



Children's Hearings (Scotland) Act 2011

2011 asp 1

PART 3

GENERAL CONSIDERATIONS

25 Welfare of the child

- (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.

Commencement Information

II S. 25 in force at 24.6.2013 by [S.S.I. 2013/195](#), [arts. 2, 3](#)

26 Decisions inconsistent with section 25

- (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^[F1], pre-hearing panel] 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^[F1], pre-hearing panel] or court complies with subsection (2).
- (2) The children's hearing^[F2], 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 a primary consideration rather than the paramount consideration.

Textual Amendments

F1 Words in s. 26(1)(a)(b) inserted (24.6.2013) by [The Children's Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, [Sch. 1 para. 20\(3\)](#)

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F2 Words in s. 26(2) inserted (24.6.2013) by [The Children's Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **Sch. 1 para. 20(3)**

Commencement Information

I2 S. 26 in force at 24.6.2013 by [S.S.I. 2013/195](#), **arts. 2, 3**

27 Views of the child

- (1) This section applies where by virtue of this Act a children's hearing^{F3}, pre-hearing panel] 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^{F4}, pre-hearing panel] 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^{F5}, pre-hearing panel], includes—
 - (a) providing advice by virtue of section 50,
 - (b) preparing a report under section 141(2).

Textual Amendments

F3 Words in s. 27(1) inserted (24.6.2013) by [The Children's Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **Sch. 1 para. 20(4)**

F4 Words in s. 27(3) inserted (24.6.2013) by [The Children's Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **Sch. 1 para. 20(4)**

F5 Words in s. 27(5) inserted (24.6.2013) by [The Children's Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **Sch. 1 para. 20(4)**

Commencement Information

I3 S. 27 in force at 24.6.2013 by [S.S.I. 2013/195](#), **arts. 2, 3**

28 Children's hearing: pre-condition for making certain orders and warrants

- (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

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- (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.

Commencement Information

I4 S. 28 in force at 24.6.2013 by [S.S.I. 2013/195](#), [arts. 2, 3](#)

29 Sheriff: pre-condition for making certain orders and warrants

- (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,
 - (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.

Commencement Information

I5 S. 29 in force at 24.6.2013 by [S.S.I. 2013/195](#), [arts. 2, 3](#)

[^{F6}29A Duty to consider including contact direction

- (1) A children's hearing must, when making, varying or continuing a compulsory supervision order in relation to a child, consider whether to include in the order a measure of the type mentioned in section 83(2)(g).
- (2) A sheriff must, when varying or continuing a compulsory supervision order in relation to a child, consider whether to include in the order a measure of the type mentioned in section 83(2)(g).

[In considering whether to include a measure of the type mentioned in section 83(2)(g),
^{F7}(3) the children's hearing or, as the case may be, the sheriff must in particular consider the inclusion of a measure regulating contact between the child and any person mentioned in subsection (4) with whom the child does not reside.

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- (4) The persons referred to in subsection (3) are—
- (a) a relevant person in relation to the child,
 - (b) a sibling of the child,
 - (c) any other person with whom the child has resided and with whom the child has an ongoing relationship with the character of a relationship between siblings.
- (5) For the purposes of subsection (4), two people are siblings if they have at least one parent in common.]]

Textual Amendments

- F6** S. 29A inserted (24.6.2013) by [The Children's Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **Sch. 1 para. 20(5)**
- F7** S. 29A(3)-(5) inserted (26.7.2021) by [Children \(Scotland\) Act 2020 \(asp 16\)](#), **ss. 14(2), 34(2)**; [S.S.I. 2020/412](#), reg. 2(2)(b)

30 Children's hearing: duty to consider appointing safeguarder

- (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.

Commencement Information

- I6** S. 30 in force at 24.6.2013 by [S.S.I. 2013/195](#), **arts. 2, 3**

31 Sheriff: duty to consider appointing safeguarder

- (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 [^{F8}and section 33]) 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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Textual Amendments

F8 Words in s. 31(4) inserted (24.6.2013) by [The Children's Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **Sch. 1 para. 20(6)**

Commencement Information

I7 S. 31 in force at 24.6.2013 by [S.S.I. 2013/195](#), **arts. 2, 3**

Changes to legislation:

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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\(5\)\(b\)](#)