

CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9 – Children's Hearing

Key definitions

Section 83 – Meaning of “compulsory supervision order”

117. This section sets out the meaning of a compulsory supervision order. A compulsory supervision order is an order made by a Children's Hearing or sheriff that requires a child to comply with specified conditions and requires the local authority to perform duties in relation to the child's needs. Subsection (2) sets out the measures which may be included in a compulsory supervision order. The local authority which is responsible for giving effect to those measures will be specified in the order and is referred to in this section as the “implementation authority”.
118. A compulsory supervision order may require the child to reside at a place specified in the order. Where such a measure is imposed, the order may include a prohibition on disclosing that place. It may also include a direction granting authority to the person who is in charge of the place which is specified to restrict the child's liberty to the extent that the person considers appropriate taking account of the measures included in the order. Other measures which may be included in the compulsory supervision order are a movement restriction condition, a secure accommodation authorisation, a contact direction (between the child and a specified person or class of person) and a requirement that the child must comply with any other specified condition. In turn, the order may also specify duties which must be carried out by the implementation authority in respect of the child. Subsection (2)(f) provides that the order may contain a requirement that the authority arrange a specified medical examination or treatment of the child.
119. Subsection (3) provides that when a Children's Hearing or sheriff makes a compulsory supervision order, they must consider whether to attach conditions to regulate any contact that the child may have with any other named person. For example, the child may be required to live away from home as part of the compulsory supervision order but it may be desirable to maintain contact with family members. Alternatively, the Children's Hearing or sheriff may regulate contact if the child remains at home and it appears to the Children's Hearing that the child may benefit from contact with e.g. an absent father or a previous foster carer. Contact may also be regulated so the child is prohibited from any contact with a person.
120. Subsections (4) and (6) provide the conditions that must be met before a movement restriction condition (defined in section 84) may be made by a hearing or sheriff. The hearing, or sheriff, must consider that it is necessary to include the movement restriction condition and one or more of the conditions in subsection (6) must be met. The conditions are that the child has previously absconded and is likely to abscond again to the detriment of his welfare, or that the child is likely to self-harm or injure another person.

121. Subsection (5) prescribes the conditions which must be met before a compulsory supervision order may include a secure accommodation authorisation. These conditions are three-fold. First, the compulsory supervision order must contain a residence requirement measure which specifies a residential establishment containing both secure and non-secure provision. Alternatively, the compulsory supervision order must specify two or more residential establishments, one of which contains non-secure accommodation. Secondly, one or more of the conditions in subsection (6) must be met (discussed in the preceding paragraph) and, thirdly, the Children's Hearing or sheriff must be satisfied that a secure accommodation authorisation is necessary having considered other available supervision options including a movement restriction condition. Subsections (1) and (7)(a) provide that where a compulsory supervision order has not been continued, the order will have effect until either the day one year after it was made or the day on which the child reaches the age of 18, whichever is the earlier). Subsections (1) and (7)(b) provide that where a compulsory supervision order has been continued, the order will have effect until either the day one year after the day on which it was last continued or until the child turns 18.

Section 84 – Meaning of “movement restriction condition”

122. This section defines “movement restriction condition”. It provides that the movement restriction condition, in relation to a child, restricts the child's movement in a way specified in that condition, and that it will contain a requirement for the child to comply with the arrangements specified for monitoring compliance with the movement restriction condition.

Section 85 – Meaning of “secure accommodation authorisation”

123. This section defines “secure accommodation authorisation” as an authorisation which enables a child to be placed and kept in secure accommodation within a residential establishment. “Secure accommodation” is defined in section 202. An authorisation may be included in an interim compulsory supervision order which may not name the place of safety within which the child is to reside, providing the necessary flexibility to deal with emergency situations. Section 83(5) requires that the residential establishment or establishments be specified where a compulsory supervision order is to contain a secure accommodation authorisation.

Section 86 – Meaning of “interim compulsory supervision order”

124. This section defines “interim compulsory supervision order”. This order is similar to a compulsory supervision order under section 83.
125. It may include any of the measures which a compulsory supervision order could contain (specified in section 83(2)) and will specify the implementation authority which has responsibility for giving effect to those measures. An interim compulsory supervision order may contain a movement restriction condition or a secure accommodation authorisation and sections 83(3) to (6) apply to interim compulsory supervision orders as they apply to a compulsory supervision order. But section 83(5)(a) does not apply to interim orders allowing these orders to have effect without specifying that the child reside at a particular place.
126. Subsection (3) sets out the period for which an interim compulsory supervision order has effect, beginning on the day the interim order is made and ending on the occurrence of certain events, whichever occurs first. Events include the next Children's Hearing in relation to the child, the disposal of an application to establish grounds under sections 93 or 94 of the Act, a day specified in the interim order, where the interim order has not been extended by the sheriff under sections 98 or 99 the expiry of 22 days from the day it is made. Where an interim order has been extended under sections 98 or 99, the relevant period ends on the expiry of the period of 22 days beginning on the day on which the interim order was extended.

Section 87 – Meaning of “medical examination order”

127. This section defines “medical examination order”. As with a compulsory supervision order, the medical examination order may contain certain measures, which are listed at subsection (2), including a secure accommodation authorisation. A child may, for example, be required to reside in an assessment centre, attend an educational psychologist or be subject to a medical examination. The order may specify a requirement that the child attend or reside at a specified clinic, hospital or other establishment. Where such a measure is included, the order may also place a prohibition on the disclosure of that specified place. It may also contain a requirement that the local authority arrange a specified medical examination of the child. As with a compulsory supervision order, it may contain a direction regulating contact. It may also include any other specified condition which appears to the Children’s Hearing to be appropriate to ensure the child’s compliance with the order.
128. Subsections (3) and (4) set out the conditions that must exist before a secure accommodation authorisation may be included in a medical examination order. These provisions mirror those for compulsory supervision orders. Subsection (5) defines “medical” for the purposes of this section to include psychological. Subsection (5) sets out the period for which a medical examination order will have effect. It defines “relevant period” as the period beginning with the making of the order and ending with the first occurrence of the following: the beginning of the next Children’s Hearing arranged to consider compulsory supervision of the child after the order is made; a day specified in the order; or the end of the period of 22 days beginning with the day on which the order is made.

Section 88 – Meaning of “warrant to secure attendance”

129. This section defines a warrant to secure the attendance of a child at either a Children’s Hearing or a hearing before the sheriff.
130. Subsection (1)(a) provides that a warrant under this section allows the Children’s Hearing or the sheriff to authorise an officer of the law to find the child, detain the child in a place of safety, and bring the child to a Children’s Hearing or hearing before the sheriff. Subsection 1(b) enables the place of safety to be withheld, either directly or indirectly from any person specified in the warrant. Subsections (2) and (3) set out the conditions which must exist before a warrant may include a secure accommodation authorisation. One or more of the conditions in subsection (3) must be met. Again, these provisions mirror those for secure accommodation authorisations attaching to compulsory supervision orders.
131. Subsection (4) prescribes the duration for warrants to secure attendance at a hearing. A warrant issued by a Children’s Hearing expires at the beginning of the proceedings in respect of which the warrant was granted, or after 7 days beginning with the day the child is first detained under the warrant (and not from when they are taken to the place of safety in which it is intended to accommodate them for the duration of the warrant). A warrant issued by the sheriff where the proceedings are continued will last until the start of the continued hearing or 14 days from the child being detained under it; whichever first occurs. A warrant issued by a sheriff in respect of attendance at proceedings under Part 10 (apart from warrants granted under section 106(8) in connection with continued hearings) expires at the beginning of the proceedings in respect of which it was granted or after a maximum of 14 days beginning with the day the child is first detained under the warrant. For warrants issued by a sheriff in respect of attendance at a hearing arranged under sections 108 (determination: ground established), 115 (recall: power to refer other grounds), 117(2)(b) (new section 67 ground established: sheriff to refer to Children’s Hearing) or 156(3)(a) (determination of appeal) the warrant will endure until the beginning of the proceedings in respect of which it was granted or 7 days, whichever is earlier, beginning with the day the child is first detained under the warrant.

*These notes relate to the Children's Hearings (Scotland) Act
2011 (asp 1) which received Royal Assent on 6 January 2011*

132. The term "relevant proceedings" is defined at the end of subsection (4) and means the Children's Hearing or proceedings before the sheriff at which a warrant to secure attendance is granted.