



# 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

*Children requiring compulsory measures of supervision*

#### **52 Children requiring compulsory measures of supervision**

- (1) The question of whether compulsory measures of supervision are necessary in respect of a child arises if at least one of the conditions mentioned in subsection (2) below is satisfied with respect to him.
- (2) The conditions referred to in subsection (1) above are that the child—
  - (a) is beyond the control of any relevant person;
  - (b) is falling into bad associations or is exposed to moral danger;
  - (c) is likely—
    - (i) to suffer unnecessarily; or
    - (ii) be impaired seriously in his health or development,  
due to a lack of parental care;
  - (d) is a child in respect of whom any of the offences mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1975 (offences against children to which special provisions apply) has been committed;
  - (e) is, or is likely to become, a member of the same household as a child in respect of whom any of the offences referred to in paragraph (d) above has been committed;

- (f) is, or is likely to become, a member of the same household as a person who has committed any of the offences referred in paragraph (d) above;
  - (g) is, or is likely to become, a member of the same household as a person in respect of whom an offence under sections 2A to 2C of the Sexual Offences (Scotland) Act 1976 (incest and intercourse with a child by step-parent or person in position of trust) has been committed by a member of that household;
  - (h) has failed to attend school regularly without reasonable excuse;
  - (i) has committed an offence;
  - (j) has misused alcohol or any drug, whether or not a controlled drug within the meaning of the Misuse of Drugs Act 1971;
  - (k) has misused a volatile substance by deliberately inhaling its vapour, other than for medicinal purposes;
  - (l) is being provided with accommodation by a local authority under section 25, or is the subject of a parental responsibilities order obtained under section 86, of this Act and, in either case, his behaviour is such that special measures are necessary for his adequate supervision in his interest or the interest of others.
- (3) In this Part of this Act, “supervision” in relation to compulsory measures of supervision may include measures taken for the protection, guidance, treatment or control of the child.

*Preliminary and investigatory measures*

**53 Provision of information to the Principal Reporter**

- (1) Where information is received by a local authority which suggests that compulsory measures of supervision may be necessary in respect of a child, they shall—
  - (a) cause inquiries to be made into the case unless they are satisfied that such inquiries are unnecessary; and
  - (b) if it appears to them after such inquiries, or after being satisfied that such inquiries are unnecessary, that such measures may be required in respect of the child, give to the Principal Reporter such information about the child as they have been able to discover.
- (2) A person, other than a local authority, who has reasonable cause to believe that compulsory measures of supervision may be necessary in respect of a child—
  - (a) shall, if he is a constable, give to the Principal Reporter such information about the child as he has been able to discover;
  - (b) in any other case, may give the Principal Reporter that information.
- (3) A constable shall make any report required to be made under paragraph (b) of section 17(1) of the Police (Scotland) Act 1967 (duty to make reports in relation to commission of offences) in relation to a child to the Principal Reporter as well as to the appropriate prosecutor.
- (4) Where an application has been made to the sheriff—
  - (a) by the Principal Reporter in accordance with a direction given by a children’s hearing under section 65(7) or (9) of this Act; or
  - (b) by any person entitled to make an application under section 84 of this Act,

the Principal Reporter may request any prosecutor to supply him with any evidence lawfully obtained in the course of, and held by the prosecutor in connection with, the investigation of a crime or suspected crime, being evidence which may assist the sheriff in determining the application; and, subject to subsection (5) below, it shall be the duty of the prosecutor to comply with such a request.

- (5) A prosecutor may refuse to comply with a request issued under subsection (4) above where he reasonably believes that it is necessary to retain the evidence for the purposes of any proceedings in respect of a crime, whether the proceedings have been commenced or are to be commenced by him.
- (6) The Lord Advocate may direct that in any specified case or class of cases any evidence lawfully obtained in the course of an investigation of a crime or suspected crime shall be supplied, without the need for a request under subsection (4) above, to the Principal Reporter.
- (7) In subsections (3), (4) and (5) above “crime” and “prosecutor” have the same meanings respectively given by section 462 of the Criminal Procedure (Scotland) Act 1975.

#### **54 Reference to the Principal Reporter by court**

- (1) Where in any relevant proceedings it appears to the court that any of the conditions in section 52(2)(a) to (h), (j), (k) or (l) of this Act is satisfied with respect to a child, it may refer the matter to the Principal Reporter, specifying the condition.
- (2) In this section “relevant proceedings” means—
  - (a) an action for divorce or judicial separation or for declarator of marriage, nullity of marriage, parentage or non-parentage;
  - (b) proceedings relating to parental responsibilities or parental rights within the meaning of Part I of this Act;
  - (c) proceedings for an adoption order under the Adoption (Scotland) Act 1978 or for an order under section 18 of that Act declaring a child free for adoption; and
  - (d) proceedings for an offence against section 35 (failure by parent to secure regular attendance by his child at a public school), 41 (failure to comply with attendance order) or 42(3) (failure to permit examination of child) of the Education (Scotland) Act 1980.
- (3) Where the court has referred a matter to the Principal Reporter under subsection (1) above, he shall—
  - (a) make such investigation as he thinks appropriate; and
  - (b) if he considers that compulsory measures of supervision are necessary, arrange a children’s hearing to consider the case of the child under section 69 of this Act; and subsection (1) of that section shall apply as if the condition specified by the court under subsection (1) above were a ground of referral established in accordance with section 68 of this Act.

#### **55 Child assessment orders**

- (1) A sheriff may grant an order under this section for an assessment of the state of a child’s health or development, or of the way in which he has been treated (to be known as a “child assessment order”), on the application of a local authority if he is satisfied that—

- (a) the local authority have reasonable cause to suspect that the child in respect of whom the order is sought is being so treated (or neglected) that he is suffering, or is likely to suffer, significant harm;
  - (b) such assessment of the child is required in order to establish whether or not there is reasonable cause to believe that the child is so treated (or neglected); and
  - (c) such assessment is unlikely to be carried out, or be carried out satisfactorily, unless the order is granted.
- (2) Where—
- (a) an application has been made under subsection (1) above; and
  - (b) the sheriff considers that the conditions for making a child protection order under section 57 of this Act are satisfied,
- he shall make such an order under that section as if the application had been duly made by the local authority under that section rather than this section.
- (3) A child assessment order shall—
- (a) specify the date on which the assessment is to begin;
  - (b) have effect for such period as is specified in the order, not exceeding seven days beginning with the date specified by virtue of paragraph (a) above;
  - (c) require any person in a position to produce the child to—
    - (i) produce him to any authorised person;
    - (ii) permit that person or any other authorised person to carry out an assessment in accordance with the order; and
    - (iii) comply with any other conditions of the order; and
  - (d) be carried out by an authorised person in accordance with the terms of the order.
- (4) A child assessment order may—
- (a) where necessary, permit the taking of the child concerned to any place for the purposes of the assessment; and
  - (b) authorise the child to be kept at that place, or any other place, for such period of time as may be specified in the order.
- (5) Where a child assessment order makes provision under subsection (4) above, it shall contain such directions as the sheriff considers appropriate as to the contact which the child shall be allowed to have with any other person while the child is in any place to which he has been taken or in which he is being kept under a child assessment order.
- (6) In this section “authorised person” means any officer of the local authority, and any person authorised by the local authority to perform the assessment, or perform any part of it.

## **56 Initial investigation by the Principal Reporter**

- (1) Where the Principal Reporter receives information from any source about a case which may require a children’s hearing to be arranged he shall, after making such initial investigation as he thinks necessary, proceed with the case in accordance with subsection (4) or (6) below.
- (2) For the purposes of making any initial investigation under subsection (1) above, the Principal Reporter may request from the local authority a report on the child and on

such circumstances concerning the child as appear to him to be relevant; and the local authority shall supply the report which may contain such information, from any person whomsoever, as the Principal Reporter thinks, or the local authority think, fit.

- (3) A report requested under subsection (2) above may contain information additional to that given by the local authority under section 53 of this Act.
- (4) The Principal Reporter may decide, after an initial investigation under subsection (1) above, that a children’s hearing does not require to be arranged; and where he so decides—
- (a) he shall inform the child, any relevant person and the person who brought the case to his notice, or any of those persons, that he has so decided; and
  - (b) he may, if he considers it appropriate, refer the case to a local authority with a view to their making arrangements for the advice, guidance and assistance of the child and his family in accordance with Chapter 1 of this Part of this Act.
- (5) Where the Principal Reporter has decided under subsection (4) above that a children’s hearing does not require to be arranged, he shall not at any other time, on the basis solely of the information obtained during the initial investigation referred to in that subsection, arrange a children’s hearing under subsection (6) below.
- (6) Where it appears to the Principal Reporter that compulsory measures of supervision are necessary in respect of the child, he shall arrange a children’s hearing to which he shall refer the case for consideration and determination.
- (7) Where the Principal Reporter has arranged a children’s hearing in accordance with subsection (6) above, he—
- (a) shall, where he has not previously done so, request a report under subsection (2) above;
  - (b) may request from the local authority such information, supplementary or additional to a report requested under subsection (2) above, as he thinks fit;
- and the local authority shall supply that report, or as the case may be information, and any other information which they consider to be relevant.

#### *Measures for the emergency protection of children*

### **57 Child protection orders**

- (1) Where the sheriff, on an application by any person, is satisfied that—
- (a) there are reasonable grounds to believe that a child—
    - (i) is being so treated (or neglected) that he is suffering significant harm; or
    - (ii) will suffer such harm if he is not removed to and kept in a place of safety, or if he does not remain in the place where he is then being accommodated (whether or not he is resident there); and
  - (b) an order under this section is necessary to protect that child from such harm (or such further harm),
- he may make an order under this section (to be known as a “child protection order”).
- (2) Without prejudice to subsection (1) above, where the sheriff on an application by a local authority is satisfied—

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

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- (a) that they have reasonable grounds to suspect that a child is being or will be so treated (or neglected) that he is suffering or will suffer significant harm;
  - (b) that they are making or causing to be made enquiries to allow them to decide whether they should take any action to safeguard the welfare of the child; and
  - (c) that those enquiries are being frustrated by access to the child being unreasonably denied, the authority having reasonable cause to believe that such access is required as a matter of urgency,
- he may make a child protection order.
- (3) Without prejudice to any additional requirement imposed by rules made by virtue of section 91 of this Act, an application for a child protection order shall—
- (a) identify—
    - (i) the applicant; and
    - (ii) in so far as practicable, the child in respect of whom the order is sought;
  - (b) state the grounds on which the application is made; and
  - (c) be accompanied by such supporting evidence, whether in documentary form or otherwise, as will enable the sheriff to determine the application.
- (4) A child protection order may, subject to such terms and conditions as the sheriff considers appropriate, do any one or more of the following—
- (a) require any person in a position to do so to produce the child to the applicant;
  - (b) authorise the removal of the child by the applicant to a place of safety, and the keeping of the child at that place;
  - (c) authorise the prevention of the removal of the child from any place where he is being accommodated;
  - (d) provide that the location of any place of safety in which the child is being kept should not be disclosed to any person or class of person specified in the order.
- (5) Notice of the making of a child protection order shall be given forthwith by the applicant to the local authority in whose area the child resides (where that authority is not the applicant) and to the Principal Reporter.
- (6) In taking any action required or permitted by a child protection order or by a direction under section 58 of this Act the applicant shall only act where he reasonably believes that to do so is necessary to safeguard or promote the welfare of the child.
- (7) Where by virtue of a child protection order a child is removed to a place of safety provided by a local authority, they shall, subject to the terms and conditions of that order and of any direction given under section 58 of this Act, have the like duties in respect of the child as they have under section 17 of this Act in respect of a child looked after by them.

## **58 Directions in relation to contact and exercise of parental responsibilities and parental rights**

- (1) When the sheriff makes a child protection order, he shall at that time consider whether it is necessary to give a direction to the applicant for the order as to contact with the child for—
- (a) any parent of the child;
  - (b) any person with parental responsibilities in relation to the child; and
  - (c) any other specified person or class of persons;

and if he determines that there is such a necessity he may give such a direction.

- (2) Without prejudice to the generality of subsection (1) above, a direction under that subsection may—
  - (a) prohibit contact with the child for any person mentioned in paragraphs (a) to (c) of that subsection;
  - (b) make contact with the child for any person subject to such conditions as the sheriff considers appropriate to safeguard and promote the welfare of the child.
- (3) A direction under subsection (1) above may make different provision in relation to different persons or classes of person.
- (4) A person applying for a child protection order under section 57(1) or (2) of this Act may at the same time apply to the sheriff for a direction in relation to the exercise or fulfilment of any parental responsibilities or parental rights in respect of the child concerned, if the person considers such a direction necessary to safeguard or promote the welfare of the child.
- (5) Without prejudice to the generality of subsection (4) above, a direction under that subsection may be sought in relation to—
  - (a) any examination as to the physical or mental state of the child;
  - (b) any other assessment or interview of the child; or
  - (c) any treatment of the child arising out of such an examination or assessment, which is to be carried out by any person.
- (6) The sheriff may give a direction sought under subsection (4) above where he considers there is a necessity such as is mentioned in that subsection; and such a direction may be granted subject to such conditions, if any, as the sheriff (having regard in particular to the duration of the child protection order to which it relates) considers appropriate.
- (7) A direction under this section shall cease to have effect when—
  - (a) the sheriff, on an application under section 60(7) of this Act, directs that it is cancelled; or
  - (b) the child protection order to which it is related ceases to have effect.

## **59 Initial hearing of case of child subject to child protection order**

- (1) This section applies where—
  - (a) a child in respect of whom a child protection order has been made—
    - (i) has been taken to a place of safety by virtue of section 57(4)(b) of this Act; or
    - (ii) is prevented from being removed from any place by virtue of section 57(4)(c) of this Act;
  - (b) the Principal Reporter has not exercised his powers under section 60(3) of this Act to discharge the child from the place of safety; and
  - (c) the Principal Reporter has not received notice, in accordance with section 60(9) of this Act, of an application under subsection (7) of that section.
- (2) Where this section applies, the Principal Reporter shall arrange a children’s hearing to conduct an initial hearing of the child’s case in order to determine whether they should,

in the interests of the child, continue the child protection order under subsection (4) below.

- (3) A children’s hearing arranged under subsection (2) above shall take place on the second working day after that order is implemented.
- (4) Where a children’s hearing arranged under subsection (2) above are satisfied that the conditions for the making of a child protection order under section 57 of this Act are established, they may continue the child protection order and any direction given under section 58 of this Act (whether with or without variation of the order or, as the case may be, the direction) until the commencement of a children’s hearing in relation to the child arranged in accordance with section 65(2) of this Act.
- (5) In subsection (3) above, section 60 and section 65(2) of this Act any reference, in relation to the calculation of any period, to the time at which a child protection order is implemented shall be construed as a reference—
  - (a) in relation to such an order made under paragraph (b) of subsection (4) of section 57 of this Act, to the day on which the child was removed to a place of safety in accordance with the order; and
  - (b) in relation to such an order made under paragraph (c) of that subsection, to the day on which the order was made,
 and “implement” shall be construed accordingly.

## **60 Duration, recall or variation of child protection order**

- (1) Where, by the end of twenty-four hours of a child protection order being made (other than by virtue of section 57(4)(c) of this Act), the applicant has made no attempt to implement the order it shall cease to have effect.
- (2) Where an application made under subsection (7) below has not been determined timeously in accordance with subsection (8) below, the order to which the application relates shall cease to have effect.
- (3) A child shall not be—
  - (a) kept in a place of safety under a child protection order;
  - (b) prevented from being removed from any place by such an order; or
  - (c) subject to any term or condition contained in such an order or a direction given under section 58 of this Act,
 where the Principal Reporter, having regard to the welfare of the child, considers that, whether as a result of a change in the circumstances of the case or of further information relating to the case having been received by the Principal Reporter, the conditions for the making of a child protection order in respect of the child are no longer satisfied or that the term, condition or direction is no longer appropriate and notifies the person who implemented the order that he so considers.
- (4) The Principal Reporter shall not give notice under subsection (3) above where—
  - (a) proceedings before a children’s hearing arranged under section 59(2) of this Act in relation to the child who is subject to the child protection order have commenced; or
  - (b) the hearing of an application made under subsection (7) of this section has begun.



- (5) Where the Principal Reporter has given notice under subsection (3) above, he shall also, in such manner as may be prescribed, notify the sheriff who made the order.
- (6) A child protection order shall cease to have effect—
- (a) where an initial hearing arranged under section 59(2) of this Act does not continue the order under subsection (4) of that section;
  - (b) where an application is made to the sheriff under subsection (7) below, on the sheriff recalling such order under subsection (13) below;
  - (c) on the person who implemented the order receiving notice from the Principal Reporter that he has decided not to refer the case of a child who is subject to the order to a children’s hearing arranged in accordance with section 65(2) of this Act;
  - (d) on the Principal Reporter giving notice in accordance with subsection (3) above in relation to the order that he considers that the conditions for the making of it are no longer satisfied; or
  - (e) where such order is continued under section 59(4) of this Act or subsection (12)(d) below, on the commencement of a children’s hearing arranged under section 65(2) of this Act.
- (7) An application to the sheriff to set aside or vary a child protection order made under section 57 of this Act or a direction given under section 58 of this Act or such an order or direction continued (whether with or without variation) under section 58(4) of this Act, may be made by or on behalf of—
- (a) the child to whom the order or direction relates;
  - (b) a person having parental rights over the child;
  - (c) a relevant person;
  - (d) any person to whom notice of the application for the order was given by virtue of rules; or
  - (e) the applicant for the order made under section 57 of this Act.
- (8) An application under subsection (7) above shall be made—
- (a) in relation to a child protection order made under section 56, or a direction given under section 58, of this Act, before the commencement of a children’s hearing arranged in accordance with section 59(2) of this Act; and
  - (b) in relation to such an order or direction continued (whether with or without variation) by virtue of subsection (4) of the said section 59, within two working days of such continuation,
- and any such application shall be determined within three working days of being made.
- (9) Where an application has been made under subsection (7) above, the applicant shall forthwith give notice, in a manner and form prescribed by rules, to the Principal Reporter.
- (10) At any time which is—
- (a) after the giving of the notice required by subsection (9) above; but
  - (b) before the sheriff has determined the application in accordance with subsection (11) below,
- the Principal Reporter may arrange a children’s hearing the purpose of which shall be to provide any advice they consider appropriate to assist the sheriff in his determination of the application.

- (11) The sheriff shall, after hearing the parties to the application and, if he wishes to make representations, the Principal Reporter, determine whether—
- (a) the conditions for the making of a child protection order under section 57 of this Act are satisfied; or
  - (b) where the application relates only to a direction under section 58 of this Act, the direction should be varied or cancelled.
- (12) Where the sheriff determines that the conditions referred to in subsection (11)(a) above are satisfied, he may—
- (a) confirm or vary the order, or any term or condition on which it was granted;
  - (b) confirm or vary any direction given, in relation to the order, under section 58 of this Act;
  - (c) give a new direction under that section; or
  - (d) continue in force the order and any such direction until the commencement of a children’s hearing arranged in accordance with section 65(2) of this Act.
- (13) Where the sheriff determines that the conditions referred to in subsection (11)(a) above are not satisfied he shall recall the order and cancel any direction given under section 58 of this Act.

## **61 Emergency protection of children where child protection order not available**

- (1) Where, on the application of any person, a justice of the peace is satisfied—
- (a) both that the conditions laid down for the making of a child protection order in section 57(1) of this Act are satisfied and that it is probable that any such order, if made, would contain an authorisation in terms of paragraph (b) or (c) of subsection (4) of that section; but
  - (b) that it is not practicable in the circumstances for an application for such an order to be made to the sheriff or for the sheriff to consider such an application,
- he may grant to the applicant an authorisation under this section.
- (2) Where on the application for a local authority a justice of the peace is satisfied—
- (a) both that the conditions laid down for the making of a child protection order in section 57(2) of this Act are satisfied and that it is probable that any such order, if made, would contain an authorisation in terms of paragraph (b) or (c) of subsection (4) of that section; but
  - (b) that it is not practicable in the circumstances for an application for such an order to be made to the sheriff or for the sheriff to consider such an application,
- he may grant an authorisation under this section.
- (3) An authorisation under this section may—
- (a) require any person in a position to do so to produce the child to the applicant;
  - (b) prevent any person from removing a child from a place where he is then being accommodated;
  - (c) authorise the applicant to remove the child to a place of safety and to keep him there until the expiration of the authorisation.
- (4) An authorisation under this section shall cease to have effect—
- (a) twelve hours after being made, if within that time—
    - (i) arrangements have not been made to prevent the child’s removal from any place specified in the authorisation; or

- (ii) he has not been, or is not being, taken to a place of safety; or
  - (b) where such arrangements have been made or he has been so taken when—
    - (i) twenty-four hours have expired since it was so given; or
    - (ii) an application for a child protection order in respect of the child is disposed of,
 whichever is the earlier.
- (5) Where a constable has reasonable cause to believe that—
  - (a) the conditions for the making of a child protection order laid down in section 57(1) are satisfied;
  - (b) that it is not practicable in the circumstances for him to make an application for such an order to the sheriff or for the sheriff to consider such an application; and
  - (c) that, in order to protect the child from significant harm (or further such harm), it is necessary for him to remove the child to a place of safety,
 he may remove the child to such a place and keep him there.
- (6) The power conferred by subsection (5) above shall not authorise the keeping of a child in a place of safety for more than twenty four hours from the time when the child is so removed.
- (7) The authority to keep a child in a place of safety conferred by subsection (5) above shall cease on the disposal of an application in relation to the child for a child protection order.
- (8) A child shall not be—
  - (a) kept in a place of safety; or
  - (b) prevented from being removed from any place,
 under this section where the Principal Reporter considers that the conditions for the grant of an authorisation under subsection (1) or (2) above or the exercise of the power conferred by subsection (5) above are not satisfied, or that it is no longer in the best interests of the child that he should be so kept.

## **62 Regulations in respect of emergency child protection measures**

- (1) The Secretary of State may make regulations concerning the duties in respect of a child of any person removing him to, and keeping him in, a place of safety under section 61 above.
- (2) Regulations under this section may make provision requiring—
  - (a) notification of the removal of a child to be given to a person specified in the regulations;
  - (b) intimation to be given to any person of the place of safety at which a child is being kept;
  - (c) notification to be given to any person of the ceasing to have effect, under section 61(4)(a) of this Act, of an authorisation.

*Children arrested by the police*

**63 Review of case of child arrested by police**

- (1) Where the Principal Reporter has been informed by a constable, in accordance with section 296(3) of the Criminal Procedure (Scotland) Act 1975, that charges are not to be proceeded with against a child who has been detained in a place of safety in accordance with that section, the Principal Reporter shall, unless he considers that compulsory measures of supervision are not required in relation to the child, arrange a children’s hearing to which he shall refer the case.
- (2) A children’s hearing arranged under subsection (1) above shall begin not later than the third day after the Principal Reporter received the information mentioned in that subsection.
- (3) Where the Principal Reporter considers that a child of whose detention he has been informed does not require compulsory measures of supervision, he shall direct that the child shall no longer be kept in the place of safety.
- (4) Subject to subsection (3) above, a child who has been detained in a place of safety may continue to be kept at that place until the commencement of a children’s hearing arranged under subsection (1) above.
- (5) Subject to subsection (6) below, a children’s hearing arranged under subsection (1) above may—
  - (a) if they are satisfied that the conditions mentioned in subsection (2) of section 66 of this Act are satisfied, grant a warrant to keep the child in a place of safety; and
  - (b) direct the Principal Reporter to arrange a children’s hearing for the purposes of section 65(1) of this Act,
 and subsections (3) to (8) of the said section 66 shall apply to a warrant granted under this subsection as they apply to a warrant granted under subsection (1) of the said section 66.
- (6) A child shall not be kept in a place of safety in accordance with a warrant granted under subsection (5) above where the Principal Reporter, having regard to the welfare of the child, considers that, whether as a result of a change in the circumstances of the case or of further information relating to the case having been received by the Principal Reporter—
  - (a) the conditions mentioned in section 66(2) of this Act are no longer satisfied in relation to the child; or
  - (b) the child is not in need of compulsory measures of supervision,
 and where he does so consider he shall give notice to that effect to the person who is keeping the child in that place in accordance with the warrant.

*Business meeting preparatory to children’s hearing*

**64 Business meeting preparatory to children’s hearing**

- (1) At any time prior to the commencement of proceedings at the children’s hearing, the Principal Reporter may arrange a meeting with members of the children’s panel from which the children’s hearing is to be constituted under section 39(4) of this Act for

those proceedings (any such meeting being, in this Part of this Act referred to as a “business meeting”).

- (2) Where a business meeting is arranged under subsection (1) above, the Principal Reporter shall give notice to the child in respect of whom the proceedings are to be commenced and any relevant person in relation to the child—
  - (a) of the arrangement of the meeting and of the matters which may be considered and determined by the meeting;
  - (b) of their right to make their views on those matters known to the Principal Reporter; and
  - (c) of the duty of the Principal Reporter to present those views to the meeting.
- (3) A business meeting, subject to subsection (4) below—
  - (a) shall determine such procedural and other matters as may be prescribed by rules under subsection (1) of section 42 of this Act by virtue of subsection (2) (a) of that section; and
  - (b) may give such direction or guidance to the Principal Reporter in relation to the performance of his functions in relation to the proceedings as they think appropriate.
- (4) Before a business meeting makes such a determination or gives such direction or guidance to the Principal Reporter, the Principal Reporter shall present, and they shall consider, any views expressed to him by virtue of subsection (2)(b) above.
- (5) Subject to any rules made under section 42(1) of this Act by virtue of subsection (2)(a) of that section and with the exception of sections 44 and, as regards any determination made by the business meeting under subsection (3)(a) above, 51, the provisions of this Act which relate to a children’s hearing shall not apply to a business meeting.

*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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- (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

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- (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.

### *Exclusion orders*

## 76 Exclusion orders

- (1) Subject to subsections (3) to (9) below, where on the application of a local authority the sheriff is satisfied, in relation to a child, that the conditions mentioned in subsection (2) below are met, he may grant an order under this section (to be known as “an exclusion order”) excluding from the child’s family home any person named in the order (in this Part of this Act referred to as the “named person”).
- (2) The conditions are—
  - (a) that the child has suffered, is suffering, or is likely to suffer, significant harm as a result of any conduct, or any threatened or reasonably apprehended conduct, of the named person;
  - (b) that the making of an exclusion order against the named person—
    - (i) is necessary for the protection of the child, irrespective of whether the child is for the time being residing in the family home; and
    - (ii) would better safeguard the child’s welfare than the removal of the child from the family home; and
  - (c) that, if an order is made, there will be a person specified in the application who is capable of taking responsibility for the provision of appropriate care for the child and any other member of the family who requires such care and who is, or will be, residing in the family home (in this section, sections 77 to 78 and section 91(3)(f) of this Act referred to as an “appropriate person”).
- (3) No application under subsection (1) above for an exclusion order shall be finally determined under this section unless—
  - (a) the named person has been afforded an opportunity of being heard by, or represented before, the sheriff; and
  - (b) the sheriff has considered any views expressed by any person on whom notice of the application has been served in accordance with rules making such provision as is mentioned in section 91(3)(d) of this Act.
- (4) Where, on an application under subsection (1) above, the sheriff—
  - (a) is satisfied as mentioned in that subsection; but
  - (b) the conditions mentioned in paragraphs (a) and (b) of subsection (3) above for the final determination of the application are not fulfilled,
 he may grant an interim order, which shall have effect as an exclusion order pending a hearing by the sheriff under subsection (5) below held within such period as may be specified in rules made by virtue of section 91(3)(e) of this Act.
- (5) The sheriff shall conduct a hearing under this subsection within such period as may be specified in rules made by virtue of section 91(3)(e) of this Act, and, if satisfied at that hearing as mentioned in subsection (1) above, he may, before finally determining the application, confirm or vary the interim order, or any term or condition on which it was granted, or may recall such order.
- (6) Where the conditions mentioned in paragraphs (a) and (b) of subsection (3) above have been fulfilled, the sheriff may, at any point prior to the final determination of the application, grant an interim order.
- (7) An order under subsection (5) or (6) above shall have effect as an exclusion order pending the final determination of the application.



- (8) Where—
- (a) an application is made under subsection (1) above; and
  - (b) the sheriff considers that the conditions for making a child protection order under section 57 of this Act are satisfied,
- he may make an order under that section as if the application had been duly made by the local authority under that rather than under this section.
- (9) The sheriff shall not make an exclusion order if it appears to him that to do so would be unjustifiable or unreasonable, having regard to—
- (a) all the circumstances of the case, including without prejudice to the generality of this subsection the matters specified in subsection (10) below; and
  - (b) any requirement such as is specified in subsection (11) below and the likely consequences in the light of that requirement of the exclusion of the named person from the family home.
- (10) The matters referred to in subsection (9)(a) above are—
- (a) the conduct of the members of the child’s family (whether in relation to each other or otherwise);
  - (b) the respective needs and financial resources of the members of that family;
  - (c) the extent (if any) to which—
    - (i) the family home; and
    - (ii) any relevant item in that home,
 is used in connection with a trade, business or profession by any member of the family.
- (11) The requirement referred to in subsection (9)(b) above is a requirement that the named person (whether alone or with any other person) must reside in the family home, where that home—
- (a) is or is part of an agricultural holding within the meaning of the Agricultural Holdings (Scotland) Act 1991; or
  - (b) is let, or is a home in respect of which possession is given, to the named person (whether alone or with any other person) by an employer as an incident of employment.
- (12) In this Part of this Act—
- “caravan” has the meaning given to it by section 29(1) of the Caravan Sites and Control of Development Act 1960;
- “exclusion order”, includes an interim order granted under subsection (4) above and such an order confirmed or varied under subsection (5) above and an interim order granted under subsection (6) above; except that in subsection (3) above and in section 78 of this Act, it does not include an interim order granted under subsection (4) above;
- “family” has the meaning given in section 93(1) of this Act;
- “family home” means any house, caravan, houseboat or other structure which is used as a family residence and in which the child ordinarily resides with any person described in subsection (13) below and the expression includes any garden or other ground or building attached to and usually occupied with, or otherwise required for the amenity or convenience of, the house, caravan, houseboat or other structure.

- (13) The description of person referred to in the definition of “family home” in subsection (12) above, is a person who has parental responsibilities in relation to the child, or who ordinarily (and other than by reason only of his employment) has charge of, or control over him.

**77 Effect of, and orders etc. ancillary to, exclusion order**

- (1) An exclusion order shall, in respect of the home to which it relates, have the effect of suspending the named person’s rights of occupancy (if any) and shall prevent him from entering the home, except with the express permission of the local authority which applied for the order.
- (2) The sheriff, on the application of the local authority, may, if and in so far as he thinks fit, when making an exclusion order do any of the things mentioned in subsection (3) below.
- (3) The things referred to in subsection (2) above are—
- (a) grant a warrant for the summary ejection of the named person from the home;
  - (b) grant an interdict prohibiting the named person from entering the home without the express permission of the local authority;
  - (c) grant an interdict prohibiting the removal by the named person of any relevant item specified in the interdict from the home, except either—
    - (i) with the written consent of the local authority, or of an appropriate person; or
    - (ii) by virtue of a subsequent order of the sheriff;
  - (d) grant an interdict prohibiting the named person from entering or remaining in a specified area in the vicinity of the home;
  - (e) grant an interdict prohibiting the taking by the named person of any step of a kind specified in the interdict in relation to the child;
  - (f) make an order regulating the contact between the child and the named person, and the sheriff may make any other order which he considers is necessary for the proper enforcement of a remedy granted by virtue of paragraph (a), (b) or (c) of this subsection.
- (4) No warrant, interdict or order (except an interdict granted by virtue of paragraph (b) of subsection (3) above) shall be granted or made under subsection (2) above if the named person satisfies the sheriff that it is unnecessary to do so.
- (5) Where the sheriff grants a warrant of summary ejection under subsection (2) above in the absence of the named person, he may give directions as to the preservation of any of that person’s goods and effects which remain in the family home.
- (6) The sheriff may make an order of the kind specified in subsection (3)(f) above irrespective of whether there has been an application for such an order.
- (7) On the application of either the named person or the local authority, the sheriff may make the exclusion order, or any remedy granted under subsection (2) above, subject to such terms and conditions as he considers appropriate.
- (8) In this Part of this Act references to a “relevant item” are references to any item within the home which both—

- (a) is owned or hired by any member of the family concerned or an appropriate person or is being acquired by any such member or person under a hire purchase agreement or conditional sale agreement; and
- (b) is reasonably necessary to enable the home to be used as a family residence, but does not include any such vehicle, caravan or houseboat or such other structure so used as is mentioned in the definition of “family home” in section 76(12) of this Act.

## **78 Powers of arrest etc. in relation to exclusion order**

- (1) The sheriff may, whether or not on an application such as is mentioned in subsection (2) below, attach a power of arrest to any interdict granted under section 77(2) of this Act by virtue of subsection (3) of that section.
- (2) A local authority may at any time while an exclusion order has effect apply for such attachment of a power of arrest as is mentioned in subsection (1) above.
- (3) A power of arrest attached to an interdict by virtue of subsection (1) above shall not have effect until such interdict, together with the attached power of arrest, is served on the named person.
- (4) If, by virtue of subsection (1) above, a power of arrest is attached to an interdict, the local authority shall, as soon as possible after the interdict, together with the attached power of arrest, is served on the named person, ensure that there is delivered—
  - (a) to the chief constable of the police area in which the family home is situated; and
  - (b) where the interdict was granted by virtue of section 77(3)(e) of this Act, to the chief constable of the area in which the step or conduct which is prevented by the interdict may take place,
 a copy of the application for the interdict and of the interlocutor granting the interdict together with a certificate of service of the interdict and, where the application to attach the power of arrest was made after the interdict was granted, a copy of that application and of the interlocutor above granting it and a certificate of service of the interdict together with the attached power of arrest.
- (5) Where any interdict to which a power of arrest is attached by virtue of subsection (1) above is varied or recalled, the person who applied for the variation or recall shall ensure that there is delivered to each chief constable specified in subsection (4) above a copy of the application for such variation or recall and of the interlocutor granting the variation or recall.
- (6) A constable may arrest without warrant the named person if he has reasonable cause for suspecting that person to be in breach of an interdict to which a power of arrest has been attached by virtue of subsection (1) above.
- (7) Where a person has been arrested under subsection (6) above, the constable in charge of a police station may—
  - (a) if satisfied there is no likelihood of that person further breaching the interdict to which the power of arrest was attached under subsection (1) above, liberate him unconditionally; or
  - (b) refuse to liberate that person.
- (8) Such a refusal to liberate an arrested person as is mentioned in subsection (7)(b) above, and the detention of that person until his appearance in court by virtue of either

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subsection (11) below, or any provision of the Criminal Procedure (Scotland) Act 1975, shall not subject that constable to any claim whatsoever.

- (9) Where a person has been liberated under subsection (7)(a) above, the facts and circumstances which gave rise to the arrest shall be reported to the procurator fiscal forthwith.
- (10) Subsections (11) to (13) below apply only where—
- (a) the arrested person has not been released under subsection (7)(a) above; and
  - (b) the procurator fiscal decides that no criminal proceedings are to be taken in respect of the facts and circumstances which gave rise to the arrest.
- (11) A person arrested under subsection (6) above shall wherever practicable be brought before the sheriff sitting as a court of summary criminal jurisdiction for the district in which he was arrested not later than in the course of the first day after the arrest, such day not being a Saturday, a Sunday or a court holiday prescribed for that court under section 10 of the Bail etc. (Scotland) Act 1980, on which the sheriff is not sitting for the disposal of criminal business.
- (12) Subsections (1) and (3) of section 3 of the Criminal Justice (Scotland) Act 1980 (intimation to a person named by the person arrested) shall apply to a person arrested under subsection (6) above as they apply to a person who has been arrested in respect of an offence.
- (13) Where a person is brought before the sheriff under subsection (11) above—
- (a) the procurator fiscal shall present to the court a petition containing—
    - (i) a statement of the particulars of the person arrested under subsection (6) above;
    - (ii) a statement of the facts and circumstances which gave rise to that arrest; and
    - (iii) a request that the person be detained for a further period not exceeding two days;
  - (b) the sheriff, if it appears to him that—
    - (i) the statement referred to in paragraph (a)(ii) above discloses a *prima facie* breach of interdict by the arrested person;
    - (ii) proceedings for breach of interdict will be taken; and
    - (iii) there is a substantial risk of violence by the arrested person against any member of the family, or an appropriate person, resident in the family home,
 may order the arrested person to be detained for a period not exceeding two days; and
  - (c) the sheriff shall, in any case in which paragraph (b) above does not apply, order the release of the arrested person from custody (unless that person is in custody in respect of some other matter);
- and in computing the period of two days referred to in paragraphs (a) and (b) above, no account shall be taken of a Saturday, a Sunday or any holiday in the court in which proceedings for breach of interdict will require to be raised.
- (14) Where a person—
- (a) is liberated under subsection (7)(a) above; or
  - (b) is to be brought before the sheriff under subsection (11) above,

the procurator fiscal shall at the earliest opportunity, and, in the case of a person to whom paragraph (b) above applies, before that person is brought before the sheriff, take all reasonable steps to intimate to—

- (i) the local authority which made the application for the interdict;
- (ii) an appropriate person who will reside in, or who remains in residence in, the family home mentioned in the order; and
- (iii) any solicitor who acted for the appropriate person when the interdict was granted or to any other solicitor who the procurator fiscal has reason to believe acts for the time being for that person,

that he has decided that no criminal proceedings should be taken in respect of the facts and circumstances which gave rise to the arrest of the named person.

## **79 Duration, variation and recall of exclusion order**

- (1) Subject to subsection (2) below, an exclusion order shall cease to have effect on a date six months after being made.
- (2) An exclusion order shall cease to have effect on a date prior to the date mentioned in subsection (1) above where—
  - (a) the order contains a direction by the sheriff that it shall cease to have effect on that prior date;
  - (b) the sheriff, on an application under subsection (3) below, recalls the order before the date so mentioned; or
  - (c) any permission given by a third party to the spouse or partner of the named person, or to an appropriate person, to occupy the home to which the order relates is withdrawn.
- (3) The sheriff may, on the application of the local authority, the named person, an appropriate person or the spouse or partner of the named person, if that spouse or partner is not excluded from the family home and is not an appropriate person, vary or recall an exclusion order and any warrant, interdict, order or direction granted or made under section 77 of this Act.
- (4) For the purposes of this section, partners are persons who live together in a family home as if they were husband and wife.

## **80 Exclusion orders: supplementary provisions**

- (1) The Secretary of State may make regulations with respect to the powers, duties and functions of local authorities in relation to exclusion orders.
- (2) An application for an exclusion order, or under section 78(3) of this Act for the variation or recall of such an order or of any thing done under section 76(2) of this Act, shall be made to the sheriff for the sheriffdom within which the family home is situated.

*Offences in connection with orders etc. for protection of children*

## **81 Offences in connection with orders etc. for protection of children**

A person who intentionally obstructs—

- (a) any person acting under a child protection order;
  - (b) any person acting under an authorisation granted under section 61(1) or (2) of this Act; or
  - (c) a constable acting under section 61(5) of this Act,
- shall, subject to section 38(3) and (4) of this Act, be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Fugitive children and harbouring*

**82 Recovery of certain fugitive children**

- (1) A child who absconds—
- (a) from a place of safety in which he is being kept under or by virtue of this Part of this Act;
  - (b) from a place (in this section referred to as a “relevant place”) which, though not a place of safety such as is mentioned in paragraph (a) above, is a residential establishment in which he is required to reside by virtue of section 70(3)(a) of this Act or a hospital or other institution in which he is temporarily residing while subject to such a requirement; or
  - (c) from a person who, by virtue of a supervision requirement or of section 74 of this Act, has control over him while he is being taken to, is awaiting being taken to, or (whether or not by reason of being on leave) is temporarily away from, such place of safety or relevant place,
- may be arrested without warrant in any part of the United Kingdom and taken to the place of safety or as the case may be the relevant place; and a court which is satisfied that there are reasonable grounds for believing that the child is within any premises may, where there is such power of arrest, grant a warrant authorising a constable to enter those premises and search for the child using reasonable force if necessary.
- (2) Without prejudice to the generality of subsection (1) above, a child who at the end of a period of leave from a place of safety or relevant place fails to return there shall, for the purposes of this section, be taken to have absconded.
- (3) A child who absconds from a person who, not being a person mentioned in paragraph (c) of subsection (1) above, is a person who has control over him by virtue of a supervision requirement may, subject to the same provisions as those to which an arrest under that subsection is subject, be arrested as is mentioned in that subsection and returned to that person; and the provision in that subsection for a warrant to be granted shall apply as respects such a child as it applies as respects a child mentioned in that subsection.
- (4) If a child—
- (a) is taken under subsection (1) above to a place of safety or relevant place; or
  - (b) is returned under subsection (3) above to a person,
- but the occupier of that place of safety or of that relevant place, or as the case may be that person, is unwilling or unable to receive him, that circumstance shall be intimated forthwith to the Principal Reporter.
- (5) Where intimation is required by subsection (4) above as respects a child, he shall be kept in a place of safety until—

- (a) in a case where he is subject to a supervision requirement, he can be brought before a children’s hearing for that requirement to be reviewed; or
- (b) in any other case, the Principal Reporter has, in accordance with section 56(6) of this Act, considered whether compulsory measures of supervision are required in respect of him.

### **83 Harboursing**

A person who—

- (a) knowingly assists or induces a child to abscond in circumstances which render the child liable to arrest under subsection (1) or (3) of section 82 of this Act;
- (b) knowingly and persistently attempts to induce a child so to abscond;
- (c) knowingly harbours or conceals a child who has so absconded; or
- (d) knowingly prevents a child from returning—
  - (i) to a place mentioned in paragraph (a) or (b) of the said subsection (1);
  - (ii) to a person mentioned in paragraph (c) of that subsection, or in the said subsection (3),

shall, subject to section 38(3) and (4) of this Act, to section 52(5) and (6) of the Children Act 1989 and to Article 70(5) and (6) of the Children (Northern Ireland) Order 1995 (analogous provision for England and Wales and for Northern Ireland), be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

*Implementation of authorisations etc.*

### **84 Implementation of authorisations etc**

Where an order, authorisation or warrant under this Chapter or Chapter 2 of this Part of this Act grants power to find a child and to keep him in a place of safety, such order, authorisation or warrant may be implemented as if it were a warrant for the apprehension of an accused person issued by a court of summary jurisdiction; and any enactment or rule of law applying to such a warrant shall, subject to the provisions of this Act, apply in like manner to the order, authorisation or warrant.

*New evidence: review of establishment of grounds of referral*

### **85 Application for review of establishment of grounds of referral**

- (1) Subject to subsections (3) and (4) below, where subsection (2) below applies an application may be made to the sheriff for a review of a finding such as is mentioned in section 68(10) of this Act.
- (2) This subsection applies where the sheriff, on an application made by virtue of subsection (6) or (8) of section 65 of this Act (in this section referred to as the “original application”), finds that any of the grounds of referral is established.
- (3) An application under subsection (1) above may only be made where the applicant claims—

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- (a) to have evidence which was not considered by the sheriff on the original application, being evidence the existence or significance of which might materially have affected the determination of the original application;
  - (b) that such evidence—
    - (i) is likely to be credible and reliable; and
    - (ii) would have been admissible in relation to the ground of referral which was found to be established on the original application; and
  - (c) that there is a reasonable explanation for the failure to lead such evidence on the original application.
- (4) An application under subsection (1) above may only be made by—
- (a) the child in respect of whom the ground of referral was found to be established; or
  - (b) any person who is a relevant person in relation to that child.
- (5) Where the sheriff on an application under subsection (1) above is not satisfied that any of the claims made in the application are established he shall dismiss the application.
- (6) Where the sheriff is satisfied on an application under subsection (1) above that the claims made in the application are established, he shall consider the evidence and if, having considered it, he is satisfied that—
- (a) none of the grounds of referral in the original application to which the application relates is established, he shall allow the application, discharge the referral to the children’s hearing in respect of those grounds and proceed in accordance with subsection (7) below in relation to any supervision requirement made in respect of the child (whether or not varied under section 73 of this Act) in so far as it relates to any such ground; or
  - (b) any ground of referral in the original application to which the application relates is established, he may proceed in accordance with section 68(10) of this Act.
- (7) Where the sheriff is satisfied as is mentioned in subsection (6)(a) above, he may—
- (a) order that any supervision requirement so mentioned shall terminate—
    - (i) immediately; or
    - (ii) on such date as he may specify; or
  - (b) if he is satisfied that there is evidence sufficient to establish any ground of referral, being a ground which was not stated in the original application, find such ground established and proceed in accordance with section 68(10) of this Act in relation to that ground.
- (8) Where the sheriff specifies a date for the termination of a supervision requirement in accordance with subsection (7)(a)(ii) above, he may, before such termination, order a variation of that requirement, of any requirement imposed under subsection (6) of section 70 of this Act, or of any determination made under subsection (7) of that section; and such variation may take effect—
- (a) immediately; or
  - (b) on such date as he may specify.
- (9) Where the sheriff orders the termination of a supervision requirement in accordance with subsection (7)(a) above, he shall consider whether, after such termination, the child concerned will still require supervision or guidance; and where he considers



that such supervision or guidance will be necessary he shall direct a local authority to provide it in accordance with subsection (10) below.

- (10) Where a sheriff has given a direction under subsection (9) above, it shall be the duty of the local authority to comply with that direction; but that duty shall be regarded as discharged where they offer such supervision or guidance to the child and he, being a child of sufficient age and maturity to understand what is being offered, is unwilling to accept it.