



# Children (Scotland) Act 1995

## 1995 CHAPTER 36

### PART II

PROMOTION OF CHILDREN'S WELFARE BY LOCAL  
AUTHORITIES AND BY CHILDREN'S HEARINGS ETC.

### CHAPTER 3

PROTECTION AND SUPERVISION OF CHILDREN

*Referral to, and disposal of case by, children's hearing*

#### **65 Referral to, and proceedings at, children's hearing**

- (1) The Principal Reporter shall refer to the children's hearing, for consideration and determination on the merits, the case of any child in respect of whom he is satisfied that—
  - (a) compulsory measures of supervision are necessary, and
  - (b) at least one of the grounds specified in section 52(2) of this Act is established;and he shall state such grounds in accordance with rules made under section 41(1) of this Act by virtue of subsection (2)(c) of that section.
- (2) Where a referral is made in respect of a child who is subject to a child protection order made under section 57, and that order is continued under section 59(4) or 60(12) (d), of this Act, the Principal Reporter shall arrange for the children's hearing under subsection (1) above to take place on the eighth working day after the order was implemented.
- (3) Where a referral is made in respect of a child who is subject to a supervision requirement, the children's hearing shall, before disposing of the referral in accordance with section 69(1)(b) or (c) of this Act, review that requirement in accordance with subsections (9) to (12) of section 73 of this Act.

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*Status: This is the original version (as it was originally enacted).*

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- (4) Subject to subsections (9) and (10) below, it shall be the duty of the chairman of the children’s hearing to whom a child’s case has been referred under subsection (1) above to explain to the child and the relevant person, at the opening of proceedings on the referral, the grounds stated by the Principal Reporter for the referral in order to ascertain whether these grounds are accepted in whole or in part by them.
- (5) Where the chairman has given the explanation required by subsection (3) above and the child and the relevant person accept the grounds for the referral, the children’s hearing shall proceed in accordance with section 69 of this Act.
- (6) Where the chairman has given the explanation required by subsection (3) above and the child and the relevant person accept the grounds in part, the children’s hearing may, if they consider it appropriate to do so, proceed in accordance with section 69 of this Act with respect to those grounds which are accepted.
- (7) Where the chairman has given the explanation required under subsection (3) above and either or both of the child and the relevant person—
- (a) do not accept the grounds for the referral; or
  - (b) accept the grounds in part, but the children’s hearing do not consider it appropriate to proceed with the case under subsection (6) above,
- the hearing shall either direct the Principal Reporter to make an application to the sheriff for a finding as to whether such grounds for the referral as are not accepted by the child and the relevant person are established or shall discharge the referral.
- (8) Subject to subsection (10) below, it shall be the duty of the chairman to explain to the child and to the relevant person the purpose for which the application to the sheriff is being made and to inform the child that he is under an obligation to attend the hearing before the sheriff.
- (9) Where a children’s hearing are satisfied that the child—
- (a) for any reason will not be capable of understanding the explanation of the grounds for the referral required under subsection (3) above; or
  - (b) has not understood an explanation given under that subsection,
- they shall either direct the Principal Reporter to make an application to the sheriff for a finding as to whether any of the grounds of the referral are established or discharge the referral.
- (10) The acceptance by the relevant person of the grounds of the referral shall not be a requirement for a children’s hearing proceeding under this section to consider a case where that person is not present.

## **66 Warrant to keep child where children’s hearing unable to dispose of case**

- (1) Without prejudice to any other power enjoyed by them under this Part of this Act and subject to subsection (5) below, a children’s hearing—
- (a) arranged to consider a child’s case under this Part of this Act; and
  - (b) unable to dispose of the case,
- may, if they are satisfied that one of the conditions mentioned in subsection (2) below is met, grant a warrant under this subsection.
- (2) The conditions referred to in subsection (1) above are—
- (a) that there is reason to believe that the child may—

- (i) not attend at any hearing of his case; or
    - (ii) fail to comply with a requirement under section 69(3) of this Act; or
  - (b) that it is necessary that the child should be kept in a place of safety in order to safeguard or promote his welfare.
- (3) A warrant under subsection (1) above may require any person named in the warrant—
- (a) to find and to keep or, as the case may be, to keep the child in a place of safety for a period not exceeding twenty-two days after the warrant is granted;
  - (b) to bring the child before a children’s hearing at such times as may be specified in the warrant.
- (4) A warrant under subsection (1) above may contain such conditions as appear to the children’s hearing to be necessary or expedient, and without prejudice to that generality may—
- (a) subject to section 90 of this Act, require the child to submit to any medical or other examination or treatment; and
  - (b) regulate the contact with the child of any specified person or class of persons.
- (5) Subject to subsection (8) below, at any time prior to its expiry, a warrant granted under this section may, on an application to the children’s hearing, on cause shown by the Principal Reporter, be continued in force, whether with or without variation of any conditions imposed by virtue of subsection (4) above, by the children’s hearing for such further period, not exceeding twenty-two days, as appears to them to be necessary.
- (6) Where a children’s hearing are satisfied that either of the criteria specified in section 70(10) of this Act are satisfied, they may order that, pending the disposal of his case, the child shall be liable to be placed and kept in secure accommodation within a residential establishment at such times as the person in charge of that establishment, with the agreement of the chief social work officer of the relevant local authority, considers necessary.
- (7) Where a children’s hearing grant a warrant under subsection (1) above or continue such a warrant under subsection (5) above, they may order that the place of safety at which the child is to be kept shall not be disclosed to any person or class of persons specified in the order.
- (8) A child shall not be kept in a place of safety or secure accommodation by virtue of this section for a period exceeding sixty-six days from the day when he was first taken to a place of safety under a warrant granted under subsection (1) above.

## **67 Warrant for further detention of child**

- (1) Where a child is being kept in a place of safety by virtue of a warrant granted under section 66 of this Act or under this subsection, the Principal Reporter at any time prior to the expiry of that warrant may apply to the sheriff for a warrant to keep the child in that place after the warrant granted under the said section 66 or, as the case may be, this subsection has expired.
- (2) A warrant under subsection (1) above shall only be granted on cause shown and—
- (a) shall specify the date on which it will expire; and
  - (b) may contain any such requirement or condition as may be contained in a warrant granted under the said section 66.

- (3) Where the sheriff grants a warrant under subsection (1) above, he may also make an order under this subsection in such terms as are mentioned in subsection (6) or (7) of the said section 66; and any order under this subsection shall cease to have effect when the warrant expires.
- (4) An application under subsection (1) above may be made at the same time as, or during the hearing of, an application which the Principal Reporter has been directed by a children’s hearing to make under section 65(6) or (8) of this Act.

## **68 Application to sheriff to establish grounds of referral**

- (1) This section applies to applications under subsections (6) and (8) of section 65 of this Act and a reference in this section (except in subsection (8)) to “an application” is a reference to an application under either of those subsections.
- (2) An application shall be heard by the sheriff within twenty-eight days of its being lodged.
- (3) Where one of the grounds for the referral to which an application relates is the condition referred to in section 52(2)(i)—
  - (a) the application shall be made to the sheriff who would have jurisdiction if the child were being prosecuted for that offence; and
  - (b) in hearing the application in relation to that ground, the standard of proof required in criminal proceedings shall apply.
- (4) A child shall—
  - (a) have the right to attend the hearing of an application; and
  - (b) subject to subsection (5) below, be under an obligation to attend such hearing; and without prejudice to the right of each of them to be legally represented, the child and the relevant person may be represented by a person other than a legally qualified person at any diet fixed by the sheriff for the hearing of the application.
- (5) Without prejudice to subsection (4)(a) above, the sheriff may dispense with the obligation imposed by subsection (4)(b) above where he is satisfied—
  - (a) in an application in which the ground of referral to be established is a condition mentioned in section 52(2)(d), (e), (f) or (g) of this Act, that the obligation to attend of the child is not necessary for the just hearing of that application; and
  - (b) in any application, that it would be detrimental to the interests of the child for him to be present at the hearing of the application.
- (6) Where the child fails to attend the hearing of an application at which his obligation to attend has not been dispensed with under subsection (5) above, the sheriff may grant an order to find and keep the child; and any order under this subsection shall be authority for bringing the child before the sheriff and, subject to subsection (7) below, for keeping him in a place of safety until the sheriff can hear the application.
- (7) The child shall not be kept in a place of safety by virtue of subsection (6) above after whichever is the earlier of—
  - (a) the expiry of fourteen days beginning with the day on which the child is found; or
  - (b) the disposal of the application by the sheriff.
- (8) Where in the course of the hearing of an application—

- (a) under section 65(7) of this Act, the child and the relevant person accept any of the grounds for referral to which the application relates, the sheriff shall; or
- (b) under section 65(8) of this Act, the relevant person accepts any of the grounds for referral to which the application relates, the sheriff may, if it appears to him reasonable to do so,

dispense with the hearing of evidence relating to that ground and deem the ground to be established for the purposes of the application, unless he is satisfied that, in all the circumstances of the case, the evidence should be heard.

- (9) Where a sheriff decides that none of the grounds for referral in respect of which an application has been made are established, he shall dismiss the application, discharge the referral to the children’s hearing in respect of those grounds and recall, discharge or cancel any order, warrant, or direction under this Chapter of this Act which relates to the child in respect of those grounds.
- (10) Where the sheriff, after the hearing of any evidence or on acceptance in accordance with subsection (8) above, finds that any of the grounds for the referral to which the application relates is, or should be deemed to be, established—
  - (a) he shall remit the case to the Principal Reporter to make arrangements for a children’s hearing to consider and determine the case; and
  - (b) he may if he is satisfied that—
    - (i) keeping the child in a place of safety is necessary in the child’s best interests; or
    - (ii) there is reason to believe that the child will run away before the children’s hearing sit to consider the case,
 issue an order requiring, subject to subsection (12) below, that the child be kept in a place of safety until the children’s hearing so sit.
- (11) An order issued under subsection (10) above may, if the sheriff is satisfied that either of the criteria mentioned in section 70(10) of this Act is fulfilled, provide that the child shall be liable to be placed and kept in secure accommodation within a residential establishment at such times as the person in charge of the establishment, with the agreement of the chief social work officer of the relevant local authority, considers necessary.
- (12) A child shall not be kept in a place of safety by virtue of subsection (10)(b) above after whichever is the earlier of the following—
  - (a) the expiry of three days beginning with the day on which he is first so kept; or
  - (b) the consideration of his case by the children’s hearing arranged under subsection (10)(a) above.

## **69 Continuation or disposal of referral by children’s hearing**

- (1) Where the grounds of referral of the child’s case stated by the Principal Reporter are accepted or are established in accordance with section 67 or section 84 of this Act, the children’s hearing shall consider those grounds, any report obtained under section 56(7) of this Act and any other relevant information available to them and shall—
  - (a) continue the case to a subsequent hearing in accordance with subsection (2) below;
  - (b) discharge the referral of the case in accordance with subsection (12) below; or
  - (c) make a supervision requirement under section 70 of this Act.

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- (2) The children’s hearing may continue the case to a subsequent hearing under this subsection where they are satisfied that, in order to complete their consideration of the case, it is necessary to have a further investigation of the case.
- (3) Where a children’s hearing continue the case under subsection (2) above, they may, for the purposes of the investigation mentioned by that subsection, require the child to attend, or reside at, any clinic, hospital or other establishment during a period not exceeding twenty-two days.
- (4) Where a child fails to fulfil a requirement made under subsection (3) above, the children’s hearing may, either on an application by the Principal Reporter or of their own motion, grant a warrant under this subsection.
- (5) A warrant under subsection (4) above shall be authority—
  - (a) to find the child;
  - (b) to remove the child to a place of safety and keep him there; and
  - (c) where the place of safety is not the clinic, hospital or other establishment referred to in the requirement made under subsection (3) above, to take the child from the place of safety to such clinic, hospital or other establishment for the purposes of the investigation mentioned in subsection (2) above.
- (6) A warrant under subsection (4) above shall be granted for such period as appears to the children’s hearing to be appropriate, provided that no warrant shall permit the keeping of a child in a place of safety after whichever is the earlier of—
  - (a) the expiry of twenty-two days after the warrant is granted; or
  - (b) the day on which the subsequent hearing of the child’s case by a children’s hearing begins.
- (7) Where a child’s case has been continued under subsection (2) above and the children’s hearing are satisfied that—
  - (a) keeping the child in a place of safety is necessary in the interests of safeguarding or promoting the welfare of the child; or
  - (b) there is reason to believe that the child may not attend the subsequent hearing of his case,
 they may grant a warrant requiring that the child be taken to and kept in a place of safety.
- (8) A warrant under subsection (7) above shall cease to have effect on whichever is the earlier of—
  - (a) the expiry of twenty-two days after the warrant is granted; or
  - (b) the day on which the subsequent hearing of the child’s case by a children’s hearing begins.
- (9) A warrant under subsection (4) or (7) above may contain such conditions as appear to the children’s hearing to be necessary or expedient, and without prejudice to that generality may—
  - (a) subject to section 90 of this Act, require the child to submit to any medical or other examination or treatment;
  - (b) regulate the contact with the child of any specified person or class of persons.
- (10) Where a child is to be kept at a place of safety under a warrant granted under this section or is to attend, or reside at, any place in accordance with a requirement made

under subsection (3) above, the children’s hearing may order that such place shall not be disclosed to any person or class of persons specified in the order.

- (11) Where a child is to reside in a residential establishment by virtue of a requirement made or warrant granted under this section, the children’s hearing may, if satisfied that either of the criteria mentioned in section 70(10) of this Act is fulfilled, order that while the requirement or warrant remains in effect he shall be liable to be placed in secure accommodation within that establishment at such times as the person in charge of the establishment, with the agreement of the chief social work officer of the relevant local authority, considers necessary.
- (12) Where a children’s hearing decide not to make a supervision requirement under section 70 of this Act they shall discharge the referral.
- (13) On the discharge of the referral of the child’s case any order, direction, or warrant under Chapter 2, or this Chapter, of this Act in respect of the child’s case shall cease to have effect.

## **70 Disposal of referral by children’s hearing: supervision requirements, including residence in secure accommodation**

- (1) Where the children’s hearing to whom a child’s case has been referred under section 65(1) of this Act are satisfied that compulsory measures of supervision are necessary in respect of the child they may make a requirement under this section (to be known as a “supervision requirement”).
- (2) A children’s hearing, where they decide to make such a requirement, shall consider whether to impose any condition such as is described in subsection (5)(b) below.
- (3) A supervision requirement may require the child—
  - (a) to reside at any place or places specified in the requirement; and
  - (b) to comply with any condition contained in the requirement.
- (4) The place or, as the case may be, places specified in a requirement under subsection (3) (a) above may, without prejudice to the generality of that subsection, be a place or places in England or Wales; and a supervision requirement shall be authority for the person in charge of such a place to restrict the child’s liberty to such extent as that person may consider appropriate, having regard to the terms of the requirement.
- (5) A condition imposed under subsection (3)(b) above may, without prejudice to the generality of that subsection—
  - (a) subject to section 90 of this Act, require the child to submit to any medical or other examination or treatment;
  - (b) regulate the contact with the child of any specified person or class of persons.
- (6) A children’s hearing may require, when making a supervision requirement, that any place where the child is to reside in accordance with the supervision requirement shall not be disclosed to any person specified in the requirement under this subsection or class of persons so specified.
- (7) A children’s hearing who make a supervision requirement may determine that the requirement shall be reviewed at such time during the duration of the requirement as they determine.

- (8) A supervision requirement shall be in such form as the Secretary of State may prescribe by rules.
- (9) Where a children’s hearing are satisfied—
- (a) that it is necessary to make a supervision requirement which includes a requirement under subsection (3)(a) above that the child reside in a named residential establishment; and
  - (b) that any of the criteria specified in subsection (10) below are satisfied,
- they may specify in the requirement that the child shall be liable to be placed and kept in secure accommodation in that establishment during such period as the person in charge of that establishment, with the agreement of the chief social work officer of the relevant local authority, considers necessary.
- (10) The criteria referred to in subsection (9) above are that the child—
- (a) having previously absconded, is likely to abscond unless kept in secure accommodation, and, if he absconds, it is likely that his physical, mental or moral welfare will be at risk; or
  - (b) is likely to injure himself or some other person unless he is kept in such accommodation.

## **71 Duties of local authority with respect to supervision requirements**

- (1) The relevant local authority shall, as respects a child subject to a supervision requirement, give effect to the requirement.
- (2) Where a supervision requirement provides that the child shall reside—
- (a) in relevant accommodation; or
  - (b) in any other accommodation not provided by a local authority,
- the relevant local authority shall from time to time investigate whether, while the child is so resident, any conditions imposed by the supervision requirement are being fulfilled; and may take such steps as they consider reasonable if they find that such conditions are not being fulfilled.
- (3) In this section, “relevant accommodation” means accommodation provided by the parents or relatives of the child or by any person associated with them or with the child.

## **72 Transfer of child subject to supervision requirement in case of necessity**

- (1) In any case of urgent necessity, where it is in the interests of—
- (a) a child who is required by a supervision requirement imposed under section 70(3)(a) of this Act to reside in a specific residential establishment or specific other accommodation; or
  - (b) other children in that establishment or accommodation,
- the chief social work officer of the relevant local authority may direct that, notwithstanding that requirement, the child be transferred to another place.
- (2) Any child transferred under subsection (1) above shall have his case reviewed, in accordance with section 73(8) of this Act, by a children’s hearing within seven days of his transfer.



### **73 Duration and review of supervision requirement**

- (1) No child shall continue to be subject to a supervision requirement for any period longer than is necessary in the interests of promoting or safeguarding his welfare.
- (2) Subject to any variation or continuation of a supervision requirement under subsection (9) below, no supervision requirement shall remain in force for a period longer than one year.
- (3) A supervision requirement shall cease to have effect in respect of a child not later than on his attaining the age of eighteen years.
- (4) A relevant local authority shall refer the case of a child who is subject to a supervision requirement to the Principal Reporter where they are satisfied that—
  - (a) the requirement in respect of the child ought to cease to have effect or be varied;
  - (b) a condition contained in the requirement is not being complied with; or
  - (c) the best interests of the child would be served by their—
    - (i) applying under section 86 of this Act for a parental responsibilities order;
    - (ii) applying under section 18 of the Adoption (Scotland) Act 1978 for an order freeing the child for adoption; or
    - (iii) placing the child for adoption,and they intend to apply for such an order or so place the child.
- (5) Where the relevant local authority are aware that an application has been made and is pending, or is about to be made, under section 12 of the said Act of 1978 for an adoption order in respect of a child who is subject to a supervision requirement, they shall forthwith refer his case to the Principal Reporter.
- (6) A child or any relevant person may require a review of a supervision requirement in respect of the child at any time at least three months after—
  - (a) the date on which the requirement is made; or
  - (b) the date of the most recent continuation, or variation, by virtue of this section of the requirement.
- (7) Where a child is subject to a supervision requirement and, otherwise than in accordance with that requirement or with an order under section 11 of this Act, a relevant person proposes to take the child to live outwith Scotland, the person shall, not later than twenty-eight days before so taking the child, give notice of that proposal in writing to the Principal Reporter and to the relevant authority.
- (8) The Principal Reporter shall—
  - (a) arrange for a children’s hearing to review any supervision requirement in respect of a child where—
    - (i) the case has been referred to him under subsection (4) or (5) above;
    - (ii) the review has been required under subsection (6) above;
    - (iii) the review is required by virtue of section 70(7) or section 72(2) of this Act;
    - (iv) he has received in respect of the child such notice as is mentioned in subsection (7) above; or
    - (v) in any other case, the supervision requirement will expire within three months; and

- (b) make any arrangements incidental to that review.
- (9) Where a supervision requirement is reviewed by a children’s hearing arranged under subsection (8) above, they may—
- (a) where they are satisfied that in order to complete the review of the supervision requirement it is necessary to have a further investigation of the child’s case, continue the review to a subsequent hearing;
  - (b) terminate the requirement;
  - (c) vary the requirement;
  - (d) insert in the requirement any requirement which could have been imposed by them under section 70(3) of this Act; or
  - (e) continue the requirement, with or without such variation or insertion.
- (10) Subsections (3) to (10) of section 69 of this Act shall apply to a continuation under paragraph (a) of subsection (9) above of a review of a supervision requirement as they apply to the continuation of a case under subsection (1)(a) of that section.
- (11) Where a children’s hearing vary or impose a requirement under subsection (9) above which requires the child to reside in any specified place or places, they may order that such place or places shall not be disclosed to any person or class of persons specified in the requirement.
- (12) Where a children’s hearing is arranged under subsection (8)(a)(v) above, they shall consider whether, if the supervision requirement is not continued, the child still requires supervision or guidance; and where a children’s hearing consider such supervision or guidance is necessary, it shall be the duty of the local authority to provide such supervision or guidance as the child is willing to accept.
- (13) Where a children’s hearing is arranged by virtue of subsection (4)(c) or (5) above, then irrespective of what the hearing do under subsection (9) above they shall draw up a report which shall provide advice in respect of, as the case may be, the proposed application under section 86 of this Act or under section 18 of the said Act of 1978, or the proposed placing for adoption or the application, or prospective application, under section 12 of that Act, for any court which may subsequently require to come to a decision, in relation to the child concerned, such as is mentioned in subsection (14) below.
- (14) A court which is considering whether, in relation to a child, to grant an application under section 86 of this Act or under section 18 or 12 of the said Act of 1978 and which, by virtue of subsection (13) above, receives a report as respects that child, shall consider the report before coming to a decision in the matter.

#### **74 Further provision as respects children subject to supervision requirements**

The Secretary of State may by regulations provide—

- (a) for the transmission of information regarding a child who is subject to a supervision requirement to any person who, by virtue of that requirement, has, or is to have, control over the child;
- (b) for the temporary accommodation, where necessary, of a child so subject; and
- (c) for the conveyance of a child so subject—
  - (i) to any place in which, under the supervision requirement, he is to reside;

- (ii) to any place to which he falls to be taken under subsection (1) or (5) of section 82 of this Act; or
- (iii) to any person to whom he falls to be returned under subsection (3) of that section.

## **75 Powers of Secretary of State with respect to secure accommodation**

- (1) The Secretary of State may by regulations make provision with respect to the placing in secure accommodation of any child—
  - (a) who is subject to a requirement imposed under section 70(3)(a) of this Act but not subject to a requirement under subsection (9) of that section; or
  - (b) who is not subject to a supervision requirement but who is being looked after by a local authority in pursuance of such enactments as may be specified in the regulations.
- (2) Regulations under subsection (1) above may—
  - (a) specify the circumstances in which a child may be so placed under the regulations;
  - (b) make provision to enable a child who has been so placed or any relevant person to require that the child’s case be brought before a children’s hearing within a shorter period than would apply under regulations made under subsection (3) below; and
  - (c) specify different circumstances for different cases or classes of case.
- (3) Subject to subsection (4) below and without prejudice to subsection (2)(b) above, the Secretary of State may prescribe—
  - (a) the maximum period during which a child may be kept under this Act in secure accommodation without the authority of a children’s hearing or of the sheriff;
  - (b) the period within which a children’s hearing shall be arranged to consider the case of a child placed in secure accommodation by virtue of regulations made under this section (and different periods may be so prescribed in respect of different cases or classes of case).
- (4) Subsection (8) of section 66 of this Act shall apply in respect of a child placed in secure accommodation under regulations made under this section as if such placing took place by virtue of that section.
- (5) The Secretary of State may by regulations vary the period within which a review of a condition imposed under section 70(9) of this Act shall be reviewed under section 73 of this Act.
- (6) The Secretary of State may by regulations make provision for the procedures to be applied in placing children in secure accommodation; and without prejudice to the generality of this subsection, such regulations may—
  - (a) specify the duties of the Principal Reporter in relation to the placing of children in secure accommodation;
  - (b) make provision for the referral of cases to a children’s hearing for review; and
  - (c) make provision for any person with parental responsibilities in relation to the child to be informed of the placing of the child in secure accommodation.