Children's Hearings (Scotland) Act 2011

2011 asp 1

PART 5

CHILD ASSESSMENT AND CHILD PROTECTION ORDERS

Child assessment orders

35 Child assessment orders

(1) A local authority may apply to the sheriff for a child assessment order in respect of a child.

(2) A child assessment order is an order authorising an officer of a local authority or a person authorised by that officer to carry out (subject to section 186) an assessment of—

(a) the child's health or development, or

(b) the way in which the child has been or is being treated or neglected.

(3) An order may—

(a) require any person in a position to do so to produce the child to the officer,

(b) for the purpose of carrying out the assessment, authorise the taking of the child to any place and the keeping of the child at that place or any other place for a period specified in the order,

(c) where it contains an authorisation of the type mentioned in paragraph (b), include directions about contact between the child and any other person.

(4) A child assessment order must specify the period during which it has effect.

(5) That period must—

(a) begin no later than 24 hours after the order is granted, and

(b) not exceed 3 days.

Commencement Information

I1 S. 35 in force at 24.6.2013 by S.S.I. 2013/195, **arts. 2**, 3

Changes to legislation: *Children's Hearings (Scotland) Act 2011, Part 5 is up to date with all changes known to be in force on or before 05 May 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) View outstanding changes*

36 Consideration by sheriff

(1) This section applies where an application for a child assessment order in respect of a child is made by a local authority.

(2) The sheriff may make the order if the sheriff is satisfied that—

(a) the local authority has reasonable cause to suspect—

(i) that the child has been or is being treated in such a way that the child is suffering or is likely to suffer significant harm, or

(ii) that the child has been or is being neglected and as a result of the neglect the child is suffering or is likely to suffer significant harm,

(b) an assessment of the kind mentioned in section 35(2) is necessary in order to establish whether there is reasonable cause to believe that the child has been or is being so treated or neglected, and

(c) it is unlikely that the assessment could be carried out, or carried out satisfactorily, unless the order was made.

(3) The sheriff may, instead of making a child assessment order, make a child protection order if the sheriff considers the conditions in section 38(2) are satisfied.

Commencement Information

I2 S. 36 in force at 24.6.2013 by S.S.I. 2013/195, **arts. 2**, 3

Child protection orders

37 Child protection orders

(1) A person may apply to the sheriff for a child protection order in respect of a child.

(2) A child protection order is an order doing one or more of the following—

(a) requiring any person in a position to do so to produce the child to a specified person,

(b) authorising the removal of the child by the specified person to a place of safety and the keeping of the child in that place,

(c) authorising the prevention of the removal of the child from any place where the child is staying (whether or not the child is resident there),

(d) authorising the carrying out (subject to section 186) of an assessment of—

(i) the child's health or development, or

(ii) the way in which the child has been or is being treated or neglected.

(3) A child protection order may also include any other authorisation or requirement necessary to safeguard or promote the welfare of the child.

(4) A child protection order may include an authorisation of the type mentioned in paragraph (d) of subsection (2) only if it also includes an authorisation of a type mentioned in paragraph (b) or (c) of that subsection.

(5) An application for a child protection order must—

(a) identify the applicant,

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(b) in so far as is practicable, identify the child in respect of whom the order is sought,

(c) state the grounds on which the application is made, and

(d) be accompanied by supporting evidence, whether documentary or otherwise, sufficient to enable the sheriff to determine the application.

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

Commencement Information

I3 S. 37 in force at 24.6.2013 by S.S.I. 2013/195, **arts. 2**, 3

Consideration of application by sheriff

38 Consideration by sheriff: application by local authority only

(1) This section applies where an application for a child protection order in respect of a child is made by a local authority.

(2) The sheriff may make the order if the sheriff is satisfied that—

(a) the local authority has reasonable grounds to suspect that—

(i) the child has been or is being treated in such a way that the child is suffering or is likely to suffer significant harm,

(ii) the child has been or is being neglected and as a result of the neglect the child is suffering or is likely to suffer significant harm, or

(iii) the child will be treated or neglected in such a way that is likely to cause significant harm to the child,

(b) the local authority is making enquiries to allow it to decide whether to take action to safeguard the welfare of the child, or is causing those enquiries to be made,

(c) those enquiries are being frustrated by access to the child being unreasonably denied, and

(d) the local authority has reasonable cause to believe that access is required as a matter of urgency.

Commencement Information

I4 S. 38 in force at 24.6.2013 by S.S.I. 2013/195, **arts. 2**, 3

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

(1) This section applies where an application for a child protection order in respect of a child is made by a local authority or other person.

(2) The sheriff may make the order if the sheriff is satisfied that—

(a) there are reasonable grounds to believe that—

(i) the child has been or is being treated in such a way that the child is suffering or is likely to suffer significant harm,

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(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.

Commencement Information

I5 S. 39 in force at 24.6.2013 by S.S.I. 2013/195, **arts. 2**, 3

Ancillary measures

40 Information non-disclosure directions

(1) This section applies where the sheriff makes a child protection order in respect of a child.

(2) The sheriff must consider whether to include an information non-disclosure direction in the order.

(3) An information non-disclosure direction is a direction that—

(a) the location of any place of safety at which the child is being kept, and

(b) any other information specified in the direction relating to the child,

must not be disclosed (directly or indirectly) to any person or class of person specified in the direction.

(4) An information non-disclosure direction ceases to have effect when—

(a) it is terminated by a children's hearing under section 47(1)(a)(ii) or the sheriff under section 51(5)(b), or

(b) the child protection order in which it is included ceases to have effect.

Commencement Information

I6 S. 40 in force at 24.6.2013 by S.S.I. 2013/195, **arts. 2**, 3

41 Contact directions

(1) This section applies where the sheriff makes a child protection order in respect of a child.

(2) The sheriff must consider whether to include a contact direction in the order.

(3) A contact direction is a direction—

(a) prohibiting contact between the child and a person mentioned in subsection (4),

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(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.

Commencement Information

I7 S. 41 in force at 24.6.2013 by S.S.I. 2013/195, **arts. 2**, 3

42 Parental responsibilities and rights directions

(1) A person applying to the sheriff for a child protection order in respect of a child may, at the same time, apply to the sheriff for a parental responsibilities and rights direction.

(2) A parental responsibilities and rights direction is a direction about the fulfilment of parental responsibilities or exercise of parental rights in relation to—

(a) the treatment of the child arising out of any assessment authorised by the child protection order, or

(b) any other matter that the sheriff considers appropriate.

(3) A parental responsibilities and rights direction ceases to have effect when—

(a) it is terminated by a children's hearing under section 47(1)(a)(ii) or the sheriff under section 51(5)(b), or

(b) the child protection order in which it is included ceases to have effect.

Commencement Information

I8 S. 42 in force at 24.6.2013 by S.S.I. 2013/195, **arts. 2**, 3

Notice of order

43 Notice of child protection order

(1) As soon as practicable after the making of a child protection order, the applicant must give notice to—

(a) the person specified in the order under section 37(2)(a) (unless the person is the applicant),

(b) the child in respect of whom it is made,

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(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.

Commencement Information

I9 S. 43 in force at 24.6.2013 by S.S.I. 2013/195, **arts. 2**, 3

Obligations of local authority

44 Obligations of local authority

(1) This section applies where, by virtue of a child protection order, a child is removed to a place of safety provided by a local authority.

(2) Subject to the child protection order, the local authority has the same duties towards the child as the local authority would have by virtue of section 17 of the 1995 Act if the child were looked after by the local authority.

Commencement Information

I10 S. 44 in force at 24.6.2013 by S.S.I. 2013/195, **arts. 2**, 3

Review by children's hearing of certain orders

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

(1) This section applies where—

(a) a child protection order is in force in respect of a child,

(b) the child has been taken to a place of safety by virtue of the order, and

(c) the Principal Reporter has not received notice under section 49 of an application to the sheriff to terminate or vary the order.

(2) The Principal Reporter must arrange a children's hearing.

(3) The Principal Reporter must arrange for the children's hearing to take place on the second working day after the day on which the child is taken to the place of safety.

Commencement Information

I11 S. 45 in force at 24.6.2013 by S.S.I. 2013/195, **arts. 2**, 3

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

(1) This section applies where—

(a) a child protection order is in force in respect of a child,

(b) the order authorises the prevention of the removal of the child from a place, and

(c) the Principal Reporter has not received notice under section 49 of an application to the sheriff to terminate or vary the order.

(2) The Principal Reporter must arrange a children's hearing.

(3) The Principal Reporter must arrange for the children's hearing to take place on the second working day after the day on which the child protection order is made.

Commencement Information

I12 S. 46 in force at 24.6.2013 by S.S.I. 2013/195, **arts. 2**, 3

Decision of children's hearing

47 Decision of children's hearing

(1) A children's hearing arranged under section 45 or 46 may—

(a) if it is satisfied that the conditions for making the order are met—

(i) continue the order, or

(ii) continue and vary the order (including by terminating, varying or including an information non-disclosure direction, a contact direction or a parental responsibilities and rights direction), or

(b) if it is not satisfied that those conditions are met, terminate the order.

(2) In subsection (1), the "conditions for making the order" are—

(a) where the order was made under section 38, the matters mentioned in subsection (2)(a) to (d) of that section,

(b) where the order was made under section 39, the matters mentioned in subsection (2)(a) and (b) of that section.

Commencement Information

I13 S. 47 in force at 24.6.2013 by S.S.I. 2013/195, **arts. 2**, 3

Variation or termination of order by sheriff

48 Application for variation or termination

(1) An application may be made by any of the following persons to the sheriff to vary a child protection order—

(a) the child in respect of whom the order is made,

(b) a relevant person in relation to the child,

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(c) a person not falling within paragraph (b) who has (or recently had) a significant involvement in the upbringing of the child,
(d) the person who applied for the child protection order,
(e) the person specified in the child protection order under section 37(2)(a),
(f) the Principal Reporter,
(g) any other person prescribed by rules of court.

(2) An application may be made by any of the persons mentioned in subsection (1)(a) to (g) (other than the Principal Reporter) to the sheriff to terminate a child protection order.

(3) An application under this section may be made only—
(a) before the commencement of a children's hearing arranged under section 45 or 46, or
(b) if the children's hearing arranged under section 45 or 46 continues the child protection order (with or without variation), within 2 working days after the day on which the child protection order is continued.

Commencement Information
I14 S. 48 in force at 24.6.2013 by S.S.I. 2013/195, **arts. 2**, 3

49 Notice of application for variation or termination

A person applying under section 48 for variation or termination must, as soon as practicable after making the application, give notice of it to—
(a) the person who applied for the child protection order (unless the person is the applicant),
(b) the person specified in the child protection order under section 37(2)(a) (unless the person is the applicant),
(c) the child (unless the child is the applicant),
(d) each relevant person in relation to the child (unless the relevant person is the applicant),
(e) the relevant local authority for the child (unless the local authority is the applicant),
(f) the Principal Reporter (unless the Principal Reporter is the applicant), and
(g) any other person to whom the applicant is required to give notice under rules of court.

Commencement Information
I15 S. 49 in force at 24.6.2013 by S.S.I. 2013/195, **arts. 2**, 3

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

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

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Commencement Information

I16 S. 50 in force at 24.6.2013 by S.S.I. 2013/195, **arts. 2**, 3

51 Determination by sheriff

(1) This section applies where an application is made under section 48 in relation to a child protection order.

(2) The sheriff must, before determining the application, give the following persons an opportunity to make representations—

(a) the applicant,

(b) the child in respect of whom the child protection order is made,

(c) each relevant person in relation to the child,

(d) any person not falling within paragraph (c) who the sheriff considers to have (or to recently have had) a significant involvement in the upbringing of the child,

(e) the applicant for the child protection order,

(f) the relevant local authority for the child (if the authority did not apply for the child protection order),

(g) the Principal Reporter.

(3) The application must be determined within 3 working days after the day on which it is made.

(4) The child protection order ceases to have effect at the end of that period if the application is not determined within that period.

(5) The sheriff may—

(a) terminate the child protection order if the sheriff is not satisfied of—

(i) where the order was made under section 38, the matters mentioned in subsection (2)(a) to (d) of that section, or

(ii) where the order was made under section 39, the matters mentioned in subsection (2)(a) and (b) of that section,

(b) vary the child protection order (including by terminating, varying or including an information non-disclosure direction, a contact direction or a parental responsibilities and rights direction), or

(c) confirm the child protection order.

(6) If the sheriff orders that the child protection order is to be terminated, the order ceases to have effect at the end of the hearing before the sheriff.

Commencement Information

I17 S. 51 in force at 24.6.2013 by S.S.I. 2013/195, **arts. 2**, 3

Changes to legislation: *Children's Hearings (Scotland) Act 2011, Part 5 is up to date with all changes known to be in force on or before 05 May 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) View outstanding changes*

Termination of order

52 Automatic termination of order

(1) This section applies where a child protection order contains an authorisation of the type mentioned in section 37(2)(b).

(2) The order ceases to have effect at the end of the period of 24 hours beginning with the making of the order if the person specified in the order under section 37(2)(a) has not attempted to implement it within that period.

(3) The order ceases to have effect at the end of the period of 6 days beginning with the making of the order if the child to whom the order relates has not been removed to a place of safety within that period.

Commencement Information

I18 S. 52 in force at 24.6.2013 by S.S.I. 2013/195, **arts. 2**, 3

53 Power of Principal Reporter to terminate order

(1) If the Principal Reporter is satisfied that the conditions for the making of a child protection order in respect of a child are no longer satisfied, the Principal Reporter may terminate the order by giving notice to—

(a) the person specified in the order under section 37(2)(a), or

(b) where there is no such person specified, the applicant for the order.

(2) If the Principal Reporter is satisfied that the conditions for including a relevant direction in a child protection order in respect of a child are no longer satisfied, the Principal Reporter may vary the child protection order so as to terminate the direction by giving notice to—

(a) the person specified in the order under section 37(2)(a), or

(b) where there is no such person specified, the applicant for the order.

(3) A relevant direction is—

(a) an information non-disclosure direction,

(b) a contact direction,

(c) a parental responsibilities and rights direction.

(4) The Principal Reporter may not terminate or vary the order if—

(a) a children's hearing arranged under section 45 or 46 has commenced, or

(b) proceedings before the sheriff in relation to an application under section 48 have commenced.

(5) Where the Principal Reporter terminates or varies a child protection order under subsection (1), the Principal Reporter must notify the sheriff who granted the order.

Commencement Information

I19 S. 53 in force at 24.6.2013 by S.S.I. 2013/195, **arts. 2**, 3

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54 Termination of order after maximum of 8 working days

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

(a) the beginning of a children's hearing arranged under section 69 in relation to the child,

(b) the person specified in the order under section 37(2)(a) or, where there is no such person specified, the applicant for the order receiving notice under section 68(3) that the question of whether a compulsory supervision order should be made in respect of the child will not be referred to a children's hearing,

(c) where the order contains an authorisation of the type mentioned in section 37(2)(b), the end of the period of 8 working days beginning on the day **[**[F1] after the day on which**]** 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 **[**[F2] after the day on which**]** the order was made.

Textual Amendments

F1 Words in s. 54(c) inserted (26.1.2015) by Children and Young People (Scotland) Act 2014 (asp 8), **ss. 83**, 102(3); S.S.I. 2014/353, art. 2(2)(3), Sch. (with art. 3)

F2 Words in s. 54(d) inserted (26.1.2015) by Children and Young People (Scotland) Act 2014 (asp 8), **ss. 83**, 102(3); S.S.I. 2014/353, art. 2(2)(3), Sch. (with art. 3)

Commencement Information

I20 S. 54 in force at 24.6.2013 by S.S.I. 2013/195, **arts. 2**, 3

Other emergency measures

55 Application to justice of the peace

(1) A person may apply to a justice of the peace for an order in respect of a child—

(a) requiring any person in a position to do so to produce the child to a specified person,

(b) authorising the removal of the child by the specified person to a place of safety and the keeping of the child in that place,

(c) authorising the prevention of the removal of the child from any place where the child is staying.

(2) A justice of the peace may make an order under this section if—

(a) the justice of the peace is satisfied of—

(i) in a case where the applicant for the order is a local authority, the matters mentioned in section 38(2)(a) to (d), or

(ii) in a case where the applicant for the order is a local authority or any other person, the matters mentioned in section 39(2)(a) and (b), and

(b) the justice of the peace is satisfied that it is not practicable in the circumstances for an application for a child protection order to be made to or considered by the sheriff.

(3) As soon as practicable after the making of the order, the applicant must inform—

(a) the Principal Reporter,

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(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.

Commencement Information

I21 S. 55 in force at 24.6.2013 by S.S.I. 2013/195, **arts. 2**, 3

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

(1) A constable may remove a child to a place of safety and keep the child there if—

(a) the constable is satisfied—

(i) of the matters mentioned in section 39(2)(a), and

(ii) that the removal of the child is necessary to protect the child from the harm mentioned there or from further harm, and

(b) it is not practicable in the circumstances for an application for a child protection order to be made to or considered by the sheriff.

(2) As soon as practicable after a constable removes a child under this section, the constable must inform the Principal Reporter.

(3) The child may not be kept in a place of safety under this section for a period of more than 24 hours.

(4) The child may not be kept in a place of safety under this section if—

(a) a child protection order is in force in respect of the child, or

(b) an application has been made to the sheriff for a child protection order or to a justice of the peace for an order under section 55 on the basis of the facts before the constable and that application has been refused.

(5) The Principal Reporter may, by giving notice to the constable, require the constable to release the child if—

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(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.

Commencement Information

I22 S. 56 in force at 24.6.2013 by S.S.I. 2013/195, **arts. 2**, 3

57 Sections 55 and 56: regulations

(1) The Scottish Ministers may by regulations make further provision in respect of a child removed to or kept in a place of safety—

(a) under an order under section 55,

(b) under section 56.

(2) In particular, the regulations may require notice to be given to a person specified in the regulations of—

(a) the removal of the child to the place of safety,

(b) the location of the place of safety,

(c) an order under section 55 ceasing to have effect by virtue of subsection (4) or (5) of that section.

Commencement Information

I23 S. 57 in force at 24.6.2013 by S.S.I. 2013/195, **arts. 2**, 3

Implementation of orders: welfare of child

58 Implementation of orders: welfare of child

(1) An applicant for (and any other person specified in) an order mentioned in subsection (2) may only take such steps to implement the order as the applicant (or other person) reasonably believes are necessary to safeguard or promote the welfare of the child.

(2) The orders are—

(a) a child assessment order,

(b) a child protection order,

(c) an order under section 55.

Commencement Information

I24 S. 58 in force at 24.6.2013 by S.S.I. 2013/195, **arts. 2**, 3

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Offences

59 Offences

(1) A person who intentionally obstructs—

(a) a person acting under a child assessment order,

(b) a person acting under a child protection order,

(c) a person acting under an order under section 55, or

(d) a constable acting under section 56(1),

commits an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Commencement Information

I25 S. 59 in force at 24.6.2013 by S.S.I. 2013/195, **arts. 2**, 3

Changes to legislation:
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View outstanding changes

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 17A inserted by 2020 asp 16 s. 6(2)
- s. 25(3) inserted by 2020 asp 16 s. 30(7)
- s. 27(3)-(4A) substituted for s. 27(3)(4) by 2020 asp 16 s. 3(2)
- s. 62(5)(q)-(u) inserted by 2020 asp 9 s. 8(2)(b)
- s. 163(2)-(2B) substituted for s. 163(2) by 2020 asp 16 s. 27(3)(b)
- s. 164(2)-(2B) substituted for s. 164(2) by 2020 asp 16 s. 27(4)(b)
- s. 165(2)-(2B) substituted for s. 165(2) by 2020 asp 16 s. 27(5)(b)