



# Children's Hearings (Scotland) Act 2011

## 2011 asp 1

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**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** **S**

#### THE NATIONAL CONVENER AND CHILDREN'S HEARINGS SCOTLAND

##### *The National Convener and CHS*

#### **1** **The National Convener** **S**

- (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.

#### **Commencement Information**

**11** S. 1 in force at 19.1.2011 by [S.S.I. 2011/8](#), [art. 2\(a\)](#)

**Status:** Point in time view as at 12/06/2013. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Children's Hearings (Scotland) Act 2011 is up to date with all changes known to be in force on or before 02 September 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## 2 Children's Hearings Scotland **S**

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

### Commencement Information

**I2** S. 2 in force at 18.4.2011 by [S.S.I. 2011/111](#), art. 2, [Sch.](#)

## 3 Further provision about National Convener and CHS **S**

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

### Commencement Information

**I3** S. 3 in force at 18.4.2011 for specified purposes by [S.S.I. 2011/111](#), art. 2, [Sch.](#)

**I4** S. 3 in force at 19.9.2012 for specified purposes by [S.S.I. 2012/246](#), art. 2, [Sch.](#)

**I5** S. 3 in force at 31.3.2013 for specified purposes by [S.S.I. 2013/98](#), art. 2, [Sch.](#)

### *The Children's Panel*

## 4 The Children's Panel **S**

- (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.

### Commencement Information

**I6** S. 4 in force at 19.9.2012 for specified purposes by [S.S.I. 2012/246](#), art. 2, [Sch.](#)

**I7** S. 4 in force at 31.3.2013 for specified purposes by [S.S.I. 2013/98](#), art. 2, [Sch.](#)

### *Children's hearings*

VALID FROM 24/06/2013

## 5 Children's hearing **S**

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.

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## 6 Selection of members of children's hearing **S**

- (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.

### Commencement Information

**18** [S. 6](#) in force at 31.3.2013 by [S.S.I. 2013/98](#), art. 2, [Sch.](#)

VALID FROM 24/06/2013

## 7 Holding of children's hearing **S**

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.

VALID FROM 24/06/2013

## 8 Provision of advice to children's hearing **S**

- (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.

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VALID FROM 24/06/2013

## 9 Independence of children's hearings **S**

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 **S**

- (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).

### Commencement Information

**I9** S. 10 in force at 18.4.2011 by [S.S.I. 2011/111](#), art. 2, [Sch.](#)

### *Functions of CHS*

## 11 Provision of assistance to National Convener **S**

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.

### Commencement Information

**I10** S. 11 in force at 18.4.2011 by [S.S.I. 2011/111](#), art. 2, [Sch.](#)

## 12 Independence of National Convener **S**

- (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).

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#### Commencement Information

**I11** S. 12 in force at 18.4.2011 by [S.S.I. 2011/111](#), art. 2, [Sch.](#)

### 13 Directions **S**

- (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.

#### Commencement Information

**I12** S. 13 in force at 18.4.2011 by [S.S.I. 2011/111](#), art. 2, [Sch.](#)

VALID FROM 24/06/2013

## PART 2 **S**

### THE PRINCIPAL REPORTER AND THE SCOTTISH CHILDREN'S REPORTER ADMINISTRATION

#### *The Principal Reporter and SCRA*

### 14 The Principal Reporter **S**

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

### 15 The Scottish Children's Reporter Administration **S**

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 **S**

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

#### *The Principal Reporter*

### 17 Duty as respects location of children's hearing **S**

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.

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## **18 Power to change Principal Reporter's functions** **S**

- (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** **S**

- (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** **S**

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** **S**

- (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** **S**

- (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.

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(2) This section is subject to section 18(1)(e).

### 23 Directions **S**

- (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. **S**

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

VALID FROM 24/06/2013

## PART 3 **S**

### GENERAL CONSIDERATIONS

### 25 Welfare of the child **S**

- (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 **S**

- (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.

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## 27 Views of the child **S**

- (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 **S**

- (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 **S**

- (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,



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- (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** **S**

- (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** **S**

- (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.

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## PART 4 S

### SAFEGUARDERS

#### 32 The Safeguarders Panel S

- (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.

#### Commencement Information

**I13** S. 32 in force at 13.2.2012 by [S.S.I. 2012/23](#), [art. 2](#)

VALID FROM 24/06/2013

#### 33 Functions of safeguarder S

- (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.

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VALID FROM 24/06/2013

#### 34 Safeguarders: regulations **S**

- (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.

VALID FROM 24/06/2013

### PART 5 **S**

#### CHILD ASSESSMENT AND CHILD PROTECTION ORDERS

##### *Child assessment orders*

#### 35 Child assessment orders **S**

- (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.

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### 36 Consideration by sheriff **S**

- (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 **S**

- (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.

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(6) In subsection (2), “specified” means specified in the order.

*Consideration of application by sheriff*

**38 Consideration by sheriff: application by local authority only** **S**

- (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** **S**

- (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.

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### *Ancillary measures*

#### **40 Information non-disclosure directions** **S**

- (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** **S**

- (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** **S**

- (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.

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- (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** **S**

- (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** **S**

- (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** **S**

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



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- (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** S

(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** S

(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** S

(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,



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- (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 S**

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 S**

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 S**

- (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,

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- (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** S

- (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** S

- (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.

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- (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** **S**

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** **S**

- (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—

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- (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** S

- (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—

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- (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 **S**

- (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 **S**

- (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 **S**

- (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),

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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.

VALID FROM 24/06/2013

## PART 6 **S**

### INVESTIGATION AND REFERRAL TO CHILDREN'S HEARING

#### *Provision of information to Principal Reporter*

#### **60 Local authority's duty to provide information to Principal Reporter **S****

- (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 **S****

- (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 [<sup>F1</sup>section 20(1)(d) of the Police and Fire Reform (Scotland) Act 2012 (asp 8)] in relation to the child, the constable must also make the report to the Principal Reporter.

#### **Textual Amendments**

- F1** Words in s. 61(3) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 44](#); S.S.I. 2013/51, [art. 2](#) (with transitional provisions and savings in S.S.I. 2013/121)

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## 62 Provision of information by court **S**

- (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,<sup>F2</sup> ...
  - (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).
  - <sup>F3</sup>(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



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- (p) proceedings relating to an offence under section 9(1) of that Act (offence of breaching order).]

#### Textual Amendments

- F2** Word in s. 62(5) repealed (28.11.2011) by [Forced Marriage etc. \(Protection and Jurisdiction\) \(Scotland\) Act 2011 \(asp 15\), ss. 13\(2\)\(a\)](#), 19(2) (with s. 18); S.S.I. 2011/352, art. 2
- F3** S. 62(5)(n)-(p) inserted (28.11.2011) by [Forced Marriage etc. \(Protection and Jurisdiction\) \(Scotland\) Act 2011 \(asp 15\), ss. 13\(2\)\(b\)](#), 19(2) (with s. 18); S.S.I. 2011/352, art. 2

### 63 Provision of evidence from certain criminal cases **S**

- (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 **S**

- (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 **S**

- (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 **S**

- (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,



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- (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”** **S**

- (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,

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- (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 <sup>F4</sup>... civil partnership, or
    - (ii) is, or is likely to become, a member of the same household as such a child.
  - [<sup>F5</sup>(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.]
- (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),

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“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).

#### Textual Amendments

- F4** Words in s. 67(2)(p)(i) repealed (28.11.2011) by [Forced Marriage etc. \(Protection and Jurisdiction\) \(Scotland\) Act 2011 \(asp 15\), ss. 13\(3\)\(a\), 19\(2\)](#) (with s. 18); S.S.I. 2011/352, art. 2
- F5** S. 67(2)(q) inserted (28.11.2011) by [Forced Marriage etc. \(Protection and Jurisdiction\) \(Scotland\) Act 2011 \(asp 15\), ss. 13\(3\)\(b\), 19\(2\)](#) (with s. 18); S.S.I. 2011/352, art. 2

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

- (1) This section applies where, having made a determination under section 66(2) in relation to a child, the Principal Reporter considers that—
- none of the section 67 grounds applies in relation to the child, or
  - 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—
- 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
  - may, if the Principal Reporter considers it appropriate, inform any other person of the determination and that fact.
- (4) Those persons are—
- the child,
  - each relevant person in relation to the child,
  - the relevant local authority for the child,
  - any person specified in a child protection order in force in relation to the child under section 37(2)(a),
  - any person who has given the Principal Reporter—
    - notice under section 43 of a child protection order,
    - information under section 60, 61, 64 or 66,
    - a report under section 61 or 66,
    - a section 62 statement,
    - evidence under section 63, or
    - information under section 43(5) of the Criminal Procedure (Scotland) Act 1995 (c.46).
- (5) The Principal Reporter may refer the child to—
- 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

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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** S

- (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** S

- (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.

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

- (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** **S**

- (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.

VALID FROM 24/06/2013

## **PART 7** **S**

### ATTENDANCE AT CHILDREN'S HEARING

## **73 Child's duty to attend children's hearing** **S**

- (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—

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- (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 **S**

- (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 **S**

- (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 **S**

- (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.



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- (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** **S**

- (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** **S**

- (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.

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- (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.

VALID FROM 24/06/2013

## PART 8 **S**

### PRE-HEARING PANEL

#### 79 Referral of certain matters for pre-hearing determination **S**

- (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).



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- (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** S

- (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** S

- (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),

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- (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 **S**

- (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.

VALID FROM 24/06/2013

## PART 9 **S**

### CHILDREN'S HEARING

#### *Key definitions*

## 83 Meaning of “compulsory supervision order” **S**

- (1) In this Act, “compulsory supervision order”, in relation to a child, means an order—

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- (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—

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- (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”** **S**

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”** **S**

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”** **S**

- (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—

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- (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” **S**

- (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—

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- (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” **S**

- (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

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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** **S**

- (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** **S**

- (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** **S**

- (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



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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 S**

- (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 S**

- (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

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(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 S**

(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 S**

(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.

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*Children's hearing to consider need for further interim order*

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

- (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** **S**

- (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.

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VALID FROM 24/06/2013

## PART 10 **S**

### PROCEEDINGS BEFORE SHERIFF

#### *Application for extension or variation of interim compulsory supervision order*

#### **98 Application for extension or variation of interim compulsory supervision order **S****

- (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 **S****

- (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 **S****

- (1) This section applies where—

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- (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** S

- (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** S

- (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** S

- (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).

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- (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** **S**

- (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** **S**

- (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** **S**

- (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

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- (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 S**

- (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 S**

- (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—



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- (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. S**

- (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 S**

- (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—

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- (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** **S**

- (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** **S**

- (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** **S**

- (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.

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#### **114 Sheriff's powers on review of grounds determination** **S**

- (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** **S**

- (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** **S**

- (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.

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- (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 S**

- (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 S**

- (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.

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VALID FROM 24/06/2013

## PART 11 **S**

### SUBSEQUENT CHILDREN'S HEARINGS

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

- (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 **S****

- (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

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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.

VALID FROM 24/06/2013

## PART 12 **S**

### CHILDREN'S HEARINGS: GENERAL

#### *Views of child*

#### **121 Confirmation that child given opportunity to express views before hearing **S****

- (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.

VALID FROM 07/09/2020

#### *Children's advocacy services*

#### **122 Children's advocacy services **S****

- (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,

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- (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** **S**

- (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** **S**

- (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).



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*Compulsory supervision orders: review*

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

- (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** **S**

- (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

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- (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** **S**

- (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** **S**

- (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.

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VALID FROM 24/06/2013

## PART 13 **S**

### REVIEW OF COMPULSORY SUPERVISION ORDER

#### *Requirement for review*

#### **129 Requirement under Antisocial Behaviour etc. (Scotland) Act 2004 **S****

- (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 **S****

- (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 **S****

- (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—

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- (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** **S**

- (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** **S**

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

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(b) the order would not otherwise be reviewed before it expires.

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

- (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** **S**

- (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** **S**

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** **S**

- (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.

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- (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** S

- (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.

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- (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 S**

- (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 S**

- (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 S**

- (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.



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- (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** **S**

- (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)).

VALID FROM 24/06/2013

**PART 14** **S**

IMPLEMENTATION OF ORDERS

*Power to transfer child in cases of urgent necessity*

**143 Transfers in cases of urgent necessity** **S**

- (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.

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### *Implementation of compulsory supervision order*

#### **144 Implementation of compulsory supervision order: general duties of implementation authority S**

- (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 S**

- (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 S**

- (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.

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- (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** S

- (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** S

- (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** S

- (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—

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- (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. S**

- (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 S**

- (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—

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- (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 **S**

- (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—

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- (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 **S**

- (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.

VALID FROM 24/06/2013

## PART 15 **S**

### APPEALS

#### *Appeal against decision of children's hearing*

### 154 Appeal to sheriff against decision of children's hearing **S**

- (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—

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- (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 **S**

- (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.



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- (7) Subsection (6) applies in relation to a safeguarder only if regulations under section 32 so provide.

#### 156 Determination of appeal **S**

- (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 **S**

- (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.

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- (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 S**

- (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 S**

- (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 S**

- (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,

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- (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 S**

- (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 S**

- (1) This section applies where a relevant order or warrant made in relation to a child includes a secure accommodation authorisation.

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- (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. S**

- (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,

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- (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

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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** **S**

- (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** **S**

- (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.

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- (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 S**

- (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.



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**167 Appeals to sheriff principal: section 166 S**

- (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.

VALID FROM 24/06/2013

**PART 16 S**

ENFORCEMENT OF ORDERS

**No Enforcement of orders S**

**commentary**

**item** (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.

**be** (2) An officer of law may enforce the order—

- found**
- (a) by searching for and apprehending the child,
  - (b) by taking the child to the authorised place,
  - (c) where—

**key-** (i) it is not reasonably practicable to take the child immediately to the authorised place.

**c103bdc8fe1f195ed44da4610d68** **No commentary item could be found for this reference key-ff7d1382f79df2931bdf1126e9e77d51...**

**No** .....  
**commentary**

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**item  
could  
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found  
for  
this  
reference  
key-**

ff7d1382f79df2931bdf1126e9e77d51(ii)

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 **S**

(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—

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- (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 **S**

- (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,

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- (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,

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- (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 **S**

- (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)).

VALID FROM 24/06/2013

## PART 17 **S**

### PROCEEDINGS UNDER PART 10: EVIDENCE

## 172 Use of evidence obtained from prosecutor **S**

- (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.

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- (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 **S**

- (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 **S**

- (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

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- (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** S

- (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.



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## 176 Amendment of Vulnerable Witnesses (Scotland) Act 2004 **S**

- (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.

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- (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

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(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.”.

VALID FROM 24/06/2013

## PART 18 **S**

### MISCELLANEOUS

#### *Children's hearings: procedural rules*

#### **177 Children's hearings: procedural rules **S****

- (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.

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(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** **S**

(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** **S**

(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** **S**

(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.

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*Implementation of compulsory supervision orders: annual report*

**181 Implementation of compulsory supervision orders: annual report** **S**

- (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** **S**

- (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.

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- (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** **S**

- (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—

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- (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 S**

(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 S**

(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—



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“(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 S**

(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.

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PROSPECTIVE

### *Rehabilitation of offenders*

#### **187 Rehabilitation of Offenders Act 1974: treatment of certain disposals by children's hearings** **S**

- (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

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- (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.”.

PROSPECTIVE

### *Criminal record certificates*

## **188 Criminal record certificates** **S**

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,

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- (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** S

- (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** S

- (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.

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- (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 S

### LEGAL AID AND ADVICE

#### 191 Legal aid and advice S

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

## “PART 5A S

### 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

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- 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—

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- (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.



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### **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.

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### **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

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- (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,

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“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 S

### 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

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- (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.

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- (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.”.

#### **Commencement Information**

**I14** S. 191 in force at 31.1.2012 for specified purposes by [S.S.I. 2012/1](#), art. 2(1), Sch.

**I15** S. 191 in force at 26.3.2012 for specified purposes by [S.S.I. 2012/1](#), art. 2(1), Sch.

VALID FROM 24/06/2013

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

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.

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- (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 **S**

### GENERAL

#### *Formal communications*

## 193 **Formal communications** **S**

- (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.



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## Forms

### 194 Forms **S**

- (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 **S**

- (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 **S**

- (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 **S**

- (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 **S**

- (1) Subsections (2) to (6) apply where subordinate legislation under this Act is subject to the super-affirmative procedure.

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- (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” S**

- (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.

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- (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” **S**

- (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” **S**

- (1) In this Act, “relevant local authority”, in relation to a child, means—

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- (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 **S**

- (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,

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“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,

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“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** S

- (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.

#### **Commencement Information**

- I16** S. 203(1) in force at 31.1.2012 for specified purposes by [S.S.I. 2012/1](#), [art. 2\(2\)](#)  
**I17** S. 203(1) in force at 12.6.2013 for specified purposes by [S.S.I. 2013/190](#), [art. 2](#)

#### **204 Ancillary provision** S

- (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.** S

- (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** S

- (1) This Act may be cited as the Children's Hearings (Scotland) Act 2011.

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- (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.



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## SCHEDULE 1 **S**

(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.

#### **Commencement Information**

**I18** Sch. 1 para. 1 in force at 18.4.2011 by S.S.I. 2011/111, art. 2, Sch.

#### *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.

#### **Commencement Information**

**I19** Sch. 1 para. 2 in force at 18.4.2011 by S.S.I. 2011/111, art. 2, Sch.

#### *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.

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#### Commencement Information

**I20** Sch. 1 para. 3 in force at 18.4.2011 by S.S.I. 2011/111, art. 2, Sch.

#### *Resignation of members*

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

#### Commencement Information

**I21** Sch. 1 para. 4 in force at 18.4.2011 by S.S.I. 2011/111, art. 2, Sch.

#### *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.

#### Commencement Information

**I22** Sch. 1 para. 5 in force at 18.4.2011 by S.S.I. 2011/111, art. 2, Sch.

#### *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

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- (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.

#### **Commencement Information**

**I23** Sch. 1 para. 6 in force at 18.4.2011 by S.S.I. 2011/111, art. 2, Sch.

#### *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.

#### **Commencement Information**

**I24** Sch. 1 para. 7 in force at 18.4.2011 by S.S.I. 2011/111, art. 2, Sch.

#### *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.

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- (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.

#### Commencement Information

**I25** Sch. 1 para. 8(1)-(6) in force at 18.4.2011 by [S.S.I. 2011/111](#), art. 2, Sch.

**I26** Sch. 1 para. 8(7) in force at 19.1.2011 by [S.S.I. 2011/8](#), **art. 2(b)**

**I27** Sch. 1 para. 8(8)-(10) in force at 18.4.2011 by [S.S.I. 2011/111](#), art. 2, Sch.

#### *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.

#### Commencement Information

**I28** Sch. 1 para. 9 in force at 18.4.2011 by [S.S.I. 2011/111](#), art. 2, Sch.

#### *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

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- (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.

#### Commencement Information

- I29** Sch. 1 para. 10(1)(3)(6) in force at 19.9.2012 by [S.S.I. 2012/246](#), [art. 2](#), [Sch.](#)
- I30** Sch. 1 para. 10(2)(a) in force at 19.9.2012 by [S.S.I. 2012/252](#), [art. 2](#)
- I31** Sch. 1 para. 10(2)(b)(4)(5)(7)-(9) in force at 31.3.2013 by [S.S.I. 2013/98](#), [art. 2](#), [Sch.](#)

#### 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,

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- (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.

**Commencement Information**

**I32** Sch. 1 para. 11 in force at 18.4.2011 by S.S.I. 2011/111, art. 2, Sch.

*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.

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- (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.

#### Commencement Information

**I33** Sch. 1 para. 12(1)-(3)(7) in force at 19.9.2012 by [S.S.I. 2012/246](#), art. 2, [Sch.](#)

**I34** Sch. 1 para. 12(4)-(6) in force at 31.3.2013 by [S.S.I. 2013/98](#), art. 2, [Sch.](#)

#### *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.

#### Commencement Information

**I35** Sch. 1 para. 13(1)-(4)(7) in force at 19.9.2012 by [S.S.I. 2012/246](#), art. 2, [Sch.](#)



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#### *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.

#### **Commencement Information**

**I36** Sch. 1 para. 14(1)(3)-(5) in force at 31.3.2013 by [S.S.I. 2013/98, art. 2, Sch.](#)

**I37** Sch. 1 para. 14(2)(6)-(8) in force at 19.9.2012 by [S.S.I. 2012/246, art. 2, Sch.](#)

#### *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.

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#### Commencement Information

**I38** Sch. 1 para. 15(1)-(5) in force at 18.4.2011 by S.S.I. 2011/111, art. 2, Sch.

#### *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.

#### Commencement Information

**I39** Sch. 1 para. 16 in force at 18.4.2011 by S.S.I. 2011/111, art. 2, Sch.

#### *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.

#### Commencement Information

**I40** Sch. 1 para. 17(1) in force at 18.4.2011 by S.S.I. 2011/111, art. 2, Sch.

**I41** Sch. 1 para. 17(2) in force at 31.3.2013 by S.S.I. 2013/98, art. 2, Sch.

#### *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.

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#### Commencement Information

**I42** Sch. 1 para. 18 in force at 18.4.2011 by S.S.I. 2011/111, art. 2, Sch.

#### *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).

#### Commencement Information

**I43** Sch. 1 para. 19 in force at 18.4.2011 by S.S.I. 2011/111, art. 2, Sch.

#### *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).

#### Commencement Information

**I44** Sch. 1 para. 20 in force at 18.4.2011 by S.S.I. 2011/111, art. 2, Sch.

#### *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

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- (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.

#### Commencement Information

**I45** Sch. 1 para. 21 in force at 18.4.2011 by S.S.I. 2011/111, art. 2, Sch.

#### *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.

#### Commencement Information

**I46** Sch. 1 para. 22 in force at 18.4.2011 by S.S.I. 2011/111, art. 2, Sch.

#### *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.

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**Commencement Information**

**I47** Sch. 1 para. 23 in force at 18.4.2011 by S.S.I. 2011/111, art. 2, Sch.

*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.

**Commencement Information**

**I48** Sch. 1 para. 24 in force at 18.4.2011 by S.S.I. 2011/111, art. 2, Sch.

*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.

**Commencement Information**

**I49** Sch. 1 para. 25 in force at 18.4.2011 by S.S.I. 2011/111, art. 2, Sch.

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## SCHEDULE 2 **S**

(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.

#### **Commencement Information**

**I50** Sch. 2 para. 1(1) in force at 19.9.2012 by S.S.I. 2012/246, art. 2, Sch.

**I51** Sch. 2 para. 1(2)-(6) in force at 31.3.2013 by S.S.I. 2013/98, art. 2, Sch.

VALID FROM 24/06/2013

#### *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.

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### *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.

#### **Commencement Information**

**I52** Sch. 2 para. 3 in force at 31.3.2013 by S.S.I. 2013/98, art. 2, Sch.

### *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).

#### **Commencement Information**

**I53** Sch. 2 para. 4 in force at 19.9.2012 by S.S.I. 2012/246, art. 2, Sch.

VALID FROM 24/06/2013

## SCHEDULE 3 **S** (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.



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### *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,

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- (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.

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- (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.

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- (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.

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- (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.

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#### *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.

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*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.

VALID FROM 24/06/2013

SCHEDULE 4 **S**  
*(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



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“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—

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- (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,

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- (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 **S**  
(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.

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- (2) In section 4 (Scottish Legal Aid Fund)—
- (a) in subsection (2)—
    - (i) in paragraph (aza), after sub-paragraph (ii) insert—
      - “(iia) 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

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- 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—

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- (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).”.

#### Commencement Information

**I54** Sch. 5 para. 1(8)(a)(b) in force at 31.1.2012 by [S.S.I. 2012/1](#), [art. 2\(2\)](#)

#### *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—

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- “(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) ”,



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(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.”.

#### Commencement Information

**I55** Sch. 5 para. 2(8) in force at 12.6.2013 for specified purposes by [S.S.I. 2013/190, art. 2](#)

VALID FROM 24/06/2013

#### *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.

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- (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.”

VALID FROM 24/06/2013

SCHEDULE 6 **S**  
(introduced by section 203(2))

REPEALS

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**Status:**

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