the children's reporter even if the first hearing does not take place until after the 16th birthday. It also includes a child over the age of 16 if remitted from court or is subject to an existing compulsory supervision order until either the compulsory supervision order is terminated or until that person becomes 18 years of age.

Definition of relevant person

In everyday language we speak about children's parents. The terminology 'relevant person' was introduced by the Children (Scotland) Act 1995 and continues today in the Children's Hearings (Scotland) Act 2011. This does not mean 'relevant' in the way the term is commonly understood but is a specific legal term. The plural is relevant persons, not relevant people. In terms of the legislation, a 'relevant' person for the purposes of a hearing is:

- Parents, married or otherwise, including adoptive parents (except where the responsibilities and rights have been removed by an order of court).
- Any person who has parental responsibilities and rights as defined in s 200 of the Act (except where the responsibilities and rights have been removed by an order of court).
- Any person who has (or has recently had) a significant involvement in the upbringing of the child.

There are basically two distinct categories of relevant persons: a person who is automatically a relevant person and a person who is a 'deemed' relevant person.

Decisions in relation to who is automatically a relevant person will be made by the reporter prior to the hearing when considering who to notify and invite. Panel members in the context of a pre-hearing panel (or at the beginning of a children's hearing if there has not been enough time to arrange a pre-hearing panel) will be asked to make determination on the following;

- whether a person has a significant involvement in the upbringing of the child
or
- whether a person recently had a significant involvement in the upbringing of the child.

If either the pre-hearing panel or children's hearing consider that the person meets either of the criteria, then they must deem that person to be relevant.

Deemed relevant person status

The child, relevant person or the individual who believes that they should be deemed to be a relevant person can ask the reporter to arrange a pre-hearing panel to determine the matter.

Also the reporter may have information to the effect that a certain individual who has no statutory right to be present at the children's hearing, may have or recently has had significant involvement in the upbringing of the child. In these circumstances the reporter themselves can refer the matter to a pre-hearing panel for a decision.

Only a pre-hearing panel, or a hearing if there has been no time to arrange a pre-hearing panel, can deem someone a relevant person. The reporter is not empowered to do this.

If an individual makes a request to be deemed as a relevant person and there is sufficient time for the reporter to convene a pre-hearing panel, the pre-hearing panel will determine this matter.

If, however, the request is made and there is not enough time to arrange a pre-hearing panel, the children's hearing can make the decision but only at the very start of the hearing before any other matter has been decided upon.

If during the course of a children's hearing, an individual requests that they be deemed to be a relevant person, the hearing may make a determination on the matter if everyone is present and agrees to the hearing making the decision.

If the individual is granted deemed relevant person status, they have all the duties and rights in connection to that child and these last until such time that the status is removed.

It is important to note that deemed relevant person status is distinct from any other relevant person status. The decision about whether a person is deemed to be

relevant is based upon the facts and the circumstances of the case at that time and is capable of change in the future. A future children's hearing may decide to remove the person's status.

The person requesting deemed relevant person status should advance arguments to support their application and panel members should confine their discussion to this question alone.

It is important to remember that:

- only a pre-hearing panel or a children's hearing can 'deem' a relevant person
- only a children's hearing can remove the 'deemed' relevant person status.

Review of deemed relevant person status

Deemed relevant person status is not permanent. When a decision has been made to deem someone to be a relevant person, a subsequent hearing may review the situation. When a hearing reviews a CSO in relation to a child and decides to continue or vary the CSO, at the conclusion of the hearing they may also consider whether a person should continue to be deemed a relevant person. If the hearing considers that the person no longer has significant involvement in the upbringing of the child or has not recently had significant involvement in the upbringing of the child, they may make a determination that the person is no longer to be deemed a relevant person.

There are however, appeal rights. The individual who has had the status removed, the child and the relevant person may appeal individually or jointly against this determination within seven days to the sheriff court. Notwithstanding the determination of the deemed relevant person status, the individual continues to have a right of appeal against the actual decision of the children's hearing in relation to the continuation, continuation and variation or variation of the CSO.

Significant involvement in the upbringing of the child

Before a decision can be made to deem a person to be a relevant person, the pre-hearing panel or children's hearing must be satisfied that the individual can demonstrate either that they have or that they have had recent significant involvement in the upbringing of the child.

The test for significant involvement is a high one. Whilst many people could claim that they have (or recently have had) significant involvement in the upbringing of the child, a person who is likely to meet this test will be able to demonstrate they have been involved in how the child is being brought up in terms of the core decisions in relation to the child's life. This would include being involved in the day to day decision making for a child: decisions about where the child lives, where the child goes to school and decisions about medical treatment for the child.

It would not be sufficiently proved if the person was solely involved in care arrangements for the child. If the test for significant involvement is applied in this way, it would exclude the person who looks after the child after school but may include a member of the extended family who recently had the care of the child in the absence of the child's parents for a significant period of time. It would also exclude a professional worker who could claim to have a significant involvement in the upbringing of the child but apart from their professional role and remit would not be involved in the child's life.

7 ADVOCACY FOR CHILDREN

(s 122)

This provision of advocacy for children will not come into force until 2014. When it does come into force, the chairing member will have a duty to inform the child of availability of children's advocacy services. The chairing member need not inform the child of the availability of an advocacy service, if it is not considered appropriate having taken account of the age and maturity of the child. Advocacy services include the provision of support and representation for the purposes of assisting a child in relation to the child's involvement in a children's hearing. The advocacy provision is under development and should be available from 2014 and will be an important provision for helping children participate in a meaningful way within the hearing.

Referral to the Children's Reporter



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- 1 Referral to the Children's Reporter**
- 2 Section 67 Grounds**
- 3 The Reporters Decisions**

1 REFERRAL TO THE CHILDREN'S REPORTER

The processes where a child may be referred to a children's reporter, the reporter's investigative powers and jurisdiction, the referral of children to hearings and the decision making powers of hearings are outlined below. (s 60(3),66 - 69)

People who must refer a child

The local authority **must** refer a child to the reporter if they receive information which suggests that the child is in need of protection, guidance, treatment or control **and** a compulsory supervision order may be necessary. The local authority must make all necessary enquiries into the child's circumstances and give the reporter all information that they have in relation to the situation. The reasons for this may be because the child is being neglected or harmed in some way or that the child's behaviour or their actions require to be addressed. Some instances where a child may be referred to the reporter are as follows:

- A child who is not being adequately cared for in the home.
- A child is being abused.
- A child is becoming involved in offending behaviour.
- A child is truanting.
- A child is running away from home.
- A child is abusing drugs or alcohol.

This is not an exhaustive list and referral to the reporter will very much depend on the individual circumstances of the case. Whilst the duty of referral lies with the local authority and is normally carried out by the social work department, all departments within a local authority, such as housing or education, can also refer a child. (s 60)

Similarly, if a constable considers that the child is in need of protection, guidance, treatment or control **and** a compulsory supervision order may be necessary, the child **must** be referred to the children's reporter. The police have a duty to give all relevant information about the child to the reporter. (s 61)

People who may refer a child

Anyone can refer the child to the reporter. There are no criteria on determining who may do this- it may be a doctor, medical practitioner, health visitor, friend, neighbour or even the child or a member of the family or wider community. Whoever makes the referral, the person must feel that the child is in need of protection, guidance, treatment or control **and** a compulsory supervision order may be required.

(s 64)

A court dealing with matters concerning any relevant civil proceedings such as divorce, dissolution of a civil partnership, separation, parental responsibilities or parental rights, adoption, an application for a permanence order or proceedings against a parent for failing to secure the child's regular attendance at school, **may**, if satisfied that one or more grounds for might apply, refer the child to the reporter. In this way the sheriff who hears something which raises concern about the welfare of the child in a completely separate proceedings, is empowered to refer the child to the reporter.

(s 62)

If a child has either admitted to being guilty or been found guilty of an offence in a criminal court, the court may remit the case to the Principal Reporter to make arrangements for the case to be considered by a children's hearing.

(s 71)

Initial Investigation by the reporter

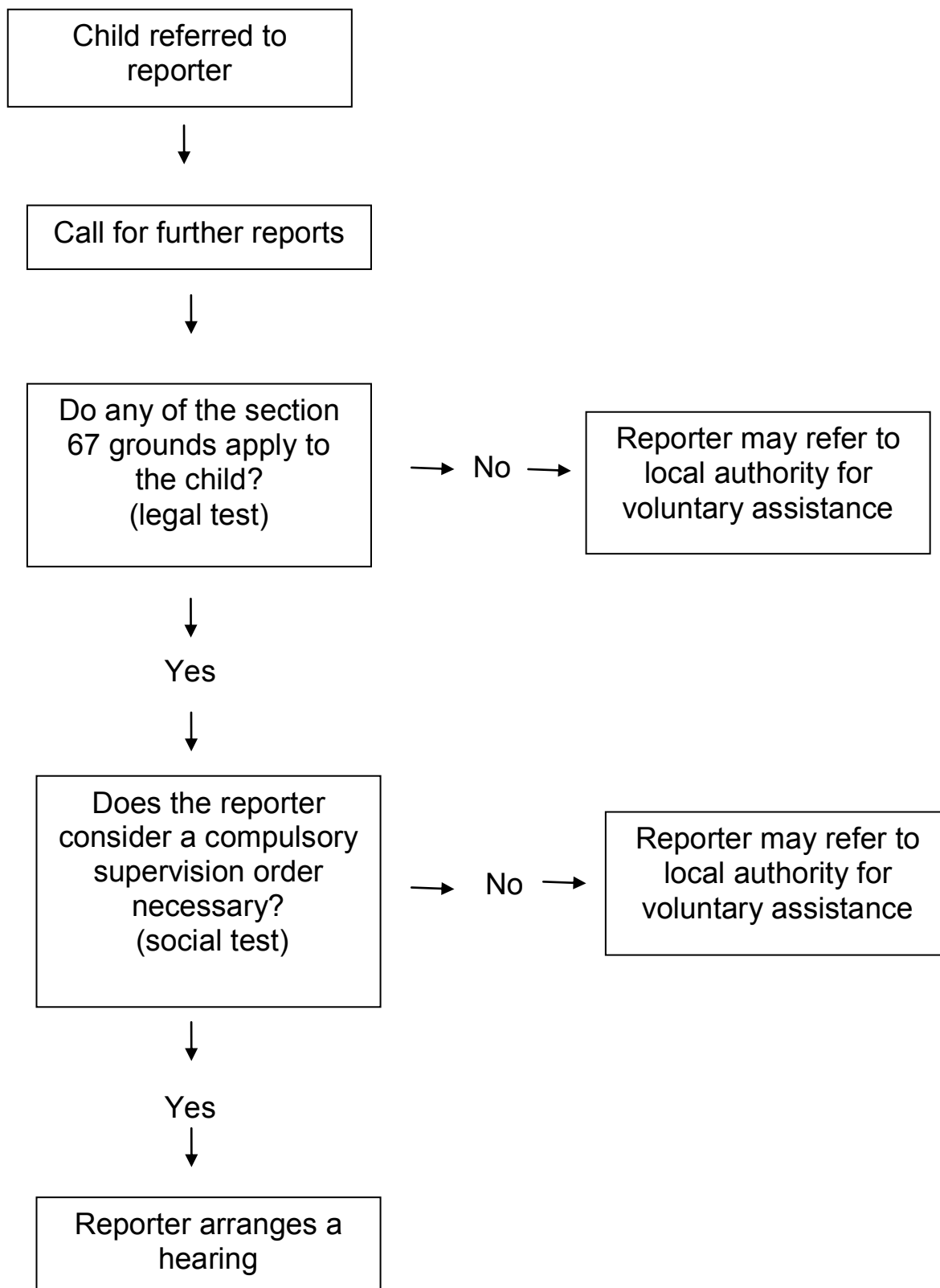
(s 66)

Having received information about a child the reporter must make a determination about whether there is enough evidence to support one of the section 67 grounds **and** if so whether it is necessary for a compulsory supervision order to be made or renewed for the child.

To make this determination the reporter is empowered to make further investigation and has an express power to request from the local authority a report on the circumstances of the child. The local authority is obliged to supply such a report including any information given to them by another person.

(s 66(2)(6))

Flowchart 1 – Referral Process



2 SECTION 67 GROUNDS

In order to reach a decision on whether or not the child requires a compulsory supervision order, one of the prime considerations by the reporter is which one or more of the section 67 grounds most appropriately reflect the principal concerns about the child's welfare.

Section 67 of the Children's Hearings (Scotland) Act 2011 notes all the different grounds at least one of which must apply before a child can be referred to a hearing.

(a) The child is likely to suffer unnecessarily, or the health or the development of the child is likely to be seriously impaired, due to a lack of parental care.

Generally this ground refers to poor parenting over a period of time by a carer. The reasons for this may be that the carer may have limited parenting ability, substance misuse problems, mental health issues or relationship difficulties and is unable to prioritise the child's needs before that of their own or of others in the household.

This ground will include children living in poor physical conditions or children whose basic needs are not being met i.e. not being fed appropriately, inadequate accommodation or poor standards of living conditions. Emotional abuse will also fall into this category but it should be added that any abuse of a child will have an emotional element.

It is important to remember that lack of parental care can involve omission as well as commission of acts. The lack of parental care may be past or present and the word 'likely' refers to possible and probable future lack of care and the likely impact on the child.

(s 67(2)(a))

(b) A schedule 1 offence has been committed in respect of the child.

A list of all the schedule 1 offences is contained in the Criminal Procedure (Scotland) Act 1995. Schedule 1 offences include offences involving assault, ill treatment, neglect, exposure, abandonment or any offence involving bodily injury in a manner

likely to cause unnecessary suffering. Sexual offences are also contained in schedule 1.

Although in some cases the identity of the perpetrator may be known, it is not necessary to prove who has committed the offence- it is sufficient for it to be established that the child has been a victim of such an offence. For the purposes of children's hearings proceedings in court, it is sufficient for the reporter to prove this on the balance of probabilities. i.e. There is enough evidence to tip the balance in favour of the offence having been committed against the child. Even if a perpetrator has had no criminal proceedings brought against them or has been acquitted in criminal proceedings, the ground of referral can still be upheld if there is supporting evidence. (s 67(2)(b))

(c) The child has, or is likely to have, a close connection with a person who has committed a schedule 1 offence.

This ground can be used to protect any child from birth onwards where the child has had or is likely to have in the future, a close connection with someone who has committed an offence mentioned in Schedule 1 of the Criminal Procedure (Scotland) Act 1995. A child is taken to have a close connection with a person if:

- the child is a member of the same household as the person or
- the child is not a member of the same household but has significant contact with the person.

The word 'household' has a wide meaning and may involve the person either living in or not living in the same house. If not living in the same house as the child, then that person having a continuing relationship or family tie with the child and/or his family would constitute member of the same household. (s 67(2)(c))

(d) A child is, or is likely to become a member of the same household as a child in respect of whom a schedule 1 offence has been committed.

For this ground to be upheld, the child has to be a member of the same household as a child who has been the victim of a schedule 1 offence. It is important to

remember that the word 'household' has a wide meaning and may involve the child not actually physically living in the same house as the referred child but having a continuing relationship with the child. (s67(2)(d))

(e) The child is being, or is likely to be, exposed to persons whose conduct is (or has been) such that it is likely that -

- (i) the child will be abused or harmed, or**
- (ii) the child's health, safety or development will be seriously adversely affected.**

This ground can be used when the child's safety is or is likely to be compromised by more than one person due to their past or present conduct. It has the potential to cover a broad range of circumstances such as being present in a house where substance misuse is taking place or pornography is being shown. 'Likely' also applies to the impact on the child.

(s 67(2)(e))

(f) The child has, or is likely to have, a close connection with a person who has carried out domestic abuse.

This ground protects any child who has a close connection with the perpetrator of domestic abuse whether that person is a man or a woman. If the only significant concern is exposure to domestic abuse then it is more likely that this ground would be used as opposed to 'lack of parental care'. The second element to this ground is that the child is taken to have a close connection with the person who has carried out domestic abuse. The child will have a close connection with a person if:

- the child is a member of the same household as the person or
- the child is not a member of the same household but has significant contact with the person.

The ground covers current or 'likely' close connection with a person who has carried out domestic abuse but it is not necessary that the domestic abuse has been carried out in the referred child's family. (s 67(2)(f))

(g) The child has, or is likely to have a close connection with a person who has committed an offence under Part 1, 4 or 5 of the Sexual Offences (Scotland) Act 2009 (asp 9)

This ground protects any child who has a close connection with someone who has committed an offence of unlawful sexual intercourse, rape etc of a young child (a child who has not attained 13 years of age) or an older child - a child who has not attained 16 years of age.

A child is taken to have a close connection with a person if:

- the child is a member of the same household as the person or
- the child is not a member of the same household but has significant contact with the person. (s 67(2)(g))

(h) The child is being provided with accommodation by a local authority under section 25 of the Children (Scotland) Act 1995 and special measures are needed to support the child.

This ground relates to children who are being looked after by the local authority on a voluntary basis whose behaviour is potentially risk taking and may include repeatedly absconding or endangering themselves or others by their behaviour. This might lead to the consideration of stronger measures to support them including a compulsory supervision order, a movement restriction condition or indeed secure accommodation. Note the use of the word 'support' in the ground. (s 67(2)(h))

(i) A permanence order is in force in respect of the child and special measures are needed to support the child.

This ground relates to those children whose future has been secured by way of a permanence order. The presumption here would be that the child is not subject to a compulsory supervision order and that some form of compulsion may be necessary to support the child through a difficult period. Note the use of 'support' in the ground. For example a child who has been looked after for several years and has their future secured by way of a permanence order. The compulsory supervision order is terminated and the child is outwith the system. If further down the line, the child was

to experience difficulties for example where the placement was breaking down, the child could be referred to a children's hearing for support and be brought back into the system. (s 67(2)(i))

(j) The child has committed an offence

This ground applies only to a child over the age of criminal responsibility who has committed at least one offence.

The age of criminal responsibility for a child in Scotland is 8 which means a child can be referred to a children's hearing on an offence ground if he was eight years old at the time of the alleged offence. The age of criminal prosecution for a child in Scotland is 12 which means that should a child commit a very serious offence, only a child of 12 or over will be prosecuted in an adult court of law.

Children aged 8 -11 who commit an offence are referred only to the children's hearings system.

Some of the main types of offence that children are likely to be involved in and may lead to a children's hearing are:

- **Theft** - Taking the property of someone else without their permission and appropriating it for their own use.
- **Reset** - Receiving from another person property known to be stolen.
- **Damage to property** - This may include malicious mischief, vandalism or fire raising.
- **Offences against the person** - This may include assault, leading to injury or various sexual offences.
- **Possession of an offensive weapon** - The carrying of an offensive weapon, knife or other implement which is used either in a threatening manner or without lawful authority.
- **Offences which might hinder the prevention or detection of a crime** - Giving a false name and details to the police is the most common offence which prevents the detection of a crime.

- **Traffic offences** - The most common offence which concerns hearings is the taking and driving away of a motor vehicle. There is also a range of statutory offences arising from driving under the permitted age, namely driving without insurance, without a seatbelt etc
- **Miscellaneous** - Possession of air weapons in certain unlawful circumstances, or recklessly firing them; general breach of the peace; vandalism, fraud or false pretences.

It is important to remember that anyone helping someone to commit an offence can be considered to be equally involved, for instance if he or she gives advice, provides tools or other materials, keeps a lookout or acts as a decoy (and is, therefore 'art and part' of the offence).

The Lord Advocate may decide that a child who has committed a very serious offence will be prosecuted in court, in the public interest. The Lord Advocate's Direction to Chief Constables sets out the circumstances when a child must be jointly reported to the procurator fiscal and the reporter and this is confined to very serious offences. There is normally discussion between these officials prior to a decision being taken by the procurator fiscal about whether to prosecute or remit the case to the reporter to deal with. (s67(2)(j))

Where the statement of grounds prepared by the reporter relates to an offence, it must have the same degree of specification as a charge and specify the nature of the offence. (Rule 14)

(k) The child has misused alcohol

This ground brings any child who has misused alcohol into the system which is in line with Article 33 of the UN Convention of the Rights of the Child which expects member states to take appropriate action to protect children from illicit drug use.

(s 67(2)(k))

(l) The child has misused a drug (whether or not a controlled drug)

This ground includes children who have misused a class A, B or C drug, prescribed or a non-prescribed drug. For example class A drugs e.g. ecstasy, heroin, crack cocaine, class B drugs e.g. cannabis, ritalin and amphetamines, Class C e.g. tranquilisers, ketamine, GHB. (s 67(2)(l))

(m) The child's conduct has had, or is likely to have, a serious adverse affect on the health safety or development of the child or another person.

This ground can bring any child into a hearing who exhibits a range of behaviours that is likely to have an adverse effect in terms of the child's health, safety or development or that of any other person. This could involve a child who has been running away from home, has substance misuse issues or has been missing from home and exposed to potential danger in the community e.g. sleeping rough. Self harming behaviour might also fall into this category. (s 67(2)(m))

(n) The child is beyond the control of a relevant person

A relevant person has the responsibility of providing control for the child. This ground may be used when a child is behaving in such a way that he or she does not respond to the reasonable demands made by a relevant person, for example when a child is running away or continually staying out until the early hours of the morning without the consent of the parent. (s 67(2)(n))

(o) The child has failed without reasonable excuse to attend school regularly

The child must be of school age. Reasonable excuses are defined in section 42 of the Education (Scotland) Act 1980 and refer to difficulties with travel arrangements, health problems or special circumstances acceptable to the education authority or a court. Exclusion due to a child's disruptive behaviour does not constitute a reasonable excuse for not attending school. If the child is being appropriately educated at home however this is considered to be a reasonable excuse.

(s 67(2)(o))

(p) The child-

- (i) is being, or is likely to be, subjected to physical, emotional or other pressure to enter into a civil partnership, or**
- (ii) is, or is likely to become, a member of the same household as such a child.**

This ground would apply to any child who is being or is likely to be put under pressure to enter into a civil partnership. A civil partnership is a legal relationship exclusively for same sex couples which is distinct from marriage but which essentially gives same sex couples the same rights and responsibilities as a married couple. To enter into a civil partnership, the child must have attained the age of 16.

This ground also protects any child who is a member of the same household as the victim or is likely to become a member of the same household as the victim.

(s 67(2)(p))

(q) The child-

- (i) has been, is being or is likely to be, forced into a marriage(that expression being construed in accordance with section 1 of the Forced Marriages etc (Protection and Jurisdiction)(Scotland)Act 2011 (asp15) or,**
- (ii) is, or is likely, to become a member of the same household as such a child**

This ground would apply to any child, male or female, who has been, is being or is likely to be forced into a marriage. The pressure may be physical, emotional or involve duress etc. For example, if the child was held captive somewhere unless he/she agreed to the marriage, this would fall under physical pressure. If the child is threatened to be cut off from his/her family if he/she does not comply with the marriage, this would fall under emotional pressure. It is important to remember that arranged marriages, where the family play a significant role in selecting a partner and the bride and groom consent, does not fall under this category.

However, a consenting arranged marriage may turn into a forced marriage if either of the parties changes their mind and there is pressure or duress exerted upon them to proceed with the marriage. This ground also protects any child who is a member of the same household as the victim or is likely to become a member of the same household as the victim. This ground covers existing or future pressure and covers past marriages. (s 67(2)(q))

Standard of proof in court

When the reporter seeks to prove a section 67 ground in court, different standards of proof apply. The standard of proof for every ground (except s 67(2)(j)) is that of the balance of probabilities i.e. that there should be enough evidence to make it more likely than not that the incident took place. However, when a child has committed an offence under s 67(2)(j), the higher standard of proof applies that of beyond reasonable doubt- it must be 'beyond reasonable doubt' that the child has committed the offence.

3 THE REPORTER'S DECISION

The reporter's decision is based on the answers to the following questions:

- Is there sufficient, relevant evidence to support at least one of the section 67 grounds?
and if so
- Whether the reporter considers that it is necessary that a compulsory supervision order should be made (or renewed) in respect of the child.

The reporter has three possible options when reaching a decision about the referral.

1. *Take no further action on the referral* (s 68(3)(a))

If the reporter considers that none of the section 67 grounds apply in relation to the child or it is not necessary for a compulsory supervision order to be made, he must make a decision to take no further action.

This does not necessarily mean that nothing has been done. The reporter may have written to the family or indeed met them to discuss the referral. The child may have been diverted to another agency for mediation or reparation if the referral was an offence. Also, the police may have agreed to administer a restorative police warning. The reporter must write to the child and his family to inform them of their decision.

2. *To refer the case for advice, guidance and assistance* (s 68(5)(a)(b))

If the reporter considers that none of the section 67 grounds apply and that a compulsory supervision order is not necessary, there is the option to refer for advice, guidance and assistance. In relation to these situations, the child and/or the family may be willing to accept advice, guidance and assistance on a voluntary basis and the reporter can refer them to the local authority for this to be provided.

What is important is that the support is offered to the family and accepted by them as an appropriate way forward to deal with the situation and as such no compulsion is necessary. In most circumstances the support will be provided

by the local authority but it may also be provided by any person or body specified by Scottish Ministers to provide this service. (s 68(5))

If a reporter decides to take no action in relation to a referral or refers the child to the local authority for advice, guidance and assistance, he/she cannot subsequently refer the child solely on the basis of information already considered. (s 68(6))

3. *Arrange a children's hearing* (s 69(2))

If the reporter considers that there is enough evidence to prove at least one of the section 67 grounds **and** that a compulsory supervision order may be required then he/she must arrange a children's hearing.

It is important to remember that once the reporter has referred a child to a hearing, that is the end of their decision making process in regard to the referral. The process of decision making then passes to the children's hearing who will look at the situation anew and will make a decision in relation to the child completely independently. The children's hearing may decide that a compulsory supervision order is not necessary. This process of separation of the decision making process by the reporter, the children's hearing and the courts is one of the fundamental principles of the children's hearings system. It protects the rights of children and relevant persons by a series of checks and balances.

Notification of a children's hearing

When the reporter has reached a decision to refer the child to a children's hearing, they must then make arrangements for the children's hearing to take place so that a decision can be made by a hearing about whether a compulsory supervision order is necessary.

They must

- Require the local authority to provide a report to the hearing on the child's background and circumstances if they have not already done so. (s 69)
- Give the child and any relevant person, notice in writing of the date, time and place of the hearing no later than 7 days before the intended date of the hearing. (Rule 22)
- Give to the members of the hearing notification of the date, place and time of the hearing wherever practicable 7 days before but no later than 3 days before the intended date of the children's hearing. (Rule 25)
- Give to the child, relevant person and any appointed safeguarder the following paperwork: a copy of any relevant requirement made by the sheriff in relation to an appeal, a copy of the report or interim report prepared by the safeguarder, a copy of any report made by the local authority, a copy of the views of the child and a copy of any other report or document which is material to the hearing's consideration wherever practicable 7 days before but no later than 3 days before the intended date of the children's hearing. (Rule 27)
- Give to the members of the hearing a copy of the statement of grounds wherever practicable 7 days before but no later than 3 days before the children's hearing. (Rule 28)
- Any person who appears to the reporter to have (or recently has had) significant involvement in the upbringing of the child is also entitled to information confirming the right to require a pre-hearing panel or a children's hearing to determine whether they should be deemed to be a relevant person. (Rule 24)

Other information to be provided

The reporter must also give to the child and each relevant person in relation to the child

- Information relating to the availability of legal advice to the child and the relevant person.
- Confirmation of the child's duty to attend the hearing.
- Confirmation of the relevant person's duty to attend the hearing.
- Confirmation of the child and relevant person's right to request a pre-hearing panel or children's hearing to determine whether a person should be deemed to be a relevant person, whether the child or relevant person should be excused from the hearing or whether a hearing is likely to make an order including secure authorisation.
- Information about the ways in which a child may express his views to the children's hearing.
- Confirmation of the right of the child and each relevant person to give any report or other documentation to the children's hearing or pre-hearing panel.

(Rule 23)

Where the child or the relevant person wish to submit any report or document to the children's hearing, they must give this to the reporter as far as is practicable, 4 days before the date of the hearing.

(Rule 26(1))

When the reporter has received any report or document from the child or relevant person, he should make this available to the child, relevant person, any appointed safeguarder and the three panel members no later than 3 days before the hearing.

(Rule 26(2))

Where the reporter obtains any information (including the views of the child) or document, the reporter must give the information or copy of the report to parties before the beginning of the hearing.

(Rule 26(3))

Documentation for section 67 grounds hearing

Where a section 67 grounds hearing has been arranged, in addition to the information noted above, the child, each relevant person in relation to the child and any appointed safeguarder, must receive no later than 7 days before the hearing

- a copy of the section 67 grounds
- a copy of any requirement made by the sheriff in relation to the determination of an appeal
- information relating to the retention of their DNA in certain circumstances.

This will enable everyone to consider the information, prepare for the hearing and seek legal advice if they wish to do so. Any appointed safeguarder has the right to receive a copy of the grounds and a copy of any requirement made by the sheriff in relation to the determination of an appeal but will not receive information relating to the retention of the child's DNA.

The reporter must also give the child, each relevant person and any appointed safeguarder no later than 3 days before the hearing.

- a copy of any available report or interim report prepared by the safeguarder
- a copy of the report provided by the local authority
- a copy of any views of the child given either to the reporter or any other person
- a copy of any report or document which would be material to the children's hearings consideration of the case (Rule 27)

Where the reporter obtains information including the views of the child or any document which is material to the hearing's consideration of the case, the reporter must provide this information to parties as soon as possible before the beginning of the children's hearing. (Rule 26(3))

Documentation for children's hearing

Where any document or report is given to members of the children's hearing or pre-hearing panel, the person who has prepared that document has a duty to ensure that it contains any views that the child has expressed to them. (Rule 8)

Provision of paperwork for children

The reporter is under a duty to notify the child of the date, time and place of the children's hearing or pre-hearing panel and to provide the child with any information, confirmation, report or documents. However, the reporter, taking into account the child's age and maturity, need not notify the child or provide paperwork if they consider that the child would not be able to understand.

Confidentiality

The contents of the documents must be kept strictly confidential by panel members.

They are responsible for keeping the papers safe and must not discuss any information concerning cases outside the hearing. No matter how complex, disturbing or perplexing the problems are, panel members must respect confidentiality and must not discuss the case with their families, close friends or any other person. Reports should not be highlighted or defaced- these same reports may be used again if a hearing is deferred. The documentation must be kept securely in the panel member's possession and returned to the reporter at the end of the pre-hearing panel or children's hearing. (Rule 5(1)/(2))

To help with their preparation, panel members may make some personal notes but these should be brief and hand-written not more than one A4 page. All personal notes should be handed to the reporter at the end of the hearing or pre-hearing panel so that they can be destroyed. Computers or laptops should not be used to record information.

Procedures for Pre-hearing Panels and Children's Hearings



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1 GENERAL DUTY OF PANEL MEMBERS

Introduction

‘The procedure at any children’s hearing or pre-hearing panel required to be held by virtue of the Act or any other enactment unless provided for under the Act or Rules, is to be determined by the chairing member’

(Rule 7(1))

The chairing member of the hearing or pre-hearing panel and the other panel members have a legal obligation to follow the procedures laid down in the Act and Rules but where the Rules are non-prescriptive, the chairing member will be able to determine the procedure.

If a children’s hearing or pre-hearing panel is arranged and a chairing member for that children’s hearing or pre-hearing panel has not been selected by the Area Support Team (AST), immediately before beginning to hear the case, the members of the children’s hearing or pre-hearing panel must decide who is to chair the hearing. Only a panel member who has successfully completed the chairing training can be selected to chair a children’s hearing.

(Rule 4)

Security of papers and confidentiality of information

A panel member must keep securely in their own possession any documents given to them for any children’s hearing or pre-hearing panel and at the end of the children’s hearing or pre-hearing panel return them to the reporter.

(Rule 5(1))

A panel member must not disclose any information that they have obtained as a result of their involvement in the children’s hearing or pre-hearing panel out with a children’s hearing.

(Rule 5(2))

Duties of the chairing member are to:

- Take reasonable steps to ensure the child and each relevant person understand the proceedings.
- Take reasonable steps to ensure the child and each relevant person are able to participate in the proceedings.
- Identify whether the child wishes to express a view.
- Make reasonable arrangements for the child to express their views in a manner preferred by the child.
- Ensure that a record is made of the decisions of the children's hearing or pre-hearing panel.
- Ensure a record is made of the reasons for the decisions.
- Sign and date the record of the decision.
- Explain the substance of any report, document and information to any children's hearing the exception being where information has been withheld.

(Rule 6)

Adjournments

The children's hearing or a pre-hearing panel may adjourn the children's hearing or the pre-hearing panel either on their own initiative or at the request of any person in attendance if they consider it appropriate to do so. Any adjourned children's hearing or pre-hearing panel must be reconvened on the same day as the adjournment was made and should consist of the same membership of the original hearing. (Rule 7(3))

2 PROCEDURES FOR PRE-HEARING PANELS

General

Pre-hearing panels make determinations about certain procedural matters before the children's hearing takes place for the child. It is important to remember that a pre-hearing panel is not a children's hearing and panel members must limit the discussion to the specific matter/s which require a decision. (s 79(6))

When a matter has been referred to a pre-hearing panel for determination, the reporter must arrange a meeting of the pre-hearing panel before the date set down for the hearing to which it relates. (s 80(1-2))

If it is not practicable for the reporter to arrange a pre-hearing panel before the date set down for the hearing, the matter referred to **must** be considered at the beginning of the children's hearing. (s 80)

Notification by the reporter

Wherever practicable, at least 5 days before the intended date of the pre-hearing panel, the reporter must notify the child, each relevant person in relation to the child, any person requesting that they be deemed a relevant person, any person with significant involvement or recent significant involvement in the upbringing of the child, and any appointed safeguarder of the date, time and place of the pre-hearing panel and that they

- have a right to attend the pre-hearing panel but not a duty
- may make representations either orally or in writing about any matter (including whether any person should be deemed to be a relevant person if the pre-hearing panel is to consider this issue)
- may present any report or document to the pre-hearing panel for consideration.

Makeup of a pre-hearing panel

A pre-hearing panel is made up of three panel members including both male and female members of the children's panel. A member of the children's panel selected to sit on a pre-hearing panel may be (but does not have to be) a member of the children's hearing which will ultimately make a decision for the child.

Persons who have a right to attend a pre-hearing panel

Pre-hearing panels may involve the attendance of the child, the child's representative, a relevant person and their representative and any appointed safeguarder.

Others who may attend are:

- a person requesting that they be deemed to be a relevant person in relation to the child and their representative.
- any person who the reporter considers to have or recently have had significant involvement in the upbringing of the child and their representative.

(Rule 45)

A person will not be entitled to participate in the discussion of any other matter unless they are first deemed to be a relevant person. (Rule 45(4))

It is important to note that those having a right to attend a pre-hearing panel do not have duty to attend and therefore if an individual does not attend the pre-hearing panel, there is no need to excuse their attendance.

Persons with a right to attend a pre-hearing panel but unable to attend

If the child, relevant person or any person with significant involvement or recent significant involvement in the upbringing of the child wants to attend but cannot attend the pre-hearing panel, the reporter must take all reasonable steps to allow participation in the pre-hearing panel by way of phone, through video link or by using any form of communication if requested to do so. (Rule 45)

Provision of information to the pre-hearing panel

Where any person wishes to make written representations or give a report or document to the pre-hearing panel for consideration, they should do so as soon as possible and wherever practicable no later than 4 days before the date of the pre-hearing panel. The reporter will thereafter provide a copy of the representations, report or document to panel members no later than 3 days before the pre-hearing panel convenes. Should any person with a right to attend the pre-hearing panel be unable to do so, they may make oral representations to the reporter any time before the beginning of the pre-hearing panel. The reporter has a duty to record the representations and give a copy of this to the pre-hearing panel. (Rule 47)

Matters for determination by a pre-hearing panel

A pre-hearing panel may be arranged to determine any of the following issues:

1. Whether a person should be deemed to be a relevant person-‘deemed relevant person status request’.
2. Whether the child should be excused from attending the children’s hearing.
3. Whether a relevant person in relation to the child should be excused from attending the hearing.
4. Whether it is likely that a children’s hearing will consider making a compulsory supervision order including secure authorisation. (s79)
5. Any other competent matter set down by the Rules.

Procedure at pre-hearing panel

At the beginning of a pre-hearing panel the chairing member must

- Introduce the members of the pre-hearing panel and explain the purpose of the pre-hearing panel to the child, each relevant person in relation to the child and any safeguarder.
- Invite those in attendance to give any representations, written or orally, or to provide any document or information that they wish to give to the pre-hearing panel for consideration.

- In the case of a deemed relevant person claim, consider whether or not to deem a person to be relevant person at the beginning of the pre-hearing panel and before considering any other matter. (Rule 45(3) (c))

If a person is deemed to be a relevant person by the pre-hearing panel, that person may request that the pre-hearing panel go on to consider another procedural issue.

Safeguarders

Although a pre-hearing panel cannot be arranged specifically to consider the appointment of a safeguarder, a pre-hearing panel may decide when considering other business to make such an appointment. The pre-hearing panel does not have to actively consider it in every case but panel members should be aware that they can appoint a safeguarder (if one has not already been appointed) and raise the issue where appropriate. If they do decide that a safeguarder is necessary, they must record that appointment and give reasons for it. The safeguarder appointed in this situation would be for the forthcoming children's hearing and not for the pre-hearing panel.

(s 2)

3 MATTERS FOR DETERMINATION BY A PRE-HEARING PANEL

Whether to deem someone a relevant person

Where requested to do so by:

- an individual
- the child or
- a relevant person in relation to the child.

the reporter **must** refer to a pre-hearing panel the question about whether the individual in question should be deemed to be a relevant person. The reporter may also refer this matter to a pre-hearing panel on his/her own initiative.

(s 79(2))

A pre-hearing panel must deem an individual to be a relevant person if that person:

- has significant involvement in the upbringing of the child
- has recently had significant involvement in the upbringing of the child.

Where a pre-hearing panel makes a determination that an individual is a relevant person, the relevant person has the full range of rights accorded to relevant persons in relation to any pre-hearing panels, children's hearings, appeals, court proceedings and rights of review.

(s 81(4))

If a pre-hearing panel decides to deem someone to be a relevant person, they will remain a relevant person until at least after the next review of the order. (s 142)

Decisions to deem or not to deem a person to be a relevant person are appealable to the sheriff by the child, any relevant person in relation to the child and any person who requested to be deemed a relevant person within 7 days of the decision. (s 160)

For more information about determining deemed relevant person status and significant involvement, refer to Section 5 of the Legislation and Procedure Handbook.

Other matters for determination by a pre-hearing panel

Where requested to do so by

- a child
- a relevant person or a
- safeguarder if appointed for the child.

or at the reporter's own initiative, a pre-hearing panel may make a determination on the following matters:

- whether the child should be excused from attending their children's hearing
- whether a relevant person should be excused from attending a children's hearing
- whether a children's hearing is likely to make a decision including a secure authorisation in relation to a child
- any other procedural matters specified in the Rules.

Excusing a child's attendance at a children's hearing

A pre-hearing panel may be asked to make a determination about whether the child should be present at their hearing. A pre-hearing panel may only excuse a child from attending a children's hearing if at least one of the following apply:

- The case involves an offence mentioned in Schedule 1 of the Criminal Procedure (Scotland) Act 1995 or Part 1, 4, 5 of the Sexual Offences (Scotland) Act 2009 and the attendance of the child at the hearing is not necessary for a fair hearing.
- The attendance of the child at the hearing would place the child's physical, mental or moral welfare at risk. or
- Taking account of the child's age and maturity, the child would not be capable of understanding what happens at the hearing. (s 73(3))

A child should only be excused from attendance at a hearing if at least one of the criteria applies. The first category is one based on fact and will be easily determined by the pre-hearing panel:

- either the case does or does not involve a Schedule 1 offence or

- an offence from the Sexual Offences (Scotland)Act 2009

and the child's presence is not necessary for a fair hearing.

The second category is far more complex and one where the pre-hearing panel must interpret and come to a decision based on the discussion. The threshold for this is high and non attendance of the child should be the rare exception and not the rule.

The pre-hearing panel would have to be satisfied that there 'would' be an identified risk in relation to the child. For physical risk- this criterion might be met if there had been a physical assault on the child at a hearing and there were concerns that this would occur again or simply that there were threats to harm the child at the hearing.

For mental risk - this criterion might be met if there was perhaps a potentially damaging piece of information which was unknown to the child. For moral risk - this might be met by the presence of a person at the hearing whose presence might have a corrupting influence on a child.

The third category is easier to interpret. A pre-hearing panel may excuse the child from attendance at the children's hearing if they consider that the child would not be able to understand what happens at the hearing because of their age and maturity.

The provision is a discretionary one. It is important to remember that a child has an absolute right to attend a children's hearing in relation to their situation and panel members should not feel pressurised to excuse a child if they do not wish to do so. A great deal of information can be gathered by observing the child's behaviour and the interaction between the child and the adults present. Regardless of the pre-hearing panel's decision a child may still decide to attend the hearing.

Excusing a child's attendance from a section 67 grounds hearing

If the pre-hearing panel are considering whether to excuse the child from attending a grounds hearing, the child can only be excused while the grounds are being explained if they are satisfied that taking account of the child's age and maturity, the child would not be capable of understanding the explanation. A grounds hearing can

require the reporter to arrange another grounds hearing if the child or relevant person fails to attend and has not been excused.

Excusing a relevant person's attendance at a children's hearing

A pre-hearing panel may only excuse a relevant person from attending the children's hearing if:

- it would be unreasonable to require their attendance for all or part of the hearing or
- their attendance at all or part of the hearing is thought to be unnecessary for the proper consideration of the case (s79(5))

It should be noted that in order to excuse a relevant person from attending a children's hearing at least one of the categories must apply. It may be unreasonable for a relevant person to attend a children's hearing if that person is abroad and cannot return in time for the hearing. Being at work is not likely to be a good reason to excuse a parent as there should be flexibility in terms of the time and date for most non emergency hearings.

The second category of 'unnecessary for the proper consideration of the case' might be met if the child has had no relationship with a relevant person for a number of years and that person plays no part in their life.

A children's hearing is likely to make a decision including a secure authorisation in relation to a child

Where a pre-hearing panel has decided that it is likely a children's hearing will consider making a compulsory supervision order or an interim compulsory supervision order including secure authorisation in relation to a child, the reporter must, as soon as it is possible, notify the Scottish Legal Aid Board and give them the name and address of the child so that legal assistance can be made available to the child.

Legal assistance for child or relevant persons

Where a pre-hearing panel arranged for any purpose recommends that

- in order for the child or any relevant person to participate effectively in the children’s hearing, it is necessary that the child or relevant person be represented by a solicitor **and**
- it is unlikely that the child or relevant person will arrange to be represented by a solicitor or counsel.

the reporter must as soon as possible notify the Scottish Legal Aid Board and give them the name and the address of the child or relevant person.

Legal assistance will be needed for the following reasons, for example,

- The case contains complex legal issues
- The person may not be able to participate effectively without the assistance of a solicitor.

The child in these circumstances must have capacity to instruct and a child aged 12 or over is deemed to be able to give instructions to a legal representative, however a younger child may also be able to instruct. It is important to remember that the pre-hearing panel does not make the appointment; this matter will be considered by the Scottish Legal Aid Board (SLAB) who will consider whether the criteria are met.

(Rule 50)

Summary

The reporter may refer the matter of whether a particular individual should be deemed a relevant person to a pre-hearing panel if asked to do so by the individual themselves, by the child or by the relevant persons. The reporter can also refer the matter of whether someone is a relevant person to a pre-hearing panel on their own account if they consider it appropriate to do so.

The child, relevant person and anyone whose status as a relevant person is being considered will have a right but not a duty to attend the pre-hearing panel. There is no need to formally excuse the child/relevant person(s) if they do not attend but the pre-hearing panel should check they have been made aware of the meeting.

A pre-hearing panel is able to appoint a safeguarder. The pre-hearing panel does not have to actively consider this in every case but panel members should be aware that they can appoint and raise the issue when appropriate.

Where a pre-hearing panel have determined that a solicitor or counsel is necessary for a child or relevant person in order for them to participate effectively in the children's hearing and that they are unlikely to arrange to be represented by a solicitor or counsel themselves, the pre-hearing panel must ask the reporter to notify the SLAB.

When a pre-hearing panel is convened to make a determination in relation to a matter, they must make the determination and the matter **cannot** be deferred.

4 PROCEDURES AT CHILDREN'S HEARINGS

General

If there is a matter that should have been considered by a pre-hearing panel but there has been insufficient time to arrange one, this matter/s must be dealt with at the start of the children's hearing before considering any other matter.

At the beginning of the children's hearing the chairing member must:

- Introduce the members of the children's hearing and explain the purpose of the children's hearing.
- Check that the child, each relevant person in relation to the child and any safeguarder has received all relevant information and documents required to be received by the Rules.
- Confirm whether the child, each relevant person and any safeguarder:
 - has received reports within the legal timescales before the children's hearing
 - had the opportunity to read and consider these reports and
 - whether these have been understood by the child and each relevant person.
- Ask the child whether the reports accurately reflect their views- unless the chairing member considers it inappropriate to do this given the child's age and maturity. If the child confirms that the reports do not accurately reflect the child's views, the chairing member must try to clarify the child's views.

Legal Assistance

A children's hearing may recommend that in order:

- To allow the child or relevant person to participate effectively in the hearing it is necessary that the child or relevant person be represented by a solicitor or counsel. **and**
- It is unlikely the child or relevant person will arrange to be represented by a solicitor or counsel.

The children's hearing should defer making a decision and require the reporter, as soon as possible, to notify the Scottish Legal Aid Board of the recommendation, the reasons for the recommendation and the name and address of the child and /or relevant person.

Automatic Legal Assistance for Children

Legal Aid for the provision of legal assistance will be automatic to children in the following circumstances:

- Application to vary or terminate a CPO.
- Second working day hearings.
- Custody hearings- when a child has been detained by the police.
- Any hearing considering secure accommodation authorisation.

The child has to have the capacity to instruct a solicitor. If the child is present at any of the hearing types mentioned above, has the capacity to instruct a solicitor but is not legally represented, the children's hearing should check that the child has been offered the opportunity to have a solicitor and if not the hearing should be deferred for this purpose.

Procedure at section 67 grounds hearing

When explaining the statement of grounds the chairing member may exclude any relevant person if they are satisfied that the presence of that person is preventing the children's hearing obtaining the acceptance or denial of the grounds from any person who is required to accept or deny the grounds.

After the exclusion the chairing member must explain to the relevant person what has taken place in their absence.

Where the child or relevant person accepts a section 67 ground but does not accept all the facts, the hearing, where it considers it appropriate, may amend the statement of grounds by removing any facts that are denied or amending the facts. If a hearing amends the facts, the hearing must be satisfied that any amendments to the facts do not call to question the acceptance of the section 67 ground. If it does, then the hearing should consider sending the section 67 ground to the Sheriff for proof or discharging the referral.

Hearing where section 67 grounds are denied or not understood

When a section 67 ground is denied or not understood, the hearing members must give reasons for either directing an application for proof or discharging the grounds. If the case is sent to the sheriff and:

- the child is not subject to a compulsory supervision order, the hearing may issue an interim compulsory supervision requirement (ICSO) if they consider it necessary **as a matter of urgency** for the protection, guidance, treatment or control of the child or if
- the child is subject to a compulsory supervision order, the hearing may issue an interim variation of the compulsory supervision order (IVCSO) if they consider it necessary **as a matter of urgency** for the protection, guidance, treatment or control of the child.

In doing this they have to consider what measure(s) should be attached to the interim order. Each hearing member has to give reasons for the interim order any measures attached.

The chairing member must:

- confirm and explain the decision of the children's hearing
- state the reasons for the decision
- inform the child, any relevant person and safeguarder of the right to appeal the decision to discharge the referral, make an ICSO, an IVCSO or grant a warrant to secure the child's attendance.

Procedure when a section 67 ground accepted or established, at a deferred hearing or at a review hearing

At a hearing where a section 67 ground is accepted or established, or at a deferred hearing or review hearing, the chairing member must:

- inform the child and any relevant person in relation to the child who is present of the substance of any relevant reports or documents
- take all reasonable steps to obtain the views of the child, each relevant person in relation to the child and safeguarder in relation to:

- any report, document or matter being considered by the hearing and
- what, if any, measures would be in the best interests of the child.

The chairing member may invite others present to express their views on, or provide any other information relevant to anything being considered by the hearing. The hearing must consider any report from a safeguarder.

Procedure when decision deferred

If a children's hearing decides to defer making a decision, the hearing may do any one or more of the following actions if appropriate:

- appoint a safeguarder if one has not already been appointed
- require the reporter to obtain any report from any person which the children's hearing considers would be relevant to any matter to be determined by the hearing
- set a date for the subsequent children's hearing to be held
- direct the reporter to notify the Scottish Legal Aid Board of the need or potential need for legal assistance for the child or any relevant person
- require the reporter to make arrangements for an interpreter for the child or any relevant person or take any other step with a view to securing participation of the child or any relevant person.

Each member of the children's hearing must give their decision and reasons for deferring the decision. They must also give reasons for any interim compulsory supervision order, interim variation of a compulsory supervision order or medical examination order.

If making an interim compulsory supervision order, an interim variation of a compulsory supervision order, a medical examination order or granting a warrant to secure attendance, the hearing members must state what measures are to be contained in the order or warrant and the reasons for their inclusion.

The chairing member must:

- confirm and explain the decision of the children’s hearing
- confirm the reasons for the decision
- inform the child, any relevant person and safeguarder of the right to appeal.

Procedure where hearing proceeds and makes a decision

When a hearing makes a decision either to make a compulsory supervision order or to continue, vary or terminate a compulsory supervision order or discharge the referral, each member of the children’s hearing must:

- state their decision and the reasons for their decision
- where the decision is to make a compulsory supervision order or continue or vary a compulsory supervision order state their decision in relation to any measures to be included in the order and the reasons for the measure.

The chairing member must:

- confirm and explain the decision of the hearing
- confirm the reasons for the decision
- inform the child, relevant person and safeguarder of the right to appeal the decision within 21 days
- where the decision is to make a compulsory supervision order or to terminate, vary or continue a compulsory supervision order, inform the child, relevant person and safeguarder of the right to seek a suspension of the hearing’s decision once an appeal has been made.

Privacy of proceedings

A children’s hearing is conducted in private. No one should be present unless they need to be there for the proper consideration of the case or else if their attendance is permitted by the chairing member, who has a duty to restrict the number of people present at any one time. This can be quite difficult to achieve in a complex case where it may be necessary to hear from a number of different parties who may assist the decision making process. Prior to the hearing, panel members should consider

how this might be managed and who needs to be in the hearing at any particular time and for how long.

The publication of protected information about proceedings at a children's hearing is prohibited if it is intended that publication will, or is likely to, lead to the identity of the child being revealed or the address or the school of the child.

Scottish Ministers may in the interests of justice, dispense with this prohibition or relax it if considered appropriate. (s 182)

5 ATTENDANCE AT HEARINGS

The law distinguishes between people who have a duty and obligation to attend the hearing and those whose attendance may be permitted by the chairing member of the hearing in consultation with the other two panel members. A third category exists which covers those people whose presence would be expected although they do not have a statutory duty to attend.

People who have a statutory right and duty to attend

Panel members

The Act stipulates that a children's hearing consists of three members of the Children's Panel. (s 5)

It is the responsibility of the National Convener to ensure that the children's hearing includes both male and female members of the children's panel and so far as is practicable who live or work in the area of the local authority for the child. (s 6(3))

The National Convener may also select one member of the children's hearing to chair the hearing but if a person has not been appointed the hearing may select the chairing member. (s 6(4))

A children's hearing may make a request to the National Convener that one of the members of the children's hearing should be selected to be a member of the next children's hearing arranged in relation to the child where this arrangement is practicable. (Rule 3)

If panel members find on receiving papers for a hearing that they are acquainted with the child or a member of the family, this information should be disclosed to the Area Support Team (AST). It is important not to presume that the child or family will not take issue with the situation and depending on the circumstances it may be that the panel member will be replaced for that hearing. This issue is not only about impartiality and the hearing being European Convention of Human Rights (ECHR)

compliant but also about possible embarrassment to the child/ family and panel member.

If a panel member recognises the family at the hearing, then he/she must declare this at the outset. The hearing should allow a brief adjournment so that the family may consider the matter in private. The views of the child and family should be taken into account. The hearing may proceed if it is absolutely necessary to safeguard the interests of the child, but the reasons should be recorded.

As there is the option to defer most hearings and set in place interim protective measures, it will be in very exceptional circumstances that the hearing must proceed, such as a second working day hearing. If a compulsory supervision order is in place and is due to expire, the children's hearing could defer the hearing and have an interim continuation in the meantime.

The National Convener will provide guidance to panel members on the practice to be adopted.

Child

The child has a right as well as a duty to attend all stages of his or her hearing and must do so unless they have been excused. (s 78(1)(a); s 73(2); s 79(4)(a))

However, a children's hearing or a pre-hearing panel may decide to release the child from this obligation to attend all or part of their hearing if they are satisfied that:

- (a) The case involves an offence mentioned in Schedule 1 of the Criminal Procedure (Scotland) Act 1995 or the Sexual Offences (Scotland) Act 2009 and the attendance of the child at the hearing, or that part of a hearing, is not necessary for a fair hearing. (s73(3)(a))
- (b) The attendance of the child at the hearing, or that part of the hearing, would place the child's physical, mental or moral wellbeing at risk. (s 73(3)(b))
- (c) Taking account of the child's age and maturity, the child would not be capable of understanding what happens at the hearing. (s 73(3)(c))

If the hearing is a s 67 grounds hearing, the hearing can only excuse the child from attending while the grounds are being explained if it is satisfied, taking account of the child's age and maturity, the child would not be capable of understanding what happens at the hearing or that part of the hearing. (s 73(4))

Once a child/relevant person has been excused by a pre-hearing panel or children's hearing, that excusal lasts until a substantive decision has been made. However at each hearing, panel members should still consider whether the child or relevant person(s) should be there although they do not formally have to excuse them. The excusal cannot last past the substantive decision.

If a child does not turn up to a section 67 grounds hearing, the children's hearing can direct the reporter to arrange another section 67 grounds hearing or discharge the referral. If a relevant person does not attend a section 67 grounds hearing and has not been excused, the hearing could require another section 67 grounds hearing to take place only if necessary to prevent unfairness to the missing relevant person.

If the child is excused from attending the children's hearing or part of the hearing but expresses a wish to attend the children's hearing or part of that hearing, the reporter must take all reasonable steps to accommodate this by way of telephone, through video link or using any other method of communication. (Rule 19)

A person representing the child

A child has a right to be accompanied by a person who is there to assist them in the discussion of the case or in any issues arising from the discussion of the case either at the children's hearing or at a pre-hearing panel. The child can choose anyone to fulfil the role, i.e. a friend, a relative etc. (s 78(1)(b); Rule 11(1))

The right of the child to be represented does not affect the right of a child to legal assistance by a solicitor or counsel. This means that the child may have both a person there to assist in the discussion of the case and a solicitor. (Rule 11(2))

A relevant person in relation to the child

A relevant person has a statutory right and a duty to attend all stages of the hearing in relation to his or her child and must be notified that it is taking place. (s 78(1)(c))

Any relevant person in relation to a child who is notified that a children's hearing is to take place must attend that hearing unless they are excused from attending because

- it would be unreasonable to require their attendance for all or part of the hearing
- their attendance at all or part of the hearing is thought to be unnecessary for the proper consideration of the case. (s 74(3)(a)(b))

The reasons for reaching this decision should be clearly recorded in the record of proceedings. (s 74(2)(3))

Notwithstanding the above, a children's hearing can proceed with a hearing in the absence of a relevant person if they consider it appropriate to do so.

A relevant person may be excluded from any part or parts of the hearing for as long as it is in the interests of the child if the hearing is satisfied that

- the relevant person's presence is preventing the hearing from obtaining the views of the child. It may be that there is a conflict of interests, or the child will not talk in front of the relevant person, or it may be the situation is that the relevant person is answering on behalf of the child
- if his or her presence is causing or is likely to cause significant distress to the child. It may be that the child is or will be caused significantly upset by the presence of this person. Note the use of the word significant which indicates there is a high test to this criterion. (s76(1)(2))

It is considered best practice that the children's hearing on their own initiative makes the decision to exclude a relevant person or representative so as not to put pressure on the child or compromise the child. After the exclusion has ended, the chairing member must explain to the relevant person what has taken place in their absence unless non-disclosure has been agreed. (s 76(3))

The chairing member should ensure that the child understands that a summary will be given to the relevant persons when they return to the hearing. It is best practice to go through the summary with the child before the relevant person returns ensuring that everyone is clear that the agreed information will be relayed back.

A person representing a relevant person

A relevant person has the right to be accompanied at a children's hearing or pre-hearing panel by a representative to assist the relevant person in the discussion of the case or in any issues arising from the discussion of the case. (Rule11(1))

The right of the relevant person to be represented does not affect their right to legal assistance by a solicitor or counsel. This means that the relevant person may have both a person there to assist in the discussion of the case and a solicitor.

(Rule11(2))

A person representing a relevant person has a right to attend unless that person has been excluded. (s 78(1)(d))

It should be noted that the Act states that a relevant person's representative can be excluded from the hearing on two occasions:

- if their presence is preventing the hearing from obtaining the child's views
or
- if their presence is causing, or is likely to cause, significant distress to the child.

It will be for the children's hearing to decide if either of these two circumstances apply and as such if they are satisfied, the hearing may exclude the representative from the hearing for as long as is necessary. After the exclusion has ended, the chairing member must explain to the representative what has taken place in their absence. (s 77)

The reporter

The reporter has a duty to keep a record of the proceeding of the hearing and has a right to attend the children’s hearing. (Rule 13)

The reporter has a role in supporting fair process without contributing or undermining the decision making function of the hearing. At every stage the reporter should be alert to any potential or actual procedural irregularities which might impact on the competency of the hearing process or decision. The reporter can clarify or offer a view to a hearing on any legal or procedural matter which has taken place or is about to take place in line with SCRA’s practice instruction for reporters and bring them to the attention of the hearing. (s 78(1)(e))

Any appointed safeguarder

A safeguarder is appointed to safeguard the interests of the child in the proceedings and has a right to attend all stages of the children’s hearing. Once a substantive decision has been reached by the hearing and any appeal process has been completed, the safeguarder has no further role and has no further right to attend review hearings unless reappointed for that specific purpose. Any paperwork provided to the safeguarder must be kept securely by that person and returned to the reporter at the end of the hearing. They must not cause or permit any information they have attained by their attendance at the children’s hearing or pre-hearing panel to be disclosed except where it is permitted by the Act or Rules

(s 78(1)(f))

A Member of the Administrative Justice Tribunals Council or the Scottish Committee of that Council

A member of the Administrative Justice Tribunal Council or the Scottish Committee of that Council has a right to be present throughout the hearing as an observer.

(s 78(1)(g))

Any information or documents which the reporter makes available to the members of the hearing shall be given, on request, to the member of the Administrative Justice and Tribunals Council or the Scottish Committee of that Council on attending the hearing. These documents must be kept securely by that person and returned to the reporter at the end of the hearing. They must not cause or permit any information they have attained by their attendance at the children’s hearing or pre-hearing panel to be disclosed except where it is permitted by the Act or Rules. (Rule 10)

A Member of the Area Support Team

The Act allows a member of the area support team to be present at a hearing as an observer. In practice, the member of the area support team in attendance is likely to be a panel practice adviser who will be observing panel member practice and performance. Any information or documents which the reporter makes available to the members of the hearing shall be given, on request, to the member of the AST on attending the hearing. These documents must be kept securely by that person and returned to the reporter at the end of the hearing. They must not cause or permit any information they have attained by their attendance at the children’s hearing or pre-hearing panel to be disclosed except where it is permitted by the Act or Rules.

(s 78(1)(h))

The press

‘Bona fide’ representatives of a newspaper or news agency have a right to attend hearings as observers (s 78(1)(i))

The hearing may exclude a representative of the press if it is satisfied that:

- it is necessary to do so in order to obtain the views of the child or
- the presence of that person is causing or is likely to cause significant distress to the child.

It should be noted that to meet the second test, the distress must be ‘significant.’

(s78(1)(5))

When a representative of the press has been excluded, the chairing member **may** after the end of the exclusion, explain to that person the substance of what has

taken place in their absence, if this is thought to be appropriate.

(s78(1)(6))

The Act also stipulates the publishing restrictions which apply to hearings. No protected information about the hearing process can be published if it is intended to or is likely to identify a child or the address or school of that child.

However there are some exceptions to this. In certain specific circumstances,

- Scottish Ministers.
- A sheriff in proceedings.
- Court of Session in proceedings.

may either dispense with this prohibition or relax the prohibition, if it is in the interests of justice and is appropriate to do so.

(s 182)

A police officer or a prison officer

A constable, prison officer or other person is authorised to attend if they have in their lawful custody a person who has a right to attend a pre-hearing panel or a children's hearing.

(Rule 20(2))

People who may attend at the discretion of the chairing member

It should be noted that the chairing member must not grant permission for any person without a right to attend, if either the child or any relevant person objects to their attendance unless the chairing member considers it is necessary for the proper consideration of the case.

The chairing member is under an obligation to take all reasonable steps to keep the number of people attending the hearing to a minimum.

(s 78(4))

There are various people who may attend children's hearings: those who attend as participants and those who attend as observers. The guiding principle in exercising this discretion is the numbers attending the hearing should be kept to a minimum,

always remembering that the essential character of the hearing is to be as informal as the circumstances permit allowing the child to actively contribute in a forum which is private and non intimidating.

In addition, when deciding whether to allow the attendance of participants, consideration has to be given to the question:

Is their presence necessary in order to obtain information to reach a decision in the child's best interests?

or

Are they there for observing for a specific purpose?

Proper consideration of the case

No other person may attend a children's hearing unless

- The person's attendance at the hearing is considered by the chairing member of the children's hearing to be necessary for the proper consideration of the case. This could involve someone who has an important contribution to make but has no entitlement to attend the hearing. (s78(2)(a))
- The person is granted permission to attend the hearing by the chairing member. This could involve an appropriate observer such as a trainee panel member, trainer, a trainee social worker etc. They would attend the hearing as an observer only.
- Any person who is authorised and required to attend by virtue of the Rules.

People who attend as participants

Social worker

The social worker or a representative from the social work department in their absence will usually attend the children's hearing. The social worker will attend as a full participant as they are likely to have compiled the report and will speak to this information and what they are recommending for the child. Although with the *Girfec* agenda, the lead professional may be someone other than the social worker.

Other professionals working with the child

Also other professionals working closely with the child, for example, the health visitor, teacher, psychologist, etc may have prepared a report for the hearing and will usually be invited to attend the hearing. They do not have the right to attend the children's hearing may decide to restrict their attendance to the part of the hearing which deals with their own reports.

People who attend as observers

Trainee panel members and others

Trainee panel members observe children's hearings as part of the compulsory Pre-Service Induction. In practice they may be permitted to have sight of the paperwork from panel members directly before the children's hearing. The chairing member may also admit children's hearings training officers, social work students and people engaging in research relating to children who come to a hearing provided that the chairing member believes that the person has a legitimate interest or justification to attend. A member of SCRA will normally inform the panel members of who has been invited to attend the hearing and who has arrived. This enables the chairing member to check who is entitled to be present. (s 78(3))

Any decision about admitting observers (with no right to be present) into the hearing should take place:

- at the beginning of the hearing and outwith the presence of the observers
- before any discussion has taken place
- in consultation with the child and family.

6 BEGINNING THE HEARING

A panel member should prepare thoroughly on their own in advance of the hearing. In the discussion before the hearing, panel members should only consider procedural issues - not those of substance. This is dealt with in the section entitled 'The Panel Member at the Hearing.'

The opening stages of the hearing set the tone for what follows. A range of legal duties fall upon the chairing member but the other two panel members can make a contribution with a pleasant greeting and active listening. If the opening stage is handled poorly, the quality of the whole hearing may be affected and it may affect how the child and relevant person/s participate in the hearing.

Introductions

When a family comes into the hearing room, the chairing member should introduce him or herself and the others present, at the same time explaining each person's function. The reporter should make their own introductions.

The chairing member must check the age of the child to find out if the child is a child within the meaning of the legislation. However, the chairing member is not under an obligation to ask the child's age if they consider that the child would not be able to understand the question. (s 124)

The reporter is obliged to keep a record of the hearing which will include the addresses of the child and the relevant persons although hearing members must be alert to whether a non-disclosure provision applies. (Rule 13)

If the child is not present

The child has a right to attend any children's hearing held in relation to their situation. If a pre-hearing panel had been arranged in advance of the children's hearing, all panel members will have been given paperwork detailing what determinations were made particularly in relation to whether the child had been excused from attending the children's hearing. The determination of a pre-hearing panel in relation to this

matter stands. If a children's hearing decide that they do not want to make a decision without the child being present they must defer the hearing for the child to attend the next hearing.

If the child has been correctly notified, has not been excused from attending the hearing and there is no other reason known why the child has not attended the hearing, the children's hearing may ask the reporter to consider making an application for a warrant to secure the child's attendance. On cause shown by the reporter, the hearing may issue a warrant to secure the child's attendance at the hearing. This warrant grants the power to the police to uplift the child and bring them to the children's hearing and is a decision which should not be taken lightly. (s 123)

If the relevant person is not present

A relevant person has a right to attend any children's hearing held in relation to their child. If a pre-hearing panel had been arranged in advance of the children's hearing, all panel members will have been given paperwork detailing what determinations were made particularly in relation to whether the relevant person has been excused from attending the children's hearing. The determination of a pre-hearing panel in relation to this matter stands. If a children's hearing decide that they do not want to make a decision without the relevant being present they must defer the hearing for the relevant person to attend the next hearing. Panel members would need to consider whether it is in the best interests of the child to do so, remembering that a relevant person cannot be compelled to attend a hearing.

Panel members must weigh up carefully the risks of delay against the value of a decision without the benefit of the relevant person's view of the situation. Relevant persons are entitled to appeal against the decision of the hearing even if not present at the hearing. A relevant person who has been notified of a hearing and fails to attend for no good reason may be prosecuted and fined in Court. (s 74(4))

If for whatever reason a relevant person is not present, there is provision within the Act for the children's hearing to proceed without him or her if it considers it

appropriate to do so. If the relevant person is not present, the hearing may wish to ask the reporter or any other person present if they are aware of any reasons why the relevant person is not in attendance. (s 75(1)(2))

Explaining the purpose of the hearing

The chairing member has a duty to explain the purpose of the hearing before the hearing considers the case.

Obviously such an explanation will vary depending on the circumstances. A child and family appearing before a hearing for the first time will need more of an explanation and if it is a very young child then any explanation must be in language that can be easily understood. The substance of the explanation would be that it is the duty of the hearing to decide if a compulsory supervision order is required for the appropriate protection, guidance, treatment or control of the child according to the circumstances which face him or her.

It is good practice that any explanation should include:

- What a hearing is.
- What format it will take.
- The purpose of this particular hearing.
- Why the child and the relevant persons have been asked to attend.
- What reports have been received and will be used as a basis for discussion.
- That the views of the child are particularly important.
- That the child's welfare will be the hearings paramount consideration in reaching a decision.
- They should question anything they disagree with or don't understand.
- They should feel free to fully participate in the discussion.

Appointment of a safeguarder s 30

In any case the panel members must consider whether they should appoint a safeguarder to safeguard the interests of the child if one has not already been appointed. The hearing may appoint a safeguarder at any time when they are deciding matters in relation to a child but for clarity and openness, it is useful to introduce the subject in the early stages of the hearing so that the child and family are clear that the panel is actively considering the matter throughout the course of the discussions.

If the hearing decides to make an appointment they must record the appointment and give reasons for reaching this decision so that the safeguarder knows what remit they have in relation to which matters the hearing wishes them to consider. If a decision is made not to appoint a safeguarder the reason for not appointing should also be recorded as this is an issue which may be raised in appeals.

When a safeguarder is appointed by a children's hearing or a pre-hearing panel, the reporter must inform the safeguarder of the date, time and place of the next children's hearing. The safeguarder will be given the same reports and information that the panel members were given in addition to the record of proceedings which sets out their remit and a copy of the decisions and the reasons for this decision as soon as practicable and no later than 7 days before the hearing (Rule 56(2) (b))

The safeguarder must prepare a report or an interim report within 35 days of his/her appointment and give a copy of this report to the reporter. (Rule 56(5))

Where an interim report is submitted to the reporter, in addition to the interim report the safeguarder must also provide the reporter with (Rule 56(6))

- A statement explaining why an interim report was produced instead of a full report.
- Details of what further investigations or information being sought by the safeguarder.
- An estimate of how much more time the safeguarder needs to complete the report .

On receipt of any report or interim safeguarder report, the reporter must arrange a children's hearing as soon as practicable to decide whether to make or review a compulsory supervision order in relation to the child. (Rule 57(1))

A safeguarder is not required to prepare a report if appointed

- By a pre-hearing panel before a grounds hearing.
- In certain emergency type situations. (Rule 56(4))
- Appointed by the sheriff.

The safeguarder has a duty to keep securely any information or documents which the reporter makes available and must return these to the reporter at the end of the hearing. They must not cause or permit any information they have attained by their attendance at the children's hearing or pre-hearing panel to be disclosed except where it is permitted by the Act or Rules. (Rule 9)

The safeguarder has the right of appeal in their own right against a decision of a children's hearing.

Explaining the statement of grounds

If following a referral, a decision is taken by the reporter to refer a child to a children's hearing, the reporter must prepare a statement of grounds including reference about

- which of the s 67 grounds apply
- the facts on which this is based (s 89)

At the opening of a children's hearing, the chairing member must explain to the child and each relevant person each s67 ground specified in the statement of grounds and ask them whether they accept each ground. (s 90)

A s67 ground must be accepted or established before a hearing can go on to consider the child's case. It is therefore crucial that the s67 ground and the

supporting statement of grounds are communicated effectively and accurately, as the child and each relevant person must be asked whether they accept them. Panel members must give time to the process and ensure that the children and relevant persons are given a genuine option to accept or deny the ground as well as to check their understanding.

The chairing member's explanation should enable the child and the relevant person/s to give a definite answer, without entering into discussion and without putting anyone under pressure to accept.

Section 67 Grounds accepted

If the child and the relevant person accept each s 67 ground or at least one of the s67 grounds, if they consider it appropriate to do so, the hearing may

- make a decision about whether a compulsory supervision order is required or
- defer making a decision about a compulsory supervision order until a subsequent hearing. (s 91)

Where the child is not subject to a compulsory supervision order and a hearing has deferred making a decision, they may, if the child's circumstances require it, make an interim compulsory supervision order as a matter of urgency for the protection, guidance, treatment and control of the child or a medical examination order if they feel that it is necessary to do so for the purposes of obtaining any further information or investigation.

Where the child is subject to a compulsory supervision order, the hearing can make an interim variation of a compulsory supervision order as a matter of urgency.

(s 92)

Grounds not accepted

If at least one of the s67 grounds is accepted but the hearing do not feel that it is appropriate to make a decision in relation to that ground alone or none of the s67 grounds are accepted, the hearing has two options:

1. the grounds hearing must either direct the reporter to make an application to the sheriff for a determination. This is generally referred to as 'sending the grounds for proof'
2. they may discharge the referral. (s 93)

If the grounds hearing directs the reporter to make an application to the sheriff for determination the chairing member must explain the purpose of the application to the child and any relevant person and inform the child that he/she is obliged to attend the hearing at court unless excused. (s93(4))

The grounds hearing may issue an interim compulsory supervision order (but not the authority for any specified medical or other examination) if they consider that it is necessary to do so for the child's protection, guidance, treatment or control.

(s93(5&6))

Child or relevant person unable to understand grounds

Where the grounds hearing is to take place and the hearing is satisfied that the child or a relevant person:

- Would not be able to understand the explanation given to them.
- Has not understood the explanation given to them.

In relation to the grounds, the grounds hearing must either direct the reporter to make an application to the sheriff court for determination or discharge the referral.

If the grounds hearing directs the reporter to make an application to the sheriff for determination the chairing member must, so far as possible, explain the purpose of the application to the child and any relevant person and inform the child that he/she

is obliged to attend the hearing at court unless excused. (s 94)

The grounds hearing may issue an interim compulsory supervision order (but not the authority for any specified medical or other examination) if they consider that it is necessary to do so for the child's protection, guidance, treatment or control.

If a child fails to attend a grounds hearing and was not excused from attending the hearing, the grounds hearing may require the Principal Reporter to arrange another hearing for the same purpose. (s 95)

Grounds referred to the Sheriff for proof

Where either a children's hearing has made a decision to refer a case to the Sheriff for proof because

- the s67 grounds have not been accepted
- child or the relevant person would not be able to understand an explanation of the s67 grounds
- child or relevant person has not understood the explanation given

The sheriff has a duty to consider the appointment of a safeguarder where one has not been appointed by the hearing. If the sheriff does appoint a safeguarder, the decision must be recorded and reasons given. The safeguarder appointed by the sheriff is to be treated as a safeguarder appointed by the hearing for all other purposes. (s 31)

The application must be heard not later than 28 days after the day on which it was lodged but the hearing does not need to be concluded in that period. (s 101(2))

The application before the Sheriff is not to be heard in open court which means that the child and relevant persons are offered a degree of privacy in the proceedings. (s 101(3))

The standard of proof for an offence committed by a child is the criminal one. i.e. beyond reasonable doubt. For all other grounds proof is to the civil standard being the balance of probabilities. (s 102(3))

A child must attend at court for the hearing of his/her application unless he/she is excused from doing so by the Sheriff. (s 103(2))

The Sheriff may excuse the child from attending all or part of their application if s.103

- the section 67 ground is in relation to a Schedule 1 offence or sexual offence ground
- if the attendance of the child at the hearing or part of the hearing would place the child's physical, mental or moral welfare at risk
- if the child would be unable to understand what happens at the hearing of the application. (s 103(3))

The child may attend the hearing of their application even if they have been excused from doing so by the Sheriff. (s103(4))

If the child is not excused from attending their application but does not attend, the Sheriff may issue a warrant to secure the child's attendance

- if the hearing is to be continued to another day
- the Sheriff considers that they will not attend on that day (s 103(5-7))

Both the child and any relevant person may be represented at the hearing of the application by another person but that person need not be a solicitor or advocate. (s 104)

Where the sheriff decides that:

- one or more of the section 67 grounds are established
- one or more of the section 67 grounds were accepted at the children's hearing.

the Sheriff must direct the reporter to arrange a children's hearing to decide whether to make a compulsory supervision order.

In any other case, the sheriff must dismiss the application and discharge the referral.

(s 108)

Once grounds are established by a sheriff, hearings can proceed to decide if a compulsory supervision order is required for the child without entering into dispute over contested matters.

Sheriff's powers to issue an ICSO

After an application for proof has been concluded and the child is to be referred back to a children's hearing, the sheriff may issue an interim compulsory supervision order if the child is not subject to a compulsory supervision order and the sheriff is satisfied that:

- there is a need for protection, guidance, treatment or control of the child and
- It is necessary as a matter of urgency. (s 100 & 109)

If the sheriff's ICSO requires the child to reside at a place of safety, a children's hearing must be held, within 3 days beginning with the day the child begins to reside at the place of safety. The sheriff in considering the making of certain orders and warrants, must only make, vary, continue or extend the order or interim variation or grant a warrant if the sheriff considered is more beneficial to the child to do so.

(s 29)

Section 67 Grounds accepted

If the section 67 grounds are accepted, the hearing may proceed to consider the case.

Summary

The children's hearing cannot proceed if:

- The child or any relevant person does not accept the grounds.

- The child or relevant person does not understand the grounds or is incapable of understanding the grounds.

The hearing's options are to either discharge the referral or direct the reporter to make an application to court for determination.

The hearing can proceed if:

- The child and any relevant persons accept the grounds.
- The child and any relevant person accepts the statement of grounds in part.

The hearing options are to proceed on the accepted grounds either in whole or in part, discharging the ground not accepted or discharge the case.

The children's hearing can amend or delete the statement of grounds as appropriate.

When sending a case to the sheriff for determination the chairing member must:

- Inform the child and relevant person of the purpose of the application.
- Inform the child he or she has a right to be present at the hearing in front of the sheriff and is under an obligation to be present unless excused by the sheriff from attending.

7 CONSIDERATION OF THE CASE

The children's hearing must consider the grounds, any remit and any reports which have been made available to them, particularly the local authority report on the child and his or her social background. Reports come in a variety of forms and in many areas panel members will receive one report containing a single integrated assessment on the child drawn from a number of professionals involved in the child's case. On other occasions panel members may receive individual reports from social work, health and education which will detail the agencies' involvement with the child.

If the reports which have been provided to panel members, the child and relevant persons have not been received at least three days before the hearing, panel members must consider whether it is absolutely essential to proceed with the hearing. It may be essential to proceed if it is an emergency hearing or if the child would be at risk if the panel deferred the hearing or if an interim compulsory supervision order or compulsory supervision order was about to lapse and would expire unless a decision was taken. In the absence such a necessity to proceed the children's hearing should normally be deferred although the hearing can make an interim decision if necessary.

The substance of the reports

The chairing member has a duty to inform the child and any relevant person of the substance of the reports. The information disclosed should cover the core issues which are material to the consideration of the case and which may have a bearing on the decision to be made.

There are various reasons for this:

- To make clear to the child, relevant persons and others present what the hearing considers as the main issues to be discussed.
- The child may not have received a copy and should be made aware of what is written about his or her circumstances.
- A child and or relevant person might not be able to read.
- The child and any relevant person may not want to read the reports.

- The child and any relevant person may have read the reports but not have understood what was written.
- The child and any relevant person should be able to give their opinions about the contents of the report and to challenge any possible inaccuracies.
- Other professionals at the hearing may not have seen each others' reports.

It is a general principle that the child should be given the opportunity to express their views before the hearing takes place so that these views can be incorporated in the reports which the hearing will consider. As such, the chairing member also has a duty to ask the child whether the documents provided accurately reflect any views expressed by the child. The exception to this is when the chairing member considers it would not be appropriate to do so given the age and maturity of the child.

(s.121)

Discussion of the case

It is the duty of the hearing to involve the child, any relevant person and representatives, any appointed safeguarder, in the discussion in order to obtain their views on what arrangements would be in the child's best interests. Best practice also dictates that panel members should discuss the arrangements to be made with the social worker and any other present who can make relevant contributions. A decision should not be made on an issue which has not been discussed.

Non-disclosure of information

A children's hearing does not need to disclose information to a person if the disclosure of that information is likely to cause the child significant harm. The test for this is a high one in that if the information is disclosed the harm to the child would be **significant** in nature and therefore likely only to arise in exceptional circumstances.

This could involve:

- withholding an explanation of what has taken place when the children's hearing has spoken to the child on their own
- information about the child's case

- other information provided for the hearing
- the reasons for the decision. (s 178)

Although extreme care would need to be taken about with holding reasons for the decision. For more information, refer to Non Disclosure of Information at page 375.

Adjourning the hearing

If some temporary problem arises which prevents panel members from reaching a decision on the case being considered, it is possible to adjourn the hearing to allow the immediate problem to be resolved.

This might be for example:

- A child or a family member being upset or distressed.
- Someone at the hearing feeling temporarily unwell.
- Someone who should be attending is delayed.
- Panel members wish to seek some other information which could affect their decision.

Depending on the situation, the chairing member of the hearing will judge whether an adjournment could be beneficial and for how long this should be. It might simply be a matter of waiting a few minutes for everyone to calm themselves or a longer time may be required. It is competent to adjourn the hearing until any time later the same day. The adjourned hearing must be constituted in the same way. i. e. the same three panel members must be present at the adjourned hearing or else it would be incompetent. If the hearing cannot restart on the same day then the hearing must be defer making a decision until a subsequent hearing.

Views of the child

The reporter when notifying the child of the hearing will let him or her know that he or she is entitled to express his or her views. Children are given an “All about me” form which enables them to have their say about a number of relevant questions. There is

also additional space for the child to add any additional comments which they might want to express.

The hearing must give the child an opportunity to indicate whether he or she wishes to express any views and if this is the case, ensure that the child has an opportunity to do so.

If necessary, in order to obtain the views of the child, or if the presence of a particular person or persons is causing significant distress to the child, the hearing may exclude a relevant person, or persons and /or their representatives from any part of the hearing for as long as is necessary in the interests of the child. This decision should be taken by the hearing and the responsibility should not be placed on the child. (s 76/77)

After the exclusion has ended, the chairing member of the hearing must explain to the relevant person(s) and/or representative of the relevant person(s) what has taken place in their absence. Best practice would promote discussing and agreeing the nature of the feedback with the child before parties have returned to the room although it is very important that all substantive matters are relayed to the excluded person.

A representative of the press or a news agency may also be excluded from the hearing if it is necessary to obtain the views of the child or if that person is causing or is likely to cause the child significant distress. When this exclusion has ended the chairing member **may** explain what the substance of what has happened in the person's absence if it is appropriate to do so. (s 78(5))

The chairing member of the children's hearing must ask the child (taking into account the age and maturity of the child) whether the reports and documents provided to the child accurately reflect the child's views. It would be best practice to do this at the beginning of the hearing so that if the report and documents do not accurately reflect the child's views that this can be remedied during the course of the hearing by questioning and discussion. (s 121)

Generally speaking, a child aged twelve or over is presumed to be of sufficient age and maturity to form a view but children under the age of twelve should also be given the opportunity to express their views. Indeed some children over the age of twelve may not be mature enough for a variety of reasons to do so including the fact that they may have learning difficulties. (s 27)

Summary

A hearing must:

- give a child the opportunity to indicate whether he/she wishes to express a views
- listen to those views
- have due regard to them.

Decisions and Reasons



CONTENTS

- 1 Introduction**
- 2 Disposals available to Hearings**
- 3 Appeals against a children's hearing**

1 INTRODUCTION

The Panel Members Role

A panel member's primary role is to make a decision about whether or not a child requires compulsory supervision. The elements of these measures are protection, treatment, guidance and control or a combination of some or all of them. The aim of a hearing's decision is to intervene positively in a child's life in order to change the circumstances for the better. Hearings have extensive powers which may have far reaching implications for and consequences on the life of a child and his or her family. The decision making task is therefore complex and difficult; with the authority to make such decisions comes the responsibility to treat families with dignity and respect and to ensure their rights are protected as far as possible.

Principles for decision-making

The principles of the children's hearings system, set out in the section on History and Principles, provides an underlying philosophy for hearings decisions. In addition, the principles of the Children's Hearings (Scotland) Act 2011, establish a broad framework for most of the decisions made by pre-hearing panels and hearings:

- The need to safeguard and promote the welfare of the child throughout their childhood as the paramount consideration except when to protect the public from serious harm.
- The child's views must be sought and if expressed, taken into account when reaching a decision.
- The beneficial principle - children's hearings should only make an order if it would be better for the child than not making an order.

Further themes should also be considered

- every child has a right to be treated as an individual
- every child has the right to be protected from all forms of abuse, neglect and exploitation

- parents should normally be responsible for a child’s upbringing and every effort should be made to preserve the family unit provided it is not to the detriment of the child
- regard should be paid to a child’s religious persuasion, racial origin and cultural and linguistic background and any disability
- any intervention by a public authority in a child’s life must be proportionate and properly justified and should be supported by services from all relevant agencies working together.

Protection of the public

Although the child’s welfare must normally be the paramount consideration for hearings and courts, the Act nevertheless allows this principle to be waived if there is a serious threat to public safety. (s 26)

This decision, which for example could allow a child to be kept in secure accommodation, carries with it a high test and should not be taken lightly. The criteria is met only if a case can be made *“for the purpose of protecting members of the public from serious harm (whether physical or not), ...”*

If a child is to be deprived of their liberty, in order to protect the public, a hearing must ensure that the child’s rights are fully protected. Legal Aid for a solicitor to offer legal assistance to the child will be automatically available.

Non-Disclosure of Information Request

A children’s hearing does not need to disclose information to a person about the child if the disclosure of the information to the person would likely cause significant harm to the child. However the following information **cannot** be withheld:

- the statement of grounds
- a copy of a remit by the court for a criminal matter
- a copy of requirement under the Antisocial Behaviour Act
- order or warrant to which the child is subject. (s 178; Rule 84)

A non-disclosure request must state

- the parts of the document which should not be disclosed
- why this information should not be disclosed
- the person/s who should not have this information
- the reasons why the person/s should not have this information.

Where a children's hearing has been arranged and a non-disclosure request is received by the reporter from a report writer or the reporter considers that there is information contained in the report or document which should be withheld; the reporter must refer the matter to the children's hearing for determination. For further information refer to Section 9 of the Legislation and Procedure Handbook. (Rule 85)

2 DISPOSALS AVAILABLE TO HEARINGS

The Children's Hearings (Scotland) Act 2011 promotes the one order principle. i.e. that there should only be one order made in respect of any child referred to a children's hearing at any given time.

COMPULSORY SUPERVISION ORDER (CSO)

A children's hearing can make a compulsory supervision order (CSO) if the hearing considers that it is necessary for the protection, guidance, treatment or control of the child.

A CSO is a legal document which means that the implementation authority must be involved in the child's life and are responsible for ensuring that the child is supported. In reaching a decision that a compulsory supervision order is required for the child, the hearing should focus on what that actually means in practice and what it is intended to achieve. This will also assist panel members when writing their written reasons.

There should be a care plan in the report which deals with the immediate needs of the child as well as that of the longer term needs of the child. The plan should outline the aims of supervision, why this is the best course of action, what the intervention will achieve and what will be expected of the child and family. The hearing must be satisfied that making the order will be more beneficial for the child than not making the order.

A compulsory supervision order

- Must be necessary for the protection, guidance, treatment or control of the child.
- Must specify one or more measures noted below. (s 83(3))
- Must specify within its terms the local authority who is to be the implementation authority.
- Lasts for a maximum of one year.

Every CSO will as a minimum contain a standard measure that the local authority supervises the child and that the child accepts that supervision.

Relevant period

When making a compulsory supervision order the children's hearing should name the period of time that the order has effect. This provision allows panel members the opportunity to set a date in terms of the duration of the compulsory supervision order. Given the practicalities for professionals of managing differing expiry dates on compulsory supervision orders, panel members should consider specifying a year and calling for an early review if they wish to have the child returned to a children's hearing. (s 86(1)(c))

Further Measures attached to a compulsory supervision order

Panel members can make their intentions for supervision more specific by adding further specific measures to a compulsory supervision order, an interim compulsory supervision order or an interim variation of a compulsory supervision order.

The measures are as follows:

- A requirement that the child reside in a specific place.
- A direction to restrict the child's liberty whilst residing in a specific place.
- A prohibition on the disclosure of the address of the child where the child is required to reside in a specified place.
- A movement restriction condition.
- A secure accommodation authorisation.
- A requirement for specified medical or other examination for the child- only with the child's consent.
- A requirement for specified medical or other treatment for the child-only with the child's consent.
- A direction regulating contact between the child and a specified person or class of persons.
- A requirement that the child comply with any other condition.

- A requirement that the local authority carry out specified duties in relation to the child. (s 83(2))

The reasons for any measure attached to an order must be included in the reasons for decision as this may be appealed against this element alone.

No compulsory supervision order should last longer than it is necessary to safeguard or promote the welfare of the child and a children's hearing cannot make a decision about a compulsory supervision order unless there is a report on the child's circumstances.

CONTINUATION, VARIATION OR TERMINATION OF A COMPULSORY SUPERVISION ORDER

When reviewing the situation of a child who is subject to a compulsory supervision order the children's hearing must consider whether the child continues to be in need of a compulsory supervision order, and if so they may:

- continue the compulsory supervision order
- continue and vary the compulsory supervision order
- vary the compulsory supervision order.

If they do not consider that the child is in need of a compulsory supervision order they may:

- terminate the compulsory supervision order.

Continue the compulsory supervision order

- If the children's hearing considers that the child continues to be in need of the same form of compulsory supervision, the hearing may continue the order which will last for one year from the date of the continuation. This order has effect for one year although a hearing could specify a different relevant period.

Continue and vary the compulsory supervision order

- If the children's hearing considers that the child continues to be in need of a compulsory supervision order but there is a change to be made to the order or one of its measures i.e. change of address, the hearing may make a variation to its terms. This order has effect for one year although a hearing could specify a different relevant period.

Vary the compulsory supervision order

- This provision allows an element of the compulsory supervision order to be varied. If the CSO is simply varied the expiry date remains the same as it was before the review and there is no extension of this date.

Terminate the compulsory supervision order

- If a children's hearing considers that a compulsory supervision order is no longer necessary for the child, they may terminate the compulsory supervision order. It is important for panel members to be mindful of the Whole System Approach which promotes vulnerable children remaining on compulsory supervision for an appropriate time after they have reached 16 and potentially up until their eighteenth birthday to ensure that they make as successful transition into adult society as is possible.
- If the compulsory supervision order is terminated the panel members have to consider whether the child needs supervision or guidance. If the hearing does decide that the child does need supervision or guidance, it is the duty of the local authority to give such guidance and supervision as the child will accept despite the fact that the compulsory supervision order has been terminated.

DEFERRAL OF DECISION

If the children's hearing considers it appropriate to do so, they may defer making a decision on whether to make a compulsory supervision order to a subsequent children's hearing. (s 138)

Deferring making a decision usually means that the hearing has decided to postpone making a decision until a future date to allow something to happen in the interim. However the children's hearing may defer making a decision and continue the compulsory supervision order until the subsequent children's hearing. (s 139(2))

Additionally if the children's hearing considers that the nature of the child's circumstances is such that for their protection, guidance, treatment or control it is necessary **as a matter of urgency**, the hearing may defer making a decision and at the same time make an interim variation of the compulsory supervision order. (s 139(3))

If a children's hearing excuses either the child or any relevant person and defers the decision of the hearing, that excusal lasts until a dispositive decision is made. (s138(8/9))

There may be various reasons why a hearing might be deferred including:

To seek further information

If after discussion it is considered that there is not enough information to make a decision, the hearing may be deferred to allow this information to be made available. It could be that the hearing has decided that it requires a further report possibly of a specialist nature or it may be that they wish the child to be accommodated and there are no identified foster carers.

For appointment of a safeguarder

The hearing may be deferred and a safeguarder appointed. The safeguarder's role is to safeguard the interests of the child during the term of the appointment. A safeguarder may be appointed when a hearing is not clear from the available information what course of action would be in the child's best interests and guidance on this matter is requested. A children's hearing:

- Must consider whether to appoint a person to safeguard the interests of the child.
- May appoint a safeguarder at any time when the children's hearing is still deciding matters in relation to the child.
- Must record any appointment made.
- Must give reasons for its decision to appoint a safeguarder so that the safeguarder has a clear remit on the matters which require investigation.

For the arrangement of legal assistance

Refer to section 12 for more discussion on legal assistance.

To allow someone to attend the hearing

If the child or any relevant person notified to attend the hearing does not appear on the stated date, the hearing may defer making a decision to allow them to attend.

The hearing might also be deferred to allow the attendance of someone whose participation will be crucial to the decision, for example, the appointed safeguarder or any person whose input may be instrumental to the decision making process, for example, the allocated social worker or a guidance teacher.

To send the case for proof

Although not a deferral in the technical sense, because there is no guarantee that the sheriff will find a section 67 ground established: if it has been decided to send the statement of grounds to proof, the hearing cannot make a substantive decision at this stage. The only options open to a children's hearing will be to make an interim decision pending the outcome of the application to court.

The application to court must be heard by the sheriff within 28 days after submission but this does not mean that the case will be concluded within this timescale. If the sheriff finds a section 67 ground established, he will remit the case to a children's hearing for a children's hearing to make a decision about whether a compulsory supervision order is required. If he does not find a section 67 ground established, he will discharge the referral and the case will not return to a children's hearing in relation to these grounds.

To seek advice from the National Convener

On occasion, a hearing may decide to seek advice from the National Convener about any matter arising out of the functions of a children's hearing and this may include:

- Legal advice.
- Advice about procedural matters.
- Advice about the consequences of a decision.
- Advice about how decisions of hearings are implemented. (s 8)

In these situations, the hearing must defer making a decision until the advice has been received. It is expected that panel members will use this option as a last resort and should in the first instance have considered and exhausted all sources of information. The National Convener must provide written advice if requested in writing to do so within 14 days of the request.

DEFERRING A DECISION AND AN INTERIM COMPULSORY SUPERVISION ORDER (ICSO)

If a decision is deferred and the child is not subject to a compulsory supervision order, the hearing may make or continue an ICSO if they are satisfied having considered the child's case that it is necessary as a **matter of urgency** for the protection, guidance, treatment or control of the child. (s 120)

Some things to remember about ICSOs are:

- The same measures which apply to a compulsory supervision order can also be applied to an interim compulsory supervision order and again at least one measure must be attached.
- The implementation authority must be specified.
- The child can remain at home and be subject to an interim compulsory supervision order.
- The child may be required to reside in a specified place or in a place of safety.

The ICSO can until the earliest of the following:

- Until the next children's hearing.
- The disposal of the proof application.
- The date specified in the order.
- 22.days (s 86)

A hearing can issue a further ICSO for a maximum of 66 days prior to a proof hearing in court. (s96(4))

On application by the Principal Reporter, a sheriff may make further extensions to the order if satisfied that it is necessary to do so and that the nature of the child's circumstances is such that an extension is needed for the protection, guidance, treatment and control of the child. (s 98-99)

DEFERRING A DECISION AND AN INTERIM VARIATION OF A COMPULSORY SUPERVISION ORDER

If a child is subject to a compulsory supervision order and as a matter of urgency, there needs to be a change to the terms of that order, the hearing may make an interim variation of the compulsory supervision order (IVCSO) if it is necessary, as a matter of urgency, for the protection, guidance, control or treatment of the child. An interim variation may order that the child resides in a place of safety away from the

place where the child predominantly resides and may include secure accommodation authorisation.

Some things to remember about IVCSOs are:

- The same measures which apply to a compulsory supervision order can also be applied to an interim variation of a compulsory supervision order and again at least one measure should be attached.
- The implementation authority must be specified and the relevant period.
- The child can remain at home and be subject to an interim variation of their compulsory supervision order.
- The child may be required to reside in a specified place or in a place of safety.

The interim variation of a compulsory supervision order lasts until the earliest of the following:

- Until the next children's hearing.
- The disposal of the proof application.
- The date specified in the order.
- 22 days.

The interim variation can last for up to 22 days but there can be further interim variations. (s140)

DISCHARGE THE REFERRAL

If after careful consideration of an accepted or established s 67 ground, the hearing considers that the child is not in need of a compulsory supervision order, the referral may be discharged. Panel members may feel that they would want to suggest to the family the possibility of working with the local authority on a voluntary basis. There is however, no obligation on the child and family to accept this advice. If the case is discharged, the child cannot be re-referred to a children's hearing on the basis of this information on its own.

MEDICAL EXAMINATION ORDER

When either at least one ground has been accepted at a children's hearing or established in court and the hearing considers it necessary to do so, they may make a medical examination order in relation to the child for the purpose of obtaining further information or carrying out any further investigation. (s 92)

A children's hearing may only make the order if they consider that it is better for the child that the order is in force than not. (s 28)

Where the child has capacity or sufficient understanding to consent under the Age of Legal Capacity (Scotland) Act 1991- a child of 12 years and over, the medical examination order involving surgical, medical (including psychological) or dental procedure or treatment may only be carried out if the child consents to this procedure or treatment. (s 186)

A qualified medical practitioner would need to be satisfied that there is an understanding on the part of the child of the nature and possible consequences of the treatment.

A medical examination order in relation to a child means an order for a relevant period authorising any of the following measures;

- A requirement that the child attend or reside at a clinic, hospital or other establishment.
- A requirement that a local authority arrange a specified medical examination of the child but only with that child's consent.
- A prohibition on the disclosure (direct or indirect) of the clinic, hospital or establishment.
- A secure accommodation authorisation - if the child meets at least one of the secure and MRC criteria.
- A direction regulating contact between the child and any person or class of persons.

- Any other condition which the children’s hearing feels is appropriate for ensuring that the child complies with the order. (s 87)

This option is only available as a disposal to a children’s hearing in extremely limited circumstances. I.e. after a section 67 ground has been accepted or established and not at any other subsequent review.

The maximum duration of the individual order is 22 days.

MOVEMENT RESTRICTION CONDITION (MRC)

Where a children’s hearing are making, varying, continuing or continuing and varying a compulsory supervision order and they consider that the child meets at least one of the following secure and MRC criteria applies, the hearing must first consider all other options available to them before making a secure authorisation. (s 83)

Secure and MRC Criteria

The secure and MRC criteria are as follows:

- That the child has previously absconded and is likely to abscond again and, if the child were to abscond, it is likely that the child’s physical, mental or moral welfare would be at risk. or
- That the child is likely to engage in self harming conduct .or
- That the child is likely to cause injury to another person. (s 83(6))

One of the options open to the hearing is to make a movement restriction condition which restricts the movements of the child in a way specified in the movement restriction condition and requires the child to comply with the arrangements made for monitoring compliance of the restriction. (s 84)

An MRC restricts the movement of the young person and can specify that he/she

- Remain at a certain address between certain hours (not more than 12 hours in 24hours).

and/or

- Prohibit that young person from entering a certain area or address.

When a movement restriction condition is made, the hearing must set a review.

(s 125)

WARRANT TO SECURE ATTENDANCE OF THE CHILD

The reporter can make an application to a children's hearing for a warrant to secure the attendance of the child at a children's hearing. The hearing does not have the power to make a warrant on their own initiative therefore if the children's hearing feels that such a warrant may be necessary to secure the child's attendance, they may ask the reporter to consider making an application for a warrant at that hearing. However, the reporter is not obliged to do so. The powers of this warrant are quite wide ranging and include authorisation for an officer of the law to:

- Search for and apprehend the child.
- To take the child and keep them in a place of safety.
- To bring the child before a children's hearing.

The officer is also empowered to break open shut and lockfast places in order to execute the warrant. The warrant may also include a secure authorisation **if** the child meets one or more of the secure and MRC criteria which are (s 88)

- That the child has previously absconded and is likely to abscond again and, if the child were to abscond, it is likely that the child's physical, mental or moral welfare would be at risk. or
- That the child is likely to engage in self harming conduct. or
- That the child is likely to cause injury to another person. (s 83(6))

COMPULSORY SUPERVISION ORDER- A CHILD'S PLACE OF RESIDENCE

Child's place of residence

A compulsory supervision order may specify where the child should live. This could be with both parents in the family home, one parent rather than the other, with any person who holds parental responsibilities and rights in relation to the child, with a kinship carer(a person who is related to the child or who is known the child and has a pre-existing relationship with the child), with an approved foster carer, with a carer deemed by the local authority to be suitable on an emergency basis only (for a time limited period) or in a residential establishment such as a children's home, a residential school or in certain circumstances, secure accommodation.

Panel members must not make a compulsory supervision order specifying residence with persons other than relevant persons unless they have received from the local authority or fostering agency information that:

- (a) the place where the child is to reside and the persons who are to look after the child are suitable to meet the needs of the child; and
- (b) the necessary checks have been carried out in compliance with the Looked After Children (Scotland) Regulations 2009.

It will obviously be essential to seek the views of the child and family about any proposed placement away from home and to make sure that the plans are explained to them in as much detail as possible. It is important for panel members to remember that the child and or the family may want to propose as an alternative potential carer, a member of the extended family or a close friend. In these circumstances the local authority would have to carry out an assessment of the suitability of the placement before a decision is made. In particular the question of contact will become crucial when a child is to be removed from his birth parents or extended family.

Kinship carer

The local authority may approve a person who, is related to the child or a person who is known to the child and who the child has a relationship with the child, as a suitable carer for the child. In these circumstances, this person will be called a 'kinship carer'. Any kinship carers must enter into a written agreement with the local authority regarding their obligations to the child and the local authority must be satisfied that the placement is in the best interests of the child following a full assessment in compliance with the Looked After Children (Scotland) Regulations 2009

Foster care

Under the Looked After Children's (Scotland) Regulations 2009, a child may only be placed with a foster carer who has been approved by the fostering panel of the relevant local authority. The local authority must be satisfied that the placement is in the best interests of the child and that the placement with the prospective approved foster carers is in the best interests of the child. The local authority, before recommending any placement must have fully considered the possibility of placing the child with parents or kinship carers.

In terms of the assessment of either a foster kinship carer, foster carer, the local authority must have obtained a range of information about the carers including

- age, marital status, health and personality
- particulars of the carers house and other members of the household(adults and children)
- religious persuasion, racial origin, cultural and linguistic background
- employment, standard of living and leisure activities and interests
- previous experience of caring for children
- any past criminal convictions
- the outcome of any previous applications to foster a child
- references from third parties as to their character.

In recommending the placement of a child with a particular foster carer, the local authority must satisfy panel members that the checks have been made and that this placement is in the child's best interests in writing and within the legal timescales.

Emergency foster placements

In emergency circumstances, the best solution for a child may be a temporary placement in the home of a close relative, a member of extended family or close family friend who has not been approved under the regulations. In this situation, if the carer appears to be the most suitable way of meeting the child's needs, a temporary placement may be made once the social work department have interviewed the prospective carer and made an assessment of the home situation. The carer must give written agreement to carry out specific duties in relation to the care of the child. If the placement is deemed to be appropriate and to continue in the longer term, a full assessment would need to be completed as noted above.

Secure accommodation

A children's hearing may only make a secure accommodation authorisation if they have first considered all other alternatives including a movement restriction condition. Where a children's hearing is satisfied that the child meets the conditions set down for secure accommodation and as such the decision is necessary to include an authorisation in the order the children's hearing can either:

- Issue an interim compulsory supervision order.
- Make a compulsory supervision order with a condition of secure accommodation naming the unit.

A compulsory supervision order may include a secure accommodation authorisation only if

- the hearing are satisfied that it would be better for the child if the order or warrant were in place than not

s28(2)

- the hearing have considered other options including a movement restriction condition and are satisfied that it is necessary to include the authorisation in the order.

The secure residential establishment must provide both secure accommodation and accommodation which is not secure whether or not this is in the same building and both would need to be specified in the order.

As detention in secure accommodation is a restriction of liberty, the child must meet one or more of the conditions set out below:

- That the child has previously absconded and is likely to abscond again and, if the child were to abscond, it is likely that the child's physical, mental or moral welfare would be at risk. or
- That the child is likely to engage in self harming conduct. or
- That the child is likely to cause injury to another person. (s 83(6))

Where a compulsory supervision order is made with secure authorisation, the reporter is under an obligation to initiate a review within a three month period beginning the date that the compulsory order was made. (s 135)

When an order or warrant is made containing secure accommodation authorisation, the chief social work officer may only implement the authorisation with the consent of the person who is in charge of the residential establishment containing the secure accommodation. (s151(4))

Because a secure accommodation authorisation deprives a child of their liberty, there is a legal duty on the chief social work officer to remove the child from secure accommodation if he/she considers it unnecessary for the child to be kept there and if a child is removed from secure accommodation, the authorisation ceases to have effect. (s151(4/5))

Appeal against secure authorisation

A child, any relevant person or safeguarder can appeal against the decision:

- to implement the secure authorisation
- not implement the secure authorisation
- to remove the child from secure accommodation.

in addition to the hearing decision to make the secure authorisation.

The chief social work officer can place a child in secure accommodation if the child is subject to an order or warrant which does not contain secure accommodation authorisation in certain specific circumstances. (s 152)

Medical examination or treatment

If a hearing believes that some particular medical examination or treatment is necessary for the child but for some reason the child is being prevented from receiving it, a requirement can be attached to the order. However the Age of Legal Capacity (Scotland) Act 1991 gives children under the age of sixteen legal capacity to consent (or refuse) any surgical, medical or dental treatment or procedure provided that they are mature enough to understand the nature and consequences of that procedure. A child therefore cannot be compelled to undergo treatment even when it is a requirement in an order.

Prohibition on the disclosure of the child's address

A hearing may prohibit the child's address being disclosed to any person or class of persons. The hearing should be aware that this provision should only be used if there is a real or potential threat to the child's safety. For example, if there is evidence that a person has threatened to remove the child from a placement or has threatened to abduct the child, there would be a real risk to the safety of that child and a justifiable reason to prohibit disclosure of the address. It would not be an appropriate use of this provision to prohibit the disclosure of the child's address because this may suit the person offering care to the child. The presumption should be that a relevant person should have information about the child's address. If the hearing has decided to withhold this information, they will have to fully justify this when delivering their verbal reasons and record these factors when compiling the written reasons.

Contact

When a children's hearing is making, continuing or varying a compulsory supervision order or any interim order, it must always consider whether a direction regulating contact between the child and another person is required.

There are numerous references to the issue of contact between a child and their parent.

Article 9(3) of the United Nations Convention on the Rights of the Child (UNCRC) sets out the child's right to personal relations and direct contact with both parents on a regular basis. The maintenance of regular contact is expressed in Part 1 of the Children (Scotland) Act 1995 as both a parental right and a parental responsibility. The presumption is that contact between child and parents is a basic right which should be promoted and protected unless the child's welfare dictates otherwise. Article 8 of the European Convention on Human Rights (ECHR) relates to private and family life and this must also be taken into account when decisions are made on whether contact should be restricted.

Where a child is removed from their home, in the majority of cases, the long term aim will be to return the child to the family and it will be crucial for the child and family to maintain contact.

When a child cannot return home, in most circumstances, some form of contact may be in the child's best interests whether this is direct contact or indirect contact.

Panel members must also be alert to any potential difficulties which may arise in contact taking place and they need to ensure that any contact direction that they make is, in fact, achievable. For example, placing the child away from home and at a great distance will make any direct contact difficult to achieve. The hearing would have to satisfy themselves that all necessary arrangements were available to the child and family so that they could exercise what is stipulated in the contact direction. Panel members should not take into account resources available to the implementation authority when making their decision.

Duty of local authority to promote contact

s 17 of 1995 Act

Where a child is being looked after by a local authority, they have a duty to take steps to promote regular contact between the child and any relevant person provided this is consistent with the child's welfare. Duties in relation to contact remain an important part of the implementing authority's duty to give effect to the compulsory supervision order and its measures.

Arrangements for contact

When considering the case of a child, a children's hearing has a duty to consider whether to include within the order, a contact direction which specifies the contact the child should have with his or her parents or any other person. The presumption should always be that every child should have contact with their parent (reasonable contact is implicit in every compulsory supervision order). If there is some reason for contact being restricted or not happening, the hearing must give very clear and robust reasons for this decision both in their verbal reasons and their supporting written reasons. A compulsory supervision order or any measure attached to it may be appealed by the child and any relevant person.

A contact direction may:

- Limit contact between the child and any named person.
- Terminate contact between the child and any named individual.
- Introduce contact between the child and any named person.
- Specify the type of contact i.e. direct or indirect contact.
- Specify how often contact should take place.
- Specify the length of contact.
- Specify whether direct contact is supervised, supported or unsupervised.
- Specify where the contact should take place.

If a hearing considers it necessary that contact needs to be regulated, they may specify the arrangement. It will be important for panel members to make specification only where it is needed. If a contact direction is very specific this may in fact become unworkable and be counterproductive.

Consider the following contact directions:

1. The child must have contact with Ms Smith, the child's mother, every Thursday between 4.30pm and 6.30pm at the Family Centre at Anytown and be supervised by the social work department.
2. The child must have contact with Ms Smith, the child's mother, on one occasion per week for a two hour period. The contact may be either supervised or supported by a person deemed suitable by the social work department.

The first contact direction is so specific in its terms that it may become unmanageable. The second contact direction offers the flexibility to promote the contact actually taking place.

There will be some cases where the child has suffered significant child abuse perhaps over a number of years and where the hearing's main responsibility will be the absolute protection of the child. As previously stated, the presumption is that contact should take place and if a hearing wishes to severely restrict or terminate contact between the child and a named individual, they must evidence why this course of action is necessary. A children's hearing must be satisfied that contact is not in the child's best interests and is having a negative impact on the child. It will be important to consider all the reports and information available, supplemented by the discussion and views of the child and family within the hearing.

Discussion of contact at the hearing

Panel members must make sure that the question of contact is fully discussed and all options are explored at the hearing. The professionals should be asked to explain any recommendations made about contact and what they would actually mean in practice. The child and their family must be included in discussing the situation and offering their views about any options which are being tabled. The hearing should fully explore the expectations about contact and what the arrangements are likely to be and should not leave the contact arrangements to the discretion of the social work department. A summary of what has been agreed (even if there is no specific contact direction contained within the order) should be noted and recorded in the reasons so that any failure to meet the expectations can be taken up by the next hearing.

Decisions about contact are often very difficult. There needs to be a balance between the importance of maintaining relationships between the child and the family against potential risk to the child's welfare. The best interests of the child, on occasion, may override the wishes and rights of parents. Hearings focussing on the removal of children from home can be fraught. Panel members need to guard against the high level of emotions exhibited by parties when dealing with the issue of contact. It is the panel member's role to reach a decision in the child's best interests and often this will not be the same as what is wanted by the parents. Once the decision has been made, it needs to be explained clearly so the family leave the hearing understanding what is going to happen even if they are not happy with the arrangements. The chairing member will also explain the right of appeal against the decision and the direction regulating contact if one has been set in place and the right to request a review of the compulsory supervision order including any measures attached after three months.

Early review

(s125(3))

The children's hearing may require the reporter to arrange an early review of the compulsory supervision order. The Act is silent on when this provision should be used and it is a matter of discretion for the hearing. It may be helpful in situations such as where a particular timeframe has been set down for a specified piece of work to take place and a review of the compulsory supervision order is needed to make decisions as a result of this. In addition, it may be used when a particular event has taken place such as an application of parental rights and responsibilities is being heard or a parent being released from prison and further decisions may flow from this event. Panel members should guard against the over use of this provision and should not use this as a means of monitoring the case as this is the responsibility of the implementation authority. The implementation authority may ask for a review at any time and in addition the child and relevant person also have the ability to bring matters back to a children's hearing.

Attending a children's hearing is in itself intervention in the child's life and applying the principle of only intervening when necessary in the best interests of the child should help panel members decide when, and when not, to set an early review date.

Communicating the decision and the reasons

During the course of the hearing, options for decision should be fully explored and views sought as to their appropriateness. When panel members are ready to make a decision, the chairing member will ask the other members in turn to give his or her decision and the reasons for that decision. The chairing member will give his or her decision and reasons. The chairing member must then state the decision of the hearing (whether unanimous or by a majority) and the reasons, drawing on whatever has been said. To ensure that written reasons reflect those given verbally, it is helpful for the chairing member or one of the other panel members to note down the key points in the reasons as they are given (first explaining to the family what is being done and why).

It is essential that reasons are explained as clearly as possible: the child and the family may not agree with the decision, but at least they should be clear why it has been made. One of the most impressive features of children's hearings is that the decisions are made openly and communicated to the child and family at the hearing: panel members do not retire to consider their decision. This is part of the spirit of openness and participation which lies at the heart of the children's hearings system.

When the hearing has made their decision disposing of the case, the chairing member must inform the child and any relevant person, safeguarder and representative of:

- the decision of the hearing
 - the reasons for the decision
 - the right of the child and any relevant person to appeal against the decision
- and
- where an appeal has been lodged against the decision, of the right to apply for the suspension of the hearing's decision pending the outcome of the appeal.

Duration and review of compulsory supervision order

As a matter of best practice, the chairing member should also inform the child, any relevant person and other parties about the duration of the compulsory supervision order, arrangements for review and the appeal rights.

The chairing member will advise the child and any relevant person in relation to the child:

- That the compulsory supervision order cannot last longer than one year unless there is a review and the reporter must initiate a review of the compulsory supervision order within three months of the expiry of the order.
s133
- That the implementation authority has a duty to ask for a review hearing if there is a change of circumstances and the compulsory supervision order ought to be terminated or varied. (s131(2)(a))
- That the implementation authority has a duty to ask for a review if there is a measure attached to the compulsory supervision order which is not being complied with. (s131(2)(b))
- That the child or any relevant person may request a review of the compulsory supervision order at any time after three months after it has been made or reviewed. (s 132)

The child and any relevant person should leave the hearing knowing:

- What decision has been made.
- Why it has been made.
- What the decision will mean in practice- i.e. what is expected of them and what supports will be made available from the agencies involved.
- What the compulsory supervision order aims to achieve.
- When any party can ask for a review of the compulsory supervision order.
- Appeal rights.

Written Reasons

As soon as is reasonably practicable after the decision has been made, the chairing member is required to make a report of the decision and a written statement of the decision and the reasons for it.

Any order, warrant or record required to be made in writing by a children's hearing or pre-hearing panel will be sufficiently authenticated if it is signed by the chairing member of the hearing or the pre-hearing panel. (Rule 98)

It is considered best practice:

- to record any minority decision and the reasons for this
- for the writing of the reasons to be undertaken by the chairing member with assistance and co operation from the other two panel members working as a team.

It is essential that the reasons are clear and robust reflecting the discussion which took place during the hearing. The written reasons must be substantially the same as those given to the family although they may be expanded where appropriate. All three panel members contribute to the writing of reasons which explain the decision of the hearing as a whole. The reasons will then be signed by the chairing member.

The reasons should indicate why a compulsory supervision order was considered to be necessary – and in what form the supervision will take. The reasons should also indicate any decision taken during the course of the hearing for example to exclude certain people and why this was necessary or if the hearing became violent or the hearing had to be adjourned.

The chairing member should advise the child and any relevant person that they will receive a copy of the written reasons in due course from the reporter usually within five days of the hearing.

Suspension of decision pending outcome of an appeal

At the end of the hearing, the chairing member must inform the child, any relevant person and any appointed safeguarder of their right of appeal and also, should they appeal, of their right to apply to the reporter to have a hearing to consider the suspension of the hearing's decision, where the decision relates to a compulsory supervision order, pending the outcome of the appeal. The reporter has a duty to arrange a children's hearing as soon as is reasonably practicable to consider this request. (s 158)

Notifications of decisions

The reporter is required as soon as reasonably practicable after the hearing but within five days of the children's hearing to send to the child, any relevant persons, any safeguarder, and the local authority a notice of the decision and the right to appeal. (Rule 88)

The reporter should also give notice of the decision to any person with whom the child is residing and where the information was given by a police officer, to the chief constable of the police area.

If a compulsory supervision order is made in respect of a child who is 16, or if a compulsory supervision order relating to a child of that age is terminated, the chief constable of the area in which the child lives must be informed.

3 APPEALS AGAINST A CHILDREN'S HEARING

It is a fundamental principle of the hearings system that decisions made by hearings should be open to challenge and ultimately, the scrutiny of the court. An appeal can be lodged if:

- the child
- relevant person in relation to the child or
- safeguarder appointed by the hearing (s 154(2))

considers that the decision is not justified.

Appeals may be made separately or jointly but in any event must be made within 21 days of the date of the hearing to the sheriff clerk. (s 154(4/5))

The decisions which can be appealed are wide ranging and include

- A decision to make, vary or continue a compulsory supervision order.
- A decision to terminate a compulsory supervision order.
- A decision to make an interim compulsory supervision order.
- A decision to make an interim variation of a compulsory supervision order.
- A decision to make a medical examination order.
- A decision to grant a warrant to secure the child's attendance at a hearing
- A decision to discharge a referral. (s 154(3))

Some of the decisions mentioned above may mean that immediate action in relation to the child needs to be taken or there is to be a restriction of the child's liberty. As such there are special arrangements for any appeal of these decisions to be heard more quickly. These appeals must be both heard and disposed of before the expiry of 3 days after the appeal was lodged in court. (s 157(2))

Those decisions attracting the expedited arrangements are:

- A compulsory supervision order including a secure authorisation or a movement restriction condition.
- An interim compulsory supervision order.
- An interim variation of a compulsory supervision order.
- A medical examination order.
- A warrant to secure the child's attendance at a hearing (s 157(1))

If an appeal is not disposed of before the expiry of 3 days, the authorisation, condition, order, variation or warrant will cease to have effect. (s 157(3))

OTHER APPEALS

Appeals against relevant person determination (s 160)

An appeal may be lodged in respect of a determination

- to deem or
- not to deem a person to be a relevant person.

or a determination of a review children's hearing that an individual

- continues to be deemed or
- is no longer deemed to be a relevant person.

An appeal can be made by the individual, the child or another relevant person in relation to the child. An appeal can also be submitted jointly by any of these persons. The appeal must be made within 7 days beginning of the day on which the determination was made and must be heard within 3 days of being lodged.

(s 160(6))

Appeal against a decision affecting contact or permanence order

(s 161)

An appeal can be made by an individual who is not a relevant person but has contact with a child and a decision has been made in relation to the child in terms of a contact order, a permanence order which specifies contact.

The appeal must be made within 21 days of when the decision was made at a hearing. The appeal must be heard and disposed of within 3 days after lodgement.

Appeal to sheriff against decision to implement secure accommodation authorisation

(s 162)

A child or a relevant person, individually or jointly, may appeal against an order or warrant which includes authorisation for secure accommodation.

The appeal may be based on a decision to:

- Implement the authorisation.
- Not to implement the authorisation.
- To remove the child from secure accommodation.

Procedure at an appeal

(s 15)

The reporter must lodge with the sheriff clerk all the information that the hearing considered, the decision of the children's hearing and the reasons for it and the record of proceedings outlining who was in attendance etc. The appeal against the decision of the children's hearing is not heard in open court i.e. only parties to the proceedings, their representatives and the sheriff and court staff will be present.

The sheriff has a duty to consider the appointment of a safeguarder where one has not been appointed by the hearing. If the sheriff does appoint a safeguarder, the decision must be recorded and reasons given.

(s 31)

The sheriff hearing the appeal has the power to examine all reports provided for the hearing and the record of proceedings completed in relation to that hearing. He may

hear evidence from a number of people including the child, relevant person, the reporter or the writer of any reports or indeed any other person he considers necessary including the person in charge of secure accommodation and the chief social work officer if the appeal relates to a decision regarding secure accommodation authorisation. (s 155(5))

The sheriff has additional powers to require any person to give a report to the sheriff for the purpose of assisting the sheriff in his decision-making. (s 155(6))

Possible decisions by the sheriff hearing an appeal

(s 156)

The sheriff has a full range of information he can rely on in order to make a decision. He has all the paperwork that the children's hearing had access to: in addition to this the sheriff can hear evidence from a range of people, may call for additional reports and will hear submissions from the appellant/s and the reporter.

When the sheriff has decided that the appeal has not been upheld, he must confirm the decision of the children's hearing and if he is satisfied that the circumstances of the child have changed since the time of the hearing he may do one or more of the following:

- require the reporter to arrange a children's hearing
- continue, vary or terminate any order, interim variation or warrant in effect
- discharge the child from any further hearing and terminate any order or warrant in force
- make an interim compulsory supervision order or an interim variation of a compulsory supervision order
- grant a warrant to secure attendance.

If the sheriff decides that the appeal should be upheld, he must recall any warrant to secure attendance if one is in force, terminate any existing interim compulsory supervision order or medical examination order and may do one or more of the following:

- require the reporter to arrange a children’s hearing.
- continue, vary or terminate any order, interim variation or warrant in effect
- discharge the child from any further hearing and terminate any order or warrant in force
- make an interim compulsory supervision order or an interim variation of a compulsory supervision order
- grant a warrant to secure attendance.

The sheriff in considering the making of certain orders and warrants, must only make, vary, continue or extend the order or interim variation or grant warrant if the sheriff considered it is more beneficial to the child to do so. (s 29)

Frivolous and vexatious appeals (s 159)

As the child and the relevant persons have the right to call a review of the compulsory supervision order after three months and have the right of appeal after every dispositive hearing, sometimes a pattern can develop of appeals being lodged for spurious reasons. As such, the sheriff has the power to order that the appellant must obtain leave from the sheriff to appeal against a decision of a children’s hearing for a 12 month period.

Other Appeals

Appeals can be made against the decision of a sheriff to the Sheriff Principal or Court of Session.

Rights of Appeal against Hearings Decisions

	Appeal against	People with a right to appeal	Time in which to appeal
s154	decision of a hearing to; <ul style="list-style-type: none"> • make, vary or continue a CSO • discharge a referral • terminate a CSO 	child relevant person safeguarder	21 days
s154 / 157	decision of a hearing to; <ul style="list-style-type: none"> • make an ICSO • make an interim variation of a CSO • make a MEO • grant a warrant to secure attendance • make a CSO with Secure Authorisation or MRC 	child relevant person safeguarder	21 days (Must be disposed of within 3 days.)
s160	relevant person determination	<ul style="list-style-type: none"> • the individual in question • child • relevant person 	7 days (Must be disposed of within 3days counting the day of lodgement as Day1)
s161	decision on review of a contact direction	person not a relevant person with; <ul style="list-style-type: none"> • a contact order in force • a permanence order in force 	21 days (Must be disposed of within 3days counting the day of lodgement as Day1)
s162	decisions relating to implementation of secure accommodation authorisation; <ul style="list-style-type: none"> • to implement authorisation • not to implement authorisation • to remove the child from secure 	child & 1 or more relevant person 2 or more relevant persons a relevant person on their own	21 days (Specified in secure accommodation regs.)

Different Types of Hearings



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- section 67 grounds hearing
- custody hearing
- review hearings
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- eighth working day hearing
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- review of relevant person determination
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2 Disposals open to the Sheriff

3 Non Disclosure of Information

1 DIFFERENT TYPES OF HEARINGS

There are a number of different types of hearings. What follows is an outline of some of the main types of hearings and the decisions available to them. Panel members are encouraged, before the start of the hearing, to check with colleagues and to quickly review what legal options are possible.

SECTION 67 GROUNDS HEARING

(s 90 to 95)

When grounds are being put for the first time there are a number of options available to panel members depending on the response from the child and family. In order to reach a decision, it is important for the hearing to explore the circumstances relating to the statement of grounds.

Panel member task

If grounds not accepted or not understood, the hearing may:

- discharge the referral if a compulsory supervision order is not required
 - send the case to the sheriff court for proof
 - send the case to proof and in a matter of urgency make an interim compulsory supervision order if the nature of the child's circumstances is such that it is necessary for the protection, guidance, treatment or control of the child (if the child is not subject to a CSO)
- or
- send the case to proof and in a matter of urgency make an interim variation of a compulsory supervision order if the nature of the child's circumstances is such that it is necessary for the protection, guidance, treatment or control of the child. (if the child is subject to a CSO)

If grounds accepted, the hearing may:

- discharge the referral if a compulsory supervision order is not required

- defer making a decision about a compulsory supervision order to a subsequent hearing
 - make a compulsory supervision order which will contain the standard measure and any other measure which is deemed to be appropriate
 - defer the case and in a matter of urgency make an interim compulsory supervision order if the nature of the child's circumstances is such that it is necessary for the protection, guidance, treatment or control of the child (if the child is not subject to a CSO)
- or
- defer the case and in a matter of urgency make an interim variation of a compulsory supervision order if the nature of the child's circumstances is such that it is necessary for the protection, guidance, treatment or control of the child. (if the child is subject to a CSO)

ADDITIONAL SECTION 67 GROUND AND REVIEW

- If a child is subject to a compulsory supervision order, is referred to a hearing by the reporter on a new ground, the hearing must proceed to consider the new ground but at the same time review the compulsory supervision order.

CUSTODY HEARING - CHILD DETAINED BY THE POLICE (s 65)

When a child has been detained in custody, the Principal Reporter has several options:

- to liberate the child if the reporter feels that there is insufficient evidence to proceed to a children's hearing
- liberate and investigate the case
- not to liberate the child and investigate.

If the child is liberated, the reporter will follow the normal investigation route and will make a decision about whether to refer the child to a children's hearing at a later date.

If the child is not liberated, a children's hearing must take place within 3 days and this initial hearing will be a section 67 grounds hearing. If the child has capacity to instruct, automatic legal aid will be available for the child.

Panel member task

The children's hearing will proceed as normal see panel member task for a section 67 grounds hearing, although panel members should be alert to the fact that the hearing will have been arranged at short notice and some of the statutory timescales may not have been met.

REVIEW HEARINGS

(s129 to 142)

It is a fundamental concept of the children's hearing system to promote and effect positive change in child's circumstances. The legislation provides for the child's circumstances to be reviewed at least annually or sooner if requested by someone with the right to do so. No compulsory supervision order will remain in force longer than:

- One year and one day after the order was made.
- The day on which the child attains the age of 18. (s 83(7))

There are numerous types of review that a panel member may come upon. It is implicit that the child is subject to a compulsory supervision order in each of the circumstances

- Annual review. (s 133)
- Child being taken to live out with Scotland. (s 134)
- Secure accommodation review (within 3 months of the order). (s 135)
- Antisocial behaviour review. (s 129)

- The child or relevant person require a review (after three months after the order). (s 132)
- The previous hearing asked for a review.

Additionally the implementation authority must require a review of a compulsory supervision order in the following circumstances

- The compulsory supervision order ought to be terminated or varied. (s 131(2)(a))
- The compulsory supervision order is not being complied with. (s 131(2)(b))
- Authority intends to make an application for permanence order or adoption. (s 131(2)(c))
- The authority intends to place the child for adoption or is aware that an application is to be made by someone or is pending.

Panel member task

The children’s hearing must consider what has happened since the original compulsory supervision order was made or last reviewed and decide what change, if any, is necessary. A suitable starting point is to look at the original grounds that brought the child into a hearing and the last reasons for the decision considering whether they are still applicable. Consideration must also be given to whether the child is still in need of compulsory supervision. If the review is requested by the child, relevant person or local authority, it is appropriate to ask the person who requested the review to explain why they have done so. Where a children’s hearing is carrying out a review of a compulsory supervision order, the following options are available to them:

In the first instance they

- May defer making a decision about compulsory supervision order until a subsequent hearing. (s 138(2))

or

- In a matter of urgency defer the case and consider making an interim variation of the compulsory supervision order if the nature of the child's circumstances is such that it is necessary for the protection, guidance, treatment or control of the child.

If they do not defer the decision they may

- Terminate the compulsory supervision order.
- Vary the compulsory supervision order.
- Continue the compulsory supervision order for a period not exceeding one year. (s 138(3))

If the hearing varies or continues the compulsory supervision order they must be satisfied that it is necessary to do so for the protection, guidance, treatment or control of the child and they must also consider whether it is necessary to include any additional measures. (s 138(4/5))

If the hearing terminates the compulsory supervision order, they must decide whether, notwithstanding this decision, the child is in need of supervision and guidance, and if so they must make a statement to that effect and it will be the duty of the relevant local authority to give the child such supervision or guidance that the child will accept. (s 138(6/7))

SECOND WORKING DAY HEARING (s 45-47)

Grounds will not be made available at this hearing. There should however be some form of report, preferably written which indicates the circumstances surrounding the child protection order, what steps have been taken, details of where the child is (provided there is not a non-disclosure direction in place) and assessment of the child's situation and potential risk factors. If the child has capacity to instruct automatic legal aid will be available for the child.

Panel member task

The hearing has three options available to them.

If satisfied that the conditions for making the order continue to be met they must either:

- continue the order or
- continue and vary the order- the variation is likely to be around the information non-disclosure direction, contact direction or parental responsibilities and rights direction. The variation may involve an entirely new measure.

If not satisfied that the conditions for making the order are met, they may

- terminate the order.

Working days are every day except

- a Saturday
- a Sunday
- 25 December
- 26 December
- 1 January
- 2 January.

EIGHTH WORKING DAY HEARING

Where the reporter considers that grounds exist and a compulsory supervision order should be made for the child, he or she must arrange for a children's hearing to take place on the eighth working day after the order was implemented. As soon as the hearing takes place, the child protection proceedings are at an end and the case must consider the situation as a normal grounds hearing.

At the eighth working day, a statement of grounds will be available and the normal processes for a grounds hearing will apply. The children's hearing may find that there is not a full report on the circumstances of the child that would allow the

hearing to make a substantive decision even if the statement of grounds were accepted by the child and the relevant person/s.

Panel member task

The statement of grounds will be put to the child (if present) and relevant persons at this hearing. In most cases because of the age of the child or because the statement of grounds have not been accepted, the children's hearing will need to consider whether to continue and send the case to the sheriff for proof or to discharge the referral.

A children's hearing can give consideration to

- issuing a interim compulsory supervision order, if the child is **not** subject to a compulsory supervision order
- making an interim variation of a compulsory supervision order if the child **is** subject to compulsory measures.

Before reaching this decision, the children's hearing should be satisfied that this course of action is necessary as a matter of urgency and that

- the risk in returning the child is too great
- the substitute arrangements for the care of the child meets the child's full range of needs.

If an interim compulsory supervision order or an interim variation of a compulsory supervision order is issued, panel members should consider if there are any measures that would need to be attached to the order.

Working days are every day except

- a Saturday
- a Sunday
- 25 December
- 26 December
- 1 January or
- 2 January.

EMERGENCY TRANSFER**(s 143)**

Another review hearing which may occur is where a child is transferred as a matter of urgent necessity.

If a child is subject to a compulsory supervision order with a measure naming a place of residence, the chief social work officer may transfer the child to another place if:

- it is a matter of urgent necessity to do so and
- it is in the interests of the child subject to the compulsory supervision order or another child resident in that place.

When the Principal Reporter is advised that the child has been transferred from a place where they are residing either under a compulsory supervision order or interim compulsory supervision order, a review of the order must be initiated. (s 136)

This hearing is an emergency hearing and must take place within 3 working days beginning the day on which the child is transferred. (s 137(3))

Panel member task

Because of the emergency nature of the situation, there are limited options available to the children's hearing.

The hearing must satisfy itself that the place where the child has been moved to meets the needs of the child and is in the child's best interests.

The options available to this hearing are very limited:

- To defer making a decision about a compulsory supervision order until a subsequent hearing.
- or
- To defer making a decision about a compulsory supervision order and in a matter of urgency consider an interim variation of the compulsory supervision order.

REVIEW OF A COMPULSORY SUPERVISION ORDER RELATIVE TO PERMANENCE ARRANGEMENTS (s 131)

Where a child is subject to a compulsory supervision order and the local authority feels that the best interests of the child would served by making an application for

- A permanence order.
- A variation of a permanence order.
- An amendment of a permanence order.
- The revocation of a permanence order.
- Placing the child for adoption.
- An application for an adoption order has been made and is pending or is about to be made.

An implementation authority must advise the reporter and require a review of the compulsory supervision order.

An implementation authority when they become aware that an application has been made for an adoption order must require a review of the compulsory supervision order as soon as practicable. (s 131(5))

Panel member task

The hearing has two tasks, in the first instance the hearing:

- Must review the compulsory supervision order and consider whether it should be varied in any way. Contact arrangements are a crucial part of the discussion in such cases and hearings should not restrict or terminate contact to further or support the local authority's plans in relation to permanence. The children's hearing should always remember to justify any reduction and have a good basis for doing so. It is not necessary for the hearing to wait for actual significant harm or distress to the child before taking action. Once an application for a permanence order has been made to the sheriff, a hearing may not at any future hearing vary the terms of the order without first having the permission of the sheriff.

- Must consider the case and the reasons why the local authority wish to pursue permanence and decide whether or not they support permanence. The hearing must prepare a report providing advice about the circumstances of the case for both the local authority and the court who will reach a decision. (The court is bound to have regard to the report provided by the hearing when coming to its decision) (s 141(2))

REVIEW OF RELEVANT PERSON DETERMINATION (s 142)

When a child is subject to a compulsory supervision order and following a review of that compulsory supervision order, it appears to a children’s hearing that an individual may no longer have a significant involvement in the upbringing of the child, the hearing must review whether or not the individual should continue to be deemed to be a relevant person in relation to the child. This must be done at the conclusion of the review of the CSO which either continues or varies the CSO.

Panel member task

Panel members may:

- Defer determining the review of the deemed relevant person status until a subsequent hearing has been convened- usually to obtain some information which would be useful in determining the matter.
- Make a determination that the individual continues to have a significant involvement in the child’s life and should retain the deemed relevant person status.

or

- Make a determination that the individual no longer has, or recently has had, significant involvement in the child’s life and should no longer be deemed to be a relevant person.

Because of the implications of this decision in removing an individual’s right to participate fully in the decision making process for the child, the individual, the child

and any other relevant person may appeal individually or jointly against the determination within seven days to the sheriff court.

SUSPENSION OF HEARING DECISION PENDING OUTCOME OF APPEAL (s 158)

When a child or relevant person appeals against a hearing's decision to make, vary, continue or terminate a compulsory supervision order, they may also request that the reporter arranges a children's hearing to consider whether the decision made by the original hearing should be suspended until there is a decision reached in respect of the appeal lodged. The reporter is bound to arrange a hearing as soon as practicable after the request has been made.

Under normal circumstances, consideration must be given to the views of the child and family and the paramount consideration must always be the welfare of the child, not only for the time being but forward looking to the rest of their childhood.

Panel member task

The purpose of the hearing is not to consider the merits of the original hearing's decision but to consider what is in the child's best interests in the period before the appeal is heard.

The children's hearing may either:

- suspend the decision of the children's hearing and any of the measures attached
- or
- not suspend the decision of the children's hearing.

The children's hearing can make no other decision. This means that the decision of the hearing will be suspended in its entirety but the child would remain subject to any CSO that was in place before the decision if there was one.

REVIEW OF CONTACT DIRECTION ORDER

(s 126)

If

- a contact direction is made within a compulsory supervision order, an interim compulsory supervision order or a medical examination order which regulates contact and
- there is someone who has a contact order or a permanence order which specifies their contact arrangements and
- this person is not a relevant person.

After the decision has been made, a further hearing must be held within 5 working days of the decision to review the contact direction that has been made. There is no requirement on either the child or any relevant person to attend the hearing.

Panel member task

- confirm the decision of the children's hearing or
- vary the order but only in terms of varying or removing the contact direction

REVIEW OF CONTACT DIRECTION ORDER REQUEST

(s 126)

The reporter must arrange a hearing to review a contact direction which regulates contact if requested to do so by a person who claims to have established family life with the child within five working days of the request.

There is no requirement on either the child or any relevant person to attend the hearing.

Panel member task

The powers of the hearing are limited in such circumstances and the hearing must

- Take no further action - if they consider that the individual who has requested the hearing does not have established family life with the child. or

In the case of an individual who has satisfied the hearing that there is established family life may

- Confirm the decision of the children’s hearing. or
- Vary the order but only in terms of varying or removing the contact direction.

REMITTS FROM COURT

In certain circumstances, the court may send a child’s case back to a hearing for disposal:

- When a section 67 ground has been established at court (s 108)
- Where a child, who is not subject to a compulsory supervision order, has appeared in court and pled guilty to or has been convicted of an offence in a criminal court. The offence which was admitted to or proven will be a ground established for the purposes of a children’s hearing. (s 71)
- Where a child, who is subject to a compulsory supervision order, has appeared in court and pled guilty to or has been convicted of an offence in a criminal court. The offence which was admitted to or proven will be a ground established for the purposes of a children’s hearing in terms of s 67(j). (s 130)
- Where an appeal against a previous hearings decision has been upheld. If the sheriff decides to remit the case to the children’s hearing for disposal in terms of any of the options open to a children’s hearing. (s 156)
- If in the course of any other proceedings involving children it appears that one of the section 67 grounds may apply, the court has the discretion to refer the case to the reporter for investigation. If the reporter considers that a section 67 ground applies and that a compulsory supervision order is necessary, he/she will bring the case to a hearing and this will be a grounds hearing. (s 62)
- Where a sheriff deals with a child under the Anti Social Behaviour etc (Scotland) Act 2004 and that child is not subject to a compulsory supervision order, the sheriff will specify a ground which will be taken to be established and require the reporter to arrange a children’s hearing. (s 70)

Panel member task

The hearing will proceed to hold a hearing under normal circumstances in the knowledge that at least one of the section 67 grounds is already established. The hearing should not treat these cases in any different way, and the decision will ultimately be to decide whether or not a compulsory supervision order is required.

Decisions available to the hearing are

- Discharge the referral,.
 - Defer the decision to a subsequent hearing.
 - If the child is not subject to a compulsory supervision order make a compulsory supervision order.
- or
- If the child is subject to a compulsory supervision order, make a continuation, variation or termination of a compulsory supervision order.

ADVICE HEARINGS

In the following circumstances, the courts may (or in some cases must) ask the hearings advice before making a decision about the child.

Criminal cases

In terms of the Criminal Procedure (Scotland) Act 1995, when a child has been prosecuted in the sheriff court and pled guilty to or been convicted of an offence, the court may (and if the child is subject to a compulsory supervision order must) seek the advice about the most suitable disposal. Higher courts other than the sheriff court are not under an obligation to seek the advice of a hearing but may do so if they feel that it is appropriate. This has been done in very serious cases involving young people.

When a hearing's advice is sought, it is important for panel members to remember that the charges itemised in the paperwork from court stand and the young person has either

- Pled guilty to these charges in court. or
- Been found guilty of these charges in court.

Panel member task

The case and the established charges must be discussed with the child and relevant persons and on the basis of this discussion, the hearing will decide what advice to offer the court. It is vital that panel members should explore the circumstances surrounding the case for example: why the offence took place, who the child was with, what influences are around. It is useful to include in the advice to give details of what has happened since the time of the offence, whether the young person has offended since the incident, broken off negative friendships, expressed remorse, gained employment, level of co-operation with agencies etc.

The options are

- To advise the court to remit the child to a children's hearing for disposal if it is considered that the resources available to the hearing are appropriate for that particular child. This is in line with the Whole System Approach for children which promotes retaining young people within the children's hearing system for as long as is appropriate in the circumstances.
- To advise the court to dispose of the case itself. The hearing may wish to suggest which of the disposals open to the court would be most suitable but only if they feel competent to do so. Some sheriffs find this type of information useful in their deliberations whilst others do not. CHS will provide further guidance in relation to national discussions with the judiciary.

At the end of the hearing, the chairing member must inform the child and family what advice the hearing will be giving and the reasons for it. It is essential that the child and family should be aware that the hearing is being asked for advice only and the court is not bound by it.

2 DISPOSALS OPEN TO A SHERIFF

Listed below are some of the disposals open to a sheriff.

Remit to a children's hearing for disposal

This power can be exercised by the sheriff whenever a young person pleads guilty to an offence or is convicted of an offence in court. The effect of this disposal is that the sheriff's involvement with the young person for the conviction is at an end and young person will be sent to a children's hearing who are empowered to make any decision open to them. Alternatively the sheriff can call for the advice of a hearing before making this disposal.

Absolute discharge

This counts as a conviction and will be disclosed on disclosure certificates.

Admonition

Admonition is a finding of guilt, even though there may be no sentence or fine imposed. It is an official court disposal and will be disclosed.

Defer sentence

The sheriff may 'defer' the sentence for a period of time for the offender to prove that he or she can be of good behaviour. Conditions may be imposed. At the period of the deferred sentence, the offender returns to court and the court has the same sentencing powers as they would have had initially but will take into consideration the how well the offender has behaved since the last calling.

Community Payback Orders

One of a number of community based orders open to the sheriff. It would consist of a number of requirements and will be tailored to allow the offender to pay back a debt to the wider community with the ultimate aim of preventing future crime.

Fine

A monetary penalty imposed by the court. Fining of children is rare and it should be noted that parents cannot be fined for their children's misdemeanours.

Caution (for good conduct)

Pronounced as 'kayshun'. The lodging of a sum of money which is to be repaid after a set period of time if no further offences have been committed. This is very rare in relation to children. Parents cannot be made to find caution for their children.

Compensation

The court may make an order requiring the offender to compensate the victim of the crime. A disposal rarely used in relation to children. Parents cannot be ordered to pay compensation on behalf of their child.

3 NON DISCLOSURE OF INFORMATION

General

In addition to the different kinds of hearing mentioned above, there may be a request from a person attending the hearing to withhold information or a document from a particular person. While this is a procedure and not a hearing in its own right, the issues that must be dealt with are very much a part of the decision making process and are contained in this section.

Dealing with a request

The children's hearing must consider the request for non-disclosure at the beginning of the hearing. In the case of a section 67 grounds hearing, the grounds must be put to the child and family first before considering the request.

Documents not subject to non-disclosure

The following documents may not be subject to a non-disclosure request:

- The statement of grounds.
- A copy of any remit from court in respect of a criminal matter.
- A copy of a relevant requirement by a sheriff under the Antisocial Behaviour etc.(Scotland) Act 2004.
- Any order or warrant which relates to the child.

Reporter's power to withhold information

When the reporter is making arrangements for a children's hearing, the reporter can, in their own right, withhold information about the whereabouts of the child or relevant person if knowledge of their whereabouts would be likely to cause significant harm to the child or relevant person.

NON DISCLOSURE REQUEST IN ADVANCE OF THE HEARING

A non-disclosure request refers to a request for information or a document to be withheld from a particular person. The criterion for withholding the information is that the disclosing of the information would cause **significant** harm to the child. This would have to be more than a temporary upset for the child. The hearing would have to be of the opinion that the disclosure of this information either about the child or the child's case would cause the child significant harm.

The request must specify:

- the parts of information or documents to be withheld and the reasons for this
- the persons the information or documents are not to be disclosed to and the reasons for this.

A reporter must arrange for a hearing to consider the request from either the report or document writer or on their own initiative if they consider it appropriate.

Panel member task

When requested to do so, a children's hearing must consider and determine a non-disclosure request at the beginning of the hearing or in the case of a section 67 grounds hearing, after the grounds have been put to the child and family, and before making a decision where they consider that the person's presence would prevent the hearing from properly considering the non-disclosure request. The hearing may exclude the specified person from the hearing when deciding this. The options open to the children's hearing are:

- to agree to the non disclosure of information.

The impact of this decision is that the specified person would not be given a copy of the information or report.

- to reject the non disclosure of information.

If the hearing makes this decision and they have excluded the person from the hearing, they must ask the excluded person to return to the hearing and ensure that the document is given to the excluded person in a manner and at a time as the hearing consider appropriate having regard to the child's best interests. If a person is to be given information, it may be necessary for the hearing to be deferred to allow the person to fully consider the information and so avoid unfairness.

NON DISCLOSURE REQUEST MADE AT A HEARING

A non-disclosure request may be made during the course of a children's hearing by

- the child
- any relevant person
- any appointed safeguarder.

Again, the criteria for withholding the information is that the disclosing of the information would cause **significant** harm to the child.

Panel member task

The children's hearing may exclude from the hearing the person to whom the information should not be disclosed. The children's hearing must consider the request and determine the request. i. e. either:

- to agree to the non-disclosure of information
- to reject the non-disclosure of information.

If the hearing makes this decision and they have excluded someone from the hearing, they must ask the excluded person to return to the hearing and ensure that the document is given to the person in a manner and at such a time as the hearing considers to be appropriate having regard to the child's best interests. If a person is to be given information, it may be necessary for the hearing to be deferred to allow the person to fully consider the information and so avoid unfairness.

Emergency Protection of Children



EMERGENCY PROTECTION OF CHILDREN

The 1995 Act established a new framework for the emergency protection of children and introduced a new series of orders. These orders continue to exist in the Children's Hearings (Scotland) Act 2011. Though wide powers are available to authorities under legislation, including the removal of children from home, strict criteria and timescales are laid down for the granting of these powers and their implementation. The child and relevant persons have the ability to challenge decisions at every stage in the process and the short timescales mean that no decision has effect for too long without proper scrutiny and review. This section explains what the procedures are and at what stage the hearing becomes involved.

Child protection order (s 37)

Any person may apply to the sheriff for a child protection order (CPO) and should, when they apply, identify the child and the grounds on which the application is made. The application needs to be supported by evidence, either documentary or verbal which is sufficient to allow the sheriff to make a decision about the application. The sheriff has to be satisfied that it would be better for the child's welfare that the order be in force than not.

Constables power to remove a child to a place of safety (s 56)

A constable may remove a child to a place of safety if satisfied that the child has suffered, is suffering or is likely to suffer significant harm and that:

- the removal of the child is necessary to protect that child from further harm and
- it is not practicable to make an application for a child protection order.

Once the child has been removed the constable must inform the principal reporter and the child cannot be kept in a place of safety longer than 24 hours.

Criteria for a child protection order

(s 39)

The person who makes an application for a CPO must believe that:

- The child has been or is being treated in such a way that the child is or will suffer significant harm. or
- The child has been or is being neglected in such a way that the child is or will suffer significant harm. or
- The child is likely to suffer significant harm unless removed and kept in a place of safety. or
- The child is likely to suffer significant harm if the child does not remain where the child is staying.

and that the order is necessary to protect the child from harm.

The sheriff may also grant a child protection order to a local authority who suspects that the child is suffering significant harm but their enquiries into the child's situation are being unreasonably denied.

(s 38)

If the application is for a child protection order, the sheriff can grant no other order.

If the CPO authorises the removal of a child to a place of safety, an attempt has to be made to implement this within 24 hours and if not the CPO will lapse.

(s 52(2))

Emergency measures

An application for a child protection order in relation to a child can be heard at any time, day or night. If, however, an application for a CPO cannot be heard by a sheriff and a child needs to be protected urgently, a Justice of the Peace (JP) may authorise the removal of a child from the home or keeping of a child in a place of safety if the basic criteria for granting of a CPO are met. This buys the applicant some time to enable a CPO to be made. In similar circumstances, the police have authority to remove a child to a place of safety.

(s 55(5))

What can a child protection order do?

(s 37(2-3))

A CPO can:

- require any person to produce a child
- authorise a child to be removed to and kept in a place of safety
- prevent the removal of the child from any place where the child is staying
- authorise an assessment of the child's health or development
- authorise an assessment of how the child has been or is being treated or neglected
- set in place any other authorisation or requirement to safeguard or promote the welfare of the child.

Where a sheriff has made a CPO for a child, he must also consider whether to include any of the following directions:

- **an information non-disclosure direction** - which is a provision to withhold information about where the child is residing from any person or class of persons
- **a contact direction** –which is a provision which controls contact between the child and the parent or any other person
- **parental responsibilities and rights direction**- which is a time limited provision about parental responsibilities and rights by the person who applied for the CPO.

A CPO lapses after 6 days if any removal to a place of safety required on the order is not implemented.

What happens following the granting of a CPO?

There is a complex chain of events which takes place once a child protection order has been granted.

Application for variation or termination

(s 48)

An application may be made to the sheriff by the child, relevant persons, and a person having significant involvement with the child or the person who applied for the child protection order, to vary or terminate the CPO before the second working day

hearing or within 2 working days after the second working day hearing has continued the order.

Advice to sheriff relative to CPO (s 50)

If an application is made to the sheriff to vary or terminate the CPO, the reporter may arrange a hearing in order to give advice to the sheriff for consideration when the application is decided. The hearing will offer advice to the sheriff as to whether the order or any ancillary measures continue to be necessary to safeguard the child's welfare. This type of hearing takes place very rarely.

The sheriff's options (s 51)

The sheriff must make a decision about the application within 3 working days after the day on which the application was made. The sheriff has a few options open to him including:

- to terminate the CPO if the conditions are no longer met
- to vary the CPO
- to confirm the CPO.

If there is no decision by the sheriff within that period, the CPO will simply cease to have effect.

Reporter's power to terminate order (s 53)

If at any time before the start of the second working day hearing or an application for a variation or termination of the order is made, the reporter may decide to

- terminate the order
- may vary the order so as to terminate a direction previously set down by the sheriff.

The reporter can only do this if further information comes to light which means that the conditions for making the CPO are no longer satisfied. If the reporter does this, he must notify the sheriff who made the order and the person who applied for the CPO. A CPO will cease to have effect after a maximum of 8 working days. (s 54)

Second working day hearing**(s 45-4)**

Unless an immediate application has been made to vary or terminate the CPO or the reporter decides to terminate the order, an initial hearing must take place on the second working day after the order has been made. This is the first time that the children's hearing will become involved. Section 67 grounds will not be made available at this hearing although there should be information available to the hearing about the circumstances of the child at the time the CPO was granted.

For further information about the panel member task in a second working day hearing, see section 9 of the Legislation and Procedure Manual.

Power of reporter to terminate a CPO before the eighth working day hearing

After the second working day hearing and before the eighth working day hearing, the reporter has a further decision to make. Due to the emergency nature of the proceedings to date, there may not have been enough information about the circumstances which led to the CPO being made. Following further investigation, the reporter may decide that a child subject to a CPO does not need to be brought before a hearing, in which case the order will cease to have effect. If the reporter decides that a child subject to a CPO should be brought to a hearing and there is enough evidence to satisfy a section 67 ground, the children's hearing will take place on the eighth working day hearing after the CPO was made.

OTHER ORDERS

It is important for panel members to know about two other orders for the protection of children although the hearing is not involved directly with child assessment orders or exclusion orders.

Child assessment order**(s 35)**

Introduced by the Children (Scotland) Act 1995, this order was created and intended to be less of an intervention into the child's life than a child protection order. It is

intended for use when the local authority have reasonable cause to suspect that a child is suffering significant harm through either action or inaction i.e. abuse or neglect and the local authority believes that an assessment of the child's health, development and the way that the child has been or is being treated is necessary, but unlikely to be carried out without an order. Only a local authority can apply for a child assessment order and the sheriff may grant one if satisfied.

A child assessment order has the power to require

- the child to be produced for the purposes of carrying out an assessment
- the taking and keeping of the child in a place where the assessment can take place.

It may also contain directions about contact and will stipulate the timescale. The assessment must begin no later than 24 hours after the order is granted and be complete within 3 days.

The sheriff on considering an application by the local authority for a child assessment order, may instead issue a CPO, if the sheriff is satisfied that the conditions set down for this order have been met.

Exclusion Orders

Exclusion orders set in place by the Children (Scotland) Act 1995 have not been repealed and replaced by the 2011 Act.

An exclusion order has the effect of removing an abuser from the family home and may be used as an alternative to a child protection order which removes the child. The effect of this order is intended to reduce the possibility of a traumatic impact on the child being removed from the home, in addition to the suffering already caused by the abuse. Only a local authority can apply for an exclusion order and three conditions must be satisfied before the sheriff grants the order:

- (a) That the child has suffered, is suffering, or is likely to suffer, significant harm as a result of any conduct, or any threatened or reasonably foreseen conduct of a named person.
- (b) That the making of an exclusion order against the named person.

- (i) Is necessary for the protection of the child (irrespective of whether the child is for the time being residing in the family home).
and
- (ii) That, if an order is made, there will be a specified person in the family home who can take responsibility for caring for the child and any other member of the family who needs such care.

Before an exclusion order can be made, the named person must have the opportunity to be heard by the sheriff, though if this cannot happen immediately, the sheriff has power to make an interim order to achieve the same result pending the full hearing of the case.

An exclusion order can last a maximum of six months and as such is not meant to be a long term measure. It can offer a breathing space while a longer term solution is sought to ensure the protection of the child.

If an application for an exclusion order has been made but the sheriff considers that the conditions for granting a child protection order are satisfied, a child protection order may be made instead.

Although exclusion orders were initially included in legislation as a protective measure for the child, there are so many practical difficulties relating to implementation and protection of the child, and also the rights of the relevant person who is to be excluded, that in practice they have been used on a very limited number of cases.

Involvement of the reporter

The reporter will receive notification of an application for an order. The child concerned will not automatically be referred to a children's hearing but the circumstances around the application for an exclusion order and the granting of an exclusion order may provide a ground for the reporter if he/she considers that a compulsory supervision order should be made or renewed in respect of the child.

Warrant and Urgent Necessity Decisions



WARRANT AND URGENT NECESSITY DECISIONS

A warrant is a measure which may entail removal of children from the home to a place of safety, possibly against their will, and this decision may entail pursuit by the police. The warrant can contain a secure accommodation authorisation.

Panel members should approach this decision with caution and are unlikely to use their power unless convinced that this course of action is appropriate. In reaching a decision panel members should weigh up the potential risks to the child and whether more harm will be caused by removal from home than by leaving the child in his or her current situation and whether the attendance of the child at the hearing could be affected by any other means

If a child has not been excused from attending the children's hearing and fails to attend the hearing without good reason, the hearing may consider whether to issue a warrant to secure the attendance of the child, if the reporter makes an application for this course of action. (s 123)

If the hearing considers that a warrant is necessary to secure the attendance of the child, they can ask the reporter to consider making an application for a warrant but the reporter is under no obligation to do so.

It should be noted that a children's hearing cannot issue a warrant to secure the attendance of the child without the reporter first making an application to do so.

Warrant to secure attendance at a children's hearing

A warrant to secure attendance gives a police officer authority to search for and apprehend the child and take the child to a place of safety and bring the child to a hearing. It also includes the power, if necessary, to break open lockfast places in their search for the child. (s 88)

Warrant to secure attendance at a children’s hearing with secure accommodation authorisation

A warrant to secure attendance may also include a secure authorisation if:

- The warrant authorises the keeping of the child in a residential establishment. and
- One or more of the secure criteria are met. and
- Having considered all other options the children’s hearing consider it is necessary to do so.

The secure criteria are:

- The child has previously absconded and is likely to do so again and if the child was to abscond, the child’s physical, mental or moral welfare would be at risk.
- That the child is engaging in self harming conduct.
- The child is likely to cause injury to another person.

Where a warrant has been granted to secure the attendance of the child, wherever practicable, the reporter must arrange the children’s hearing to take place on the first working day after the child has been detained. (Rule 17)

URGENT NECESSITY DECISIONS

In certain situations, a children’s hearing may have to make a decision in relation to the child in urgent necessity. In these types of situations, an immediate decision needs to be made to protect the child. There are certain ‘protective’ procedures which can be applied but it is important to remember that there is a presumption of a one order principle throughout the legislation.

If a child is not subject to a compulsory supervision order, there is an interim measure which can be set in place for the child if it is necessary as an urgent necessity.

If the child is subject to a compulsory supervision order, there is an interim measure which varies the current compulsory supervision order which can be set in place for the child if it is an urgent necessity.

WHEN A CHILD IS NOT SUBJECT TO A COMPULSORY SUPERVISION ORDER

If it is necessary as a **matter of urgency** for the protection, guidance, treatment or control of the child, interim compulsory supervision order (ICSO) may be made. This order is highly flexible and offers panel members a range of options for the child. The child can be removed from home or remain in home on an ICSO. The child can be required to reside in a named place or in a place of safety. As with a compulsory supervision order (CSO) at least one measure must be attached to the order and the implementation authority must be named. An ICSO lasts for 22 days but can be renewed lasting up to a total of 66 before the section 67 ground is established in court. If grounds are accepted or established there are no limit to the ICSOs which may be set in place by the children's hearing.

WHEN A CHILD IS SUBJECT TO A COMPULSORY SUPERVISION ORDER

If a child is subject to a compulsory supervision order it is necessary as a **matter of urgency** for the protection, guidance, control or treatment of the child, an interim variation of a compulsory supervision order may be made. This order allows the child to reside in named place (including the child's own home) or a place of safety away from the place where the child predominantly resides. As with a compulsory supervision order (CSO) at least one measure must be attached to the order and the implementation authority must be named. The order can last for 22 days and cannot be renewed although other variations can be made.

Legal Assistance



LEGAL ASSISTANCE**(s 191)**

The provision of Legal Aid for children and relevant persons is introduced by the Children's Hearings (Scotland) Act 2011. When Legal Aid is granted, legal assistance at the hearing will be provided for the child or relevant person. Legal Aid is an automatic right for a child at certain types of hearings. This is necessary to protect their rights and interests. There is no provision of automatic Legal Aid for relevant persons.

It is important to remember that neither a pre-hearing panel nor a children's hearing makes the decision about the provision of legal assistance for either a child or a relevant person. The pre-hearing panel or children's hearing may make certain recommendations which result in the reporter having to convey that information to the Scottish Legal Aid Board (SLAB). When Legal Aid is not automatically made available, all decisions made in relation to granting or refusing Legal Aid will be made by the Scottish Legal Aid Board.

AUTOMATIC LEGAL AID FOR CHILDREN

Legal Aid for ensuring legal assistance for the child is automatically available in the following circumstances:

- where an application is made to vary or terminate a child protection order (s 48)
- where a second working day hearing is to take place (s 45-6)
- custody hearings where a child has been detained by police
- any hearing considering secure accommodation authorisation.

The child has to have the capacity to instruct a solicitor. A child of the age of 12 is deemed to have capacity to instruct but this does not mean that children below that age cannot have capacity. If the child is present at any of the hearing types mentioned above, has the capacity to instruct a solicitor but there is no legal assistance, the children's hearing should check that the child has been offered the opportunity to have a solicitor.

PROCEDURE AT PRE-HEARING PANELS

A children's hearing is likely to make a decision including a secure authorisation in relation to a child

Where a pre-hearing panel has decided that it is likely a children's hearing will consider making a compulsory supervision order or an interim compulsory supervision order including secure authorisation in relation to a child, the reporter must, as soon as it is possible, notify the Scottish Legal Aid Board and give them the name and address of the child so that arrangements can be made to provide the child with legal assistance at the forthcoming hearing in the event that the child does not have their own solicitor.

Non automatic legal assistance for child or relevant persons

Additionally, where a pre-hearing panel recommends that:

- In order for the child or any relevant person to participate effectively in the children's hearing, it is necessary that the child or relevant person be represented by a solicitor. **and**
- It is unlikely that the child or relevant person will arrange to be represented by a solicitor or counsel.

they should require the reporter to notify the Scottish Legal Aid Board as soon as possible and give them the name and the address of the child or relevant person/s. It is important to remember that the pre-hearing panel does not make the appointment; this matter will be considered by the Scottish Legal Aid Board (SLAB) who will consider whether their criteria are met. (Rule 50)

PROCEDURE AT CHILDREN'S HEARINGS

Legal Assistance

A children's hearing is likely to come across situations where a child has automatically been granted Legal Aid and is present at a hearing with a solicitor who is there to give legal assistance to the child. In addition to this form of legal assistance, there may be circumstances which the panel consider that legal assistance is required either for the child or the relevant person.

If during the course of a hearing, the children's hearing considers that:

- To allow the child or relevant person to participate effectively in the hearing it is necessary that the child or relevant person be represented by a solicitor or counsel. **and**
- It is unlikely the child or relevant person will arrange to be represented by a solicitor or counsel.

Legal assistance may be needed for the following reasons. e.g.

- The case contains complex legal issues.
- The person may not be able to participate effectively without the assistance of a solicitor.

The children's hearing should defer making a decision and require the reporter, as soon as possible, to notify the Scottish Legal Aid Board of the decision, the reasons for the decision and the name and address of the child and /or relevant person/s.

The Legal Aid Board

The Legal Aid Board has the duty to establish and maintain a register of solicitors (and also the firms to which they are connected) who will be eligible to provide assistance to children in certain circumstances.

The Board is under an obligation to draft a code of practice in relation to the functions of solicitors carrying out children's legal assistance and solicitors and firms

must comply with the code of practice. Both solicitors and firms will be monitored by the Board in terms of their compliance with the code of practice.

The Register

It is likely that most firms who register will have one or more solicitors whose names are on the register. However, a solicitor who is acting on his own will be under an obligation to register as both a solicitor and a firm. Only solicitors whose names are included in this register are able to provide a service of children's legal assistance. The Act allows for regulations to be made in the future which may be prescriptive about the qualifications held by those on the register.

Removal from the Register

The Board must remove the name of a solicitor from the register if the Board is satisfied that

- The solicitor has become connected with a firm whose name is not on the register.
- and
- The solicitor is no longer connected with a firm whose name is on the register.

Children's Hearings Powers



CONTENTS

- 1 Breach of Duty by Local Authority**
- 2 Failure to Provide Education for Excluded Pupil**
- 3 Parenting Orders**

1 BREACH OF DUTY BY LOCAL AUTHORITY

An implementation authority must give effect to the compulsory supervision order and comply with any requirements imposed on it in relation to the child. This includes the securing or facilitating the provision of services for a child even if the local authority does not normally provide this kind of service. (s 144)

When a children's hearing is reviewing a compulsory supervision order in respect of a child who is subject to a compulsory supervision order and it appears to them that the local authority is in breach of their duty either to

- Give effect to the terms of the compulsory supervision order or comply with any requirements in terms of provision of services. or
- Investigate whether any imposed conditions are being carried out where the child is placed in accommodation. (s 145)

the childrens' hearing may direct the National Convener to give the authority notice of intention to enforce the local authority's duty and if they do so they must also require a review of the compulsory supervision order to take place as soon as is practicable after 28 days from when the notice is given.

If at the following review the local authority continues to be in breach of their duty, the children's hearing may then direct the National Convener to make an application to court for an order to enforce the implementation authority to carry out their duty. (s 146)

If directed to do so by the children's hearing the National Convener must apply to the sheriff principal for an order to enforce the implementation authority's duty in relation to the child where the National Convener has:

- Already given notice to the local authority about the breach of duty. and
- The local authority has failed to carry out the duty specified in the period set down. (s 147)

The sheriff principal may make an order requiring the implementation authority to carry out that duty and that order is final. (s 148)

2 FAILURE TO PROVIDE EDUCATION FOR EXCLUDED PUPIL

(s 127)

During the course of a hearing, where it appears to a children's hearing that an education authority has a duty to provide education for a child

- to whom the hearing relates and
- who is excluded from school

but the education authority is failing to comply with this; the children's hearing may require the National Convener to refer the matter to Scottish Ministers.

If a requirement is made the National Convener must make a referral to Scottish Ministers and also give a copy of the referral to both the education authority and the principal reporter.

3 PARENTING ORDERS

(s 128)

Where a children's hearing in respect of a child is satisfied that it might be appropriate for a parenting order to be made in respect of a parent of a child, the hearing may require the Principal Reporter to consider whether to apply for such an order.

The children's hearing must specify in the requirement to the Principal Reporter:

- the parent for whom it might be appropriate for the parenting order to be made
- the condition in respect of the application either that:
 - the child has engaged in antisocial behaviour and the making of the order is desirable in the interests of preventing the child from engaging in further such behaviour or
 - the child has engaged in criminal conduct and that the making of the order is desirable in the interests of preventing the child from engaging in further such conduct.
 - the welfare condition is that the making of the order is desirable in the interests of improving the welfare of the child.

***(s 102(4)(6) Antisocial Behaviour
etc. (Scotland) Act 2004)***

4 MUTUAL ASSISTANCE

(s 183)

Children's Hearings Scotland, the National Convener, SCRA and the Principal Reporter must be mutually supportive and comply with a request for assistance in carrying out their functions.

A local authority or health board must comply with a request from any local authority for assistance in carrying out its functions under the Act. (s 183(4))

Any request must specify the assistance required. Any party need not comply with the request if it would be incompatible with their own functions (statute or otherwise) or it would prejudice the person in being able to carrying out their own functions.

If an implementation authority has made request for assistance from a health board and:

- the request made is in connection with the implementation of a compulsory supervision order in relation to a child and
- the implementation authority is satisfied that the health board has unreasonably failed to comply.

The implementation authority may refer the matter to Scottish Ministers who may consider the case and, if satisfied that there has been an unreasonable failure to comply with the request for assistance direct the health board to comply and the health board must comply. (s 184)

Essential Information



THE FUNDAMENTAL PRINCIPLES

A pre-hearing panel or children's hearing must:

- Have regard to the need to safeguard and promote the welfare of the child throughout the child's childhood as their paramount consideration. The one exception to this being when it is necessary that a decision is made for the purposes of protecting the public from **serious** harm - the paramount principle.
- Give the child an opportunity to indicate whether the child wishes to express a view, and if they do, give them the opportunity to do so and have regard to any views expressed by the child – the views of the child.
- Make, continue or vary any order or grant a warrant only if the children's hearing considers it would be better for the child than not to do so - the beneficial principle.

CRITERIA FOR DECISION MAKING

Throughout the Act mention is frequently made of:

- Protection
- Guidance
- Treatment
- Control

Panel members need to consider which one or more of these areas is in point when making a decision about the child.

DEFINITION OF CHILD

A child for the purposes of a children's hearing is someone who was under 16 at the point of referral to the children's reporter even if the first hearing does not take place until after the 16th birthday. It also includes a child over the age of 16 if remitted from court or is subject to an existing compulsory supervision order until either the compulsory supervision order is terminated or until that person becomes 18 years of age.

DEFINITION OF RELEVANT PERSON IN RELATION TO CHILD

- Parents (married or otherwise) including adoptive parents unless responsibilities and rights have been removed by an order of court.
- Any person who has parental responsibilities and rights under s 200.
- Any person who has (or has recently had) a significant involvement in the upbringing of the child.

EXCUSING THE CHILD FROM ATTENDANCE AT A CHILDRENS HEARING

A child may be excused from attending a children's hearing if:

- The case involves an offence mentioned in Schedule 1 of the Criminal Procedure (Scotland) Act 1995 or the Sexual Offences (Scotland) Act 2009, parts 1, 4 and 5.
- The attendance of the child at the hearing would place the child's physical, mental or moral wellbeing at risk.
- Taking account of the child's age and maturity, the child would not be capable of understanding what happens at the hearing.

EXCUSING A CHILD FROM ATTENDANCE AT A SECTION 67 GROUNDS HEARING

If the pre-hearing panel are considering whether to excuse the child from attending a section 67 grounds hearing, the child can only be excused while the grounds are being explained if they are satisfied that taking account of the child's age and maturity, the child would not be capable of understanding the explanation.

A grounds hearing can require the reporter to arrange another grounds hearing if the child or relevant person fails to attend and has not been excused.

EXCUSING A RELEVANT PERSON FROM ATTENDANCE AT A CHILDRENS HEARING

A relevant person in relation to the child may be excused from attending the children's hearing if:

- it would be unreasonable to require their attendance for all or part of the hearing or
- their attendance at all or part of the hearing is thought to be unnecessary for the proper consideration of the case.

Notwithstanding the above, a children's hearing can proceed with a hearing in the absence of a relevant person if they consider it appropriate to do so.

EXCLUDING A RELEVANT PERSON AND/OR THEIR REPRESENTATIVE

A relevant person and/or a relevant person's representative may be excluded from any part or parts of the hearing for as long as it is in the interests of the child if the hearing is satisfied that:

- their presence is preventing the hearing from obtaining the views of the child.
 - his or her presence is causing or is likely to cause significant distress to the child.
- (s 76(1)(2))

CRITERIA FOR CHILD PROTECTION ORDER

A local authority can apply for a child protection order if they have reasonable grounds to suspect that:

- the child has been, or is being, treated in such a way that the child is suffering or is likely to suffer significant harm
 - the child has been, or is being, neglected and as a result of the neglect the child is suffering or is likely to suffer significant harm
 - the child will be treated or neglected in such a way that it is likely to cause significant harm to the child.
- (s 38)

WORKING DAYS

Working days are every day except

- a Saturday
- a Sunday
- 25 December
- 26 December
- 1 January
- 2 January

NON-DISCLOSURE OF INFORMATION

A children's hearing does not need to disclose information about the child to a person or child if the disclosure of the information to the person or child would be likely to cause significant harm to the child. However the following information cannot be withheld:

- the statement of grounds
- a copy of a remit by the court for a criminal matter
- a copy of a requirement under the Anti Social Behaviour Act
- order or warrant to which the child is subject.

SECURE AND MRC CRITERIA

- That the child has previously absconded and is likely to abscond again and, if the child were to abscond, it is likely that the child's physical, mental or moral welfare would be at risk. or
- That the child is likely to engage in self harming conduct. or
- That the child is likely to cause injury to another person.
- Secure authorisation is necessary.

CLOSE CONNECTION

The child will have a close connection with a person if

- The child is a member of the same household as the person. or
- The child is not a member of the same household but has significant contact with the person.

SIGNIFICANT INVOLVEMENT

In order for a person to make the case that they have had a 'significant involvement in the upbringing of the child', they should be able to evidence that they have more than a day to day caring role for the child and have been actively involved and consulted in fundamental decision making that affect the child's life. i. e. decisions about where the child should reside, educational and medical matters.

DEEMING AN INDIVIDUAL TO BE A RELEVANT PERSON

A pre-hearing panel must deem an individual to be a relevant person if that person

- Has significant involvement in the upbringing of the child
- Has recently had significant involvement in the upbringing of the child

AUTOMATIC LEGAL ASSISTANCE FOR CHILDREN

A child will automatically be eligible for legal assistance in the following circumstances:

- Application to vary or terminate a Child Protection Order (CPO).
- Second working day hearings.
- Custody hearings - when a child has been detained by police.
- Any hearing considering secure authorisation in relation to a child.

LEGAL ASSISTANCE

A children's hearing may recommend that:

- To allow the child or relevant person to participate effectively in the hearing it is necessary that the child or relevant person be represented by a solicitor or counsel. and
- It is unlikely that the child or relevant person will arrange to be represented by a solicitor or counsel.

The children's hearing should defer making a decision and require the reporter as soon as possible to notify the Scottish Legal Aid Board (SLAB) of the decision, the reasons for it and the name and address of the child and or any relevant person in relation to the child.

MEASURES

Every CSO will contain a standard measure that the local authority supervises the child and that the child accepts that supervision. Panel members can add further specific measures to an order in the best interests of the child including requirements, directions, conditions and authorisations.

These measures can be categorised as follows:

Requirement

- Child's place of residence
- Medical or other examination of the child
- Medical or other treatment of the child
- Local authority carry out specified duties in relation to the child
- The child complies with any condition

Direction

- Restrict the child's liberty whilst residing in a specific place
- Regulating contact between the child and a specified person/s

Prohibition

- Disclosure of the address of the child

Condition

- Movement restriction condition

Authorisation

- Secure accommodation

The Panel Member at the Hearing



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1 INTRODUCTION

There is a limited amount of time for a children's hearing or pre-hearing panel to come to a decision that is in the best interests of the child. Therefore it is essential that each panel member attending the hearing has prepared fully for the hearing and that the hearing has a structure which allows the legal requirements to be met and gives everyone present the opportunity to make a valuable contribution.

Although the chairing member of the hearing has particular responsibilities laid down in legislation, he or she has no additional power in relation to the decision and all three panel members should work together as a team prior to, during and after the children's hearing or pre-hearing panel. They should support each other with each panel member making a full contribution to the process. This section focuses on the role of a panel member in the hearing and takes each stage of the hearing in turn.

2 WORK ON RECEIPT OF PAPERWORK

Every panel member will have their own individual way of preparing before a hearing when the papers have been received. However, good and thorough preparation is essential and means that every child and family should receive as fair and well conducted hearing as possible.

It is important to note that when the notification of a children's hearing is received and the panel member knows or has knowledge of the child or a family member, they should make contact with the AST immediately. If the knowledge or familiarity is likely to be seen to be prejudicial to the conduct of the hearing, the panel member should withdraw. The panel member should also take on board that the hearing may be uncomfortable for the child/family and also the panel member. The National Convener will provide guidance to the AST in relation to such circumstances.

Some questions that a panel member should ask themselves when preparing for the hearing are:

- What is the purpose of the hearing?
- Who is likely to be present and in what capacity?
- How old is the child?
- Is this the child's first hearing?-If it is, more care will be needed to explain the purpose of the hearing and what will be happening.
- Are there new section 67 grounds and how might these be explained to the child and family?
- Do I have a copy of all the reports available?
- What are the main issues or topics from the reports which need to be discussed in the hearing?
- How will the issues being discussed impact on the child?
- What is the best way to find out the views of the child?
- Are there likely to be any sensitive issues and, if so, how might they best be raised?
- Are there any areas of conflict or contention which might arise at the hearing?
- Is there is a compulsory supervision order in place, if so when will this expire?

- Are there any measures attached to the compulsory supervision order which need to be reviewed? Panel members will be able to check this by referring to the previous compulsory supervision order contained in the paperwork
- Is there is an interim compulsory supervision order in place, if so when will this expire?
- Is there an interim variation of a compulsory supervision order, if so when will it expire?
- Is there a non-disclosure request to consider?
- Are there any pre-hearing panel issues to be discussed?
- What options are available?
- Do I have all the necessary information I need to enable me to make a decision at the children's hearing?
- Is there any legal or procedural matter I need to research or request advice on before coming to the hearing?

Preparing in this way will allow the panel member to be fully conversant with the circumstances of the case, the issues that are likely to arise and how this case will be best managed to ensure that the child's views are taken and a decision is made in the best interests of the child.

3 PRE-HEARING PREPARATION

Panel members should arrive at the hearing centre at least 15 minutes before the session begins. This is to allow the pre-hearing checklist to be carried out. A list of those present will be given to you by a member of SCRA detailing who has been notified to be in attendance, who is present, observers, Safeguarders, solicitors etc.

A check should be made that all panel members have the same paperwork and if there are late reports tabled, consideration should be given to what options are open to the hearing. It should be noted that only the options should be discussed at this stage and that the substance of the case should not be discussed prior to the children's hearing. All decision-making in respect of any matter before the hearing must be done openly in the children's hearing and in the presence of all parties.

In preparing for the hearing, each panel member should have considered and identified the broad issues which need to be discussed. It is best practice to agree and compile a list of topics to be discussed and which panel member would want to raise the issue within the hearing.

Panel members also need to consider if there are:

- any deemed relevant person issues which need to be made or reviewed in the hearing
- whether any information has been withheld or requested to be withheld.

4 THE HEARING - The Beginning

The main responsibility for the first part of the hearing falls to the chairing member but the other panel members should be fully aware of and alert to the process. Please see the Step by Step Procedures for Children's Hearings and Pre-Hearing Panels.

There are certain legal requirements that must be covered and these should be done as clearly and succinctly as possible so that everyone understands what is happening and why. Children and families will have a better understanding if the chairing member introduces him or herself, the others present and then checks who else is present, making it clear in what capacity they are there. The reporter should make their own introduction and SCRA have a standard format for this. If there is a potential observer without a right to attend, it should not be assumed that they can have entrance into the hearing. This is a decision for the hearing who will take the views of the family on board before reaching a decision. All observers who do not have a right to attend the hearing should therefore wait outwith the room until a decision has been made about whether they will be admitted. Any decision about observers should be made at the start of the hearing in consultation with the child and any relevant persons. No observers without a right to attend are allowed to have admittance if the child or any relevant person objects to their presence.

At the beginning of the hearing the chairing member must:

- introduce the members of the children's hearing and explain the purpose of the hearing
- check that the child, each relevant person and any safeguarder has received all relevant information and documents required by the Rules
- confirm whether the child, each relevant person and any safeguarder has had the opportunity to read and consider these reports and whether these have been understood by the child and each relevant person
- ask the child whether the papers accurately reflect their views - unless the chairing member considers it inappropriate to do so given the child's age and maturity. If the child confirms that the reports do not accurately reflect the child's views the chairing member must try to clarify what the child's views are.

The hearing may also wish to tell the child and each relevant person that:

- the hearing can talk to the child on his or her own in order to obtain their views
- during the course of the hearing, panel members will be considering whether a safeguarder needs to be appointed- a safeguarder is an independent person who becomes party to the hearing process if the hearing thinks it is necessary to safeguard the interests of the child
- if anyone is unsure about what is being said or is happening, people can ask for things to be explained.

The tone that is set at the beginning can influence how the rest of the hearing is conducted.

If a panel member discovers at the hearing that individuals are known to him/her (e.g. when they come into the hearing room), they should declare this before the hearing starts. Knowledge of individuals cannot be avoided. The family should be given an opportunity to consider the matter in private and the views of the child and relevant persons taken into account. A children's hearing may proceed to consider an interim decision if it is necessary to safeguard the best interests of the child but this should be clearly recorded in the reasons and why the hearing considered it best to proceed.

5 THE HEARING - The Middle

Once the beginning of the hearing has been dealt with and any new grounds put have been accepted, the hearing can progress to consider the reports and discuss with all present what decision is in the child's best interests.

The chairing member should start by going over the main points to be raised during the hearing (this will be based on the agenda set before the hearing) and ask the child, family or any others in attendance at the hearing if there are any additional issues they think should be included. It is good practice for the chairing member to note down the points raised as this will reassure the family that their points will be covered. The chairing member had a duty to give the substance of the reports to those present.

The Act emphasises the need to ensure that the views of the child are fully reflected in reports. The child should be asked if the reports have incorporated and reflect their views. If they do not, some time will have to be given to ascertaining the child's views before entering into the discussion of the case.

The main skills required during this part of the hearing are communication and teamwork. Although the chairing member has some duties in the middle stage of the hearing, many of the legal obligations during this part are for the hearing as a whole. This is when the three panel members should be operating as a team, sharing the load and working together to address all relevant issues that are raised. While the chairing member 'holds the reins' each panel member makes a contribution and plays an important part in ensuring that the hearing is productive. There are a number of things which need to be borne in mind:

- Structuring the hearing through use of the identified issues as an agenda.
- Keeping the hearing on track and ensuring it does not drag on unnecessarily or keep going over the same ground. Panel members must remember that they need sufficient and relevant information to reach a decision. This can sometimes be difficult to achieve if a family member has issues that they keep returning to.
- Summarising at various points lets people know what stage has been reached. This should include the main points discussed; points agreed on,

points not agreed on and still in dispute and the views of the child, family members and professionals.

- Making sure everyone is given the opportunity to have their say. This may mean excluding the relevant person/s and their representative to leave to allow the hearing to obtain the views of the child. If the hearing wish to ascertain whether there is anyone in particular who the child may wish to stay with him or her in the hearing, it would be appropriate to ask all persons to leave and then when they are out of the room, to ask the child who he or she would like to be asked to return.
- Involving all three panel members.
- Checking that the child or relevant person understands what is happening and what is being said.
- Prior to the hearing coming to a decision, asking the child and any relevant persons if they have any final comments to make. This is important not only because of fairness but if there is an appeal, the reporter will be able to state that the child and relevant persons had a final opportunity to raise any point they wanted the hearing to consider.

Difficult situations

Hearings often centre on situations of conflict. Individuals and families will be coping with the background tensions that are certainly not lessened by the stress of coming to a hearing. Though it is valuable to know people's true feelings, a hearing dominated by uncontrolled outbursts of aggression and emotion is unlikely to fulfil its primary aim of making the best possible decision about a child's life.

Strategies to avoid conflict

The following list offers some practical strategies for panel members which may help to reduce this kind of destructive conflict to a minimum:

- Prepare thoroughly in advance and be familiar with all the details of the case, especially names and relationships. Getting these wrong can be very off putting for the child and their family.
- Check the physical surroundings. Are there enough chairs? Are there toys/colouring books and crayons in the hearing room in case small children get bored? Are there tissues in case someone gets upset?
- Keep to time if at all possible. Nothing increases tension more than being kept waiting. If the previous hearing has overrun, an apology should be given to the next family.
- Consider changing the chairing member. It may be helpful to have a panel member who has met the family before chair the hearing. Panel members need to weigh up the possibilities always remembering that despite the best of planning arrangements, things sometimes do not go to plan!
- Limit the number in the room. There is a legal obligation on the chairing member that the number of people present is kept to a minimum.
- Set the tone. How the child and family are welcomed into the hearing and how introductions are made are crucial to how the hearing develops.
- Be confident of the procedures to be employed and the options available. If the case is confusing, re-read the paperwork and try to clarify what has happened when. A feeling that the panel members know what they are doing, with the chairing member firmly in control will communicate itself to other people present and help them to settle down.
- Watch the body language. People struggling to control themselves will often give clear physical signs before bursting into a rage or breaking down in tears.
- Do not preach to parents. Although the child's problems may be caused by their actions, attitudes or behaviour, they are likely to feel antagonised and act aggressively if they think that panel members are telling them what to do. Panel members should try to focus the discussion on the child.
- If a relevant person is obviously under the influence of drink or drugs and are in no fit state to participate in the hearing in a meaningful manner, there is the option to defer making a decision.

- Acknowledge distress. If someone is very distressed panel members should not ignore it but make it clear they recognise the reasons why. Make an offer to take a short break to allow them time to recover their composure.
- Keep calm! No matter how nervous and stressed panel members are feeling they should remember it is much worse for the child and family.

Strategies for coping with distress

Despite all sensible precautions and planned tactics, conflict will occasionally flare up between individuals. This may not necessarily be a bad thing. It allows people to let off steam and express their true feelings. However, panel members need to be prepared for the unexpected and develop some strategies for managing conflict. Many of these are to do with good communication skills and are described in more detail in that section. In summary, they involve repeating messages quietly and calmly, being empathetic and understanding yet assertive and keeping control.

Some of the following ideas may be useful in certain particular circumstances:

- The broken record. One of the panel member's most important tasks and legal obligations is to get across clearly to families what is happening, what stage of the process they are at and what options are available. When people are distressed, they are often unable to take in what is being said to them on a rational level. This situation may call for a great deal of persistence by panel members in getting their message across. One way of doing this is to repeat the message quietly and calmly until it has been received, e.g. to a parent who is still denying the grounds which have been established in court.
 - *Chairing member: As you are aware, we are here to discuss Tommy's case and to decide what course of action is necessary for Tommy in light of the grounds which were established in court last week*
 - *Relevant person: But that's ridiculous... none of those things ever happened.....*
 - *Chairing member: I hear what you are saying **but** from the point of view of this children's hearing, we have to consider the case on the basis of these*

*established grounds. These grounds were established at court and remitted to this hearing by a sheriff and we **must** proceed on this basis.*

- *Parent: What's the point of talking about them when they are not true?*
 - *Chairing member: The grounds were established at court last week. The hearing must now decide what we need to set in place for Tommy in light of these established grounds which we will use as a basis for discussion.*
 - ...
 - The important thing for panel members here is to hold their ground and to go on repeating the message and move the situation on from this.
- Turn down the volume. This is a technique to respond to loudness and aggression by deliberately speaking in a quiet manner. It is hoped that this method will have a calming effect, causing the angry person to moderate their tone.
 - The understanding referee. If a family member indulges in a violent outburst, it will be necessary for a panel member to intervene to stop it after the person has let off steam. This may call for a firm interruption by the panel member, if necessary backed up by the other two, but it is likely to be more effective if it shows some understanding of the point of view expressed.
 - *'We all understand why Ian's behaviour makes you so angry, but we will get further if we try to talk about it a bit more calmly.....'*
 - *'I see that you do not agree with what is being said by the social worker but in order to make a decision we need to listen to everybody's viewpoint before making a decision...'*
 - *'Anyone might be expected to be upset and angry with what happened to you but shouting and swearing isn't the way to help us understand what should happen next and how we can help you...'*
 - Keeping cool. It is essential for panel members not to be drawn into any situations that might arise. Becoming involved in a heated argument with anyone at the hearing will not be productive. This will mean that you cannot react to extreme provocation.
 - Supporting the child. Witnessing conflict between the parents is distressing for the child and if the hearing becomes too difficult, the panel members may decide

to adjourn the hearing to allow everyone to calm down, carefully explaining what has happened and why. When the hearing is reconvened and the circumstances arise again, the hearing could exclude the relevant persons if they are causing significant distress to the child or if their behaviours pose a health and safety risk, the reporter may call the police.

- Knowing their powers. If all the techniques for defusing aggression fail and the situation deteriorates completely, the hearing has the authority to take firm action: ask the aggressive person to leave the hearing room.
 - The hearing may decide to:
 - adjourn the hearing if the atmosphere is becoming very heated, tense or distressing
 - it can be good idea to suggest a break in the hope that everyone will calm down and return in a more amenable frame of mind
 - or defer the hearing to another day
- Although incidents where real emergency occurs and physical violence takes place in the hearing room are very rare, the reporter has a health and safety responsibility to all in the hearing and may summon the police if the situation gets out hand.

European Convention on Human Rights (ECHR) challenges

What if ECHR issues are raised in the hearing?

There have been fewer challenges in hearings than were anticipated but it is still important for panel members to know how to respond to a challenge if one is raised:

(a) Consider the issue which has been raised and record your decision and reasons.

(b) If the concerns relates to how the child or family has been treated up to that point in the hearing, then the panel members must consider whether they have acted in a manner compatible with ECHR:

- If the answer is 'yes' then the chairing member of the hearing should indicate that the hearing is operating in accordance with the Children's Hearings (Scotland) Act 2011, the rules and best practice guidance.
- If the answer is 'no', the hearing should clarify the concern and try to address it.
- If the hearing cannot agree on the appropriate course of action then the hearing should defer reaching a decision to another date and consider if any decision needs to be taken in the interim to protect the child and as a matter of urgency.
- If the hearing agrees to proceed and the complainant continues to hold the view that their rights have been infringed, the chairing member must advise the complainant of their right of appeal.

Whatever happens, **panel members must listen to what is said and record the comments** as a postscript to the reasons for the decision. The reporter will take their own notes about any legal challenge.

Where the concern relates to the procedures and the legislation within which the children's hearing is operating, the chairing member should indicate that the hearing is operating in accordance with the Children's Hearings (Scotland) Act 2011, the Rules and best practice guidance. If there is an ECHR issue it may be appealed. Meantime the hearing will consider the welfare and needs of the child and proceed to make a decision. Pending any appeal, the decision of the hearing will stay in force unless another hearing subsequently suspends the compulsory supervision order.

Where an alleged breach is the responsibility of others (e.g. failure on the part of the authority to follow key procedures or to provide essential services to the detriment of the child's basic rights), the hearing should consider whether the breach has a direct bearing on the substance of the discussion in relation to the child.

- If the answer is 'yes', the hearing then has to consider the alleged breach along with all other relevant factors which have a bearing on the interests of the child.

The hearing must record its reasons for whatever decision it takes. The hearing may proceed to reach a decision.

- If the hearing considers that the alleged breach is fundamental to a hearing's consideration and if deferring or postponing the consideration of the case might be in the child's best interests, the hearing may take this course of action in order to allow the breach to be addressed and allow for additional supports to be made available to the hearing.

6 THE HEARING - Making decisions

A children's hearing is a decision making process. Although the ultimate aim is to make a disposal, a series of decisions are in fact being made throughout the course of the hearing. These may include who should be present at the hearing, whether to exclude someone from the hearing, whether or not a safeguarder should be appointed and whether disputed grounds should be sent to court for proof. Decisions may also be made about non disclosure of address or information.

While it is hoped that a consensus will naturally develop from the discussion in the hearing, differences of opinion may emerge and these must be carefully considered and discussed. If the process of the hearing has been clear, with explanations and summing up at every stage, the decision should never come as a shock to the family even if they do not agree with it. If the decision of the hearing differs from any views expressed by the child and or relevant persons, the hearing should acknowledge this and explain that, whilst they have been taken account of their views, the paramount consideration in reaching a decision must be the welfare of the child.

In order to make a decision, panel members will take into account the following issues:

Information about the case

This is gained from the reports about the circumstances of the child and discussion during the hearing.

The views of other people

Hearings have a duty to seek the child's views and to encourage participation by relevant persons in the decision making process. Panel members will also consider the views expressed in reports and those from other parties at the hearing.

Panel members' knowledge and judgement

This knowledge comes from panel members own experience of children, families and the community. As panel members are drawn from all parts of society, this knowledge and awareness is very important. Panel members will also have the knowledge of the children's hearing system through training, experience and other

resources. One important aspect is knowing what legal options are open to the hearing in any particular case and what resources there are in existence which might meet the child's needs.

The aims of the decision

Hearings' decisions need to be forward looking, considering, identifying and deciding what needs to be changed in a child's circumstances in order to resolve issues which have had an adverse impact on the child's life. A panel member's role is to make decisions in the child's best interests considering not only what is needed for the present but for the whole of that child's childhood.

Personal attitudes and values

Common sense is an essential feature for all panel members. It is important for panel members to be aware of their own prejudices and not to make any decisions based on these. One strength of the system is that the views of all three panel members will contribute to the decision. The chairing member's decision has no more 'weight' than that of the other two panel members. Panel members should never feel that they must agree with each other and it is essential that each panel member makes up their own mind honestly and independently in reaching a decision. Panel members are making potentially life changing decisions about a child's life and such decisions must be made by an independent and impartial tribunal as laid down in Article 6 of the European Convention on Human Rights. For the purposes of the child and the child's family, panel members are that independent and impartial tribunal.

A framework for decision making

When reaching decisions, panel members should:

Consider: child's basic physical, social, emotional and educational need
 child's developmental level

- other relevant information
- Identify:** which needs are being met
which needs are not being met
- Establish:** which of the needs could be met
whether failure to meet needs amounts to abuse
- Decide:** on the course of action which will best meet the child's needs

Key questions in meeting the needs of children and young people

When reflecting on the needs of a children and young people and whether a compulsory supervision order is necessary, panel members should consider:

- Is the child or young person generally within adult control?
- Is the child or young person being looked after by adults who can exercise authority, guidance and support, in a consistent, reasonable and appropriate manner?
- Does the child or young person have a home environment offering appropriate care, nurturing, supervision, structure and routine?
- Is the child or young person attending nursery or school and making progress socially and educationally?
- Is the child or young person being offered opportunities to engage in appropriate activities?
- Are there opportunities for reasoned discussion, guidance and responsible behaviour?

If the answer to any or all of these is no, then panel members will need to decide whether a compulsory supervision order is required to offer the necessary protection, guidance, treatment or control.

Assessment of risk

Many of the decisions panel members will be making involve balancing risks. In order to do this, they will need to take account of the following questions:

- Is it safe for the child to go home?
- Do the possible damaging effects of separation from the family outweigh the risks of leaving the child at home?
- Are the parents likely to be co operative to social work intervention if the child is returned home?

The most important thing for panel members to remember is that if they feel that the child is at risk, they should take whatever steps necessary to protect that child from danger. If the risks are caused by the child's own behaviour, hearings may also need to take into account the protection of other people. A useful tool for panel members in determining what strengths and pressures there are in the child's life is referring to the 'My World Triangle' and the 'SHANARRI' framework. See Child, Family and Society.

7 THE HEARING - The Ending

Each panel member including the chairing member should give his or her decision and reasons for it. It is most important that these are communicated accurately and effectively so that everyone at the hearing understands exactly what they mean. This is not an easy task particularly following a complicated hearing. The chairing member then informs the family of the hearing's decision with a summary of the reasons. This should be done clearly and in language that is understood by the child and relevant persons. The chairing member then informs the family of their rights of appeal and review. The hearing is now over. Best practice dictates that the chairing member should give the child and any relevant persons an opportunity to remain in the hearing room while the reporter is present completing the paperwork. A written record of the reasons for the hearing's decision is now made and this task is made easier if all three panel members contribute to compiling the written reasons working together as a team.

A set of robust reasons must address 'why' the decision has been reached. They should include:

- A statement of the problem, drawing on various sources of information and referring to the family situation and any particular concerns for the child.
- The impact of the situation on the child and the evidence which backs this up
- Options considered and rejected including any minority views.
- An indication of the outcomes and why this particular course of action will help to achieve them.
- The type of compulsory supervision thought to be necessary- protection, guidance, treatment and control.
- An indication why the child needs compulsory supervision.

It is important to remember that reasons should be given for all decisions made during the course of the hearing i.e. excusing the child etc. Any measure attached to a compulsory supervision order particularly the measure involving contact which can be a contentious issue for the child and relevant persons.

Good reasons are essential for:

- The child and relevant persons so that they can understand why decisions have been made, what is expected from them in the future etc.
- The implementation authority whose duty is to give effect to the decision.
- The next hearing, so the panel members know why the previous decision was made and what the expectations were.
- The sheriff, so that if there is an appeal the sheriff will be able to understand why a decision was made and consider if this decision was justifiable in all the circumstances of the case.
- The reporter who may respond an appeal if one is lodged.
- The panel members themselves, to focus their minds on their own decision making and ensure that they take all factors into consideration.

Decisions and reasons should be forward looking, the starting point for any work to take place and a yardstick by which to measure progress when the case comes to be reviewed. If the child comes to a children's hearing over a number of years the reasons from successive hearings should chart his or her progress through the system.

8 POST HEARING

Although there is no statutory definition of when a children's hearing is concluded, when panel members have delivered their verbal decision and reasons for the decision and the rights of appeal have been given to the child and relevant person/s, the hearing is deemed to be at a close.

The chairing member should offer the child and relevant person/s the opportunity to remain in the room whilst the reporter completes the paperwork; this is to ensure transparency of proceedings. If the child and relevant person/s remain in the room, it is very important to ensure that no further discussion of the case takes place.

If the reporter leaves the room at the conclusion of the hearing with the child and relevant persons, the chairing member need not offer the family an opportunity to remain.

A written record of the reasons for the hearing's decision should now be made. The chairing member and panel members working as a team should record the written reasons for their decision immediately after the hearing has taken place and before the next hearing starts. It is not considered best practice to leave the writing of reasons until the end of all hearings in a session as important information may be omitted inadvertently.

On occasion something may have occurred during a hearing which one or more of the panel members may wish to have raised elsewhere. Each AST will be aware of the procedures for dealing with such situations based on a nationally consistent process handed down to the ASTs by the National Convener and Children's Hearings Scotland (CHS).

Panel members should take the opportunity wherever possible to debrief after each hearing. This might be particularly important if the hearing was very distressing or when a panel member felt they were unable to make a contribution. Such sharing of information and support should enable panel members to learn from their experiences and become empowered at future hearings.

All paperwork in relation to the hearing should now be returned to the reporter or a member of SCRA staff at this stage.

9 SUMMARY

Although the chairing member carries specific responsibilities for the conduct of the hearing, all three panel members have a role in ensuring that the hearing flows effectively. It is part of the culture of the children's hearing system that the chairing member and panel members should work together as a team sharing responsibilities and supporting one another in order to reach a decision which is in the child's best interests.

FURTHER READING

Norrie K McK (2013)

"Children's Hearings in Scotland", published by W. Green, Edinburgh- third edition

Step-by-Step Procedures and Pre-hearing Panel



STEP BY STEP PROCEDURES

PRE-HEARING PANEL

These procedures are a combination of legislation and best practice.

Rule 7(1) of the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013

states:

“The procedure at any children’s hearing or pre-hearing panel required to be held by virtue of the Act or any other enactment unless provided for under the Act or Rules, is to be determined by the chairing member”

The Children's Hearings (Scotland) Act 2011 requires that the welfare of the child must be the paramount consideration of a children's hearing or pre-hearing panel, unless members of the public are to be protected from serious harm and then the welfare of the child is the primary consideration rather than the paramount one.

BEFORE THE PRE-HEARING PANEL

Checklist

- Check list of those who are present and their entitlement to attend.
- Check what the pre-hearing panel is being asked to consider and the possible options.
- Check papers - do you all have the same information?

AT THE BEGINNING OF THE PRE-HEARING PANEL

The Chairing Member

1. Welcomes everyone; introduces him/herself and the other two panel members; explains their role within the pre-hearing panel; asks people present to introduce themselves and checks the status of those attending.
N.B. The child/relevant person has a right but not a duty to attend and so there is no need to excuse the child/relevant person if they are not present but the chairing member should check that notification has been sent.
2. Explains the purpose(s) of the pre-hearing panel.
3. Checks with the child/relevant person if they have any objection to an observer coming in to the pre-hearing panel.
4. Ascertains that people attending the pre-hearing panel have received the papers.

APPLICATION FOR DEEMED RELEVANT PERSON STATUS

The Panel Members

5. Where there is an application for someone to be deemed a relevant person this matter must be considered at the start of the pre-hearing panel.

The Chairing Member

6. When determining if an individual has a significant involvement in the upbringing of the child: invites the child, any relevant person and any individual about whom the deemed relevant person determination is being considered, if present, to give any representations (orally or in writing) or any other document or information for the consideration of the pre-hearing panel.

The Panel Members

7. Each panel member gives their determination on the matter of deemed relevant person status and the reasons for the determination.

The Chairing Member

8. Confirms the determination and the reasons for the determination.
9. Informs the child, each relevant person, any individual the pre-hearing panel has decided is or is not a relevant person that they all have a right to appeal the determination.
10. Ensures that where an individual has not been deemed to be a relevant person and there are other matters to consider, that individual should leave the pre- hearing panel.

PRE-HEARING PANEL DEALING WITH OTHER MATTERS

(Excusing the child, excusing any relevant person or deciding if the subsequent hearing is likely to be considering secure accommodation).

The Chairing Member

11. When considering any other matter, invites the child or any relevant person, if present, to give any representations (orally or in writing) or any other document or information for the consideration of the pre-hearing panel.

The Panel Members

12. Each panel member gives their determination on the matter and their reasons for the determination.

The Chairing Member

13. Confirms the determination and the reasons for the determination.
14. Advises the child and any relevant person that they will get a copy of the determination and the reasons for the determination in writing.

15. Closes the pre- hearing in an appropriate way.

N.B. The pre-hearing panel can appoint a safeguarder if one is not already in place (but there is no obligation to consider the appointment in every case).

Panel members should raise the issue when appropriate.

The Panel Members

16. Where a pre-hearing panel has decided that it is likely that a children's hearing will consider making a compulsory supervision order or an interim compulsory supervision order including secure accommodation authorisation in relation to the child, the reporter must, as soon as possible notify the Scottish Legal Aid Board and give them the name and address of the child.

17. Where a pre-hearing panel recommends that:

- In order for the child or any relevant person to participate effectively in the children's hearing, it is necessary that the child or relevant person be represented by a solicitor or counsel.

and

- It is unlikely that the child or relevant person will arrange to be represented by a solicitor or counsel.
- The reporter must, as soon as possible, notify the Scottish Legal Aid Board of the pre- hearing panel's decision and reasons and give them the name and address of the child or relevant person.

Step-by-Step Procedures and Children's Hearings



STEP BY STEP PROCEDURES

CHILDREN'S HEARING

These procedures are a combination of legislation and best practice.

Rule 7(1) of the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013

states:

“The procedure at any children’s hearing or pre-hearing panel required to be held by virtue of the Act or any other enactment unless provided for under the Act or Rules, is to be determined by the chairing member”

The Children's Hearing (Scotland) Act 2011 requires that the welfare of the child must be the paramount consideration of a children's hearing or pre-hearing panel, unless members of the public are to be protected from serious harm and then the welfare of the child is the primary consideration rather than the paramount one.

BEFORE THE HEARING

Pre-hearing checklist

- Arrive at least fifteen minutes before the session begins.
- Check the list of those who are present - who should be present; who is present; any observers; safeguarder; solicitors.
- Check the purpose of the hearing and possible options.
- Check the papers - do you all the same information; late reports- what are the options open to you? Has the child been sent the reports? Are the child's views reflected throughout the reports? Are there any problems anticipated?
- Identify the broad issues to be discussed- topic only not substance- agree a list of issues; decide, if appropriate, who will chair the hearing; check who may wish to raise a particular topic initially.
- Has any information been withheld?

- Consider whether there might be a need to be a review of deemed relevant person status at the end of the hearing.
- Is there any non – disclosure of information in force?

AT THE BEGINNING OF THE HEARING

The Chairing Member

1. Takes all reasonable steps to ensure that the number of people present at the same time is kept to a minimum.
2. Welcomes everyone; introduces him/herself and the other two panel members; explains their role within the hearing; asks people present to introduce themselves; takes a decision on whether any other person not notified or invited should be allowed into the hearing.
3. Checks the status of those present and their entitlement, or otherwise, to be present.
4. Checks with the child/relevant person if they have any objection to an observer being allowed in.

The hearing must be satisfied

5. If a relevant person is not present, that their presence is not necessary or that it would be unreasonable to expect them to attend.
6. If a child is not present that:
 - the case relates to an offence mentioned in Schedule 1 of the Criminal Procedure (Scotland) Act 1995 and the attendance of the child at the hearing is not necessary for a fair hearing.
 - the attendance of the child at the hearing would place the child's physical, mental or moral welfare at risk.

- taking account of the child's age and maturity, the child would not be capable of understanding what happens at the hearing.

At a grounds hearing, the child can only be excused from attending during the explanation of the grounds, if the hearing is satisfied, taking account of the child's age and maturity, that the child would not be capable of understanding the explanation.

Any excusal cannot last beyond the substantive decision.

A grounds hearing can only be rearranged if the child does not attend and has not been excused. If the grounds are accepted the hearing can after discussion, if necessary, defer making a substantive decision.

The hearing can decide not to proceed if the relevant person is not present.

The Chairing Member

7. Asks the child how old they are. If the child is not present or cannot understand the question, the hearing makes a determination as to their age.
8. Explains the purpose of the hearing to the child and relevant persons.
9. Ascertains that the child, each relevant person and any safeguarder has received all the relevant information and documents required to be received by the Rules and within the required timescales.
10. Confirms whether the child, each relevant person and any safeguarder has had the opportunity to read and consider these reports and whether these have been understood by the child and each relevant person.

The Hearing

11. If there has been a request prior to a hearing for information in a report to be withheld, 'a non-disclosure request', the hearing should consider this first. If it is a grounds hearing, the request should be considered immediately after the grounds have been explained and before any discussion.
12. If a request for non-disclosure is made during a hearing, the hearing must exclude the person it has been asked not to give the information to and consider the request. Once a decision has been made the person who has been excluded should be invited to return and advised of the hearing's decision. If the decision is not to withhold the information, the children's hearing must give the person who has been excluded the information.

The Chairing Member

13. Explains the statement of grounds to the child and relevant person.
Where necessary or appropriate the grounds may be read as written but should then be explained.
14. Ascertains whether the child and each relevant person:
 - understands the statement of grounds
 - accepts them in whole or as amended.

The Hearing

15. If the grounds are not accepted or understood, decides whether they wish to discharge the referral or send the grounds for proof.

If the grounds are sent for proof, considers where the child should live meantime and whether an interim compulsory supervision order is necessary. An interim compulsory supervision order can allow the child to stay at home, in a named place or unnamed place of safety.

16. If the grounds are accepted in whole or as amended, the hearing proceeds to discuss the case.

The facts in the statement of grounds which are not accepted may be deleted or amended and the hearing would proceed to discuss the accepted statement of grounds.

If grounds not accepted are sent to proof, the hearing should not consider the accepted grounds but should consider whether an interim compulsory supervision order is necessary as a matter of urgent necessity.

The Chairing Member

17. If the grounds are sent for proof:
- explains the purpose of the proof hearing
 - explains the child's right and obligation to attend
 - advises the child and relevant persons that they may wish to consult a solicitor and may be entitled to legal aid.

THE MIDDLE OF THE HEARING

The Chairing Member

18. Informs the child and any relevant person(s) present of the substance of all relevant reports or document as long as disclosure would not be likely to cause significant harm to the child.
19. Asks the child whether the papers accurately reflect the views they have expressed- unless the chairing member considers it inappropriate given the child's age and maturity. If the child confirms that the reports do not accurately reflect the child's view the chairing member must endeavour to clarify the child's view.

The Hearing

20. The hearing must at some stage, explicitly consider the appointment of a safeguarder and note the decision with reasons in the final written statement of reasons.
21. Takes all reasonable steps to obtain the views of the child, each relevant person and any safeguarder in relation to:
 - any report, document or matter being considered by the hearing
 - what measures, if any, would be in the best interests of the child.
22. May invite others present to express their views on, or provide any other information relevant to anything being considered by the hearing.

The discussion of issues in reports should be covered by the panel members working as a team.

23. Discusses the circumstances relating to the grounds.

Checks the information in the reports through discussion and questioning of report writers and others present. Checks the understanding of information discussed.

24. Provides the child with an opportunity to express his/her views and have regard to the views expressed. Children of twelve or over are presumed to be of sufficient age and maturity to form a view, but that does not mean that children under 12 should be presumed to have nothing valuable to contribute.
25. May consider, whether in order to obtain the views of the child, it is necessary to exclude certain parties from part or parts of the hearing. Exclusion of any party who has a right to be present must be done for the following reasons:
 - Exclusion is necessary to enable the hearing to ascertain the view of the child.

- Their presence is causing, or is likely to cause, the child significant distress.

Children, their representatives and safeguarders cannot be excluded.

26. Explains-

- To the persons being excluded why the exclusion is considered to be necessary.
- To any excluded relevant persons that any discussion in their absence will be outlined to them when they return.
- To the child that the hearing will need to disclose to the relevant person(s) what was discussed in the relevant person's absence. A summary of what will be said should be given to the child prior to the return of the relevant person(s) (subject to any non-disclosure decision).

27. If the relevant persons or their representatives are excluded from the hearing, on their return, the chairing member must disclose what has taken place (subject to any non-disclosure decision).

If members of the press are excluded, the chairing member may disclose the substance of what has taken place in their absence.

A decision to exclude any person should be noted in the written statement of decision and reasons.

28. Summarises the discussion at appropriate points and gives an overall summary before the hearing reaches its decision.

The Hearing

29. A children's hearing may recommend that:

- To allow the child or any relevant person to participate effectively in the hearing it is necessary that the child or relevant person be represented by a solicitor or counsel.
- and**
- It is unlikely the child or relevant person will arrange to be represented by a solicitor or counsel.

The hearing should then defer making a substantive decision and require the reporter, as soon as possible, to notify the Scottish Legal Aid Board of the decision, the reasons for that decision and the name and address of the child or relevant person.

30. If considering making a compulsory supervision order with a condition of residence other than with a relevant person, the hearing must have received a report with recommendations on the needs of the child and on the suitability to meet those needs of the place or places where the child is to stay and the suitability of the person(s) who will have charge of or control over the child and confirmation that regulation 3 and 4 of the Looked After Children (Scotland) Regulations 2009 have been complied with in compiling the report.

31. If making, continuing or varying a compulsory supervision order, the hearing must consider if a direction regulating contact is required and may consider if other measures are necessary- e.g. non-disclosure of address, medical treatment.

32. A hearing may, if satisfied that the criteria are met, authorise secure accommodation but **MUST** consider alternative options first.

THE END OF THE HEARING

The Hearing

33. Each panel member gives his/her decision and the reasons for the decision.

The Chairing Member

34. Confirms and explains the decision of the hearing and confirms the reasons for the decision.

35. Informs the child, relevant person and any safeguarder of their right of appeal.

- In the case of a child protection order second working day hearing, informs the child and relevant persons that they may apply to the sheriff within 2 working days to have the order or a direction set aside or varied.
- In the case of an interim compulsory supervision order, informs the child and relevant person that any appeal lodged will be heard within three days of the appeal being lodged.
- Advises the child and/or relevant persons that if they wish to appeal or to make an application in relation to a Child Protection Order that they should seek legal advice and that the child will be and the relevant person may be entitled to legal aid.
- Advises the child /relevant person that if there is secure authorisation they can appeal against the authorisation and the implementation/non implementation of the authorisation or the removal of the child from secure accommodation.

36. Where the decision is to make a compulsory supervision order or terminate, vary or continue a compulsory supervision order, informs the child, relevant person and any safeguarder of the right to seek a suspension of the hearing's decision once the appeal has been lodged.

The Hearing

37. The hearing may, in suitable circumstances, consider setting a date or period for review of the compulsory supervision order.
- Must set a review date or period for review if they issue a movement restriction condition.
38. If advice is being given about plans for permanence or adoption, the hearing should indicate the nature of that advice- whether or not they support the local authority's plans. The hearing must also review the compulsory supervision order.
39. If the hearing is giving advice to a court in a case where the child has pled guilty to or been convicted of an offence, they should explain what their advice is but that the court may not follow that advice.

The Chairing Member

40. Informs the child and relevant persons of their right to request a review hearing after three months and that the local authority may request a review at any time. A compulsory supervision order (CSO) should last only as long as is necessary. If no review is called, the CSO lasts for a maximum of one year, although the reporter will arrange a review before the CSO lapses.
41. Informs the child and relevant persons if there is an authorisation for secure accommodation, that there will be a review within three months.
42. Informs the child and relevant persons that they will receive a copy of the decision and reasons in writing from the reporter(within 5 working days if practicable)

REVIEW OF RELEVANT PERSON STATUS

43. Once a decision has been made in relation to a compulsory supervision order, if it appears that someone with deemed relevant person status no longer has significant involvement in the upbringing of the child, the hearing must review whether that person should continue to be a relevant person. There is a right of appeal against this decision.
44. The chairing member then closes the proceedings in an appropriate manner.

AFTER THE HEARING

The Chairing Member

45. Invites the child and relevant person to stay while the reporter completes the paperwork. Once the reporter has completed the forms and handed them to the chairing member, the reporter, child and any relevant person leaves the room.
46. Makes or causes to be made, a report of the decision and a statement in writing of the reasons for the decision.
- Including all decisions made throughout the hearing and any minority decisions and reasons
 - It is best practice for this to be undertaken by the hearing members working as a team
47. Signs the report and statement of reasons and any order.
48. The chairing member and other hearing members return all papers to the reporter and any notes for destruction.

Glossary of Terms



GLOSSARY OF TERMS

Terminology	Abbreviation	Description
Compulsory supervision order Section 83	CSO	An order in relation to the child containing at least one measure and specifying the authority responsible for implementing its terms. Lasts for a relevant period generally up to one year.
Interim compulsory supervision order Section 86	ICSO	An interim order in relation to the child which may contain a measure. Issued as a matter of urgency for the protection, guidance treatment or control of the child when there is no compulsory supervision order in place. It can last for up to 22 days and may be extended up to 66 days if application for proof is pending.
Interim variation of an compulsory supervision order Section 140	IVCSO	An interim order in relation to the child which may contain a measure. Issued as a matter of urgency for the protection, guidance treatment or control of the child when there is a compulsory supervision order in place. Can last for up to 22 days but then ends. New interim variations can be made.
Medical examination order Section 87	MEO	An interim order in relation to the child when a ground has been accepted or established: to be used in very limited and specific circumstances. May include a measure. It can last for 22 days.

Child protection order Ss 37-54	CPO	An order in relation to the child issued by court for the immediate protection of a child and reviewed by subsequent children's hearings.
Child assessment order Section 36	CAO	An order in relation to the child issued by court for the assessment of the child.
Warrant to secure the child's attendance Section 45		Warrant issued for the police to search for a child, apprehend and take them to a place of safety until a children's hearing is convened. Can include secure authorisation.
Movement restriction condition	MRC	A restriction on the movements of the child included in an order in relation to a child. An MRC must be considered by a hearing before authorising secure accommodation
Pre-hearing panel Section 79-82	PHP	A meeting involving three panel members and potentially the child and relevant persons to discuss and determine business before a children's hearing in relation to the child. May appoint a safeguarder.
Defer		An option available to a children's hearing. The hearing will continue matters and not make a substantive decision until a subsequent hearing. Interim decisions can still be made

<p>Scottish Legal Aid Board</p>	<p>SLAB</p>	<p>An agency which is responsible for ensuring legal assistance for children automatically in certain situations and determining whether legal assistance should be provided to a child and/or relevant person/s in other situations if referred by a children’s hearing.</p>
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Appendices

Appendix 1 - Antisocial Behaviour etc. (Scotland) Act 2004 (Extracts)

Appendix 2 - Adoption and Children (Scotland) Act 2007 (Extracts)

Appendix 3 - The Rehabilitation of Offenders Act 1974

Appendix 4 - Papers for Children

Appendix 5 - Summary of Legal Aid and Assistance

Appendix 6 - Amendments to the 2011 Act by the Forced Marriages Act 2011



Appendix 1

Antisocial Behaviour etc. (Scotland) Act 2004 (Extracts)

Section 4 Antisocial behaviour orders

(1) On the application of a relevant authority, the sheriff may, if satisfied that the conditions mentioned in subsection (2) are met as respects the person to whom the application relates (the “specified person”), make an antisocial behaviour order.

(2) Those conditions are—

(a) that the specified person is at least 12 years of age;

(b) that the specified person has engaged in antisocial behaviour towards a relevant person; and

(c) that an antisocial behaviour order is necessary for the purpose of protecting relevant persons from further antisocial behaviour by the specified person.

(3) For the purpose of determining whether the condition mentioned in subsection (2)(b) is met, the sheriff shall disregard any act or conduct of the specified person which that person shows was reasonable in the circumstances.

(4) Where the specified person is a child, the sheriff shall, before determining the application, require the Principal Reporter to arrange a children’s hearing for the purpose of obtaining their advice as to whether the condition mentioned in subsection (2)(c) is met; and the sheriff shall, in determining whether that condition is met, have regard to that advice.

(5) Subject to subsections (6) and (7), an antisocial behaviour order is an order which prohibits, indefinitely or for such period as may be specified in the order, the specified person from doing anything described in the order.

(6) The prohibitions that may be imposed by an antisocial behaviour order are those necessary for the purpose of protecting relevant persons from further antisocial behaviour by the specified person.

(7) If an antisocial behaviour order is made on the application of a local authority the order may, in addition to imposing prohibitions that are necessary for the purpose mentioned in subsection (6), impose such prohibitions as are necessary for the purpose of protecting other persons (“affected persons”) from further antisocial behaviour by the specified person.

Section 75A Requirement on Principal Reporter to consider application for parenting order

(1) Subsection (2) below applies where it appears to—

(a) the children’s hearing to whom a child’s case has been referred under section 65(1) of this Act; or

(b) a children’s hearing arranged, under section 73(8) of this Act, to review a supervision requirement in respect of a child,

that it might be appropriate for a parenting order to be made in respect of a parent of the child under section 102 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) (the “2004 Act”).

(2) The hearing may require the Principal Reporter to consider whether to apply, under subsection (3) of that section of the 2004 Act, for such an order.

(3) A requirement under subsection (2) above shall specify—

(a) the parent in respect of whom it might be appropriate for the order to be made; and

(b) by reference to subsections (4) to (6) of that section of the 2004 Act, the condition in respect of which the application might be made.

(4) In subsection (1) above, “parent” and “child” have the same meanings as in section 117 of the 2004 Act.”

102 Applications

(1) The court may make a parenting order in respect of a parent of a child where—

(a) subsection (2) or (3) applies; and

(b) the Scottish Ministers have notified the court that the local authority for the area in which the parent ordinarily resides has made arrangements that would enable the order to be complied with.

(2) This subsection applies where—

(a) the application for the order is made by the appropriate local authority; and

(b) the court is satisfied that—

(i) the behaviour condition; or

(ii) the conduct condition,
is met.

(3) This subsection applies where—

- (a) the application for the order is made by the Principal Reporter; and
 - (b) the court is satisfied that—
 - (i) the behaviour condition;
 - (ii) the conduct condition; or
 - (iii) the welfare condition,
- is met.

(4) The behaviour condition is—

- (a) that the child has engaged in antisocial behaviour; and
- (b) that the making of the order is desirable in the interests of preventing the child from engaging in further such behaviour.

(5) The conduct condition is—

- (a) that the child has engaged in criminal conduct; and
- (b) that the making of the order is desirable in the interests of preventing the child from engaging in further such conduct.

(6) The welfare condition is that the making of the order is desirable in the interests of improving the welfare of the child.

(7) For the purposes of subsection (5), a child engages in criminal conduct if the child engages in conduct that constitutes a criminal offence (or would do so if the child had attained the age of 8 years).

(8) An application under this section shall be made by summary application to the sheriff of the sheriffdom where the parent ordinarily resides.

(9) Before an application is made under this section—

- (a) by a local authority, it shall consult the Principal Reporter;
- (b) by the Principal Reporter, the Principal Reporter shall consult the appropriate local authority.

(10) In this section, “appropriate local authority” means the local authority for the area where the child ordinarily resides.

103 Parenting orders

(1) A parenting order is an order requiring the specified person—

(a) to comply, during a specified period—

(i) beginning with the making of the order; and

(ii) not exceeding 12 months,

with such requirements as are specified; and

(b) subject to subsection (2), to attend, during a specified period—

(i) falling within the specified period mentioned in paragraph (a); and

(ii) not exceeding 3 months,

such counselling or guidance sessions as may be directed by a supervising officer appointed by the relevant local authority.

(2) Where a parenting order has been made in respect of the person on a previous occasion in the interests of the child in whose interests the order is to be made, the order need not include a requirement under subsection (1)(b).

135 Supervision requirements: conditions restricting movement

(9A) The powers are—

(b) that the children's hearing may impose, under subsection (3)(b) above, a movement restriction condition."

(11) In this section, "movement restriction condition" means a condition—

(a) restricting the child's movements in such way as may be specified in the supervision requirement; and

(b) requiring the child to comply with such arrangements for monitoring compliance with the restriction mentioned in paragraph (a) above as may be so specified.

(12) Where a children's hearing impose a condition such as is mentioned in subsection (9A)(b) above, they shall also impose under subsection (3)(b) above such of the conditions prescribed by the Scottish Ministers for the purposes of this section as they consider necessary in the child's case.

(13)The Scottish Ministers may by regulations make provision as to the arrangements mentioned in subsection (11)(b) above.

(14)Regulations under subsection (13) above may in particular include provision—

(a)prescribing what method or methods of monitoring compliance with the restriction mentioned in paragraph (a) of subsection (11) above may be specified in a supervision requirement;

(b)specifying the devices which may be used for the purpose of that monitoring;

(c)prescribing the person who may be designated by a children’s hearing to carry out that monitoring or the class or description of person from which that person may be drawn;

(d)requiring a children’s hearing who have designated a person in pursuance of paragraph (c) above who is no longer within the provision made under that paragraph to vary the designation accordingly and notify the child of the variation.

(15)The Scottish Ministers may, by contract or otherwise, secure the services of such persons as they think fit to carry out the monitoring mentioned in subsection (11)(b) above and may do so in a way in which those services are provided differently in relation to different areas or different forms of that monitoring.

(16)Nothing in any enactment or rule of law prevents the disclosure to a person providing services in pursuance of subsection (15) above of information relating to a child where the disclosure is made for the purposes only of the full and proper provision of the monitoring mentioned in subsection (11)(b) above.

(17) A children’s hearing may include in a supervision requirement a movement restriction condition only if the hearing is constituted from the children’s panel for a local government area which is prescribed for the purposes of this section by the Scottish Ministers.”.

Antisocial Behaviour etc. (Scotland) Act 2004 as amended by Schedule 5 of the Children’s Hearings (Scotland) Act 2011

Section 12 Sheriff’s power to refer case to children’s hearing

(1) This section applies where-

(a) the sheriff makes an antisocial behaviour order or an interim order in respect of a child, and

(b) the sheriff considers that a section 67 ground (other than the ground mentioned in section 67(2)(j)) applies in relation to the child.

(1A) The sheriff may require the Principal Reporter to arrange a children’s hearing.

(1B) The sheriff must give the Principal Reporter a section 12 statement if-

(a) The sheriff makes a requirement under section (1A), and

(b) A compulsory supervision order is not in force in relation to the child

(1C) A section 12 statement is a statement-

(a) Specifying which of the section 67 grounds the sheriff considers applies in relation to the child,

(b) Setting out the reasons why the sheriff considers the ground applies, and

(c) Setting out any other information about the child which appears to the sheriff to be relevant

(1D) In this section-

“compulsory supervision order” has the meaning given to it by section 83 of the Children’s Hearings (Scotland) Act 2011,

“section 67 ground” means a ground mentioned in section 67(2) of that Act.”.

APPENDIX 2

ADOPTION AND CHILDREN (SCOTLAND) ACT 2007 (EXTRACTS)

84 Conditions and considerations applicable to making of order

(1) Except where subsection (2) applies, a permanence order may not be made in respect of a child who is aged 12 or over unless the child consents.

(2) This subsection applies where the court is satisfied that the child is incapable of consenting to the order.

(3) The court may not make a permanence order in respect of a child unless it considers that it would be better for the child that the order be made than that it should not be made.

(4) In considering whether to make a permanence order and, if so, what provision the order should make, the court is to regard the need to safeguard and promote the welfare of the child throughout childhood as the paramount consideration.

(5) Before making a permanence order, the court must—

(a) after taking account of the child's age and maturity, so far as is reasonably practicable—

(i) give the child the opportunity to indicate whether the child wishes to express any views, and

(ii) if the child does so wish, give the child the opportunity to express them,

(b) have regard to—

(i) any such views the child may express,

(ii) the child's religious persuasion, racial origin and cultural and linguistic background, and

(iii) the likely effect on the child of the making of the order, and

(c) be satisfied that—

(i) there is no person who has the right mentioned in subsection (1)(a) of section 2 of the 1995 Act to have the child living with the person or otherwise to regulate the child's residence, or

(ii) where there is such a person, the child's residence with the person is, or is likely to be, seriously detrimental to the welfare of the child.

(6) A child who is aged 12 or over is presumed to be of sufficient age and maturity to form a view for the purposes of subsection (5)(a).

85 Child in respect of whom order may be made

(1) A permanence order may be made in respect of a child who is an adopted child.

(2) A permanence order may not be made in respect of a child who is or has been—

(a) married,

(b) a civil partner.

89 Revocation of supervision requirement

(1) Subsection (2) applies where—

(a) the child in respect of whom a permanence order is to be made is subject to a supervision requirement, and

(b) the appropriate court is satisfied that, were it to make a permanence order in respect of the child, compulsory measures of supervision in respect of the child would no longer be necessary.

(2) The court must make an order providing that, on the making of the permanence order, the supervision requirement ceases to have effect.

95 Duty of children's hearing to prepare report for court

(1) Subsection (2) applies where—

(a) an application is made for a permanence order, or variation of such an order, in respect of a child,

(b) the application has not been determined (or, as the case may be, withdrawn or abandoned), and

(c) a children's hearing proposes to—

(i) make a supervision requirement in respect of the child, or

(ii) modify, under paragraph (c) or (d) of subsection (9) of section 73 of the 1995 Act, a supervision requirement that has been made in respect of the child.

(2) The children's hearing must prepare for the court to which the application has been made a report containing such information as the Scottish Ministers may by regulations prescribe.

(3) In subsection (1)(a), the reference to variation of a permanence order includes a reference to amendment of the order to include provision granting authority for the child to whom the order relates to be adopted.

96 Application: effect on supervision requirement

(1) Subsection (2) applies where an application is made for a permanence order, or variation of such an order, in respect of a child.

(2) A supervision requirement in respect of the child may not be—

(a) made, or

(b) modified under paragraph (c) or (d) of subsection (9) of section 73 of the 1995 Act,

until the application is determined (or, as the case may be, withdrawn or abandoned).

(3) Subsection (2) does not apply if the court to which the application is made refers the child's case to the Principal Reporter (whether following receipt of a report under section 95 or otherwise).

(4) In subsection (1), the reference to variation of a permanence order includes a reference to amendment of the order to include provision granting authority for the child to whom the order relates to be adopted.

(5) In subsection (3), "Principal Reporter" has the same meaning as in Part II of the 1995 Act.

106 Child subject to supervision requirement: duty to refer to Principal Reporter

(1) Subsection (2) applies where—

(a) a child is subject to a supervision requirement,

(b) a registered adoption service is satisfied that the best interests of the child would be served by placing the child for adoption, and

(c) it intends to place the child for adoption.

(2) The registered adoption service must refer the child's case to the Principal Reporter.

(3)The Scottish Ministers may make regulations specifying by reference to the occurrence of an event or events described in the regulations the period of time during which a referral under this section is to be made.

(4)In subsection (2), “Principal Reporter” has the same meaning as in Part II of the 1995 Act.

Appendix 3

THE REHABILITATION OF OFFENDERS ACT 1974

This note explains how the above Act may affect a child attending a children's hearing to accept offence grounds post 24 June 2013.

What is the purpose of the 1974 Act?

It is intended to limit the time which a person must reveal that they have either a 'criminal conviction' or post 24 June 2013 an 'alternative to prosecution'. From the 24th June 2013, following implementation of the Children's Hearings (Scotland) Act 2011, the majority of offences admitted at a children's hearing or established in court will no longer be classed as a 'criminal conviction' but will be classed as an 'alternative to prosecution'. The alternative to prosecution disposal will be major advance in supporting a young person particularly when applying for employment.

Does any appearance at a children's hearing constitute a 'criminal conviction' or an 'alternative to prosecution'?

No. Children can be referred to a children's hearing on a number of different issues and the Rehabilitation of Offenders Act 1974 only comes into play when a child either admits an offence at a children's hearing or an offence is established by a sheriff in children's hearings proceedings. Any appearance at a children's hearing is in private and the press, even if present, cannot publish details of any child. Children and their parents do not need to tell anyone about it except for the circumstances defined in the Act. Children's hearings are not part of the criminal court system but records of decisions taken at children's hearings are kept by the police on the national computer system.

For how long do 'criminal convictions' or 'alternatives to prosecution' have to be revealed?

Any child who accepts offence grounds which results in a supervision requirement will have that offence appear on a standard or enhanced disclosure certificate or Protection of Vulnerable Groups (PVG) scheme record issued by Disclosure Scotland until they reached age 40. This was quite complicated particularly if the child has had several appearances over time for various offences.

Following implementation of the 2011 Act the 'alternative to prosecution' will become 'spent' either three months from the date the compulsory supervision order was made, varied, continued or terminated or three months from the date the referral to the children's hearing was discharged.

The provisions in the 2011 Act will also cover retrospectively supervision requirements and discharges under the Children (Scotland) Act 1995 and the Social Work (Scotland) Act 1968.

AFTER THIS PERIOD, AN EMPLOYER DOES NOT HAVE TO BE TOLD ABOUT THE OFFENCE

But are there any exceptions to this rule?

Yes. As you can imagine, there are a number of jobs and situations where it is considered that even a child's previous behaviour is very important to know about. These are currently set out in the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 and if any one of them applies, then every criminal conviction must be revealed, not matter how long ago it was. Examples of jobs and situations are listed below.

The repeal of section 3 of the 1974 Act

The 2011 Act will, however, sever the link between children's hearing disposals resulting from offence grounds and convictions and create a new link between children's hearing disposals and Disclosure Scotland by making changes to the Police Act 1997 which mean that only serious violent and serious sexual offences will be automatically disclosed on standard and enhanced disclosure certificates and PVG scheme records. The offences which will be automatically disclosed will be set out by an order (the offences order) to be made by Scottish Ministers.

The repeal of section 3 of the 1974 Act means that the 2013 Exclusions and Exceptions Order will not apply to children's hearing disposals which are an alternative to prosecution so an order will require to be made by Scottish Ministers which will ensure that individuals are not required to 'self disclose' to prospective employers previous disposals that will not be disclosed on standard and enhanced

disclosure certificates and PVG scheme records. This order along with the offences order will come into effect when the 2011 Act is implemented on 24 June 2013.

If a child commits an offence (no matter the type of offence) which is considered to be of such seriousness as to justify prosecution and conviction then the terms of the 2013 Exclusions and Exceptions Order will apply.

What will a prospective employer do?

If a child does reveal any 'conviction', or alternative to prosecution then it does not mean that there is an automatic bar to the job, licence etc. Any employer or agency must use the information fairly and sensibly. Many children who have 'convictions' or alternatives to prosecution gain employment in the jobs or professions listed below.

'Spent convictions' or 'alternatives to prosecution' may be a proper reason for refusing a person employment, dismissing him from his employment, demoting him within his employment or in any other way prejudicing him in his employment if the employment is or relates to the following:

- Judicial appointments
- Prosecutors, officers assisting prosecutors, and officers assisting in the work of the Crown Office.
- Clerks (including depute and assistant clerks) and officers of the High Court of Justiciary, the Court of Session and the district court, sheriff clerks (including sheriff clerks depute) and their clerks and assistants.
- Traffic wardens appointed under section 95 of the Road Traffic Regulation Act 1984 or section 9 of the Police (Scotland) Act 1967.
- Constables, police custody and security officers, persons appointed as police cadets to undergo training with a view to becoming constables and persons employed for the purposes of, or to assist the constables of, a police force, military, naval and air force police.
- Any employment or work which is concerned with the provision of a care service.
- Any regulated work with children.

'Spent convictions' or alternatives to prosecution may be taken into account in considering a person's suitability for admission to the professions listed in the following paragraph. A person may be refused admission to the roll or register of these professions because of a 'spent conviction' or alternatives to prosecution. Such convictions or alternatives to prosecution are also admissible as evidence in disciplinary proceedings against a member of any of these professions. The professions referred to are:

- Medical practitioner
- Advocate, solicitor
- Accountant
- Dentist, dental hygienist, dental auxiliary
- Veterinary surgeon
- Nurse, midwife
- Ophthalmic optician, dispensing optician
- Pharmaceutical chemist
- Registered teacher

'Spent convictions' or alternatives to prosecution may be taken into account in relation to any application for the following licences etc:

- Firearms certificates and permits, shotgun certificates and registration as a firearms dealer
- Licences to employ abroad a person under the age of 18
- Certificates of fitness to keep explosives for private use
- Certificate of fitness to keep explosives.

Appendix 4

Scottish Children's Reporter Administration (SCRA):

Papers for Children

New powers come into place in terms of the provision of papers (or otherwise) for children on 24 June 2013.

Rule 18 of The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 provides the following:-

Notification and provision of information to a young child

18.-(1) This rule applies where, under the Act or these Rules, the Reporter must-

(a) notify a child of the date, time and place of a children's hearing or pre-hearing panel to be held in relation to that child or

(b) provide a child with any information, confirmation, report or any document in relation to a children's hearing or pre-hearing panel.

(2) The Reporter need not notify the child or provide the information, confirmation, report or other document where taking account of the child's age and maturity, the child would not be capable of understanding the notification, information, confirmation, report or other document.

This means the Reporter has a discretionary power in terms of

- Notification of the children's hearing to the child
- Providing the child with paperwork in relation to the hearing

This discretionary power is based on the age and maturity of the child and the child's ability to understand the information.

This in practice may mean that a child gets all the information, some of the information or no information. For example a child might be able to understand the notification to attend a children's hearing but not the actual hearing papers.

Additionally, if a child is able to understand information relative to their hearing and would in the normal course of events receive information, documents or reports from

the reporter about their hearing, that information may still be subject to a non-disclosure request if it is likely to cause significant harm to the child. For more information about non-disclosure see Section 9 of the Legislation and Procedure manual.

Further details about how this will be dealt with in practice by reporters will be available at a later date.

APPENDIX 5 SUMMARY OF LEGAL AID AND ASSISTANCE

1. ADVICE AND ASSISTANCE

As at present, advice and assistance will be available to all persons, assuming they qualify, for general advice before and after a children's hearing and for advice on associated court proceedings. Where the client is a child this assumes that the child has sufficient capacity to instruct a solicitor directly.

(A child aged 12 or over is deemed to be of sufficient age to instruct a solicitor although a child younger than this may also be able to instruct a solicitor.)

2. AUTOMATIC CHILDREN'S LEGAL AID

Automatic legal aid is available only to a child and in the four specified circumstances where that child has not secured themselves their own solicitor. Again, this assumes that the child has sufficient capacity to instruct a solicitor directly.

The 4 specified circumstances are -

- Application to a sheriff for variation or termination of a child protection order
- Second working day hearing following the granting of a child protection order
- A children's hearing where placement of the child in secure accommodation is under consideration
- A children's hearing where child been arrested and detained in custody for the alleged commission of a criminal offence

3. ASSISTANCE BY WAY OF REPRESENTATION

For all other hearings which fall outwith the four specified hearings, the solicitor representing a child, relevant person or a deemed relevant person would apply a means test and then make an application to the Scottish Legal Aid Board who would consider the case and ultimately make a decision. Where the client is a child this assumes that the child has sufficient capacity to instruct a solicitor directly.

Contact direction review- Assistance by way of representation is available to an individual for representation at a contact direction review hearing only, subject to a means test applied by the solicitor and a merits test applied by the Board.

Individual seeking deemed relevant person status- Assistance by way of representation is available to a person seeking deemed relevant person status at a pre-hearing panel(but only where there is no compulsory supervision order in place for the child)subject to a means and merits test being applied by the solicitor.

4. CHILDREN'S LEGAL AID

This is available to a child, relevant person or a person who has been deemed to be relevant at a pre-hearing panel or children's hearing for all court related court proceedings (including appeals against panel decisions) before the sheriff, Sheriff Principal and Court of Session. Where the client is a child this assumes that they have sufficient capacity to instruct a solicitor directly.

Deemed relevant person status-Children's Legal Aid will also be available to an individual who wishes to appeal against a decision of a pre-hearing panel or children's hearing not to deem them to be a relevant person.

Contact direction review-Children's Legal Aid will also be available to an individual who wishes to appeal against a decision taken at a contact direction review hearing.

An application for children's legal aid is made to SLAB who will apply the means and merits test

Special urgency children's legal aid will be made available to all those entitled to receive children's legal aid but where there has been insufficient time to submit /consider a full children's aid application and where special urgency can be shown.

Appendix 6

Amendments under Section 62 (5) and Section 67(2) of the Children's Hearings (Scotland) Act 2011

13 Amendment of Children's Hearings (Scotland) Act 2011

(1) The Children's Hearings (Scotland) Act 2011 (asp 1) is amended as follows.

(2) In section 62(5) (provision of information by court)—

(a) the word “or” immediately following paragraph (l) is repealed,

(b) after paragraph (m) insert—

“(n) an application for the making, variation, recall or extension of—

(i) a forced marriage protection order (as defined in section 1(6) of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (asp 15)), or

(ii) an interim forced marriage protection order (as defined in section 5(2) of that Act),

(o) civil proceedings in which a court makes an order such as is mentioned in sub-paragraph (i) or (ii) of paragraph (n) by virtue of section 4(1) of that Act (power to make order without application), or

(p) proceedings relating to an offence under section 9(1) of that Act (offence of breaching order).”.

(3) In section 67(2) (meaning of “section 67 ground”)—

(a) in paragraph (p)(i) the words “marriage or” are repealed,

(b) after paragraph (p) insert—

“(q) the child—

(i) has been, is being or is likely to be forced into a marriage (that expression being construed in accordance with section 1 of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (asp 15)) or,

(ii) is, or is likely to become, a member of the same household as such a child.”.

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