

# **CHILDREN'S HEARINGS (SCOTLAND) ACT 2011**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 13 – Review of Compulsory Supervision Order**

##### **Functions of Principal Reporter and children's hearing**

###### ***Section 137 – Duty to arrange children's hearing***

198. This section applies where a compulsory supervision order is in force in relation to the child and a review of the order is required under the sections of the Act set out in subsection (1). Subsection (2) provides that the Principal Reporter must arrange such a hearing. Subsection (3) provides that where a child is transferred as a matter of urgent necessity under section 143(2), the child's case must be reviewed by the Children's Hearing within three working days of the transfer. Subsection (4) places a duty on the reporter to require the implementation authority to provide reports in relation to the child or any other information in relation to the child that the local authority wishes to give to the Children's Hearing to assist in the hearing's review of the compulsory supervision order. The reporter must require the information when arranging every review hearing. Subsection (5) provides a power for the reporter to require the local authority to provide a report in relation to the child generally or in relation to any matter relating to the child that the reporter specifies. Subsection (6) makes clear that the local authority may include in the reports required under this section information given to the authority by another person.

###### ***Section 138 – Powers of children's hearing on review***

199. This section applies to Children's Hearings arranged to review a compulsory supervision order in relation to a child.

200. The review is only complete when the hearing is in a position to make a decision as to what course of action is in the best interests of the child. 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 further assessment of the child is required in order to fully determine the child's needs. Subsection (2) provides that a hearing may defer a decision to a subsequent hearing where the hearing considers it appropriate to do so. Subsection (3) provides that if the review hearing does not defer to a subsequent hearing then the hearing must terminate, vary, or continue the compulsory supervision order in relation to the child. An order may not be continued for a period exceeding one year. Subsection (4) provides that the hearing may only vary or continue a compulsory supervision order if it is necessary to do so for the protection, guidance treatment or control of the child. Subsection (5) places a duty on the hearing, when varying or continuing a compulsory supervision order, to consider making a measure to regulate contact between the child and another person.

201. Subsections (6) and (7) provide that where the hearing terminates the compulsory supervision order, the hearing must consider whether the child is in need of voluntary

supervision or guidance and, if so, make a statement to that effect. If such a statement is made, the relevant local authority is then under a duty to provide such voluntary supervision or guidance as the child is willing to accept. Subsections (8) and (9) provide that where the review hearing decides to defer consideration of the case, the hearing may require the attendance of the child and the relevant person at that subsequent hearing even where they were excused from attending the original review hearing.

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

202. This section applies where a review hearing defers a decision to a subsequent hearing under section 138(2). Subsection (2) provides for the hearing to continue the existing compulsory supervision order for the child until the subsequent hearing. Subsection (3) provides for the making of an interim variation of a compulsory supervision order where 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. The hearing may only make such a variation of the order if the hearing considers that circumstances are urgent.

***Section 140 – Interim variation of compulsory supervision order***

203. This section sets out the meaning of an interim variation of a compulsory supervision order. Where an interim variation of a compulsory supervision order requires a child to reside away from home, the order need not specify a particular place but instead specify that a child reside at any place of safety away from the place where the child predominantly resides. Section 83(5)(a) does not apply to interim variations of compulsory supervision orders. Subsection (4) sets out the period for which an interim variation of a compulsory supervision order has effect beginning on the day the order is varied and ending on the occurrence of certain events, whichever occurs first: the next Children's Hearing in relation to the child, the disposal by the sheriff of an application under Part 10 in relation to the child, a day specified in the order, or the expiry of the period of 22 days.

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

204. This section relates to the review hearing that must be arranged when the local authority or adoption society intend to place a child for adoption or the local authority intend to apply for an order freeing the child for adoption or to apply for a permanence order, or where they become aware that someone intends to apply to adopt the child. Subsection (2) provides that the hearing that carries out the review must prepare a report (in a form determined by the Scottish Ministers) to provide advice in respect of the proposed application or adoption to the implementation authority and any court which may require to make a decision on the application or adoption. Subsection (4) provides that when a court considering a permanence order or an adoption order receives the report prepared by the Children's Hearing, it has a duty to have regard to the advice in the report under subsection (2) before coming to any decision relating to the application.