

CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 11 – Subsequent Children's Hearings

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

175. This section applies where a Children's Hearing is arranged following: a deferral by a grounds hearing; withdrawal of grounds determination by the reporter; a grounds determination by the sheriff; a recall of grounds determination by the sheriff; the establishment by the sheriff of a new ground for referral on review of grounds determination; or the hearing has deferred making a decision under section 119(2). Subsection (2) provides for a Children's Hearing, where it considers it appropriate, to defer making a decision on whether to make a compulsory supervision order until a subsequent hearing. Deferral of a decision may be considered appropriate, for example, because a particular report has not been completed in time, or the accuracy of a report is being challenged or because the child requires further assessment in order to fully determine the child's needs.
176. Subsection (3) provides that if the Children's Hearing does not defer making a decision, the hearing must either make a compulsory supervision order for the child or discharge the referral. The hearing may only make a compulsory supervision order if it is satisfied that it is necessary for the protection, guidance, treatment or control of the child. Subsections (4) and (5) make clear that where the hearing defers making a decision and the child or relevant person had been excused from attending that hearing, the hearing may defer to a subsequent hearing without further excusing the child and the relevant person from attending at the subsequent hearing.

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

177. This section applies when the Children's Hearing defers making a decision on whether to make a compulsory supervision order in relation to the child. Subsection (2) provides for the making of an interim compulsory supervision order where the child was not already subject to an interim compulsory supervision order immediately prior to the hearing and the hearing considers that the nature of the child's circumstances is such that it is necessary for the protection, guidance, treatment or control of the child. Subsection (3) makes clear that the hearing may only make such an order if the hearing considers that circumstances are urgent.
178. Subsections (4) and (5) make similar provision for the hearing to make a further interim compulsory supervision order where a child was subject to an interim order immediately prior to the hearing. Where an order has been in place previously, then the urgency in the situation should have been removed due to the effect of the order, for example, a child may already be in a place of safety as a condition of an interim order. However, it may be necessary to continue the order meantime to ensure that the child's circumstances do not deteriorate pending a substantive decision. As such the test for the making of a further interim order is not that the child's circumstances are such that urgent action is required

*These notes relate to the Children's Hearings (Scotland) Act
2011 (asp 1) which received Royal Assent on 6 January 2011*

but that the order continues to be necessary for the protection, guidance, treatment or control of the child. Subsection (6) provides for the Children's Hearing to make a medical examination order if it is necessary to obtain further information or to carry out further investigation before making a substantive decision. A child may, for example, be required to reside in an assessment centre, attend an educational psychologist or be subject to a medical examination.