



Antisocial Behaviour etc. (Scotland) Act 2004

2004 asp 8

PART 12

CHILDREN'S HEARINGS

Supervision requirements

135 Supervision requirements: conditions restricting movement

(1) Section 70 of the Children (Scotland) Act 1995 (c. 36) (supervision requirements) shall be amended in accordance with subsections (2) to (4).

(2) For subsection (9) there shall be substituted—

“(9) A children’s hearing may exercise a power mentioned in subsection (9A) below in relation to a child if they are satisfied—

- (a) that one of the conditions mentioned in subsection (10) below is met; and
- (b) that it is necessary to exercise the power concerned.

(9A) The powers are—

- (a) that the children’s hearing may specify in the supervision requirement that the child shall be liable to be placed and kept in secure accommodation in a residential establishment specified, under subsection (3)(a) above, in the requirement, 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; and
- (b) that the children’s hearing may impose, under subsection (3)(b) above, a movement restriction condition.”.

(3) For subsection (10) there shall be substituted—

“(10) The conditions are—

- (a) that the child, having previously absconded, is likely to abscond and, if he absconds, it is likely that his physical, mental or moral welfare will be at risk; and
- (b) that the child is likely to injure himself or some other person.”.

(4) After subsection (10) there shall be added—

“(11) In this section, “movement restriction condition” means a condition—

- (a) restricting the child’s movements in such way as may be specified in the supervision requirement; and
- (b) requiring the child to comply with such arrangements for monitoring compliance with the restriction mentioned in paragraph (a) above as may be so specified.

(12) Where a children’s hearing impose a condition such as is mentioned in subsection (9A)(b) above, they shall also impose under subsection (3)(b) above such of the conditions prescribed by the Scottish Ministers for the purposes of this section as they consider necessary in the child’s case.

(13) The Scottish Ministers may by regulations make provision as to the arrangements mentioned in subsection (11)(b) above.

(14) Regulations under subsection (13) above may in particular include provision—

- (a) prescribing what method or methods of monitoring compliance with the restriction mentioned in paragraph (a) of subsection (11) above may be specified in a supervision requirement;
- (b) specifying the devices which may be used for the purpose of that monitoring;
- (c) prescribing the person who may be designated by a children’s hearing to carry out that monitoring or the class or description of person from which that person may be drawn;
- (d) requiring a children’s hearing who have designated a person in pursuance of paragraph (c) above who is no longer within the provision made under that paragraph to vary the designation accordingly and notify the child of the variation.

(15) The Scottish Ministers may, by contract or otherwise, secure the services of such persons as they think fit to carry out the monitoring mentioned in subsection (11)(b) above and may do so in a way in which those services are provided differently in relation to different areas or different forms of that monitoring.

(16) Nothing in any enactment or rule of law prevents the disclosure to a person providing services in pursuance of subsection (15) above of information relating to a child where the disclosure is made for the purposes only of the full and proper provision of the monitoring mentioned in subsection (11)(b) above.

(17) A children’s hearing may include in a supervision requirement a movement restriction condition only if the hearing is constituted from the children’s panel for a local government area which is prescribed for the purposes of this section by the Scottish Ministers.”.

136 Supervision requirements: duties of local authorities

(1) In section 70 of the Children (Scotland) Act 1995 (c. 36) (supervision requirements)—

(a) after subsection (3) there shall be inserted—

“(3A) A children’s hearing may, for the purpose of enabling a child to comply with a supervision requirement, impose such duties on the relevant local authority as may be specified in the supervision requirement.

(3B) The duties imposed under subsection (3A) above may include that of securing or facilitating the provision for the child of services of a kind other than that provided by the relevant local authority.”; and

(b) after subsection (7) there shall be inserted—

“(7A) Where, on a review under subsection (7) above, it appears to the children’s hearing that the relevant local authority are in breach of a duty imposed on them under section 71 of this Act, the hearing may direct the Principal Reporter to give the authority notice of an intended application under section 71A(2) of this Act.

(7B) The Principal Reporter shall, at the same time as giving the notice of an intended application under section 71A(2) of this Act, send a copy of the notice to—

- (a) the child to whom the duty referred to in subsection (7A) above relates;
- (b) any person who, in relation to the child, is a relevant person;
- (c) any person appointed under section 41 of this Act to safeguard the interests of the child in any proceedings which are taking place when the notice is given.

(7C) Notice of an intended application under section 71A(2) of this Act is a written notice—

- (a) setting out the respects in which the relevant local authority are in breach of the duty imposed on them under section 71 of this Act; and
- (b) stating that if the authority do not comply with that duty within the period of 21 days beginning with the day on which they received the notice, the Principal Reporter may make an application under section 71A(2) of this Act.

(7D) Where a children’s hearing have made a direction under subsection (7A) above, they shall determine that a further review under subsection (7) above take place on or as soon as is reasonably practicable after the expiry of the period of 28 days beginning with the day on which notice was given in pursuance of that direction.

(7E) Where on a further review under subsection (7) above which takes place by virtue of subsection (7D) above, it appears to the children’s hearing that the relevant local authority continues to be in breach of the duty referred to in subsection (7A) above, the hearing may authorise the Principal Reporter to make an application under section 71A(2) of this Act.”.

- (2) In section 71 of that Act (duties of local authority with respect to supervision requirements), after subsection (1) there shall be inserted—

“(1A) Where a supervision requirement imposes, under section 70(3A) of this Act, duties on the relevant local authority, the authority shall perform those duties.”.

- (3) After that section, there shall be inserted—

“71A Enforcement of local authorities’ duties under section 71

- (1) The sheriff principal may, on an application under subsection (2) below, make an order requiring a relevant local authority in breach of a duty imposed on them under section 71 of this Act to perform that duty.
- (2) The Principal Reporter, having been so authorised by a children’s hearing under section 70(7E) of this Act, may apply for an order under subsection (1) above.
- (3) No such application shall be competent unless—
 - (a) the Principal Reporter has, on a direction of the children’s hearing made under section 70(7A) of this Act, given the relevant local authority the notice referred to in that provision; and
 - (b) the authority have failed to comply, within the period stipulated in the notice, with the duty there referred to.
- (4) In deciding whether to apply under subsection (2) above, the Principal Reporter shall not take into account any factor relating to the adequacy of the means available to the relevant local authority to enable it to comply with the duty.
- (5) An application under subsection (2) above shall be made by summary application.
- (6) The sheriff principal having jurisdiction under this section is the sheriff principal of the sheriffdom in which is situated the principal office of the relevant local authority in breach of the duty referred to in subsection (1) above.
- (7) An order under subsection (1) above shall be final.”.

Failure to provide education for excluded pupils

137 Failure to provide education for excluded pupils: reference

- (1) The Children (Scotland) Act 1995 (c. 36) shall be amended as follows.
- (2) In subsection (4) of section 56 (steps where no reference to children’s hearing)—
 - (a) the word “and” where it occurs immediately after paragraph (a) shall be repealed; and
 - (b) after paragraph (b) there shall be inserted “; and
 - (c) he may, where it appears to him that—

- (i) an education authority have a duty under section 14(3) of the Education (Scotland) Act 1980 (c. 44) in relation to the child; and
 - (ii) the authority are not complying with that duty,refer the matter to the Scottish Ministers.
 - (4A) A reference made under subsection (4)(c) above shall be in writing.
 - (4B) A copy of a reference made under subsection (4)(c) above shall be sent by the Principal Reporter to the education authority in respect of which the reference is made.”.
- (3) After section 75 there shall be inserted—

“Failure to provide education for excluded pupils

75B Failure to provide education for excluded pupils: reference to Scottish Ministers

- (1) Where it appears to the children’s hearing to whom a child’s case has been referred under section 65(1) of this Act that—
 - (a) an education authority have a duty under section 14(3) of the Education (Scotland) Act 1980 (c. 44) in relation to the child; and
 - (b) the authority are not complying with that duty,they may require the Principal Reporter to refer the matter to the Scottish Ministers.
 - (2) The Principal Reporter shall comply with any requirement made under subsection (1) above.
 - (3) A reference made by virtue of subsection (1) above shall be in writing.
 - (4) A copy of a reference made by virtue of subsection (1) above shall be sent by the Principal Reporter to the education authority in respect of which the reference is made.”.
- (4) In subsection (1) of section 93 (interpretation of Part II), after the definition of “disabled” there shall be inserted—
- ““education authority” has the meaning given by section 135(1) of the Education (Scotland) Act 1980 (c. 44);”.