

CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 13 – Review of Compulsory Supervision Order

Requirement for review

Section 129 – Requirement under Antisocial Behaviour etc. (Scotland) Act 2004

189. This section relates to when the sheriff has directed the Principal Reporter under section 12(1A) of the Antisocial Behaviour etc. (Scotland) Act 2004 to arrange a hearing for a child and the child is subject to an existing compulsory supervision order. Subsection (2) places a duty on the reporter to arrange for the order to be reviewed.

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

190. This section applies where the court has remitted a case to the Children's Hearing under section 49 of the Criminal Procedure (Scotland) Act 1995 for disposal and the child is already subject to a compulsory supervision order. In these circumstances, the Principal Reporter must arrange for the order to be reviewed. The ground is considered as having been established as an offence ground by the sheriff under section 108 of this Act.

Section 131 – Duty of implementation authority to require review

191. This section places a duty on the implementation authority (the local authority specified in the compulsory supervision order), by notifying the Principal Reporter, to require a review of a compulsory supervision order when the authority is satisfied that one of the circumstances set out in subsection (2) applies. The circumstances range from where the compulsory supervision order is not being complied with to where the implementation authority consider that it would be in the best interests of the child to make a permanence order under section 80 of the Adoption and Children (Scotland) Act 2007.
192. Subsection (3) enables the Scottish Ministers to make regulations specifying the period within which a review requirement must be made in those circumstances listed in subsection (2)(a) to (d). Subsection (5) makes clear that a review must be made without delay where an application for an adoption order for the child has been made or is pending.

Section 132 – Right of child or relevant person to require review

193. This section allows the child and relevant person to require a review of the compulsory supervision order by giving notice to the Principal Reporter. The review may not take place until three months after the order being made, continued or varied although the notice may be given before that date. Subsection (5) enables the Scottish Ministers to make regulations shortening the period before a review can take place in relation to a compulsory supervision order that includes a secure accommodation authorisation.

Section 133 – Principal Reporter's duty to initiate review

194. This section places a duty on the Principal Reporter to initiate a review where a compulsory supervision order is due to expire within a 3 month period and no other arrangements exist to review the order before the end of that period. A compulsory supervision order normally expires after a period of one year from making or reviewing the order, or on the child's eighteenth birthday, unless the Children's Hearing specifies an earlier review date in the order (see section 83(7)).

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

195. This section provides a duty on the relevant person to notify the Principal Reporter and the implementation authority of any plans to take a child who is subject to a compulsory supervision order to live outwith Scotland where removing the child from Scotland is not in accordance with the compulsory supervision order or with an order under section 11 of the 1995 Act. The jurisdiction of a Children's Hearing extends only to Scotland but a hearing may specify a place of residence in Scotland and effectively prohibit a move elsewhere if that is considered to be in the best interests of the child. The notice must be given at least 28 days before the day the relevant person proposes to take the child to live outwith Scotland. Subsection (3) places a duty on the reporter to initiate a review hearing if the reporter receives notification under this section.

Section 135 – Duty to initiate review: secure accommodation authorisation

196. This section relates to a review of a compulsory supervision order that includes a secure accommodation authorisation and provides that the Principal Reporter must arrange for a review of the order within 3 months from the date the order was made, varied or continued. The duty on the reporter to initiate a review of the compulsory supervision order does not apply where the chief social work officer has removed the child from secure accommodation in the interim.

Section 136 – Duty to initiate review where child transferred

197. This section provides that where a child has been transferred as a matter of urgent necessity under section 143(2), the reporter must arrange a hearing to review the child's case.

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.

Review of relevant person determination

Section 142 – Review of determination that person be deemed a relevant person

205. This section provides for a review of an individual's status as a deemed relevant person where the Children's Hearing considers that they no longer meet the test for deemed relevant person status. The deeming status may only be reviewed when the hearing has been arranged to review the compulsory supervision order. The hearing must first make the decision on the review of the compulsory supervision order. The individual will continue to be treated as the child's relevant person for the purpose of any appeal which arises from the review of the compulsory supervision order.
206. Subsection (2) provides that the hearing must review the deeming status where it considers that the individual may no longer have (nor recently have had) a significant involvement in the upbringing of the child. Subsection (3) provides that the hearing may also defer the decision to a subsequent hearing (which will deal only with the question of the review of the deeming status). Subsection (4) provides that if the hearing determines that the deeming test is no longer met then it must direct that the individual is no longer to be the child's relevant person. Section 81(4) will no longer apply to the individual except for the purposes of any appeal against the review of the compulsory supervision order. The individual will have the right to appeal, under section 160 of this Act, against the determination.