

# **CHILDREN'S HEARINGS (SCOTLAND) ACT 2011**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 1 – the National Convener and Children's Hearings Scotland (Chs)**

##### **The National Convener and CHS**

###### ***Section 1 – The National Convener***

3. This section provides for the creation of the post of National Convener of CHS. The first National Convener will be appointed by the Scottish Ministers and thereafter appointments will be made by CHS with the approval of the Scottish Ministers, under terms set out in schedule 1, paragraph 8. Subsection (3) places a duty on the Scottish Ministers to take reasonable steps to involve persons under 21 in the process for selecting the first National Convener and this responsibility is passed to CHS for subsequent appointments in schedule 1. Appointments are for a fixed term of 5 years and the terms and conditions of the first National Convener are to be determined by the Scottish Ministers. The terms and conditions for subsequent appointments will be determined by CHS and approved by the Scottish Ministers.

###### ***Section 2 – Children's Hearings Scotland***

4. This section provides for the establishment of a dedicated national body to support the Children's Hearings system to be known as Children's Hearings Scotland.

###### ***Section 3 – Further provision about National Convener and CHS***

5. This section introduces schedule 1 which makes further provision for the National Convener and CHS.

##### **The Children's Panel**

###### ***Section 4 – The Children's Panel***

6. This section places a duty on the National Convener to appoint persons to be members of the national Children's Panel. The National Convener has a duty to ensure that the Children's Panel is sufficiently staffed and includes people from all local authority areas. This supports the principle of having people from the local community involved in local decision making. Subsection (3) introduces schedule 2 which makes detailed provision concerning the recruitment, appointment, training and payment of expenses of panel members. This section establishes one national Children's Panel for Scotland in place of the 32 local authority panels which currently exist.

## **Children's hearings**

### ***Section 5 – Children's hearing***

7. **Section 5** defines a Children's Hearing as one that consists of three members of the Children's Panel. Children's Hearings are to carry out the functions conferred on them by this Act or any other enactment.

### ***Section 6 – Selection of members of children's hearing***

8. **Section 6** makes provision for the selection of panel members to sit on a Children's Hearing. The National Convener has a duty to ensure that a hearing consists of both male and female members of the panel and, wherever possible, they either work or live in the local authority area in which the hearing will sit. While the duty to ensure a gender balance is firm, there is a limited degree of flexibility that allows members of a Children's Hearing to be drawn from a wider geographical area than the immediate local authority in which the hearing will be held. Subsection (4) provides that the National Convener may select one of the three members to act as chairing member in that hearing. Schedule 1, paragraph 14 places an obligation on the National Convener to delegate this function to the area support teams, defined in schedule 1.

### ***Section 7 – Holding of children's hearing***

9. This section places a duty on the National Convener to ensure that hearings are held where required in order to carry out functions under this Act or other legislation.

### ***Section 8 – Provision of advice to children's hearing***

10. This section provides the National Convener with the power to provide advice to Children's Hearings and Pre-hearing Panels. Subsection (2) contains a non-exhaustive list of the types of advice which the National Convener might provide to Children's Hearings and Pre-hearing Panels. This includes legal advice, procedural advice, advice about the consequences of decisions and advice about the implementation of decisions.

### ***Section 9 – Independence of children's hearing***

11. This section serves to protect the independence of the Children's Hearing. It makes clear that neither the National Convener nor the Principal Reporter can guide or direct the Children's Hearing in carrying out any of its functions.

## **Power to change National Convener's functions**

### ***Section 10 – Power to change National Convener's functions***

12. This section gives the Scottish Ministers power to vary the functions of the National Convener. Ministers may specify further functions for the National Convener, either by creating entirely new functions or through transferring functions from existing bodies or persons. Functions may also be removed from the National Convener or transferred to another body or person, should Ministers consider this to be appropriate. Any such change to the functions of the National Convener will require to be made by an order subject to super-affirmative procedure. Subsection (1)(e) confers power on the Scottish Ministers to specify the manner in which the National Convener must carry out a function or the time period in which the function must be carried out. Any such specification will require to be made by an order subject to affirmative procedure. See sections 197 and 198 for definitions of "affirmative procedure" and "super-affirmative procedure".

## **Functions of CHS**

### ***Section 11 – Provision of assistance to National Convener***

13. This section specifies the principal function of CHS which is to support the work of the National Convener.

### ***Section 12 – Independence of National Convener***

14. This section provides a clear separation of functions between CHS and the National Convener and prevents CHS or any other person from directing or guiding the National Convener in carrying out their functions. Subsection (2) makes clear that this prohibition is subject to the power of the Scottish Ministers under section 10(1)(e) to specify by secondary legislation the manner or timing in which any function of the National Convener is carried out.

### ***Section 13 – Directions***

15. This section enables the Scottish Ministers to give directions to CHS about the carrying out of its functions. Such directions might relate to setting the strategic direction of CHS or its organisational objectives and outcomes. CHS must comply with these directions.

## **Part 2 – the Principal Reporter and the Scottish Children's Reporter Administration (Scra)**

### **The Principal Reporter and SCRA**

#### ***Section 14 – The Principal Reporter***

16. This section provides for the post of Principal Reporter to continue. That post was established by section 127(1) of the Local Government etc. (Scotland) Act 1994 ("the 1994 Act").

#### ***Section 15 – The Scottish Children's Reporter Administration***

17. This section provides for SCRA to continue to exist as part of the Children's Hearings system. That body was established by section 128(1) of the 1994 Act.

#### ***Section 16 – Further provision about Principal Reporter and SCRA***

18. [Schedule 3](#) makes extensive further provision about the Principal Reporter and SCRA including their status and governance arrangements.

### **The Principal Reporter**

#### ***Section 17 – Duty as respects location of children's hearing***

19. This section places a duty on the Principal Reporter (who is the person responsible for arranging all Children's Hearings) to ensure that a Children's Hearing takes place, so far as is practicable, in the child's local authority area.

#### ***Section 18 – Power to change Principal Reporter's functions***

20. This section gives the Scottish Ministers power to vary the functions of the Principal Reporter. Ministers may specify further functions for the Principal Reporter, either by creating entirely new functions or through transferring functions from existing bodies or persons. Functions may also be removed from the Principal Reporter and transferred to another body or person should Ministers consider this to be appropriate. Any such change to the functions of the Principal Reporter will require to be made by an order subject to super-affirmative procedure. Subsection (1)(e) confers power on the

Scottish Ministers to specify the manner in which the Principal Reporter must carry out a function or the time period in which the function must be carried out. Any such specification will require to be made by an order subject to affirmative procedure. See sections 197 and 198 for definitions of "affirmative procedure" and "super-affirmative procedure".

### ***Section 19 – Rights of audience***

21. This section gives the Scottish Ministers the power to make regulations to empower the Principal Reporter to conduct any proceedings before the sheriff or sheriff principal in relation to the Children's Hearings system despite not being a solicitor or advocate. This authorisation will also extend to persons to whom functions of the Principal Reporter have been delegated under paragraph 10 of schedule 3 (a "reporter"). Ministers may also prescribe any qualification, training or experience that must be undertaken by the Principal Reporter (and other reporters exercising the Principal Reporter's functions) before conducting such court proceedings.

## **Functions of SCRA**

### ***Section 20 – Assisting Principal Reporter***

22. This section specifies the principal function of SCRA which is to support the Principal Reporter in carrying out their functions.

### ***Section 21 – Provision of accommodation for children's hearings***

23. This section places a duty on SCRA to provide suitable accommodation and facilities for Children's Hearings. Subsection (2) provides that such accommodation and facilities must, so far as practicable, be provided within each local authority area across Scotland. Subsection (3) places a duty on SCRA to ensure that accommodation and facilities for Children's Hearings continue to be separate from criminal courts and police stations.

### ***Section 22 – Independence of Principal Reporter***

24. This section protects the independence of the Principal Reporter by ensuring that neither SCRA nor any other person may direct or guide the Principal Reporter in the conduct of their statutory functions. Subsection (2) makes clear that this prohibition is subject to the power of the Scottish Ministers under section 18(1)(e) to specify by secondary legislation the manner or timing in which any function of the Principal Reporter is to be carried out.

### ***Section 23 – Directions***

25. This section provides for the Scottish Ministers to give directions to SCRA on the carrying out of its functions. This power could be used, for example, to set the strategic direction of the children's reporter service or to set organisational objectives and outcomes. SCRA must comply with such directions.

## **Transfer of staff, property etc.**

### ***Section 24 – Transfer of staff, property etc.***

26. This section introduces schedule 4 which makes provision about the transfer of staff, property, rights, liabilities and obligations from SCRA, local authorities or the Scottish Ministers to CHS.

### **Part 3 – General Considerations**

#### **General considerations**

##### ***Section 25 – Welfare of the child***

27. This section is based on section 16(1) of the 1995 Act and links decisions of courts, Children's Hearings and Pre-hearing Panels to an overarching welfare principle in relation to the child. When arriving at a decision about a matter relating to a child under the Act, the Children's Hearing, Pre-hearing Panel or court must, as their paramount consideration, have regard to the need to safeguard and promote the child's welfare throughout childhood.

##### ***Section 26 – Decisions inconsistent with section 25***

28. **Section 26(1)** is based on section 16(5) of the 1995 Act and provides that a decision can be made which is inconsistent with the welfare of the child requirement in section 25, if the Children's Hearing or court considers this departure from that principle necessary to protect the public from serious harm. Subsection (2) provides that, in keeping with the United Nations Convention on the Rights of the Child, when making such a decision the welfare of the child must still be treated as a primary consideration, rather than as the paramount consideration.

##### ***Section 27 – Views of the child***

29. This section is based on section 16(2) of the 1995 Act and provides that the Children's Hearing or sheriff must, so far as is practicable, give the child the opportunity to express their views, and take those views into account in coming to decisions. When doing this the Children's Hearing or the sheriff must take account of the age and maturity of the child. Subsection (4) provides that a child aged 12 years or more is presumed capable of forming a view, but the capacity of each child should be assessed individually, and the sheriff or hearing should take account of the views of children under 12 when that child is capable of forming and expressing a view. This section does not apply where the sheriff is deciding whether to make a child protection order (CPO) in relation to a child. As an emergency protection measure, it would not be possible to seek the child's views before making a CPO.

##### ***Section 28 – Children's hearing: pre-condition for making certain orders and warrants***

30. This section supports the "no order" principle of the Children's Hearings system - that measures should only be put in place if that is better for the child than taking no action. It applies in situations where a Children's Hearing may make, vary or continue certain orders or grant a warrant. It provides that the hearing should only do this if it is better for the child than not making, varying or continuing the order or granting the warrant.

##### ***Section 29 – Sheriff: pre-condition for making certain orders and warrants***

31. This section applies the "no order" principle to situations where a sheriff may make, vary, continue or extend certain orders or grant a warrant. Section 29 provides that the sheriff should only do so if that would be better for the child than not making, varying, continuing or extending the order or granting the warrant.

##### ***Section 30 – Children's hearing: duty to consider appointing safeguarder***

32. This section places a duty on every Children's Hearing to actively consider whether to appoint a Safeguarder. A Safeguarder is a person whose job it is to safeguard the interests of the child involved in the hearing. Subsection (4) requires the Children's Hearing to state the reasons for appointing a Safeguarder. This duty on the Children's Hearing only applies where a Safeguarder has not already been appointed.

### ***Section 31 – Sheriff: duty to consider appointing safeguarder***

33. This section places a duty on the sheriff to actively consider whether to appoint a Safeguarder in relation to the child. It relates to court proceedings under parts 10 and 15 where a Safeguarder has not already been appointed in relation to those proceedings. A Safeguarder appointed under this section is to be treated as having been appointed by a Children's Hearing under section 30.

## **Part 4 – Safeguarders**

### ***Section 32 – The Safeguarders Panel***

34. Safeguarders are independent persons appointed by a court or Children's Hearing when it is considered necessary to safeguard the interests of the child in cases before them. Subsection (1) places a duty on the Scottish Ministers to establish a national panel of Safeguarders, to be known as the Safeguarders Panel. Subsection (2) enables the Scottish Ministers to make regulations in relation to the Safeguarder Panel, including the establishment and management of the Safeguarders Panel and the appointment, qualifications and training of members of the Panel. These regulations will be subject to negative procedure. Subsection (3) provides the Scottish Ministers with the power to enter into arrangements, contractual or otherwise, for the management of the Safeguarders Panel with another organisation other than SCRA or CHS.

### ***Section 33 – Functions of safeguarder***

35. **Section 31** relates to the functions of Safeguarders once appointed by a Children's Hearing or sheriff. Subsection (1)(a) sets out the duty of a Safeguarder on appointment to provide a report, except in the circumstances set out in subsection (2), when a hearing directs the Principal Reporter to make an application to a sheriff for the establishment of grounds. Subsection (1)(b) provides that Safeguarders must attend all Children's Hearings so far as is reasonably practicable. A hearing can also require a Safeguarder to prepare additional reports where they consider that appropriate under subsection (1)(c).

### ***Section 34 – Safeguarders: regulations***

36. This section enables Scottish Ministers to make regulations about Safeguarders including imposing additional requirements on Safeguarders, conferring additional powers, including appeal rights on Safeguarders, and providing for the termination of Safeguarder appointments. These regulations will be used to review and develop the role of Safeguarders, particularly their role in court proceedings. The regulations will be subject to negative procedure.

## **Part 5 – Child Assessment and Child Protection Orders**

### **Child assessment orders**

### ***Section 35 – Child assessment orders***

37. **Sections 35** and **36** provide for the local authority to apply to the sheriff for a "child assessment order". It provides for an assessment to be made of a child's health or development or of the way in which she or he has been or is being treated or neglected even in the absence of consent by the parent. Nothing in this section affects the child's legal capacity to consent or refuse treatment, as made clear in section 186 of the Act. Subsection (3)(b) provides for the child to be removed to and kept at the place where the assessment is to be carried out. Subsection (5) sets a maximum duration for the child assessment order of three days.



### ***Section 36 – Consideration by sheriff***

38. This section relates to circumstances where a local authority has applied to the sheriff for a child assessment order. Subsection (2) sets out what the sheriff must be satisfied of before making the child assessment order. Subsection (3) enables the sheriff to make a child protection order instead of a child assessment order if the conditions in section 38(2) are satisfied.

## **Child protection orders**

### ***Section 37 – Child protection orders***

39. **Section 37(1)** provides that anyone can apply to the sheriff for a child protection order. Subsection (2) deals with what a child protection order may do. Subsection (2)(d) allows for the sheriff to authorise that an assessment of a child's health or development be undertaken in the same way as would be achieved through the granting of a child assessment order. Nothing in this section affects the child's legal capacity to consent or refuse treatment, as made clear in section 186 of the Act. Subsection (3) provides the sheriff with a general power to make any other authorisation or requirement deemed to be necessary in order to safeguard or promote the welfare of a child. Subsection (4) reinforces the differing purposes that child protection orders and child assessment orders serve, and provides that a child protection order can include an assessment of a child's health only as part of an order that also includes an authorisation of a type mentioned in section 37 (2)(b) or (c).

## **Consideration of application by sheriff**

### ***Section 38 – Consideration by sheriff: application by local authority only***

40. This section relates specifically to the sheriff's consideration of a local authority application for a child protection order. Subsection (2) sets out what the sheriff must be satisfied of before making the child protection order.

### ***Section 39 – Consideration by sheriff: application by a local authority or other person***

41. This section relates to the sheriff's consideration of an application for a child protection order by any person, including a local authority. Subsection (2) sets out what the sheriff must be satisfied of before making the child protection order.

## **Ancillary measures**

### ***Section 40 – Information non-disclosure directions***

42. This section places a duty on the sheriff to consider whether to make a direction regarding the non-disclosure of the location of a child who is the subject of a child protection order or any other information relating to the child as directed by the sheriff. This sheriff will also specify in the direction the person or class of person to whom that non-disclosure direction applies.

### ***Section 41 – Contact directions***

43. This section places a duty on the sheriff to consider contact between the child and certain other persons, specified in subsection (4), during the subsistence of the child protection order. It provides the sheriff with discretion to prohibit contact or to make contact arrangements subject to any conditions that they consider appropriate, in order to safeguard and promote the welfare of the child and to make any other provision that the sheriff considers appropriate about contact between the child and any other person.

### ***Section 42 – Parental responsibilities and rights directions***

44. This section provides for an applicant for a child protection order to also apply to the sheriff for a direction in relation to parental responsibilities and rights. A child protection order does not transfer parental responsibilities and rights to the applicant. It provides for the sheriff to give such direction as might be necessary, for example, in order to ensure that a parent maintains beneficial contact with the child, or when a parent refuses to consent to a medical examination which is considered essential to allow for the proper consideration of the child's needs.

### **Notice of order**

#### ***Section 43 – Notice of child protection order***

45. This section places a duty on the applicant to notify the persons listed when the sheriff makes a child protection order. Subsection (2) also requires that, where the Principal Reporter receives notice of the order they must notify any persons who they consider to have, or to have recently had, a significant involvement in the upbringing of a child as those persons may seek to be determined as a relevant person.

### **Obligations of local authority**

#### ***Section 44 – Obligations of local authority***

46. This section applies where a child is removed to a place of safety provided by a local authority under a child protection order. It stipulates that in these circumstances the local authority has the same duties under section 17 of the 1995 Act toward the child as it would have if the child were a "looked after" child, subject to any conditions of the child protection order.

### **Review by children's hearing of certain orders**

#### ***Section 45 – Review by children's hearing where child in place of safety***

47. This section relates to the review of a child protection order where the order directs the removal of a child to a place of safety. This section does not apply where there is an existing application to the sheriff for a review of the order under section 49 of the Act. Subsections (2) and (3) require a Children's Hearing to be arranged by the Principal Reporter to sit on the second working day after the implementation of the child protection order.

#### ***Section 46 – Review by children's hearing where order prevents removal of child***

48. This section relates to the review of a child protection order where the order prevents the removal of a child from a specified place. This section does not apply where there is an existing application to the sheriff for a review of the order under section 49 of the Act. Subsections (2) and (3) require a Children's Hearing to be arranged by the Principal Reporter to sit on the second working day after the day on which the child protection order is made.

### **Decision of children's hearing**

#### ***Section 47 – Decision of children's hearing***

49. This section provides for a Children's Hearing arranged under section 45 or 46 to determine whether or not the conditions for the making of a child protection order are met and whether the order should be continued, varied or terminated.



## **Variation or termination of order by sheriff**

### ***Section 48 – Application for variation or termination***

50. This section relates to an application to the sheriff to vary or terminate a child protection order. Subsection (1) sets out the persons eligible to seek a variation of a child protection order and subsection (2) sets out the persons eligible to apply for the termination of a child protection order. The Principal Reporter cannot apply for a termination. Subsection (3) provides that an application to the sheriff can only be made before a Children's Hearing arranged under section 45 or 46 is commenced or if the order was continued by a Children's Hearing arranged under section 45 or 46 within 2 working days from the continuation of the order.

### ***Section 49 – Notice of application for variation or termination***

51. This section identifies those individuals who must be informed where an application has been made to have a child protection order varied or terminated.

### ***Section 50 – Children's hearing to provide advice to sheriff in relation to application***

52. This section provides the Principal Reporter with the power to convene a Children's Hearing for the purposes of providing advice to assist the sheriff in determining an application to vary or terminate a child protection order under section 48.

### ***Section 51 – Determination by sheriff***

53. This section relates to the sheriff's determination of an application under section 48. It stipulates that the sheriff must provide an opportunity for the persons listed in subsection (2) to make representations before the sheriff makes a determination. Subsections (3) and (4) set out the timescale for determination of the application and provide for the order to cease if the application is not determined within three working days. Subsection (5) provides that the sheriff may terminate, vary or confirm the child protection order. Any termination has immediate effect.

## **Termination of order**

### ***Section 52 – Automatic termination of order***

54. This section provides for a child protection order made under section 37(2)(b), authorising the removal of the child to a place of safety, to cease to have effect if the applicant has not attempted to implement the order within 24 hours of it having been made. Subsection (3) provides that any order which includes an authorisation to remove a child to a place of safety will cease to have effect after 6 days where implementation of the order has not been possible within that timeframe.

### ***Section 53 – Power of Principal Reporter to terminate order***

55. This section provides the Principal Reporter with the power to terminate or vary a child protection order made by the sheriff where the reporter receives further evidence to suggest that the conditions for the making of the order, or specific directions included in an order, are no longer satisfied. The reporter may terminate or vary an order up until the Children's Hearing commences under section 45 or 46, or until the hearing of an application to the sheriff commences under section 48.

### ***Section 54 – Termination of order after maximum of 8 working days***

56. This section establishes the maximum duration of child protection orders. Where a child protection order directs the removal of a child to a place of safety under section 37(2)(b), the order cannot remain effective beyond the eighth day after the child was removed

to the place of safety. Where a child protection order does not direct the removal of a child to a place of safety the order cannot remain effective beyond the eighth working day after it was made. A child protection order ceases to have effect before that day on those instances when a Children's Hearing arranged under section 69 begins or when notice is given under section 68(3) that no hearing will take place.

## **Other emergency measures**

### ***Section 55 – Application to justice of the peace***

57. This section provides an alternative procedure where application to the sheriff for a child protection order is not practicable. It provides for a justice of the peace to apply the same considerations set out for the sheriff under sections 38 and 39 above. Subsections (4) and (5) place time restrictions on orders made by a justice of the peace. The maximum possible subsistence of such an order is 24 hours. Subsection (6) provides the Principal Reporter with powers to terminate an order made by a justice of the peace where the Principal Reporter is satisfied that the conditions for the making of the order are no longer satisfied or that it is no longer in the best interests of the child for the order to have effect.

### ***Section 56 – Constable's power to remove child to place of safety***

58. This section provides police officers with powers to remove a child to a place of safety for a period of up to 24 hours without involvement of a sheriff. The police officer must be satisfied that the conditions for the granting of a child protection order exist but it is not practicable to pursue an application to a sheriff. Subsection (4) provides that police officers must not exercise this power where a child protection order is in effect for the child or where an application for a child protection order or for an order under section 55 has been submitted to the sheriff or to a justice of the peace respectively, and that application has been refused.
59. Subsection (5) provides the Principal Reporter with powers to order the release of the child from the place of safety where they are satisfied that the conditions for placing the child there are no longer met or that it is no longer in the best interests of the child to be kept in a place of safety.

### ***Section 57 – Sections 55 and 56: regulations***

60. This section enables the Scottish Ministers to make regulations in respect of a child removed to, or kept in, a place of safety by police officers or under an order made by a justice of the peace. Subsection (2) provides that such regulations may require that specified individuals be notified of the removal of the child, the location of the child, and the cessation of an order under section 55.

## **Implementation of orders: welfare of child**

### ***Section 58 – Implementation of orders: welfare of child***

61. This section provides that, where a child protection order, a child assessment order or an order under section 55 is made, the applicant (and any other person specified in the order) must only take such steps to implement that order as that person reasonably believes are necessary to safeguard or promote the welfare of the child.

## **Offences**

### ***Section 59 – Offences***

62. This section provides that intentionally obstructing the implementation of a child assessment order, a child protection order, or an order under section 55 is a criminal

offence, as is obstructing a constable acting under section 56. This offence attracts a maximum fine of level 3 on the standard scale.

## **Part 6 – Investigation and Referral to Children's Hearing**

### **Provision of information to Principal Reporter**

#### ***Section 60 – Local authority's duty to provide information to Principal Reporter***

63. This section relates to the duties of the local authority to make inquiries into the child's circumstances where the local authority considers (i) that a child in its area is in need of protection, guidance, treatment or control and (ii) that the child might be in need of compulsory measures of supervision. Where both these conditions are satisfied then the local authority must make all necessary inquiries and give any information that it has about the child to the Principal Reporter.

#### ***Section 61 – Constable's duty to provide information to Principal Reporter***

64. **Section 61(1)** and (2) relate to the duties of the police to provide information to the Principal Reporter where the police consider that a child is in need of protection, guidance, treatment or control and that a compulsory supervision order might be necessary in respect of the child. Subsection (3) relates to the duty of the police to provide information to the Principal Reporter when the police have reported the commission of an offence that relates to a child to the Procurator Fiscal. This covers both where the child is the victim or the perpetrator of the alleged offence.

#### ***Section 62 – Provision of information by court***

65. This section provides for a court to refer a case to the Principal Reporter.
65. A court dealing with matters such as divorce, separation, parental responsibilities or parental rights, adoption, or proceedings against a parent for failing to secure regular attendance by his or her child at school, may, if the court considers that one or more grounds (except for offence grounds) for referral to a hearing might apply, refer the child to the reporter. The court must provide the reporter with a statement setting out which ground the court considers to be relevant and why. Where information is passed on to the reporter under this section, the reporter must investigate and assess whether compulsory measures of supervision is the best course of action for the child. If so, the reporter must arrange a hearing so that the grounds may be put to the child and relevant person.

#### ***Section 63 – Provision of evidence from certain criminal cases***

66. This section gives the Lord Advocate a power to direct the prosecutor, in certain cases, to provide evidence obtained during a criminal investigation to the Principal Reporter without any request being made by the reporter.

#### ***Section 64 – Provision of information by other persons***

67. **Section 64** gives other persons the power to provide the reporter with information to support the view that the child is in need of protection, guidance, treatment or control and that a child might be in need of compulsory measures of supervision. This may include a medical practitioner, health visitor, neighbour, youth club leader, friend, nursery or children's centre, or even the child or parents themselves.

#### ***Section 65 – Provision of information by constable: child in place of safety***

68. This section applies where a child has been detained by the police in a place of safety and it has been decided not to proceed with criminal charges against the child. The police must inform the Principal Reporter of this under section 43(5) of the Criminal

Procedure (Scotland) Act 1995. Subsection (2) gives the reporter the power to direct that the child be released from the place of safety or to direct that the child is kept in the place of safety until the reporter determines whether the ground(s) for referral apply to the child and whether it is necessary for a compulsory supervision order to be made. Under section 69(2) the Children's Hearing must be arranged to take place no later than the third working day after the Principal Reporter receives notice under section 43(5) of the Criminal Procedure (Scotland) Act 1995.

## **Investigation and determination by Principal Reporter**

### ***Section 66 – Investigation and determination by Principal Reporter***

69. This section provides for the Principal Reporter to investigate a child's circumstances whenever the Principal Reporter considers that a child might be in need of protection, guidance, treatment or control. This includes, but is not limited to, circumstances where information is passed on to the reporter under section 43, section 60 to 64 or under section 43(5) of the Criminal Procedure (Scotland) Act 1995. The source of information may also include the reporter's own files. The reporter must investigate and assess whether there is sufficient, relevant evidence to support the ground(s) for referral and whether compulsory measures of supervision are necessary for the child. If the reporter determines that both tests are satisfied, the reporter must refer the child to a hearing. The reporter may make further investigations as necessary and require the local authority to submit a report on the child.

### ***Section 67 – Meaning of “section 67 ground”***

70. This section sets out the grounds upon which a child can be referred to a Children's Hearing. This is an exhaustive list of the grounds.
71. The Principal Reporter must refer a child to a Children's Hearing where any of the grounds in section 67 exist and the reporter is satisfied that the child is in need of compulsory measures of supervision. The section 67 ground(s) may relate: to situations where the child has been or may be harmed by others; or to a specific incident, incidents or pattern of behaviour by the child, or concerning the child. Whatever the ground(s) for referral for a child, there also needs to be an assessment by the reporter to determine whether the child requires compulsory measures of supervision in consequence of the ground(s) for referral and the child's overall circumstances. Therefore the existence of a ground for referral is a necessary, but not a sufficient condition in and of itself, to trigger a referral to a Children's Hearing. It is for the reporter to decide which ground or grounds for referral apply and then to draw up a statement of facts in support of the ground or grounds if the reporter considers there is a need for compulsory measures of supervision.
72. **Section 67(2)** sets out the ground(s) for referral to be considered by the reporter and to be accepted by the child and relevant person before a Children's Hearing or, if the ground(s) are not so accepted, then established before the sheriff.
73. There are two situations where the grounds will not require to be accepted or established before a hearing or the sheriff respectively:
- (a) under section 70 where the sheriff has made a child the subject of an Antisocial Behaviour Order and directed the reporter to arrange a hearing,
  - (b) under section 71 where a child has pled guilty to or been convicted of an offence in the criminal court, and the child has been referred to a Children's Hearing.
74. In these situations, the grounds are treated as having been already established by the sheriff.
75. Subsection (2)(a) to (g) and (p) relate to the conduct of persons in the child's life; subsection (2)(h) relates to the child looked after by the local authority; subsection (2)

- (i) relates to the child who is subject to a permanence order; and subsection (2)(j) to (o) relate to the conduct of the child.
76. Subsection (2)(a) provides for situations of inadequate parenting on the part of the person who has parental care of the child. A lack of care may arise in a wide variety of ways and may be the outcome of the parent's actions, such as emotional abuse, or of the parent's omissions, as in neglect. The lack of parental care may result from a parent's intentional or unintentional behaviour and could be a consequence of a parent's alcohol or drug abuse, mental ill-health, limited ability or lack of parenting skills. Subsection (2)(a) can be applied on the basis of past or present incidents of lack of parental care but such lack of care needs to link to the impact on the child's health or development, or may be a cause of the child's suffering. The lack of care may relate to another child, but it is the likely impact on the child to which the ground(s) applies that needs to be considered. The ground(s) can be used to protect a new-born child joining the household where there is evidence of a lack of care towards other children or the lack of care can be drawn by inference from the parent's lifestyle or capacity.
77. Subsection (2)(b), (c) and (d) relate to situations where Schedule 1 offences have been committed, such as sexual offences, an offence involving bodily injury, ill-treatment, neglect, exposure or abandonment. "Close connection" at subsection (2)(c) is defined in subsection (3).
78. "Household" at subsection (2)(d) can be given a wide interpretation. It means more than simply the bricks and mortar of the building where people live. When people are held together by particular bonds of affection or contact, even though people may not be living together at the same address, they may still be members of the same household.
79. Subsection (2)(e) is designed to protect the child exposed to significant negative influences. It may include situations of a child in a home frequented by drug addicts or alcoholics, a child who is frequenting a neighbour's house where the child is being involved in harmful activity, and a child who has been groomed by a paedophile, whether within or outwith the home or online.
80. Subsection (2)(f) is designed to cover a child who is in an environment of domestic abuse.
81. Subsection (2)(g) makes provision for a child who has or is likely to have significant contact with someone who has committed an offence under Parts 1, 4 or 5 of the Sexual Offences (Scotland) Act 2009 such as rape or other serious sexual offences.
82. Subsection (2)(h) provides for children who are being looked after by the local authority through a voluntary agreement and who, for example, repeatedly abscond or endanger themselves or others by their own behaviour.
83. Subsection (2)(i) provides for children who are the subject of a permanence order under the Adoption and Children (Scotland) Act 2007 and who may require special measures for their support.
84. "Special measures" in subsection (2)(h) and (i) mean measures over and above being looked after by a local authority or under the terms of the permanence order. The Principal Reporter must still decide if the ground is evidenced and there is a need for compulsory measures over and above the local authority's powers. The ground may apply, for example, where a child meets the criteria for secure accommodation or where the child has particular needs or behaviours that cannot be adequately addressed within the scope of the permanence order.
85. Subsection (2)(j) is based on section 52(2)(i) of the 1995 Act. This ground applies only to children who have committed an offence.



86. Subsection (2)(k) and (l) apply to children who have misused alcohol or drugs. "Controlled drug" is defined in subsection (6) by reference to the Misuse of Drugs Act 1971.
87. Subsection (2)(m) is designed to cover circumstances where the conduct of the child either has or is likely to have a serious adverse effect on the health, safety or development of the child (e.g. self-harm or serious risk-taking behaviour such as playing on railway lines), or has caused or is likely to have a seriously adverse effect on the health, safety or development of another person (e.g. gang behaviour or severe bullying).
88. Subsection (2)(n) is intended to cover situations where a child is behaving in such a way that the child does not respond to the reasonable controls and boundaries made by the parent(s)/carers/guardians. For example this may apply when a child is running away or continually staying out overnight without the consent of the parent. "Relevant person" is defined in section 200.
89. Subsection (2)(o) covers the situation where the child has repeatedly failed to attend school without reasonable excuse for the absences. "Reasonable excuses" are defined in section 42 of the Education (Scotland) Act 1980. The Act refers to difficulties with travel arrangements, health problems or special circumstances acceptable to the education authority or a court. Exclusion due to a child's disruptive behaviour does not constitute a reasonable excuse for not attending school. A child who is being appropriately educated at home is considered to have a reasonable excuse
90. Subsection (2)(p) is designed to protect a child who is being, or is likely to be, subject to physical, emotional or other pressure to enter into a marriage or civil partnership, or is, or is likely to become, a member of the same household as such a child.
91. Subsection (4) enables the Scottish Ministers by order, to modify the grounds for referral. Such modifications may concern: adding a new ground; removing an existing ground; amending any existing ground; and amending the definition of an existing ground. Any such modification will require to be made by an order subject to affirmative procedure.

#### ***Section 68 – Determination under section 66: no referral to children's hearing***

92. This section relates to circumstances where the Principal Reporter is satisfied that a Children's Hearing does not require to be arranged. Subsection (2) applies where a child is kept in a place of safety and places a duty on the reporter to order the release of the child from the place of safety. Subsections (3) and (4) provide that the reporter must inform the relevant local authority, as well as the child, relevant person and any person(s) who provided notice or information, of the decision not to refer the child to a hearing.
93. Subsection (5) provides for the reporter, if the reporter considers it appropriate, to refer the case to the relevant local authority for the child or such other person or body as may be specified by the Scottish Ministers by order with a view to their making arrangements for advice, guidance and assistance to the child and the child's family. Subsection (6) provides that the reporter cannot subsequently refer a child to a hearing unless the reporter receives new information to support a subsequent referral.

#### ***Section 69 – Determination under section 66: referral to children's hearing***

94. This section provides that, where the Principal Reporter is satisfied that a Children's Hearing is required; the reporter must arrange the hearing. Subsection (3) provides that when the reporter is satisfied that a hearing is required for a child who is detained in police custody, the reporter must arrange for a Children's Hearing to take place on the third day after the reporter received the referral from the police. Subsections (4) and (5) provide that the reporter must request a report on the child from the relevant



local authority unless the reporter has already done so as part of an initial investigation, in which event the reporter may request supplementary information from the local authority.

### ***Section 70 – Requirement under Antisocial Behaviour etc. (Scotland) Act 2004***

95. This section provides that where the sheriff refers a case to the Principal Reporter under section 12(1A) of the Antisocial Behaviour etc. (Scotland) Act 2004, the ground(s) are to be treated as having been established by the sheriff under section 108 of this Act. The hearing will take place as if the sheriff has then directed the reporter under section 108(2) to arrange a hearing. The sheriff is required to give the reporter a statement specifying the ground which has been determined by the sheriff in the antisocial behaviour proceedings. There is no need for a ground(s) hearing.

### ***Section 71 – Case remitted under section 49 of Criminal Procedure (Scotland) Act 1995***

96. This section applies when a child has pled guilty to or been convicted of an offence in the criminal court and the child is not already subject to a compulsory supervision order. In these circumstances, the grounds for referral are deemed to be established by the sheriff under section 108 of this Act, and there is no need for a Children's Hearing to consider the grounds further.

### ***Section 72 – Child in place of safety: Principal Reporter's powers***

97. This section deals with the situation where the police make a referral to the Principal Reporter when a child is detained in police custody and where it has been decided that criminal proceedings are not going to be taken. Subsection (2) makes provision for the reporter to direct the release of the child from police custody or to direct that the child continues to be detained until the Children's Hearing for the child.

## **Part 7 – Attendance at Children's Hearing**

### ***Section 73 – Child's duty to attend children's hearing***

98. This section places an obligation on the child to attend a Children's Hearing unless excused under subsection (3) or the rules under section 177. The hearing has a general power to excuse a child from a Children's Hearing either which has been or is to be arranged, where the hearing is satisfied that the circumstances set out in subsection (3) apply. Subsection (3)(a) provides for the hearing to excuse the child where the child has been the victim of a schedule 1 offence, has (or is likely to have) a close connection with a person who has committed a schedule 1 offence, is (or is likely to become) a member of the same household as a child who is a victim of such an offence, or has (or is likely to have) a close connection with a person who has committed an offence under Parts 1, 4, or 5 of the Sexual Offences (Scotland) Act 2009 and the attendance of the child at the hearing or that part of the hearing is not necessary for a fair hearing.
99. Subsection (3)(b) provides for the hearing to excuse the child where attendance may be damaging to the child's physical, mental or moral welfare. Subsection (3)(c) provides for the hearing to excuse the child where the hearing considers the child would not be able to understand the process. Subsection (4) provides for when the Children's Hearing may excuse a child from a child's obligation to attend a grounds hearing. Acceptance or denial of ground(s) by a child is a fundamental part of the hearing and a child may only be excused from this part of the hearing where the hearing considers that the child is not capable of understanding the explanation.

### ***Section 74 – Relevant person's duty to attend children's hearing***

100. This section places an obligation on each relevant person in relation to the child who is notified of a hearing to attend the Children's Hearing unless excused under

subsection (3) or rules made under section 177, or excluded under section 76(2). Subsection (3) provides the hearing with a power to excuse a relevant person from attending all or part of a Children's Hearing, where the hearing is satisfied that the obligation of the relevant person to attend the hearing is unreasonable or unnecessary for the proper consideration of the case. This determination may be made by the hearing either when the relevant person fails to attend or when a relevant person asks to be excused. Subsection (4) provides that a relevant person who is required to attend a hearing but who fails to do so commits an offence and is liable on summary conviction to a fine up to level 3 on the standard scale.

### ***Section 75 – Power to proceed in absence of relevant person***

101. This section allows the Children's Hearings to proceed if a relevant person has failed to attend where the hearing considers it appropriate to do so.

### ***Section 76 – Power to exclude relevant person from children's hearing***

102. This section provides discretion for the hearing to exclude a relevant person from the hearing. There are two grounds for exclusion: that the presence of the relevant person is preventing the hearing from obtaining the views of the child; or that significant distress is being or is likely to be caused to the child.
103. Subsection (3) provides that the chairing member of the Children's Hearing must explain to each excluded person what has taken place in their absence. Section 178 provides that a Children's Hearing can withhold information about a child from any person if the hearing considers that disclosing it would be likely to cause significant harm to the child.

### ***Section 77 – Power to exclude relevant person's representative from children's hearing***

104. This section provides discretion for the hearing to exclude any representative of a relevant person from the hearing. There are two grounds for exclusion: that the presence of the relevant person's representative is preventing the hearing from obtaining the views of the child; or that significant distress will be caused to the child. Subsection (3) provides that the chairing member of the Children's Hearing must explain to each excluded person what has taken place in their absence. Section 178 provides that a Children's Hearing can withhold information about a child from to any person if the hearing considers that disclosing it would be likely to cause significant harm to the child.

### ***Section 78 – Rights of certain persons to attend children's hearing***

105. This section lists those persons who have a right to attend a Children's Hearing (including a member of an area support team, as established under Schedule 1 of this Act). No person, other than those listed, may attend a Children's Hearing unless the chairing member considers that the person's attendance is necessary for the proper consideration of the case. In that circumstance the chairing member can permit them to attend or the person is authorised or required to attend by virtue of rules under section 177 of the Act. Notwithstanding this power, the chairing member has a duty to ensure that the number attending a hearing is kept to a minimum.
106. Subsection (2)(a) provides the chairing member with discretion to allow hearing participants who do not have a statutory right to attend but whose presence is necessary for the proper consideration of the case e.g. a social worker, to attend the hearing. Subsection (2)(b) gives the chairing member discretion to allow observers without a statutory right to attend but with a legitimate interest, such as trainee panel members, to attend the hearing. The chairing member's discretion applies where no objection is raised by the child or relevant persons.

107. Subsection (3) provides the child or relevant person with the power to object to the presence of observers under subsection (2)(b). If there is any such objection, the chairing member cannot permit the observer to attend the hearing. This right does not apply to circumstances under subsection (2)(a), for example where the chairing member has allowed a social worker to attend the hearing for the proper consideration of the case.
108. The Children's Hearing may exclude a newspaper or news agency representative under subsection (5) and the chairing member of the hearing may explain to the representative the substance of the discussion that was held in their absence, where the chairing member considers it appropriate to do so.

## **Part 8 – Pre-Hearing Panel**

### ***Section 79 – Referral of certain matters for pre-hearing determination***

109. This section establishes Pre-Hearing Panels. A Pre-Hearing Panel must comprise of 3 panel members selected by the National Convener. The subsequent Children's Hearings may or may not comprise the same panel members.
110. Subsection (2) provides that the Principal Reporter must refer the issue of whether a particular person should be deemed to be a relevant person if requested to do so by the person in question, the child or their relevant person. Any person who claims to be a relevant person but does not meet the legal test set out in section 200 (e.g. the person may claim to have, or have recently had significant involvement in the upbringing of the child) may ask that a Pre-Hearing Panel is arranged to consider their status. The child and any other relevant person may also challenge the reporter's assessment if they think someone who has or who has not been recognised as a relevant person should or should not be. A Pre-Hearing Panel may be arranged at any stage prior to the Children's Hearing (i.e. before a continued hearing, or a review hearing as well as before a grounds hearing).
111. Subsection (2)(b) provides that the reporter may refer consideration of whether a person should be deemed a relevant person to the Pre-Hearing Panel for a determination on the reporter's own initiative. Subsections (2)(c) and (3) set out other specific matters that the reporter, either on the reporter's own initiative or following a request from the child, relevant person or Safeguarder, may refer to a Pre-Hearing Panel. These include: consideration of releasing a child or relevant person from their obligation to attend the Children's Hearing; whether a secure accommodation authorisation is likely to be considered at a forthcoming hearing and any other matters as specified in the procedural rules under section 177 of the Act. These procedural rules will be subject to affirmative procedure.
112. Subsections (4) and (5) provide that Pre-Hearing Panels may only excuse a child or relevant person from attending a Children's Hearing if the conditions in section 73 or 74 or in rules made under section 177, are satisfied. These rules will be subject to negative procedure.

### ***Section 80 – Determination of matter referred under section 79***

113. This section places a duty on the Principal Reporter to arrange a Pre-Hearing Panel so that the hearing can decide on the matters referred under section 79. Subsection (2) provides that the Pre-Hearing Panel must be arranged before the Children's Hearing. Subsection (3) provides that if it is not possible for the reporter to arrange a Pre-Hearing Panel for a date before the Children's Hearing as required by subsection (2), the Children's Hearing must determine the matters referred at the beginning of the hearing.

### ***Section 81 – Determination of claim that person be deemed a relevant person***

114. This section relates to when a Pre-Hearing Panel (or Children's Hearing) is considering the claim of a person to be a relevant person in relation to the child (a "relevant person claim"). It provides for this issue to be dealt with before any other matter. Only if the Pre-Hearing Panel or hearing determines that the person is a relevant person, can the person then take part in the discussions on any other issue referred. Subsection (3) provides that the Pre-Hearing Panel or hearing must deem the person to be a relevant person if they consider that the person has (or has recently had) a significant involvement in the upbringing of the child. Subsection (4) provides for the consequences of that determination by the Pre-Hearing Panel or hearing and provides that the status will be accorded for the purposes of Parts 7 to 15, 17 and 18 of the Act in so far as they relate to the Children's Hearing, any subsequent Children's Hearing under Part 11, any subsequent Pre-Hearing Panel which may be held prior to the full hearing, any compulsory supervision order or other order or warrant made by the hearing or the sheriff, any review hearing or any court proceedings (application to establish grounds or appeal) and the implementation of the order.
115. Subsection (5) provides for the Scottish Ministers to change the criteria for "deemed relevant person" status and to make any necessary or expedient consequential amendments to those provisions of the Act specified in subsection (5). Such an order will be subject to affirmative procedure.

### ***Section 82 – Appointment of safeguarder***

116. This section provides the Pre-Hearing Panel with the power to appoint a Safeguarder. A Pre-Hearing Panel may be arranged at various stages in the child's case, for example, to determine whether an individual should be deemed to be a relevant person under section 81(3), and the panel has sufficient information at that point to make a decision on whether or not to appoint a Safeguarder. The provision mirrors the duties placed on a Children's Hearing to consider appointing a Safeguarder under section 30. The Pre-Hearing Panel is required to state the reasons for appointing a Safeguarder.

## **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.
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.

## **Statement of grounds**

### ***Section 89 – Principal Reporter's duty to prepare statement of grounds***

133. This section applies when the Principal Reporter is required to arrange a grounds hearing under section 69(2). It places a duty on the reporter to prepare the statement of grounds. Section 89(3) defines "statement of grounds" as a statement setting out which of the ground(s) for referral the reporter believes applies in relation to the child and the facts on which the reporter bases that belief.

## **Grounds hearing**

### ***Section 90 – Grounds to be put to child and relevant person***

134. This section places a duty on the chairing member of the hearing to explain to the child and each relevant person at the hearing each of the grounds for referral, and to enquire whether those grounds are accepted by each of the parties or not. A statement of grounds may contain more than one ground for referral and each ground needs to be accepted (or not accepted) by the child and each relevant person. The chairing member must not simply read out the grounds as stated by the Principal Reporter but the chairing member must endeavour to ensure that the child and relevant persons understand the nature of the grounds by explaining each ground for referral. The chairing member is not obliged to pursue the explanation where the child or relevant person is unable to understand the grounds for referral, for example, where the case relates to a very young child see section 94(3).
135. **Sections 91 to 97** below deal with the subsequent stages of the Children's Hearing depending on the outcome of the chairing member's enquiry about the acceptance or denial of the grounds for referral.

### ***Section 91 – Grounds accepted: powers of grounds hearing***

136. This section provides for the Children's Hearing to proceed to a consideration of the case where the child and each relevant person in relation to the child have understood and accepted each ground specified in the statement of the grounds for referral or at least one of those grounds. The hearing must then consider whether or not to make a substantive decision based on the accepted ground(s).

137. The consideration of a case is only complete when the hearing is in a position to make a decision as to what course of action is in the best interests of the child. Deferral of a decision under subsection (2) may be considered appropriate, for example, because a particular report has not been completed in time, or the accuracy of a report is being challenged or because the child requires further assessment in order to fully determine the child's needs. A hearing may decide to defer a decision to a subsequent hearing if the hearing needs more information in order to fully determine the best outcome for the child. If the hearing does not defer making a decision, the hearing must either make a compulsory supervision order for the child if satisfied that it is necessary for the protection, guidance, treatment or control of the child or discharge the referral.

### ***Section 92 – Powers of grounds hearing on deferral***

138. This section sets out the options available to a Children's Hearing which has deferred making a decision as to whether to make a compulsory supervision order under section 91(2). Section 92(2) provides for the current hearing to make an interim compulsory supervision order where it decides that the nature of the child's circumstances is such that it is necessary, as a matter of urgency, for the protection, guidance, treatment or control of the child. Section 86 defines "interim compulsory supervision order". Subsection (3) provides for the Children's Hearing to make a medical examination order in order to obtain further information. A child may for example be required to reside in an assessment centre, attend an educational psychologist or be subject to a medical examination. Section 87 defines "medical examination order".

### ***Section 93 – Grounds not accepted: application to sheriff or discharge***

139. This section sets out the procedure where at least one of the grounds specified in the statement of grounds is not accepted by the child and each relevant person in relation to the child and the hearing does not consider it appropriate to proceed on the basis of the ground(s) that are accepted or where none of the grounds are accepted. The grounds hearing must direct the Principal Reporter to make an application to the sheriff for a determination on whether each ground that is not accepted is established or discharge the referral.
140. Subsection (4) applies where the hearing decides to refer the ground(s) to the sheriff for establishment of grounds, the chairing member must explain the purpose of this application to the child and each relevant person who is there and inform the child of the child's obligation to attend the hearing before the sheriff. Subsection (5) enables the Children's Hearings to make an interim compulsory supervision order if the hearing considers it is necessary for the protection, guidance, treatment and control of the child and that it is necessary as a matter of urgency. Where an interim compulsory supervision order is made it may not include a requirement to arrange a medical or other examination under section 83(2)(f)(i). This reflects current practice; examinations are for investigative purposes linked to the needs of the child and are not for the establishment of facts relating to the grounds for referral.

### ***Section 94 – Child or relevant person unable to understand grounds***

141. This section sets out the procedure for the grounds hearing where a child or relevant person is unable to understand the grounds for referral and so can neither accept nor deny the grounds. The requirement to explain the grounds applies in relation to each individual ground and if the chairing member considers that the child or a relevant person would not be capable of understanding the explanation of a particular ground then the chairing member need not provide the explanation for that ground and may refer that ground to the sheriff for establishment. If the child or relevant person is capable of understanding some of the grounds the chairing member must still explain those grounds and seek acceptance of those individual grounds.

142. Subsection (2) provides that the hearing must either direct the Principal Reporter to make an application to the sheriff for establishment of the ground(s) or discharge the referral in relation to the ground(s) that is not understood. Subsection (3) provides that if the hearing consider that the child or relevant person would not be capable of understanding an explanation of the grounds, for example, if the child is a baby, then the chairing member is not required to proceed with an explanation under section 90(1) in so far as it relates to the person who is not capable of understanding the ground. The explanation still needs to be given to those who are capable of understanding the ground. Subsection (4) applies where the hearing directs the reporter to make an application to the sheriff for a proof hearing and the child has not understood the grounds for referral. It follows that the child may also not understand the explanation provided by the chairing member explaining the purpose of the application to the sheriff.

### ***Section 95 – Child fails to attend grounds hearing***

143. This section relates to circumstances where the child does not attend a grounds hearing, has not been excused from attending, and provides that the hearing may require the Principal Reporter to arrange another grounds hearing.

### **Children's hearing to consider need for further interim order**

#### ***Section 96 – Children's hearing to consider need for further interim compulsory supervision order***

144. This section applies when a grounds hearing has directed the Principal Reporter to make an application to the sheriff to determine whether a ground is established under section 93(2)(a) (grounds not accepted: application to sheriff or discharge) or section 94(2)(a) (child or relevant person unable to understand grounds) and has made an interim compulsory supervision order but the order will cease before the disposal of the application by the sheriff to which it relates. Subsection (2) enables the reporter to arrange a Children's Hearing to determine whether to make a further interim compulsory supervision order. Where there is already an interim order in force, the necessary safeguards put in place for the child under that first order will have removed the urgency from the child's situation. Subsection (3) provides that the hearing must focus on whether or not there is a need for the protection, guidance, treatment and control of the child to make a further interim order. Subsection (4) provides that a Children's Hearing may not make a further interim order if the effect of the order would be that the child would be subject to an interim compulsory supervision order for a continuous period of more than 66 days.

### **Application of Part where compulsory supervision order in force**

#### ***Section 97 – Application of Part where compulsory supervision order in force***

145. This section applies where a compulsory supervision order is already in force in relation to the child to whom the Children's Hearings proceedings relate. References in this Part to a decision on whether to make a compulsory supervision order are to be read as references to a decision on whether to review the compulsory supervision order. References to an interim compulsory supervision order are to be read as references to an interim variation of the compulsory supervision order.
146. Subsection (4) provides for the grounds hearing under section 91 to be treated as if it were a review hearing and the procedures under sections 138, 139 and 142 apply accordingly.
147. Subsection (6) disapplies the cap where a child may not be made subject to an interim compulsory supervision order for more than 66 continuous days before grounds are determined by the sheriff. This cap will not apply where the grounds hearing makes

an interim variation of a compulsory supervision order prior to new grounds being determined by the sheriff.

## **Part 10 – Proceedings before Sheriff**

### **Application for extension or variation of interim compulsory supervision order**

#### ***Section 98 – Application for extension or variation of interim compulsory supervision order***

148. This section applies to the extension of an interim compulsory supervision order where a child has been made the subject of such interim orders for a continuous period of 66 days.
149. Subsections (2) and (3) provide that the Principal Reporter may apply to the sheriff for an extension or an extension and variation of the current interim compulsory supervision order at any time prior to the expiry of the current order. Subsection (4) provides that an interim order may only be extended, or extended and varied, where the sheriff is satisfied that the nature of the child's circumstances makes this extension necessary for the protection, guidance, treatment or control of the child.

#### ***Section 99 – Further extension or variation of interim compulsory supervision order***

150. This section enables the further extension of interim compulsory supervision orders which have already been extended or extended and varied. Section 99 enables the sheriff to continue to extend or vary interim orders as many times as the sheriff considers appropriate.

### **Power to make interim compulsory supervision order**

#### ***Section 100 - Sheriff's power to make interim compulsory supervision order***

151. This section enables the sheriff to make an interim compulsory supervision order during the hearing of an application to establish the grounds where the hearing needs to be continued to another day. Where a child is not already subject to an interim compulsory supervision order and the application to the sheriff has been made but not yet determined, the sheriff may make an interim compulsory supervision order if satisfied that such an order is necessary, as a matter of urgency, for the protection, guidance, treatment or control of the child.

### **Application to establish grounds**

#### ***Section 101 – Hearing of application***

152. This section sets a time limit of 28 days for the hearing by the sheriff to commence to consider the application by the Principal Reporter to determine whether the ground(s) for referral are established or not. The hearing is closed to the public and may not be heard in open court.

#### ***Section 102 – Jurisdiction and standard of proof: offence ground***

153. This section provides a special jurisdiction rule for grounds hearings where the ground(s) for referral include that a child has committed an offence. Subsection (2) provides that the application must be made to a sheriff who would have jurisdiction if the child were being prosecuted for the offence. Subsection (3) provides that the standard of proof in relation to the ground is that which applies in criminal proceedings – that is proved beyond reasonable doubt.

***Section 103 – Child's duty to attend hearing unless excused***

154. This section requires a child to appear before the sheriff for the hearing to establish grounds for referral. Subsections (2) and (3) provide for the sheriff to release the child from the obligation to attend the hearing: where the child has been the victim of a schedule 1 offence, has (or is likely to have) a close connection with a person who has committed such an offence, is (or is likely to become) a member of the same household as a child who is a victim of such an offence, or has (or is likely to have) a close connection with a person who has committed an offence under Parts 1, 4, or 5 of the Sexual Offences (Scotland) Act 2009 and the sheriff considers that the child's attendance is not necessary to ensure a fair hearing; where the sheriff considers that attending the court hearing would put the child's physical, moral or mental welfare at risk; or where taking account of the child's age and maturity, the child would be incapable of understanding the hearing or that part of the hearing.
155. Subsection (4) provides that the child may attend the hearing even where he or she has been excused from the obligation to do so. Subsection (5) provides for the sheriff to grant a warrant to secure attendance of the child at the hearing, if the child has failed to attend the hearing, without being excused from attending. Subsections (6) and (7) provide that where a proof hearing needs to be continued, for example to another day, the sheriff has the power to grant a further warrant to secure the attendance of the child if there is reason to believe that the child may not attend the continued hearing.

***Section 104 – Child and relevant person: representation at hearing***

156. This section allows the child and/or the relevant person(s) to be represented at the hearing by another person who may or may not be a solicitor or advocate.

**Ground accepted before application determined**

***Section 105 – Application by virtue of section 93: ground accepted before determination***

157. This section applies to applications to the sheriff to establish grounds for referral under section 93(2)(a). If, at the hearing before the sheriff, the child and the relevant person(s) accept the grounds, the sheriff must, unless satisfied in all the circumstances that evidence in relation to the ground should be heard, dispense with hearing the evidence and find the ground established. This does not remove the sheriff's discretion to hear evidence where the sheriff considers this is necessary.

***Section 106 – Application by virtue of section 94: ground accepted by relevant person before determination***

158. This section provides powers for the sheriff to determine grounds for referral on the information lodged with the application, instead of holding a formal hearing. This applies when an application has been made to the sheriff for establishment of grounds where a child is unable to understand the grounds for referral and so can neither accept nor deny the grounds and, before the application is determined, the ground is accepted by each relevant person in relation to the child who is present at the hearing before the sheriff. Subsection (2)(a) and (b) sets out the two circumstances where the sheriff may not use the expedited process set out at subsection (1). First, where the Principal Reporter, the child, a relevant person or an appointed Safeguarder have requested a formal hearing the sheriff must comply with such a request; and secondly where the sheriff considers that it would not be appropriate to determine the application without a hearing. Subsection (4) provides for an expedited timescale of 7 days for the sheriff to determine the application without hearing evidence.



**Withdrawal of application: termination of orders etc.**

***Section 107 – Withdrawal of application: termination of orders etc. by Principal Reporter***

159. This section provides that where an application is made to the sheriff under sections 93 or 94 of the Act and because of a change in circumstances or new information coming to light, the reporter no longer considers that any ground to which the application relates applies in relation to the child, then the reporter must withdraw the application to the sheriff. The application may only be withdrawn by the reporter before it has been determined by the sheriff.

***Section 108 – Determination: ground established***

160. This section applies where an application to establish grounds for referral under sections 93 or 94 is determined by the sheriff. Subsections (2) and (4) provide a duty on the sheriff to direct the Principal Reporter to arrange a Children's Hearing to consider whether a compulsory supervision order should be made in relation to the child where the sheriff determines that one or more of the grounds are established or one or more of the grounds were accepted at the grounds hearing by the child and each relevant person. Subsection (3) provides that in any other case the sheriff must dismiss the application and discharge the referral to the Children's Hearing.

***Section 109 – Determination: power to make interim compulsory supervision order etc.***

161. This section applies where the sheriff directs the reporter to arrange a children's hearing to decide whether to make a compulsory supervision order in relation to the child. It enables the sheriff to make an interim compulsory supervision order in relation to the child if they consider that such an order is required. Subsections (2) and (3) provide for the making of an interim compulsory supervision order where the child was not already subject to an interim order immediately prior to the hearing at which the sheriff determined the application to establish grounds for referral, and the sheriff considers that the nature of the child's circumstances is such that an interim order is necessary for the protection, guidance, treatment or control of the child. Subsection (3) makes clear that the sheriff may only make such an order if the sheriff considers that circumstances are urgent.
162. Subsections (4) and (5) make similar provision for the sheriff to make an interim compulsory supervision order where a child was already subject to an interim order immediately prior to the hearing at which the sheriff determined the application to establish grounds for referral, and the sheriff considers that the nature of the child's circumstances is such that an interim order is necessary for the protection, guidance, treatment or control of the child. Where an order has been in place previously, then the urgency in the situation should have been removed due to the effect of the order, for example, a child may already be in a place of safety as a condition of an interim order. However, it may be necessary to continue the order meantime to ensure that the child's circumstances do not deteriorate pending a substantive decision. As such the test for the making of a further interim compulsory supervision order under subsection (5) is not that the child's circumstances are such that urgent action is required but that the order continues to be necessary for the protection, guidance, treatment or control of the child.
163. Subsection (6) provides that the sheriff may grant a warrant to secure the child's attendance at the subsequent Children's Hearing if the sheriff considers that the child would not attend otherwise. Subsection (7) makes clear that a subsequent Children's Hearing must be held within 3 days of the making of the interim order where the order requires the child to reside at a place of safety.



## **Review of sheriff's determination**

### ***Section 110 – Application for review of grounds determination***

164. This section restricts an application for a review of the grounds determination to the person who was the subject of that grounds determination (even if that person is no longer a child); or a person who is a relevant person in relation to the child. The right to request a review of the establishment of the ground does not apply to any offence ground remitted under section 71. The child in these circumstances has appeal rights under the Criminal Procedure (Scotland) Act 1995.

### ***Section 111 – Sheriff: review or dismissal of application***

165. This section sets out the circumstances in which a sheriff must review the establishment of grounds for referral where an application has been made under section 110. The sheriff must review the case if they consider: that there is evidence in relation to the ground that was not considered by the sheriff when making the grounds determination; that this evidence would have been admissible at the time; and that there is a reasonable explanation for the failure to lead that evidence during the initial grounds determination. The evidence must be significant and relevant to the question of whether the grounds determination should have been made. If these conditions are not satisfied, then the sheriff must dismiss the application for a review of the grounds determination.

### ***Section 112 – Child's duty to attend review hearing unless excused***

166. This section requires that, where an application for the review of the grounds determination is made in relation to a person who is still a child, that child must attend the review hearing. The child must attend the review hearing unless they are excused by the sheriff. If excused the child may still attend the hearing. This places the child under the same obligations and provides the same right to attend as in relation to the original hearing to establish the grounds. Subsection (4) provides that the sheriff may grant a warrant to secure the child's attendance at the hearing if the sheriff considers that there is reason to believe that the child would not attend voluntarily.

### ***Section 113 – Child and relevant person: representation at review hearing***

167. This section provides that the child and relevant person have the same right to choose to be represented at a review of a grounds determination by a representative of their choice (who may or may not be a legal representative) as at the original hearing to establish the grounds. This right applies whether or not the person to whom the review relates to is still a child, and does not affect their right to legal representation.

### ***Section 114 – Sheriff's powers on review of grounds determination***

168. This section sets out the options available to the sheriff after the sheriff has reviewed the establishment of grounds for referral under section 111. If the sheriff determines that the ground for referral is established, then the sheriff must dismiss the application without further consideration. Subsection (3) provides that if the sheriff finds that one or more of the original grounds are not established, the sheriff must uphold the application, recall the grounds determination and discharge the referral to the Children's Hearing, in whole or part to the extent that it relates to the ground.

### ***Section 115 – Recall: power to refer other grounds***

169. This section applies when the sheriff makes an order under section 114(3) above recalling the grounds determination but another ground for referral is accepted or established. That ground must be specified in the same statement of grounds which gave rise to the grounds determination. Subsection (2) provides that, if the person who is the subject of the grounds hearing is still a child, the sheriff must direct the Principal Reporter to arrange a Children's Hearing to consider whether a compulsory supervision

order should be made in relation to the child. Subsection (3) provides that the sheriff may make an interim compulsory supervision order for the child if the sheriff is satisfied that the nature of the child's circumstances is such that urgent action is necessary for protection, guidance, treatment or control of the child. Subsection (4) provides that the sheriff may grant a warrant to secure the child's attendance at the hearing if the sheriff considers that there is reason to believe that the child would not attend voluntarily.

***Section 116 – Recall: powers where no grounds accepted or established***

170. This section applies where the sheriff makes an order under section 114(3) recalling the grounds determination and no other grounds for referral specified in the statement of grounds which gave rise to the grounds determination are accepted or established. Subsection (2) provides a duty on the sheriff to refer the child's case back to the Children's Hearing to review the compulsory supervision order that was in force at the time of the grounds determination by the sheriff. This applies where a child was already subject to a compulsory supervision order and the reporter referred new grounds for consideration by the Children's Hearing.
171. Subsection (3) provides that the sheriff must terminate any compulsory supervision order that is in force and consider whether the person, if still a child, requires any supervision or guidance. Subsection (4) provides that, where the person is still a child, and the sheriff considers that the child requires supervision or guidance, then the sheriff must order the local authority to provide that supervision or guidance. Subsection (5) places a duty on the local authority to comply with the sheriff's order. The duty on the local authority extends to supervision and guidance that the child will accept. The supervision or guidance is voluntary and cannot be enforced upon the child.

***Section 117 – New section 67 ground established: sheriff to refer to children's hearing***

172. This section applies in cases where the sheriff is reviewing a grounds determination under section 110. It provides that, where the sheriff is satisfied that there is sufficient evidence to establish any ground for referral that was not specified in the statement of grounds that gave rise to the grounds determination, the sheriff must determine that ground to be established. Subsection (2)(b) provides that if the person to whom the grounds determination relates is still a child, the sheriff must direct the Principal Reporter to arrange a Children's Hearing to consider whether a compulsory supervision order should be made in relation to the child.
173. Subsection (3) provides that the sheriff may make an interim compulsory supervision order for the child if the sheriff is satisfied that the nature of the child's circumstances is such that urgent action is considered necessary for the protection, guidance, treatment or control of the child. Subsection (4) provides that the sheriff may grant a warrant to secure the child's attendance at the subsequent Children's Hearing if the sheriff is satisfied that there is reason to believe that the child would not otherwise attend.

**Application of Part where compulsory supervision order in force**

***Section 118 - Application of Part where compulsory supervision order in force***

174. This section clarifies how the provisions of Part 10 apply in relation to a child who is already subject to a compulsory supervision order and further grounds are the subject of an application to establish the grounds or an application for review of a grounds determination has been made. It provides that where a child is already subject to a compulsory supervision order, Part 10 is to be read as if references to an interim compulsory supervision order were references to an interim variation of the compulsory supervision order, and as if references to the sheriff directing the Principal Reporter to arrange a Children's Hearing to decide whether to make a compulsory supervision order in relation to the child were references to the sheriff requiring a review

of the compulsory supervision order. Subsection (5) exempts sections 98 and 99 as section 96(4) (cap of 66 days) does not apply to the Children's Hearing's power to make an interim variation of a compulsory supervision order.

## **Part 11 – Subsequent Children's Hearings**

### ***Section 119 – Children's hearing following deferral or proceedings under Part 10***

175. This section applies where a Children's Hearing is arranged following: a deferral by a grounds hearing; withdrawal of grounds determination by the reporter; a grounds determination by the sheriff; a recall of grounds determination by the sheriff; the establishment by the sheriff of a new ground for referral on review of grounds determination; or the hearing has deferred making a decision under section 119(2). Subsection (2) provides for a Children's Hearing, where it considers it appropriate, to defer making a decision on whether to make a compulsory supervision order until a subsequent hearing. Deferral of a decision may be considered appropriate, for example, because a particular report has not been completed in time, or the accuracy of a report is being challenged or because the child requires further assessment in order to fully determine the child's needs.
176. Subsection (3) provides that if the Children's Hearing does not defer making a decision, the hearing must either make a compulsory supervision order for the child or discharge the referral. The hearing may only make a compulsory supervision order if it is satisfied that it is necessary for the protection, guidance, treatment or control of the child. Subsections (4) and (5) make clear that where the hearing defers making a decision and the child or relevant person had been excused from attending that hearing, the hearing may defer to a subsequent hearing without further excusing the child and the relevant person from attending at the subsequent hearing.

### ***Section 120 – Powers of children's hearing on deferral under section 119***

177. This section applies when the Children's Hearing defers making a decision on whether to make a compulsory supervision order in relation to the child. Subsection (2) provides for the making of an interim compulsory supervision order where the child was not already subject to an interim compulsory supervision order immediately prior to the hearing and the hearing considers that the nature of the child's circumstances is such that it is necessary for the protection, guidance, treatment or control of the child. Subsection (3) makes clear that the hearing may only make such an order if the hearing considers that circumstances are urgent.
178. Subsections (4) and (5) make similar provision for the hearing to make a further interim compulsory supervision order where a child was subject to an interim order immediately prior to the hearing. Where an order has been in place previously, then the urgency in the situation should have been removed due to the effect of the order, for example, a child may already be in a place of safety as a condition of an interim order. However, it may be necessary to continue the order meantime to ensure that the child's circumstances do not deteriorate pending a substantive decision. As such the test for the making of a further interim order is not that the child's circumstances are such that urgent action is required but that the order continues to be necessary for the protection, guidance, treatment or control of the child. Subsection (6) provides for the Children's Hearing to make a medical examination order if it is necessary to obtain further information or to carry out further investigation before making a substantive decision. A child may, for example, be required to reside in an assessment centre, attend an educational psychologist or be subject to a medical examination.

## **Part 12 – Children's Hearings: General**

### **Views of child**

#### ***Section 121 - Confirmation that child given opportunity to express views before hearing***

179. This section places a duty on the chairing member of the Children's Hearing to ask the child whether the documents provided to the child prior to the hearing (such as social work reports) accurately reflect any views expressed by the child, except where the chairing member thinks it is inappropriate to do so because the child is too young or immature.

### **Children's advocacy services**

#### ***Section 122 - Children's advocacy services***

180. This section provides that where a Children's Hearing is being held under the Act, the chairing member is under a duty to inform the child of the availability of children's advocacy services. Subsection (4) enables the Scottish Ministers to make regulations to make provision for or in connection with the provision of children's advocacy services, qualifications to be held by, training of, and the payment of expenses, fees and allowances to, persons providing the children's advocacy service. Such regulations will be subject to affirmative procedure. Subsection (5) provides that Ministers may enter into contracts with any person other than a local authority, CHS or SCRA to provide children's advocacy services. "Children's advocacy services" is defined in subsection (7).

### **Warrants to secure attendance**

#### ***Section 123 – General power to grant warrant to secure attendance***

181. This section provides a general power for the hearing to issue a warrant to secure the attendance of the child at a Children's Hearing which has been or is to be arranged, or a hearing in front of the sheriff which is to take place under Part 10 of this Act. This power is available to all children's hearings and so there is no need to confer specific powers on particular types of hearing.

### **Child's age**

#### ***Section 124 – Requirement to establish child's age***

182. This section relates to determining the child's age. Subsection (2) places a duty on the chairing member to ask the person who is the subject of the hearing to declare their age. A Children's Hearing only has jurisdiction over children within the meaning of section 199 of this Act. If the person is found not to be a child, within that meaning, the hearing may not continue with proceedings. Subsections (3) and (5) provide for the person to make further declarations about their age at any other time during the proceedings, and for the Children's Hearing to make a fresh determination of the person's age at any stage in the proceedings. Subsection (4) makes clear that the chairing member of the hearing need not ask a child their age when it would be inappropriate to ask that question based on the age and maturity of the child. Subsection (6) makes clear that the person's age is worked out either on the basis of their latest declaration or by determination by the Children's Hearing. Subsection (7) provides that any decision, warrant or order made by the hearing is not challengeable on the basis that the age determined by the hearing is not the person's true age.

## **Compulsory supervision orders: review**

### ***Section 125 – Compulsory supervision order: requirement to review***

183. This section provides for the Children's Hearing to specify a review date when making, varying or continuing a compulsory supervision order. The hearing must specify when an order is to be reviewed by a hearing when a movement restriction condition is included in the order. The hearing may set a review period when making, varying or continuing a compulsory supervision order in any other case.

## **Contact orders and permanence orders**

### ***Section 126 – Review of contact direction***

184. This section provides individuals who are not relevant persons, but who have a right of contact with the child by virtue of a contact order or a permanence order, or otherwise meet conditions specified by order by the Scottish Ministers, certain rights of participation when the Children's Hearing makes a contact direction. This section applies where the Children's Hearing makes a contact direction within a compulsory supervision order, an interim compulsory supervision order, an interim variation of a compulsory supervision order or a medical examination order which lasts more than 5 days or continues or varies a compulsory supervision order under section 138.
185. Subsection (2) provides the Scottish Ministers with the power to extend the categories of those who may be affected by a contact direction, and who could have that contact direction reviewed, by an order. That order would be subject to negative procedure. Subsection (2) also allows those who consider they meet the conditions specified in the order to seek a hearing to review that contact direction.
186. Subsection (5) provides for the hearing to take no further action if it considers the conditions specified for the purpose of subsection (2)(b) are not satisfied in relation to the individual. Subsection (6) provides that where the Children's Hearing considers the conditions for reviewing a contact order are met, it may either confirm the decision of the original hearing or vary the contact direction by varying the compulsory supervision order, interim compulsory supervision order or medical examination order. No other element of the underlying order may be varied at this hearing. Subsection (7) provides that the child and relevant person are not under a duty to attend the contact direction review hearing.

## **Referral where failure to provide education for excluded pupil**

### ***Section 127 – Referral where failure to provide education for excluded pupil***

187. This section applies where it appears to a Children's Hearing that an education authority is failing to comply with its duty under section 14(3) of the Education (Scotland) Act 1980 (duty to provide education for child excluded from school). Subsection (2) provides that the hearing may require the National Convener to refer the matter to the Scottish Ministers. Subsection (3) provides that if the National Convener is required to refer the matter to the Scottish Ministers the National Convener must give a copy of the referral to the education authority concerned and the Principal Reporter. The Education (Scotland) Act 1980 provides powers to the Scottish Ministers to ensure the duty is complied with. A referral under this section must be in writing and may be sent in electronic form.

## **Parenting order**

### ***Section 128 – Duty to consider applying for parenting order***

188. This section applies when a Children's Hearing is satisfied that it might be appropriate for a parenting order to be made in respect of a parent of the child under section 102



of the Antisocial Behaviour etc. (Scotland) Act 2004. Subsection (2) provides that the hearing may require the Principal Reporter to consider making an application to the sheriff for a parenting order. The Reporter does not have to make such an application.

## **Part 13 – Review of Compulsory Supervision Order**

### **Requirement for review**

#### ***Section 129 – Requirement under Antisocial Behaviour etc. (Scotland) Act 2004***

189. This section relates to when the sheriff has directed the Principal Reporter under section 12(1A) of the Antisocial Behaviour etc. (Scotland) Act 2004 to arrange a hearing for a child and the child is subject to an existing compulsory supervision order. Subsection (2) places a duty on the reporter to arrange for the order to be reviewed.

#### ***Section 130 – Case remitted under section 49 of Criminal Procedure (Scotland) Act 1995***

190. This section applies where the court has remitted a case to the Children's Hearing under section 49 of the Criminal Procedure (Scotland) Act 1995 for disposal and the child is already subject to a compulsory supervision order. In these circumstances, the Principal Reporter must arrange for the order to be reviewed. The ground is considered as having been established as an offence ground by the sheriff under section 108 of this Act.

#### ***Section 131 – Duty of implementation authority to require review***

191. This section places a duty on the implementation authority (the local authority specified in the compulsory supervision order), by notifying the Principal Reporter, to require a review of a compulsory supervision order when the authority is satisfied that one of the circumstances set out in subsection (2) applies. The circumstances range from where the compulsory supervision order is not being complied with to where the implementation authority consider that it would be in the best interests of the child to make a permanence order under section 80 of the Adoption and Children (Scotland) Act 2007.

192. Subsection (3) enables the Scottish Ministers to make regulations specifying the period within which a review requirement must be made in those circumstances listed in subsection (2)(a) to (d). Subsection (5) makes clear that a review must be made without delay where an application for an adoption order for the child has been made or is pending.

#### ***Section 132 – Right of child or relevant person to require review***

193. This section allows the child and relevant person to require a review of the compulsory supervision order by giving notice to the Principal Reporter. The review may not take place until three months after the order being made, continued or varied although the notice may be given before that date. Subsection (5) enables the Scottish Ministers to make regulations shortening the period before a review can take place in relation to a compulsory supervision order that includes a secure accommodation authorisation.

#### ***Section 133 – Principal Reporter's duty to initiate review***

194. This section places a duty on the Principal Reporter to initiate a review where a compulsory supervision order is due to expire within a 3 month period and no other arrangements exist to review the order before the end of that period. A compulsory supervision order normally expires after a period of one year from making or reviewing the order, or on the child's eighteenth birthday, unless the Children's Hearing specifies an earlier review date in the order (see section 83(7)).



***Section 134 – Duty to initiate a review if child to be taken out of Scotland***

195. This section provides a duty on the relevant person to notify the Principal Reporter and the implementation authority of any plans to take a child who is subject to a compulsory supervision order to live outwith Scotland where removing the child from Scotland is not in accordance with the compulsory supervision order or with an order under section 11 of the 1995 Act. The jurisdiction of a Children's Hearing extends only to Scotland but a hearing may specify a place of residence in Scotland and effectively prohibit a move elsewhere if that is considered to be in the best interests of the child. The notice must be given at least 28 days before the day the relevant person proposes to take the child to live outwith Scotland. Subsection (3) places a duty on the reporter to initiate a review hearing if the reporter receives notification under this section.

***Section 135 – Duty to initiate review: secure accommodation authorisation***

196. This section relates to a review of a compulsory supervision order that includes a secure accommodation authorisation and provides that the Principal Reporter must arrange for a review of the order within 3 months from the date the order was made, varied or continued. The duty on the reporter to initiate a review of the compulsory supervision order does not apply where the chief social work officer has removed the child from secure accommodation in the interim.

***Section 136 – Duty to initiate review where child transferred***

197. This section provides that where a child has been transferred as a matter of urgent necessity under section 143(2), the reporter must arrange a hearing to review the child's case.

**Functions of Principal Reporter and children's hearing**

***Section 137 – Duty to arrange children's hearing***

198. This section applies where a compulsory supervision order is in force in relation to the child and a review of the order is required under the sections of the Act set out in subsection (1). Subsection (2) provides that the Principal Reporter must arrange such a hearing. Subsection (3) provides that where a child is transferred as a matter of urgent necessity under section 143(2), the child's case must be reviewed by the Children's Hearing within three working days of the transfer. Subsection (4) places a duty on the reporter to require the implementation authority to provide reports in relation to the child or any other information in relation to the child that the local authority wishes to give to the Children's Hearing to assist in the hearing's review of the compulsory supervision order. The reporter must require the information when arranging every review hearing. Subsection (5) provides a power for the reporter to require the local authority to provide a report in relation to the child generally or in relation to any matter relating to the child that the reporter specifies. Subsection (6) makes clear that the local authority may include in the reports required under this section information given to the authority by another person.

***Section 138 – Powers of children's hearing on review***

199. This section applies to Children's Hearings arranged to review a compulsory supervision order in relation to a child.
200. The review is only complete when the hearing is in a position to make a decision as to what course of action is in the best interests of the child. Deferral of a decision may be considered appropriate, for example, because a particular report has not been completed in time, or the accuracy of a report is being challenged or because further assessment of the child is required in order to fully determine the child's needs. Subsection (2) provides that a hearing may defer a decision to a subsequent hearing where the hearing considers it appropriate to do so. Subsection (3) provides that if the review hearing does

not defer to a subsequent hearing then the hearing must terminate, vary, or continue the compulsory supervision order in relation to the child. An order may not be continued for a period exceeding one year. Subsection (4) provides that the hearing may only vary or continue a compulsory supervision order if it is necessary to do so for the protection, guidance treatment or control of the child. Subsection (5) places a duty on the hearing, when varying or continuing a compulsory supervision order, to consider making a measure to regulate contact between the child and another person.

201. Subsections (6) and (7) provide that where the hearing terminates the compulsory supervision order, the hearing must consider whether the child is in need of voluntary supervision or guidance and, if so, make a statement to that effect. If such a statement is made, the relevant local authority is then under a duty to provide such voluntary supervision or guidance as the child is willing to accept. Subsections (8) and (9) provide that where the review hearing decides to defer consideration of the case, the hearing may require the attendance of the child and the relevant person at that subsequent hearing even where they were excused from attending the original review hearing.

### ***Section 139 – Powers of children's hearing on deferral under section 138***

202. This section applies where a review hearing defers a decision to a subsequent hearing under section 138(2). Subsection (2) provides for the hearing to continue the existing compulsory supervision order for the child until the subsequent hearing. Subsection (3) provides for the making of an interim variation of a compulsory supervision order where the hearing considers that the nature of the child's circumstances is such that it is necessary for the protection, guidance, treatment or control of the child. The hearing may only make such a variation of the order if the hearing considers that circumstances are urgent.

### ***Section 140 – Interim variation of compulsory supervision order***

203. This section sets out the meaning of an interim variation of a compulsory supervision order. Where an interim variation of a compulsory supervision order requires a child to reside away from home, the order need not specify a particular place but instead specify that a child reside at any place of safety away from the place where the child predominantly resides. Section 83(5)(a) does not apply to interim variations of compulsory supervision orders. Subsection (4) sets out the period for which an interim variation of a compulsory supervision order has effect beginning on the day the order is varied and ending on the occurrence of certain events, whichever occurs first: the next Children's Hearing in relation to the child, the disposal by the sheriff of an application under Part 10 in relation to the child, a day specified in the order, or the expiry of the period of 22 days.

### ***Section 141 – Preparation of report in circumstances relating to permanence order or adoption***

204. This section relates to the review hearing that must be arranged when the local authority or adoption society intend to place a child for adoption or the local authority intend to apply for an order freeing the child for adoption or to apply for a permanence order, or where they become aware that someone intends to apply to adopt the child. Subsection (2) provides that the hearing that carries out the review must prepare a report (in a form determined by the Scottish Ministers) to provide advice in respect of the proposed application or adoption to the implementation authority and any court which may require to make a decision on the application or adoption. Subsection (4) provides that when a court considering a permanence order or an adoption order receives the report prepared by the Children's Hearing, it has a duty to have regard to the advice in the report under subsection (2) before coming to any decision relating to the application.

## **Review of relevant person determination**

### ***Section 142 – Review of determination that person be deemed a relevant person***

205. This section provides for a review of an individual's status as a deemed relevant person where the Children's Hearing considers that they no longer meet the test for deemed relevant person status. The deeming status may only be reviewed when the hearing has been arranged to review the compulsory supervision order. The hearing must first make the decision on the review of the compulsory supervision order. The individual will continue to be treated as the child's relevant person for the purpose of any appeal which arises from the review of the compulsory supervision order.
206. Subsection (2) provides that the hearing must review the deeming status where it considers that the individual may no longer have (nor recently have had) a significant involvement in the upbringing of the child. Subsection (3) provides that the hearing may also defer the decision to a subsequent hearing (which will deal only with the question of the review of the deeming status). Subsection (4) provides that if the hearing determines that the deeming test is no longer met then it must direct that the individual is no longer to be the child's relevant person. Section 81(4) will no longer apply to the individual except for the purposes of any appeal against the review of the compulsory supervision order. The individual will have the right to appeal, under section 160 of this Act, against the determination.

## **Part 14 – Implementation of Orders**

### **Power to transfer child in cases of urgent necessity**

#### ***Section 143 – Transfers in cases of urgent necessity***

207. This section applies when a child is required to stay in a specified place as a condition of their compulsory supervision order or interim compulsory supervision order. Subsection (2) provides the chief social work officer with the power to transfer the child from that accommodation where such a transfer is required in the interests of the child or another child in that accommodation as a matter of urgent necessity. This would apply where there is an immediate necessity that cannot wait until a hearing has been arranged. A hearing to review the compulsory supervision order must be held within 3 days (see section 137(3)).

### **Implementation of compulsory supervision order**

#### ***Section 144 – Implementation of compulsory supervision order: general duties of implementation authority***

208. This section places a duty on the implementation authority to give effect to a compulsory supervision order. The "implementation authority" is the local authority specified in the order as being responsible for giving effect to the measures included in the order. Subsection (3) makes clear that the implementation authority may need to secure services from another source.

#### ***Section 145 – Duty where order requires child to reside in certain place***

209. This section applies when the compulsory supervision order requires the child to stay in accommodation provided by the parents or relatives of the child, by any person associated with them or with the child or in any other accommodation not provided by the local authority. In these circumstances, the local authority must check that the conditions attached to the compulsory supervision order are being fulfilled. If the local authority finds that any of those conditions are not being fulfilled, subsection (2) (b) places a duty on the local authority to take such steps as the authority consider reasonable.

***Section 146 – Breach of duties imposed by sections 144 and 145***

210. This section applies where it appears to the Children's Hearing when making a decision about a compulsory supervision order that the local authority specified in the order ("the implementation authority") is not fulfilling the obligations contained in the order.
211. Subsection (2) provides that the Children's Hearing may direct the National Convener to notify the implementation authority of an intended application by the National Convener to enforce the authority's duty. Subsections (3) and (4) relate to the conditions of the notice. The notice must set out how the local authority is in breach of its duties and state that if the local authority does not perform its duties within 21 days of the notice the National Convener, on the direction of the Children's Hearing, will make an application to enforce the local authority's duty. A copy of the notice served on the implementation authority must also be sent to the child and each relevant person.
212. Subsection (5) provides that where a Children's Hearing gives a direction under subsection (2), the hearing must require that a further review of the compulsory supervision order take place as soon as possible after 28 days have expired from the day the notice was given. Subsection (6) provides that if the review hearing considers that the implementation authority is still not fulfilling the obligations contained in the compulsory supervision order, the Children's Hearing may direct the National Convener to proceed with an application to the sheriff principal under section 147. Subsection (7) makes clear that the Children's Hearing must not take account of the resources available to the implementation authority when considering whether to direct the National Convener to make an application to enforce the authority's duty.

***Section 147 – Application for order***

213. This section places a duty on the National Convener, where directed by the Children's Hearing under section 146(6), to make a summary application to the relevant sheriff principal, for an order to enforce the implementation authority's duty in relation to a child. Subsection (3) makes clear that the National Convener may only apply for such an order if the implementation authority has been given notice by the National Convener as required under section 146(2) and the authority has failed to carry out the duty within the period specified in the notice.

***Section 148 – Order for enforcement***

214. This section provides for the sheriff principal, on the application of the National Convener under section 147, to make an order requiring the relevant local authority to fulfil the obligations imposed under the compulsory supervision order. Subsection (2) makes clear that an order made by the sheriff principal under this section is final.

**Compulsory supervision orders etc.: further provision**

***Section 149 – Compulsory supervision orders etc.: further provision***

215. This section enables the Scottish Ministers to make regulations relating to compulsory supervision orders, interim compulsory supervision orders, medical examination orders and warrants to secure attendance. Such regulations may concern one or more of the following: the transmission of information about children who are subject to an order or warrant; temporary accommodation for the child; taking the child to a place specified in an order or warrant; or taking the child to a place of safety.

**Movement restriction conditions: regulations etc.**

***Section 150 – Movement restriction conditions: regulations etc.***

216. This section enables the Scottish Ministers to make regulations relating to the restrictions that can be placed upon a child and the monitoring arrangements that may

be imposed as part of a movement restriction condition. Subsection (2) provides that the regulations may in particular: prescribe methods of monitoring compliance; specify the devices that may be used for monitoring; prescribe the people who can carry out the monitoring; specify a maximum duration of any movement restriction condition included in an order; require that the condition be varied to designate another person if the person designated ceases to be a prescribed person or fall within a class of prescribed persons. Regulations will be subject to affirmative procedure. Subsection (4) provides that Ministers may make arrangements, including contractual arrangements, to have monitoring carried out and subsection (5) provides for appropriate information sharing with a person providing a monitoring service in order to allow full and proper provision of that monitoring.

## **Secure accommodation**

### ***Section 151 – Implementation of secure accommodation authorisation***

217. This section sets out the way in which secure accommodation authorisations are implemented. It applies where a hearing makes a compulsory supervision order, an interim compulsory supervision order, a medical examination order or a warrant to secure attendance which includes a secure accommodation authorisation. Subsection (3) provides that the chief social work officer of the relevant local authority for the child may implement the authorisation only with the consent of the person in charge of the residential establishment containing the secure accommodation in which the child will be placed. Subsection (4) provides that the chief social work officer must remove the child from secure accommodation where he considers it unnecessary for the child to be kept there or he is required to remove the child by virtue of regulations. Subsection (5) provides that the secure accommodation authorisation ceases to have effect once the child is removed from the secure accommodation under subsection (4).
218. Subsection (6) enables the Scottish Ministers to make regulations with regard to the decisions of the chief social work officer to implement the secure accommodation authorisation or remove the child from secure accommodation and with regard to the decisions of the head of unit to consent to the implementation of the secure accommodation authorisation under subsection (3). Subsection (7) sets out the areas that may, in particular, be covered by regulations. These areas include: the timescales for the decision; the procedures to be followed, the criteria to be applied; who must be consulted; and who must consent to a decision. Regulations may also make provision about the notification of decisions, the giving of reasons for decisions, the reviewing of decisions and the review of an order or warrant containing a secure accommodation authorisation where the head of unit does not consent. Subsection (8) provides that such regulations will be subject to affirmative procedure.
219. The term “chief social work officer” is defined in section 202. The definition refers to both implementation authorities and relevant authorities. This is necessary because under compulsory supervision orders and interim compulsory supervision orders an “implementation authority” will be specified but this will not be the case for medical examination orders or warrants to secure attendance where the duties will fall on the relevant local authority.

### ***Section 152 – Secure accommodation: placement in other circumstances***

220. This section enables the Scottish Ministers to make provision in regulations specifying circumstances in which children may be placed in secure accommodation if a relevant order or warrant is in force in relation to the child and that order does not include a secure accommodation authorisation. A relevant order or warrant is a compulsory supervision order, an interim compulsory supervision order, a medical examination order, or a warrant to secure attendance. Subsection (2) provides that the regulations may in particular include provision about: the procedure to be followed in deciding whether to place a child in secure accommodation; the notification of decisions; the



giving of reasons for decisions; the review of decisions; and the review of placements by Children's Hearings. Such regulations will be subject to the affirmative procedure.

### ***Section 153 – Secure accommodation: regulations***

221. This section enables the Scottish Ministers to make provision by regulations about children placed in secure accommodation under the Act. Such regulations may in particular include provision imposing requirements on the Principal Reporter, the relevant local authority or implementation authority and in relation to protecting the welfare of children placed in secure accommodation under the Act. Requirements may be placed on both the implementation authority in relation to compulsory supervision orders and interim compulsory supervision orders and the relevant local authority in relation to the medical examination orders and warrant to secure attendance. Such regulations will be subject to the affirmative procedure.

## **Part 15 – Appeals**

### **Appeal against decision of children's hearing**

#### ***Section 154 – Appeal to sheriff against decision of children's hearing***

222. This section provides for a child, relevant person or Safeguarder to appeal to the sheriff against decisions made by a Children's Hearing within 21 days of the hearing making the decision. Subsection (3) lists those decisions which are appealable. Decisions which are procedural steps in the process towards the making of a dispositive decision are not appealable. For example, where the hearing directs an application to the sheriff for the establishment of grounds for referral.

#### ***Section 155 – Procedure***

223. This section makes clear that when an appeal is made the Principal Reporter must lodge the documents set out in subsection (2) with the sheriff clerk. The sheriff may hear the appeal based on the papers lodged (subsection (4)) or the sheriff may hear oral evidence from any party listed under subsection (5). Subsection (6) provides that the sheriff may also require additional reports to assist in hearing the appeal. Subsection (7) provides that such reports may only be required from Safeguarders if enabled by regulations under section 32.

#### ***Section 156 – Determination of appeal***

224. This section provides that if the sheriff is satisfied that the decision appealed against is justified, the sheriff must confirm the decision (subsection (1)(a)) and may take one or more of the steps mentioned in subsection (3) if satisfied that the child's circumstances have changed since the decision, which was under appeal, was made (subsection (1)(b)). The steps available to the sheriff under subsection (3) are: to require the Principal Reporter to arrange a Children's Hearing for any purpose that a hearing could be arranged under the Act (this reflects the fact that the case may be at different stages in the process – for example, a grounds hearing, subsequent hearing or review hearing); the continuation, variation or termination of any order, interim variation or warrant which is in effect; discharge the child from any further hearings or proceedings in relation to the grounds of referral which stimulated the referral to the Children's Hearing; or to make an interim compulsory supervision order, interim variation or warrant to secure attendance.
225. Subsection (2) applies where the sheriff is not satisfied that the decision under appeal is justified. If the decision under appeal relates to a warrant to secure attendance the sheriff must recall that warrant. Where the decision under appeal is an interim compulsory supervision order or a medical examination order, the sheriff must terminate that order. Otherwise the sheriff may also take one or more of the steps set out in subsection (3).

Subsection (4) ensures that, where a child is discharged under those powers, all existing orders and warrants in effect in relation to that child also terminate at that point. Subsection (5) provides that the fact that the sheriff continues or varies an order, or grants a warrant, under subsection (1)(b) or (2)(b) does not prevent a subsequent Children's Hearing from continuing, varying or terminating any order or warrant issued by the sheriff under this section.

### ***Section 157 – Time limit for disposal of appeal against certain decisions***

226. This section applies where there is an application to appeal the decision of a Children's Hearing to make a compulsory supervision order including a secure accommodation authorisation or movement restriction condition, make an interim compulsory supervision order, make an interim variation of a compulsory supervision order, make a medical examination order or to grant a warrant to secure attendance. Subsection (2) provides that the application must be heard and disposed of by the sheriff before the expiry of the period of three days beginning with the day after the day on which the appeal under section 154 is made. If this time limit is not met then the order, warrant, authorisation or condition ceases to have effect (subsection (3)).

### **Compulsory supervision order: suspension pending appeal**

#### ***Section 158 # Compulsory supervision order: suspension pending appeal***

227. This section provides that the child, a relevant person or Safeguarder who appeals against a decision of the Children's Hearing to make, vary, or continue a compulsory supervision order may also request the Principal Reporter to arrange a hearing to consider whether the decision should be suspended pending the determination of the appeal. Subsection (2) places the reporter under a duty to arrange a Children's Hearing to consider the request for suspension as soon as practicable after the request is made. The duty only applies where the appeal is against a decision to make a compulsory supervision order and where the person making the appeal makes the request to the reporter.

### **Frivolous and vexatious appeals**

#### ***Section 159 – Frivolous and vexatious appeals***

228. This section applies where the sheriff confirms a decision of the Children's Hearing to vary or continue a compulsory supervision order and is satisfied that the application for appeal was frivolous or vexatious. The sheriff may make an order which prevents the applicant from making further applications for appeal, unless the leave of the sheriff is obtained, for a period of 12 months beginning on the day the order is made.

### **Other appeals**

#### ***Section 160 – Appeal to sheriff against relevant person determination***

229. This section applies when a Pre-Hearing Panel or Children's Hearing has determined, under section 81, whether a particular person is or is not to be deemed to be a relevant person in relation to the child or has determined under section 142 that an individual continues to be deemed or no longer be deemed a relevant person. It provides a right of appeal to the sheriff for those persons listed in subsection (2). Subsection (6) provides that an application for appeal under this section must be made within 7 days of the determination; and the sheriff must hear and dispose of the appeal within 3 days of the appeal being made. Under subsection (3) the sheriff must confirm the determination under appeal if satisfied that it is justified. Subsection (4) places a duty on the sheriff to either quash the determination of the hearing or make an order if not satisfied that the decision of the hearing is not justified. Subsection (5) provides that where the sheriff decides that the original determination is not justified and that the individual *should* be

a deemed relevant person, then that person is considered to be a deemed relevant person as set out in section 81(4) as if the pre-hearing panel had made the decision.

***Section 161 – Appeal to sheriff against decision affecting contact or permanence order***

230. This section relates to section 126 (which creates a separate review process of contact directions where a contact or permanence order is in force and the holder of that order is not a relevant person). This section provides a separate appeal right to the sheriff against the decision of that review hearing for persons who are not relevant persons but who hold a contact or permanence order in respect of the child, or a person who meets the conditions specified by the order-making power under section 126(2)(b). The appeal is only applicable against the hearing's review of the contact direction. Subsection (6) provides that the appeal must be made within 21 days of the date the decision under appeal is made and it must be heard within 3 days. The sheriff must either confirm the decision of the review hearing if satisfied that it is justified or vary the compulsory supervision order by varying or removing the contact direction contained in it if not satisfied that the decision of the review hearing was justified.

***Section 162 – Appeal to sheriff against decision to implement secure accommodation authorisation***

231. This section applies where a compulsory supervision order, interim compulsory supervision order, medical examination order or a warrant to secure attendance includes a secure accommodation authorisation. Subsection (3) provides that the child or their relevant person may appeal to the sheriff against a "relevant decision" in relation to the secure accommodation authorisation. Subsection (4) defines "relevant decision" as a decision by the chief social work officer to implement the secure accommodation authorisation, not to implement the authorisation or to remove the child from secure accommodation. Subsection (5) provides that an appeal under subsection (3) may be made jointly by the child and one or more relevant persons in relation to the child, or two or more relevant persons in relation to the child. Subsection (6) makes clear that the appeal hearing is closed to the public and may not be heard in open court.
232. Subsections (7) and (8) enable the Scottish Ministers to make further provision in regulations about appeals under this section. Regulations made under this provision may in particular specify the period within which an appeal may be made, make provision about the hearing of evidence, make provision about the powers of the sheriff on determining the appeal, and provide for appeals to the sheriff principal and Court of Session against the determination of an appeal. Such regulations will be subject to the affirmative procedure.

**Appeals to the sheriff principal and Court of Session**

***Section 163 – Appeals to the sheriff principal and Court of Session: children's hearings etc.***

233. Subsections (1) and (3) provide for the child, relevant person, Safeguarder (the appeal may also be made jointly by any of these parties) or the Principal Reporter, to appeal to the sheriff principal or the Court of Session by stated case against a determination by the sheriff of: an application to establish the grounds for referral under section 67; (other than 67(2)(j) if the case was remitted under the Criminal Procedure (Scotland) Act), an application for a review of a grounds determination; an appeal against a decision of the Children's Hearing; an application under section 98 for an extension of an interim compulsory supervision order or an application under section 99 for a further extension of an interim compulsory supervision order. Appeals under subsection (1) may also be made against the decision of a sheriff to make an interim compulsory supervision order and make an interim variation of a compulsory supervision order.

234. Subsections (2) and (3) provide for the child, their relevant person, Safeguarder (the appeal may also be made jointly by any of these parties) or the reporter, to appeal to the Court of Session by stated case and with the leave of the sheriff principal, against the sheriff principal's decision under subsection (1). Subsection (4) makes clear that a Safeguarder appointed by a Children's Hearing may not appeal against the decision of the sheriff in relation to a grounds determination or the review of a grounds determination. Subsection (5) provides that the reporter may not appeal against a determination by the sheriff confirming a decision of a Children's Hearing.
235. Subsections (6) and (7) provide for the references to "child" and "relevant person" in subsection (3) to be adjusted in line with section 110(2) which provides for circumstances where the review of the grounds determination occurs when the person who was the subject of the grounds determination is no longer a "child" and the person who was a relevant person in relation to the child is no longer a "relevant person". Subsection (8) provides that an appeal made under this section must be made within 28 days of the determination or decision being appealed. Subsection (9) provides that an appeal under this section may be made on a point of law or in respect of any procedural irregularity. Subsection (10) provides that, on deciding the appeal, the sheriff principal or Court of Session must remit the case back to the sheriff for disposal. Subsection (11) provides that a determination of an appeal by the Court of Session made under subsections (1) or (2) is final. Subsection (12) makes clear that appeal rights under this section also cover a review of a finding that a ground is established where that is a new ground originally established by the sheriff under section 117.

#### ***Section 164 – Appeals to the sheriff principal and Court of Session: relevant persons***

236. This section provides a right of appeal against a decision of a sheriff in an appeal against a determination by a Pre-Hearing Panel or Children's Hearing as to whether or not a person should be deemed to be a relevant person. The individual claiming deemed relevant person status, the child and the child's relevant person have the right of appeal. The appeal may also be made jointly by the child and the relevant person or jointly by two or more relevant persons.
237. Subsection (2) allows an appeal to be made to the Court of Session against the decision of the sheriff principal under subsection (1). The leave of the sheriff principal must first be obtained.
238. Subsection (4) provides that an appeal made under this section must be made within 28 days of the decision made by the sheriff or sheriff principal. Subsection (5) provides that an appeal under this section may be made on a point of law or in respect of any procedural irregularity. Subsection (6) provides that the sheriff principal or Court of Session must remit the case back to the sheriff for disposal after the decision. Unlike the first level appeal under section 160 (to the sheriff against the determination by the hearing as to whether a person should be deemed to be a relevant person) the court will not substitute its own decision and must remit the case to the sheriff for disposal. The court may give directions when remitting the case. Subsection (7) provides that a decision in an appeal by the Court of Session is final.

#### ***Section 165 – Appeals to the sheriff principal and Court of Session: contact and permanence orders***

239. This section provides a further appeal, by stated case, to the sheriff principal or the Court of Session, against the decision of the sheriff under section 161 (an appeal against the decision of a contact review hearing for persons who are not relevant persons but hold a contact or permanence order in respect of the child, or a person who meets the conditions specified using the order-making power in section 126(2)(b)). This mirrors the appeal route for other appeals against decisions of the sheriff throughout the Act. The decision of the sheriff principal may be appealed to the Court of Session but leave

to appeal must first be granted. The appeal may be made on a point of law or in respect of any procedural irregularity. Subsection (6) provides that the court must remit the case back to the sheriff for disposal. Subsection (7) provides that a determination of an appeal by the Court of Session is final.

## **Requirement imposed on local authority: review and appeal**

### ***Section 166 – Review of requirement imposed on local authority***

240. This section applies where a duty is imposed on a local authority under a compulsory supervision order, interim compulsory supervision order or a medical examination order by a Children's Hearing or by the sheriff. If the local authority on which the duty is imposed is satisfied that it is not the relevant local authority for that particular child then the local authority may apply to the sheriff for a review of the decision to impose the duty upon it. The term "relevant local authority" for the child is defined in section 201.
241. Subsection (3) gives the sheriff discretion as to whether to hear evidence from any of the persons listed in subsection (4). Subsections (6) and (7) provide that the sheriff must determine which local authority is the relevant local authority for the child and if the local authority that made the application for review is the relevant local authority for the child then the sheriff must confirm the original decision of the hearing or sheriff. Subsection (8) provides that if the sheriff finds that another local authority is the relevant local authority for the child, the sheriff must vary the order so that the duty imposed by it falls on that other local authority. The sheriff may also make an order for that local authority to reimburse such sums as the sheriff may determine to the local authority which make the application for review for any costs incurred in relation to the duty.

### ***Section 167 – Appeals to the sheriff principal: section 166***

242. This section provides for a right of appeal on the part of a local authority from the decision of the sheriff under section 166(6) or (8)(b). The child to whom the determination relates, a relevant person in relation to that child and persons representing the child or relevant person may also appeal the decision of the sheriff under section 166(6). This appeal is by stated case to the sheriff principal and must be made within 28 days from the making of the determination or order under section 166. The appeal may be on a point of law or in respect of any procedural irregularity. After determining the appeal the sheriff principal must remit the case to the sheriff for disposal and the sheriff principal's determination is final.

## **Part 16 – Enforcement of Orders**

### ***Section 168 – Enforcement of orders***

243. This section applies where a relevant order, listed in subsection (3), authorises the keeping of a child in a particular place. The order may be enforced by an officer of law.
244. Subsection (2) sets out the actions which may be taken to enforce the order. The officer may search for and apprehend the child and take the child to the place authorised in the order. Where it is not possible to take the child immediately to the authorised place, for example, because the situation is urgent and arrangements for the "authorised" place are not yet complete, and the authorised place is not a place of safety, the child may be taken to a place of safety for a short a period as is practicable. The officer also has the power to break open shut and lockfast places where this is necessary to enforce the order (subsection 3(d)).

### ***Section 169 – Child absconding from place***

245. This section provides that a child who absconds from or fails to return to a particular place in which they are required to be kept by virtue of an order or warrant, for example a place of safety or residential establishment, may be arrested without a warrant and



returned to that place. Subsection (1) provides that this provision applies where the child is required to reside at a particular place in accordance with one of the orders listed in paragraph (a) and where the child absconds from that place or fails to return to that place.

246. Subsection (3) allows a court to grant a warrant authorising an officer of law to enter premises and search for the child where there are reasonable grounds for believing that the child is within the premises. Subsection (4) expressly permits the officer to use reasonable force for these purposes. Subsection (5) provides that, where a child cannot be returned to the place at which they are required to stay by virtue of the order or warrant because the occupier is unwilling or unable to take the child back, the officer must inform the Principal Reporter immediately and the child must be kept in a place of safety until the 'relevant event' occurs. Subsection (6) defines 'relevant event' in relation to each of the cases listed in subsection 1(a).

### ***Section 170 – Child absconding from person***

247. This section applies when a particular person, such as a foster carer or relative, has (or is authorised to have) control of a child by virtue of an order or warrant listed in subsection (1)(a) and the child absconds from that person. A compulsory supervision order, for example, may require the child to reside with foster carers.
248. Subsection (2) provides that the child may be arrested without warrant and returned to the person named in the order or warrant. Subsection (3) permits the court to grant a warrant authorising an officer of law to enter premises and search for the child where there are reasonable grounds for believing that the child is within the premises. Subsection (4) expressly permits the officer to use reasonable force. Subsection (5) provides that, where a child cannot be returned to the person from whom the child absconded because the person is unwilling or unable to take the child back, the officer must immediately inform the Principal Reporter of this and the child must be kept in a place of safety until the 'relevant event' occurs. Subsection (6) defines "relevant event" in relation to each of the cases listed in subsection 1(a).

### ***Section 171 – Offences related to absconding***

249. This section applies where a child is required to be kept in a particular place or with a particular person, such as a foster carer or relative who has (or is authorised to have) control of a child by virtue of an order or warrant specified in subsection (1) (a). It is an offence for a person to knowingly help or induce a child to abscond, to knowingly harbour or conceal a child, or to knowingly prevent a child from returning to the place of safety or person (subsection (2)). Subsection (3) provides that anyone who commits such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale or a term of imprisonment not exceeding six months or both. Subsection (4) provides that a local authority, person providing a care home service or other children's home, or foster parent who provides short-term refuge for a child who appears to them to be at risk of harm and who requests refuge, will not be criminally liable for an offence under subsection (2) so long as the conditions set out in the specified provisions are observed.

## **Part 17 – Proceedings under Part 10: Evidence**

### ***Section 172 – Use of evidence obtained from prosecutor***

250. This section applies where an application has been made to the sheriff to determine whether a ground for referral is established or to review a grounds determination. It provides for the Principal Reporter to ask any prosecutor to provide evidence held in connection with the investigation of a crime or suspected crime where the reporter considers that the evidence may assist the sheriff in the determination of the application. For example, the prosecutor may hold evidence in criminal proceedings relating to

an alleged assault of a child by a parent. The reporter may have referred the child to a Children's Hearing based on the same alleged incident and if the grounds are denied and an application to the sheriff follows, the reporter may take the view that the evidence held by the prosecutor would assist the sheriff in order to establish the grounds. Subsection (3) makes clear that only evidence which was lawfully obtained may be made available to the reporter. Subsection (4) provides that the prosecutor is not obliged to comply with the reporter's request to provide evidence if the prosecutor reasonably believes that it is necessary to retain that evidence for the purposes of any criminal proceedings. This applies regardless of whether or not the proceedings have already commenced.

### ***Section 173 – Cases involving sexual behaviour: evidence***

251. This section prohibits the admission of certain evidence in any hearing by a sheriff of an application to establish whether or not a ground for referral is established, or to review the establishing of a ground, where that ground involves sexual behaviour engaged in by any person. Subsection (3) applies the prohibition to evidence which shows or tends to show: that such a person is not of good character; that relates to the person's sexual history (other than that forming part of the ground of referral); that relates to any non-sexual past behaviour (other than behaviour around the time of the subject-matter of the ground of referral) that might raise an inference that the person is not credible or the evidence not reliable; or that the person has a condition or precondition, that suggests the person is not credible or that their evidence is unreliable.
252. Subsection (5) provides that the prohibition under subsection (2) applies whether any other person to whom evidence or questioning relates is giving evidence directly at the hearing or if their evidence is given in the form of a statement. Such statements include any representations of fact or opinion however made. This ensures that statements can be made in different formats such as in writing or by audio or visual recording. Subsection (6) provides that references to 'sexual behaviour engaged in' in this section and section 174 include references to having undergone or been made subject to any experience of a sexual nature. These provisions – and the protections offered by them – cover both the victim of sexual behaviour and a child alleged to have committed an offence involving sexual behaviour.

### ***Section 174 – Cases involving sexual behaviour: taking of evidence by a commissioner***

253. This section applies similar restrictions to those contained in section 173 to the taking of evidence by a commissioner for the purposes of a hearing by a sheriff of an application to determine whether or not a ground for referral is established, or to review the establishing of a ground, where that ground of referral involves the sexual behaviour engaged in by any person.

### ***Section 175 – Sections 173 and 174: application to sheriff for order as to evidence***

254. This section sets out the circumstances in which a sheriff may make exceptions to the restrictions about allowing evidence or questioning. On the application of the child, the relevant person, the Principal Reporter or Safeguarder, the sheriff may make an order to allow such evidence to be admitted or taken in certain circumstances. Subsection (4) provides that references in this section to an occurrence or occurrences of sexual behaviour include references to undergoing or being made subject to any experience of a sexual nature. As with sections 173 and 174, the provisions in this section cover both the victim of sexual behaviour and a child alleged to have committed an offence involving sexual behaviour. Subsection (5) provides a definition of "proper administration of justice" for the purposes of this section.

### ***Section 176 – Amendments of Vulnerable Witnesses (Scotland) Act 2004***

255. This section makes consequential amendments to the Vulnerable Witnesses (Scotland) Act 2004 (“the 2004 Act”). Subsection (3) amends section 12 of the 2004 Act and clarifies that the child witness notice or vulnerable witness application must be lodged or made before the commencement of the hearing at which the child or vulnerable witness is to give evidence. Subsection (4) inserts a new section 16A into the 2004 Act which allows the Principal Reporter to lodge a child witness notice or a vulnerable witness application, or to make an application for a review of the current arrangements for taking the witness’s evidence. The reporter may exercise this power where he or she is citing the witness who is also a party to the proceedings. The witness may lodge the notices or applications independently of the reporter.
256. Subsection (5) inserts a new section 22A into the 2004 Act which provides for evidence in chief to be given by prior statement in any hearing by a sheriff of an application under sections 93 or 94 of this Act to establish whether or not a ground for referral is established, or to review the establishing of a ground under section 110 of this Act where the ground of referral is that the child has committed an offence. The use of a prior statement enables a witness’s evidence to be recorded without interruption before the trial and alleviates the need for the witness to adopt or otherwise speak to the statement when giving evidence in court. It also avoids the need for the witness to be led through potentially distressing material in court. A prior statement of the type mentioned in subsection (7) of section 22A will only be admissible if it has been authenticated. The method of authentication is to be provided for by the Scottish Ministers in secondary legislation. For the purposes of section 22A, a statement is contained in a document where the person: makes the statement personally; has direct knowledge of the statement; or approves the statement.

### **Part 18 – Miscellaneous**

#### **Children’s hearings: procedural rules**

##### ***Section 177 – Children’s hearings: procedural rules***

257. This section enables Scottish Ministers to make rules about the practice and procedure of Children’s Hearings and Pre-Hearings. Subsection (2) sets out a non-exhaustive list of matters which may be included in these rules. Procedural rules made under this section that include the following matters will be subject to affirmative procedure: specifying matters that may be determined by Pre-Hearing Panels; attendance of persons, excusal and exclusion from attending; withholding documents; and representation of persons at Children’s Hearings. Procedural rules that relate to other matters under this section - constituting and arranging hearings; notification; obtaining the views of the child to whom a Children’s Hearing relates; provision of documents; prescribing the form of the statement of grounds; the recording and transmission of information; expenses; and appeals – will be subject to negative procedure.
258. In making any procedural rules under subsection (2)(i)(i) – rules making provision for or in connection with the provision of specified documents to members of Children’s Hearings – the Scottish Ministers must ensure that any views that may have been expressed by the child to whom the hearing relates are reflected in one of the documents provided to members of that Children’s Hearing. Subsection (3) provides that references to a “Children’s Hearing” in this section include a Pre-Hearing Panel.

#### **Disclosure of information**

##### ***Section 178 – Children’s hearing: disclosure of information***

259. This section provides that a Children’s Hearing can withhold information about the child from a particular person if disclosing the information to that person would be

likely to cause significant harm to the child. An example of such a situation would be where a relevant person was excluded from part of a hearing, and during that time, the child spoke of matters that if then shared with the relevant person might endanger the child. Section 178 applies despite any other statutory requirements to give the person an explanation of what took place at the hearing or to provide the person with information or the reasons for a decision made by the hearing.

***Section 179 – Sharing of information: prosecution***

260. This section applies to specific circumstances where there are both criminal proceedings in the criminal courts and care and protection proceedings in the Children's Hearings system, and the Crown Office and Procurator Fiscal Service request specific information, such as expert reports or transcripts of care and protection proceedings, from the Principal Reporter.
261. Subsection (1)(a) provides that the care and protection proceedings can include past situations, for example where the sheriff found the grounds for referral not to be established and the child is not subject to any order. Subsection (1)(b) and (c) cover both summary and solemn criminal proceedings. Subsection (1)(d) provides that this provision applies when the child is connected to the criminal proceedings in any way or is connected to the accused or any other person involved in the criminal proceedings. Subsection (2) places a duty on the reporter to provide any information to the Crown Office and Procurator Fiscal Service which the reporter holds which relates to the prosecution and which the Crown Office requests for the purpose of preventing or detecting crime or apprehending or prosecuting offenders.

***Section 180 – Sharing of information: panel members***

262. This section places the local authority under a duty to comply with a request from the National Convener to provide him or her with information about the implementation of compulsory supervision orders by that authority. The National Convener may then disclose that information to all members of the Children's Panel. This information might include: policy statements of the council, details of types of residential establishments that the council owns/has use of; statistics on types of compulsory supervision orders, and general information on how the council goes about implementing compulsory supervision orders.

**Implementation of compulsory supervision orders: annual report**

***Section 181 - Implementation of compulsory supervision orders: annual report***

263. This section places a duty on the National Convener to prepare a report about the implementation of compulsory supervision orders during the preceding financial year for submission by Ministers to Parliament. This report must also be provided by the National Convener to all panel members. The report must include details of implementation across Scotland and on a local authority basis. Subsection (4) provides that for the purposes of preparing the report the National Convener may require each local authority to provide information about the number of compulsory supervision orders for which they are the implementation authority, changes of circumstances giving rise to the orders and the ways in which the overall wellbeing of children who are subject to the orders has been affected by them. The National Convener may also require other information relating to the implementation of orders. Subsection (5) ensures the information is presented in an anonymised and aggregated basis by making clear that it must not identify or enable the identification of any particular child.

## **Publishing restrictions**

### ***Section 182 – Publishing restrictions***

264. This section prohibits the publication of certain information about proceedings at a Children's Hearing or court proceedings under this Act. This provision applies to any person and could therefore include journalists and their publishers as well as panel members, the Principal Reporter, social workers, parents and other relatives.
265. Subsection (1) prohibits the publication of protected information if it is intended that publication will, or is likely to, lead to the identification of the child or the child's address or school. Subsection (2) provides that a breach of section 182(1) is an offence. A single publication can constitute many offences if different people are involved in its publication. Subsection (3) provides that it is a defence if the person can prove that they did not intend, know or have reason to suspect that publication would lead to the identification of the child or the child's address or school. Subsections (4) to (6) provide for the restriction on publication to be waived or lessened by the sheriff or the Court of Session in relation to proceedings before them, and by the Scottish Ministers in relation to proceedings before a Children's Hearing if this is in the interests of justice. Subsections (7) and (8) provide that the publication of information about a child by a local authority or an adoption agency is not an offence under this section where it is for the purposes of making arrangements in relation to the child under the Act or the Adoption and Children (Scotland) Act 2007.
266. Subsection (9) defines "protected information" and "publish" for the purposes of this section. "Protected information" includes information relating to various stages of the Children's Hearings process and information given to the Principal Reporter. "Publish" includes to publish matters in a programme service within the meaning of the Broadcasting Act 1990, thus including a television or radio programme or service (including digital), or teletext.

## **Mutual assistance**

### ***Section 183 – Mutual assistance***

267. This section places an obligation on CHS, the National Convener, SCRA and the Principal Reporter to co-operate with each other in relation to the performance of their duties under the Act. Each of them must comply with a request by the other for assistance in carrying out functions conferred by the Act. Subsection (3) provides that a local authority may make a request to not only another local authority, but also a health board, for assistance in the performance of the local authority's functions under the Act, and those persons are under a duty to comply. This reflects the fact that the compulsory supervision order may require the local authority to provide services under the order which the authority does not itself provide, under section 144(3). Furthermore, the power to request assistance and the duty to comply extends to all the local authority's functions under the Act so it would therefore cover for example, investigating whether a child should be referred to the reporter, or responding to requests for information from the National Convener under section 180 or 181, as well as functions relating to implementing any orders under the Act. Subsection (5) provides that any request under section 183 must specify the assistance that is required. The duties in this section do not apply if complying with a request would be incompatible with any function of the person or would unduly prejudice the conduct of that function (subsection (6)).

### ***Section 184 – Enforcement of obligations on health board under section 183***

268. This section provides an additional enforcement mechanism in relation to the request for help by a local authority to a health board in connection with the implementation of a compulsory supervision order. This provision is restricted to requests for assistance by a local authority where the local authority is the specified implementation authority



for a compulsory supervision order and is in connection with the implementation of that order. Where the implementation authority has made a request to a health board for assistance in connection with the implementation of the order and the implementation authority considers that the health board has unreasonably failed to comply with the request the implementation authority may refer the matter to the Scottish Ministers. Subsection (3) provides that the Scottish Ministers may then, if they consider that the health board has unreasonably failed to comply with the request, direct the health board to comply with that request. Subsection (4) provides that the health board must comply with that direction.

## **Proceedings before sheriff under Act**

### ***Section 185 – Amendment of section 32 of Sheriff Courts (Scotland) Act 1971***

269. This section amends the Sheriff Courts (Scotland) Act 1971 (“the 1971 Act”) and inserts into section 32 powers for the Court of Session to make court rules about: enabling witnesses to give evidence when not physically present in court; prescribing circumstances in which a party to proceedings may be prohibited from personally questioning witnesses; permitting a party to be represented by a person who is neither an advocate nor a solicitor; and prescribing the functions and rights of Safeguarders appointed by the sheriff.

## **Consent of child to medical examination or treatment**

### ***Section 186 – Consent of child to medical examination or treatment***

270. This section clarifies that, where a child is subject to an order that includes a condition requiring that a medical examination or treatment be arranged, the child’s ability to consent to or refuse medical examination or treatment is preserved in terms of the Age of Legal Capacity (Scotland) Act 1991.

## **Rehabilitation of offenders**

### ***Section 187 – Rehabilitation of Offenders Act 1974: treatment of certain disposals by children’s hearings***

271. This section amends the Rehabilitation of Offenders Act 1974 (“the 1974 Act”). It inserts into the Act a new section 8B(1A) which provides for certain matters to be treated as an “alternative to prosecution” under that Act and so benefit from the protections contained in that Act. A child is to be treated as having been given an “alternative to prosecution” where following a referral on a relevant offence ground the ground has been accepted or established, and a compulsory supervision order has been made, varied, continued or the referral has been discharged. Similar provision is made in relation to offence proceedings under the Children (Scotland) Act 1995. Provision is also made for the “alternative to prosecution” to become spent and so no longer require to be disclosed by the individual in situations where convictions and alternative to prosecutions require to be disclosed by the individual.
272. Paragraph 1 of schedule 6 to this Act repeals the existing meaning in the 1974 Act which caused such offence referral grounds to be regarded as a conviction.
273. **Section 187** severs the link between Children’s Hearing disposals and the Police Act 1997 (“the 1997 Act”), through which Disclosure Scotland discharges its functions of providing criminal record checks for recruitment and other purposes. These changes will be retrospective. Subsection (3) also provides protection for these disposals under the 1974 Act. The protection afforded will mean that an “alternative to prosecution” will become spent after 3 months of the offence grounds being accepted or established, or of a compulsory supervision order being made.

## **Criminal record certificates**

### ***Section 188 – Criminal record certificates***

274. This extends the meaning of “relevant matter” in section 113A of the 1997 Act. This is achieved by bringing certain “alternatives to prosecution” in the new section 8B (1A) and (1D) of the 1974 Act within the meaning of “relevant matter” in the 1997 Act as well as certain supervision requirements and discharges made under the Social Work (Scotland) Act 1968. Section 188 therefore establishes a link between the alternatives to prosecution resulting from Children’s Hearings on offence grounds and the 1997 Act.
275. Subsection (b) provides Scottish Ministers with the power to make an order specifying to which offences (resulting in an alternative to prosecution following a Children’s Hearing), the definition of ‘relevant matter’ will apply. This limits the offences Disclosure Scotland can access whilst discharging their functions of providing criminal record checks for recruitment and other purposes. Any such order will be subject to affirmative procedure. Subsection (6B) provides that the order can set out offences by level of seriousness.

## **Places of safety**

### ***Section 189 – Places of safety: restrictions on use of police stations***

276. This section provides that a child may be kept or detained in a police station only if there is no alternative place of safety available. If kept or detained in a police station, the child must be transferred to a suitable place as soon as reasonably practicable.

## **Orders made outwith Scotland**

### ***Section 190 – Effect of orders made outwith Scotland***

277. This section enables regulations to be made to allow for an order made by a court in England, Wales or Northern Ireland to have effect in Scotland as if it was a compulsory supervision order. This section also enables the modification of the Act or the Social Work (Scotland) Act 1968 in their application by virtue of the regulations to the non-Scottish orders. These regulations will be subject to affirmative procedure.

## **Part 19 – Legal Aid and Advice**

### ***Section 191 – Legal aid and advice***

278. This section amends the Legal Aid (Scotland) Act 1986 (“the 1986 Act”). It inserts into the 1986 Act two new Parts - Parts 5A and 5B. Part 5A provides for children’s legal aid to be made available in connection with Children’s Hearings in limited circumstances and in respect of court proceedings in connection with Children’s Hearings. Part 5B provides for the registration and quality assurance of solicitors providing children’s legal aid and assistance by way of representation in connection with Children’s Hearings.
279. The following paragraphs discuss the sections which section 191 inserts into the 1986 Act.

### **New Part 5a – Children’s Legal Aid**

280. Part 5A makes provision for children’s legal aid. Legal aid in respect of court proceedings connected with Children’s Hearings was previously made available under section 29 of the 1986 Act. Part 5A replaces section 29. Schedule 6 of the Act provides for the consequent repeal of section 29.

#### **Section 28B – Children’s legal aid**

281. This section defines the scope of children's legal aid. Subsection (2) defines it as representation (and such assistance as is usually incidental to representation) by a solicitor and, where appropriate, by counsel in respect of the proceedings specified in subsection (3). The proceedings specified in subsection (3) are:
- (a) proceedings before a sheriff for variation or termination of a child protection order;
  - (b) proceedings before a Children's Hearing or Pre-Hearing Panel—
    - (i) following the making of a child protection order;
    - (ii) where the hearing or Pre-Hearing Panel considers it might be necessary to make a compulsory supervision order including a secure accommodation authorisation;
    - (iii) following the arrest of a child and his or her detention in a place of safety; and
  - (c) proceedings before a sheriff, the sheriff principal or the Court of Session in connection with a Children's Hearing.

282. Subsection (4) defines, by reference to this Act, the terms "compulsory supervision order", "Pre-Hearing Panel" and "secure accommodation authorisation" for the purposes of the 1986 Act as amended.

#### Section 28C – Circumstances where children's legal aid automatically available

283. This section provides for children's legal aid to be made available to a child automatically, that is without application of the merits and means tests discussed in relation to section 28D, in limited circumstances. Those circumstances are where:
- (a) there are proceedings before a sheriff for variation or termination of a child protection order;
  - (b) the hearing follows the making of a child protection order;
  - (c) a hearing or Pre-Hearing Panel considers it may be necessary to authorise the placement of the child in secure accommodation; or
  - (d) the hearing follows the child being apprehended by the police if it has been decided that criminal proceedings are not going to be pursued.

284. Subsection (3) confers power on the Scottish Ministers to extend or restrict, by regulations, the circumstances in respect of which children's legal aid is automatically available.

#### Section 28D – Availability of children's legal aid: child

285. This section deals with court proceedings under Parts 10 and 15 of the Act. Subsection (2) provides for children's legal aid to be available to the child in respect of proceedings before a sheriff where the Scottish Legal Aid Board ("SLAB") is satisfied that the conditions in subsection (3) are met. The conditions in subsection (3) take account of both the merits of the application and the applicant's means. The conditions are that it is in the child's best interests that children's legal aid is made available and that it is reasonable in the circumstances of the case for the child to receive children's legal aid. The means test requires SLAB to consider whether the expenses of the case can be met by the child, without causing undue hardship to the child. The Scottish Ministers may use their existing powers under section 42(2) of the 1986 Act in relation to civil legal aid and advice and assistance in all contexts to make detailed provision in regulations setting out what is and is not to be taken into account when assessing the means of a child or relevant person in connection with an application for children's legal aid.
286. Subsection (4) provides for children's legal aid to be available to the child in respect of appeal proceedings before the sheriff principal or the Court of Session where the

conditions in subsection (5) are met. The conditions are that SLAB is satisfied that the merits and means tests described in the preceding paragraph are met and, further, that the child has substantial grounds for making or responding to the appeal.

**Section 28E – Availability of children's legal aid: relevant person**

287. This section mirrors section 28D, providing for children's legal aid to be available to the relevant person (as opposed to the child) in respect of proceedings before a sheriff for variation or termination of a child protection order and court proceedings connected with a Children's Hearing.
288. Subsection (2) provides for children's legal aid to be available to the relevant person in respect of proceedings before a sheriff where SLAB is satisfied that the conditions in subsection (3) are met: that it is reasonable in the circumstances of the case for children's legal aid to be made available to the relevant person; and that the expenses of the case cannot be met without causing undue hardship to the relevant person. These are similar to the merits and means tests set out in section 28D(3) for determining whether children's legal aid should be made available to the child, save that section 28E does not require it to be in the best interests of the child that children's legal aid be made available to the relevant person.
289. Subsection (4) provides for children's legal aid to be available to the relevant person in respect of appeal proceedings before the sheriff principal or the Court of Session where the conditions in subsection (5) are met. The conditions are that SLAB is satisfied that the merits and means tests described in the preceding paragraph are met and, further, that the relevant person has substantial grounds for making or responding to the appeal. Subsection (6) defines "relevant person", for the purposes of the relevant sections to be inserted into the 1986 Act, so that it has the same meaning which it is given in this Act.

**Section 28F – Availability of children's legal aid: appeals relating to deemed relevant person**

290. This section provides for children's legal aid to be available for court proceedings in which an individual is seeking deemed relevant person status. It also allows children's legal aid to be made available to an individual who was, but has ceased to be, deemed to be a relevant person due to a decision of a hearing under section 142. By virtue of section 142(4)(b) the individual is to continue to be treated as a relevant person for the purpose of any appeal to the court against the hearing's determination in respect of the compulsory supervision order. For the purpose of that appeal, this section allows children's legal aid to be made available to the person whose deemed relevant person status has been removed. For these limited purposes, children's legal aid will be made available to the individual concerned subject to the same eligibility criteria which are to apply in relation to relevant persons.

**Section 28G – Conditions**

291. This section allows SLAB to make a grant of children's legal aid, under section 28D, 28E, 28F or any provision that may be made in regulations under section 28L of the 1986 Act, subject to such conditions as it considers expedient. It allows conditions to be imposed at any time, including at the time SLAB first makes legal aid available.
292. Section 28G replicates the effect of the provision which was to become section 29(5A) of the 1986 Act. Section 29(5A) was to be inserted into the 1986 Act by section 72 of the Legal Profession and Legal Aid (Scotland) Act 2007. However, section 29 of the 1986 Act (which is the provision under which legal aid was previously made available in relation to Children's Hearings related court proceedings) is to be replaced by sections 28D and 28F. Schedule 6 of the Act therefore provides for the repeal of section 29 of the 1986 Act and the uncommenced provisions of the Legal Profession and Legal Aid (Scotland) Act 2007 which would amend it.

**Section 28H – Board to establish review procedures**

293. Section 28H(1) places a duty on SLAB to establish a procedure for reviewing their refusal of an application for children's legal aid. Subsection (2) obliges SLAB to

establish a procedure for reviewing any conditions which it imposes in relation to a grant of children's legal aid under section 28G. Like section 28G, section 28H replicates the effect of provisions which were to be inserted into section 29 of the 1986 Act by virtue of section 72 of the Legal Profession and Legal Aid (Scotland) Act 2007.

**Section 28J – Board's power to require compliance with conditions**

294. This section enables SLAB to impose conditions on a person receiving children's legal aid. The conditions imposed will be for the purpose of enabling SLAB to verify that the legal aid recipient continues to be entitled to receive it throughout the duration of the case.

**Section 28K – Contributions to the Fund**

295. This section enables SLAB to levy contributions towards the expenses of the case on those receiving children's legal aid. Contributions received by SLAB will be paid into the Scottish Legal Aid Fund. Subsection (2) provides that it is for SLAB to determine the amount of any contribution payable.

296. Subsection (2)(a) provides that any contribution in respect of disposable income is to be levied on disposable income exceeding the prescribed statutory threshold (£3,355 per annum) and that the amount of that contribution is not to exceed one-third of the amount by which the person's disposable income exceeds the prescribed threshold. It further provides, together with subsection (3), for the prescribed statutory threshold and the maximum contributable proportion (or amount) of disposable income to be varied by regulations. Subsection (2)(b) makes similar provision about the contribution which may be levied in respect of disposable capital. Specifically, it is only to be levied on disposable capital exceeding a prescribed statutory threshold (£7,504) and that the amount of the contribution is not to exceed the amount by which the person's disposable capital exceeds the prescribed threshold. It further provides, together with subsection (3), for the prescribed statutory threshold and the maximum contributable proportion (or amount) of disposable capital to be varied by regulations.

**Section 28L – Power of Scottish Ministers to modify circumstances in which children's legal aid to be available**

297. This section enables the Scottish Ministers, by regulations, to extend or restrict the proceedings before a Children's Hearing in respect of which, and the persons to whom, children's legal aid is available.
298. Subsections (2) and (3) set out the eligibility criteria which must be imposed by any regulations made under section 28L which make children's legal aid available to the child concerned for proceedings before a Children's Hearing. The conditions in subsection (3) are that representation may be made available to the child concerned in cases where either there is a possibility that the hearing might make a compulsory supervision order that contains a secure accommodation authorisation (or where such a compulsory supervision order is being reviewed) or where representation is considered necessary to ensure the child's effective participation in the proceedings.
299. Subsection (5) prescribes the eligibility criteria which must be applied by regulations extending the availability of children's legal aid to a person other than the child for proceedings before a Children's Hearing. It requires that the conditions in subsection (6) are met. The conditions in subsection (6) are that SLAB must be satisfied that the person will only be able to effectively participate in the proceedings if he or she is legally represented. When making that determination SLAB must take into account the matters specified in subsection (4). Subsection (4) provides that when determining whether the child, or as the case may be the appropriate person, is able to participate effectively in the proceedings SLAB should take into account the assistance which may be afforded by an "accompanying person". Subsection (7) defines "accompanying person" for those purposes by reference to rules made under section 177 of the Act. Subsection (8)(b) enables the Scottish Ministers, by regulations, to modify the definition of "accompanying person".



300. In addition to enabling amendment of the definition of “accompanying person” in subsection (7), subsection (8) also enables the Scottish Ministers to amend, by regulations, the list of matters prescribed in subsection (4) which SLAB is obliged to take into account when determining whether the child, or as the case may be relevant person, will be able to effectively participate in the proceedings.

### **New Part 5b – Children’s Legal Assistance**

301. Part 5B provides for the registration and quality assurance of solicitors providing children’s legal assistance. Schedule 5 of the Act inserts into section 41 of the 1986 Act (the 1986 Act’s interpretation section) a definition of “children’s legal assistance”. It is defined as comprising both children’s legal aid and assistance by way of representation provided in relation to a Children’s Hearing or connected court proceedings.

#### **Section 28M – Register of solicitors and firms eligible to provide children’s legal assistance**

302. This section requires SLAB to establish a register of solicitors eligible to provide children’s legal assistance and the firms with which those solicitors are associated. Subsection (2) provides that solicitors who operate as sole practitioners must be registered both as solicitor and firm. Subsection (3) makes registration a pre-condition for any solicitor who wants to provide children’s legal assistance. Subsection (4) provides that a registered solicitor will only be allowed to provide children’s legal assistance when working in connection with a registered firm.
303. Subsection (5) deals with registration requirements in relation to solicitors directly employed by SLAB. It provides that SLAB can only employ a solicitor to provide children’s legal assistance who is personally registered to do so. However SLAB is not to be regarded as a firm and, as such, need not itself be registered. Subsection (6) allows the Scottish Ministers to specify, in regulations, the qualifications to be required of solicitors seeking to be registered to provide children’s legal assistance.
304. Subsection (7) provides for section 25A(5) to (15) of the 1986 Act to apply in relation to the register established under subsection (1) as those provisions apply in relation to the register established under section 25A for the purposes of criminal legal assistance. Section 25A was inserted into the 1986 Act by the Crime and Punishment (Scotland) Act 1997.
305. Section 25A(5) allows SLAB to specify the form which an application for registration must take. Section 25A(6) requires SLAB to consult the Law Society of Scotland and such other persons as it considers appropriate before determining whether to register a solicitor or firm. Section 25A(7) provides that SLAB is not to consider a solicitor’s application for registration unless the firm with which he or she is connected is either already registered or has also applied for registration. If the solicitor is connected with more than one firm, section 25A(15) provides that only one of those firms needs to be registered. Section 25A(8) requires SLAB, on receipt of an application for registration, to make such enquiries as it thinks appropriate to determine whether the solicitor meets the requirements expected of a registered solicitor and authorises SLAB to use its powers under section 35A of the 1986 Act to require the solicitor or firm to produce information or documents for that purpose. Section 25A(9) provides for SLAB to enter the solicitor’s name on the register where SLAB is satisfied that it is appropriate to do so. Section 25A(10) prohibits SLAB from entering the name of a solicitor on the register where the solicitor is connected with a firm which is not already entered on the register. Again, section 25A(15) provides that if the solicitor is connected with more than one firm, only one of the firms needs to be registered. Section 25A(11) provides that the name of any registered firm with which the solicitor is connected should appear next to his or her name on the register. Section 25A(12) requires that where a solicitor’s application for registration is refused SLAB must notify the unsuccessful applicant and give reasons for its refusal. Section 25A(13) allows an unsuccessful applicant for registration 21 days within which to appeal SLAB’s decision to the Court of Session.

Section 25A(14) clarifies that such an appeal may be on questions of fact or law and provides that, at the conclusion of the proceedings, the court may make such order as it thinks fit.

306. Subsection (8) sets out the modifications which will apply to sections 25A(5) to (15) of the 1986 Act in relation to the register for children's legal assistance. In essence it ensures that terms relevant to the quality assurance regime for criminal legal assistance are construed as if they were references to the equivalent aspects of the quality assurance regime for children's legal assistance.

#### Section 28N – Code of practice

307. This section requires SLAB to establish a code of practice which solicitors will be required to abide by when providing children's legal assistance.
308. Subsection (3) applies section 25B(3) to (8) of the 1986 Act, which deals with the code of practice for providers of criminal legal assistance, to the code of practice which will be established under section 28N. Section 25B(3) requires SLAB to consult the Law Society of Scotland and such other persons as it considers appropriate on a draft of the code of practice. Section 25B(4) requires SLAB to send the draft code to the Secretary of State for approval. The function of the Secretary of State in this regard now rests with the Scottish Ministers. Section 25B(5) allows the Scottish Ministers to approve the draft code with or without modification. Section 25B(6) provides that the Scottish Ministers, having approved the draft code, must return it to SLAB and give SLAB instruction on when it is to come into force and the manner of its publication. Section 25B(7) requires SLAB to carry out the Scottish Ministers instructions under section 25B(6) and also obliges SLAB to make copies of the code available on request (SLAB may charge for doing so). Section 25B(8) requires SLAB to keep the code under review and to revise it as necessary. The same procedures apply to revisions of the code as apply to preparing the code for the first time.

#### Section 28P – Duty to comply with code of practice

309. This section requires registered solicitors and firms to adhere to the code of practice which is established under section 28N. Subsection (2) requires SLAB to monitor the compliance of solicitors and firms with the code of practice. Subsection (3) authorises SLAB to use its powers under sections 35A and 35B of the 1986 Act in doing so. Sections 35A and 35B were inserted into the 1986 Act by the Crime and Punishment (Scotland) Act 1997.
310. The powers conferred under section 35A of the 1986 Act include the power to require a solicitor to provide information and documents relating to the provision of children's legal assistance. Any person who fails to comply with the requirement shall be guilty of an offence and liable to a fine. The powers conferred under section 35B of the 1986 Act provide for SLAB to apply for a warrant to search premises or take possession of documents. Any person who intentionally obstructs such a warrant shall be guilty of an offence and liable to a fine.

#### Section 28Q – Non-compliance with code of practice

311. This section applies section 25D of the 1986 Act in relation to the quality assurance regime for children's legal assistance as it applies in relation to the quality assurance regime for criminal legal assistance.
312. Section 25D of the 1986 Act requires SLAB to investigate registered solicitors or firms where it suspects they are not complying with the code of practice. It authorises for that purpose use of the powers in sections 35A and 35B of the 1986 Act (discussed in relation to section 28P). Where SLAB finds a solicitor or firm has not been complying with the code of practice it may set a deadline for them to resolve the defect in their practice. If SLAB is still not satisfied as to compliance it may remove the solicitor or firm from the register and the solicitor will be required to allocate any live children's legal assistance work to another solicitor who is registered. SLAB must give reasons

for its decision to remove a solicitor or firm from the register and that decision is subject to appeal to the Court of Session, on points of fact or law, within 21 days.

**Section 28R – Further provision as to removal of name from register**

313. This section deals with situations in which a solicitor included on the register becomes connected with a firm which is not registered and, as a result, he or she is no longer connected with any registered firm. In that event, subsection (2) obliges SLAB to remove the solicitor's name from the register.
314. Subsection (3) provides for section 25D(6) to (9) of the 1986 Act to apply where a solicitor's name is removed from the register under section 28R(2) as it applies in relation to the removal of a solicitor's name from the register for criminal legal assistance. That means the solicitor will be required to transfer any children's legal assistance work to a solicitor who is registered. SLAB must give the solicitor reasons for its decision to remove his or her name from the register and the solicitor will have 21 days from the date of receiving SLAB's reasons to appeal the decision to the Court of Session.

**Section 28S – Publication of register etc.**

315. This section applies section 25F of the 1986 Act to the register to be established under section 28M as it applies in relation to the register for criminal legal assistance established under section 25A of the 1986 Act. Specifically, it requires SLAB to make available for inspection, without charge: the register of those solicitors and firms entitled to provide children's legal assistance; its decisions refusing applications for entry on the register; and its decisions to remove the names of solicitors and firms from the register. Furthermore, it requires SLAB to send a copy of the register to the Secretary of the Law Society of Scotland on an annual basis and to notify the Law Society of any changes made to the register during the course of a year.

***Section 192 – Power to make regulations about contracts for provision of children's legal aid***

316. This section provides for a new section 33B to be inserted into the 1986 Act to enable SLAB to enter into contracts with solicitors to provide children's legal assistance, meaning State funded legal advice and representation in relation to Children's Hearings and court proceedings arising from Children's Hearings. The new section confers a power by regulations, subject to the negative procedure, on the Scottish Ministers to allow the Board to enter into such contracts, and make detailed provision about the terms on which the Board may contract with solicitors.

**Part 20 – General**

**Formal communications**

***Section 193 – Formal communications***

317. This section lists the documents which are "formal communications" for the purposes of the Act. It also provides that such communications must be in writing. Subsection (3) provides that electronic communications will satisfy the requirement that formal communications be made in writing. The electronic communication must be sent by electronic means and capable of being reproduced in legible form. A formal communication sent electronically is treated as being received on the day it is sent.

**Forms**

***Section 194 – Forms***

318. This section allows the Scottish Ministers to determine the form of documents produced by virtue of the Act and how these documents will be sent. Subsection (2) provides that such documents may be sent electronically.

## **Subordinate legislation**

### ***Section 195 – Subordinate legislation***

319. This section relates to the powers of the Scottish Ministers contained in the Act to make subordinate legislation. It provides for these powers to be exercisable by statutory instrument, and provides standard powers for instruments to include ancillary provisions as the Scottish Ministers think necessary or expedient and to make different provisions for different purposes. Subordinate legislation under this Act is subject to the negative procedure unless specific contrary provision is made in particular sections of the Act (subsection (3)). Subsections (2) and (3) do not apply to an order made under section 206 (commencement orders). This prevents a commencement order, which is made without any Parliamentary procedure, from making incidental, consequential or supplementary provision.

### ***Section 196 – Negative procedure***

320. This section applies where subordinate legislation under the Act is subject to the negative resolution procedure in the Scottish Parliament. Such subordinate legislation is in the form of a statutory instrument which must be laid before the Parliament and is subject to annulment in pursuance of a resolution of parliament. Such instruments are laid as made instruments (not in draft form) and come into force (or remain in force) unless the Parliament annuls them within a period of 40 days from the day that they are laid.

### ***Section 197 – Affirmative procedure***

321. This section applies where subordinate legislation under the Act is subject to the affirmative resolution procedure in the Scottish Parliament. Such subordinate legislation is in the form of a statutory instrument which must be laid in draft before the Parliament for approval by resolution. Such instruments may only be made, and then come into force, after the Parliament has approved them.

### ***Section 198 - Super-affirmative procedure***

322. This section applies where subordinate legislation under the Act is subject to the super-affirmative resolution procedure in the Scottish Parliament – this applies to some of the powers in sections 10 and 17 only. Such subordinate legislation is in the form of a statutory instrument which must be laid in draft before the Parliament for approval by resolution. Such instruments may only be made, and then come into force, after the Parliament has approved them.

323. Subsection (3) requires that the Scottish Ministers, before laying such an instrument in draft before Parliament, must consult persons who are under 21 years of age as they consider appropriate, and such other persons as they consider appropriate. For the purposes of the consultation, Ministers must lay a copy of the proposed draft instrument before the Parliament, publish the proposed draft instrument as Ministers consider appropriate, and have regard to any representations about the proposed draft instrument that are made to them within 60 days of the date on which the copy of the proposed draft instrument is laid before the Parliament. Subsection (5) provides that in calculating the 60 day period, days when the parliament is dissolved or in recess for more than 4 days are not to be counted. Subsection (6) provides that when the draft instrument is laid before the Parliament, Ministers must lay before the Parliament an explanatory document giving details of the consultation carried out, any representations received as a result of the consultation, and the changes (if any) made to the proposed draft instrument as a result of those representations.

## **Interpretation**

### ***Section 199 – Meaning of “child”***

324. This section provides a definition of “child” for the purposes of the Act. A child means a person under 16 years of age. However this section also provides some exceptions to that general rule. Subsection (2) provides that for the purposes of referrals under section 67(2)(o) (failure to attend school), references in the Act to a child include references to a person who is school age. “School age” has the meaning given in section 31 of the Education (Scotland) Act 1980.
325. Subsections (3), (4) and (5) provide that where a person becomes 16 after section 66 of the Act applies (after the Principal Reporter has obtained information that suggests the child might need a compulsory supervision order but before the reporter has made a determination on that issue) but before a relevant event, the Act continues to apply to that person until a relevant event occurs. A relevant event is the making of a compulsory supervision order, the notification under section 68(3) that the question of whether a compulsory supervision order should be made in respect of the child will not be referred to the Children’s Hearing (the reporter has determined not to refer to the Children’s Hearing) or the discharge of the referral. Subsections (6) and (7) provide that the provisions of the Act continue to apply to persons who are subject to a compulsory supervision order on becoming 16 or when one is made in respect of that person on or after they become 16 until the compulsory supervision order is terminated (it may be continued at review under sections 138 or 139 where necessary) or the person reaches 18 years of age.
326. Subsections (8) and (9) relate to persons whose case has been remitted to the Children’s Hearings under section 49(7)(b) of the Criminal Procedure (Scotland) Act 1995 for disposal. Where the person concerned will be over the age of 16 but under 18 and not at the time of the remit subject to a compulsory supervision order, the provisions of the Act will apply to them until the hearing or sheriff discharges the referral, any resulting compulsory supervision order is terminated or the person reaches 18 years of age.

### ***Section 200 – Meaning of “relevant person”***

327. This section defines the meaning of “relevant person” in relation to a child in the Act. A relevant person means:
- a parent or guardian who has parental responsibilities or parental rights in relation to the child under Part 1 of the 1995 Act;
  - a person in whom parental responsibilities or parental rights are vested under section 11(2)(b) of the 1995 Act; a person in whom parental responsibilities or parental rights are vested under section 11(12) of the 1995 Act;
  - a parent having parental responsibility for the child under Part 1 of the Children Act 1989;
  - a person having parental responsibility for the child under other provisions of the 1989 Act or the Adoption and Children Act 2002;
  - a person in whom parental responsibilities or parental rights are vested by a permanence order under the Adoption and Children (Scotland) Act 2007; or
  - any other person specified by order made by the Scottish Ministers.
328. Any such order will be subject to affirmative procedure. Subsection (2) provides that a parent does not have parental responsibilities or rights merely by virtue of contact order or specific issues order made under section 11(2)(d) or (e) of the 1995 Act.



### ***Section 201 – Meaning of “relevant local authority”***

329. Most duties under the Act are imposed on the “relevant local authority” for the child and that term is defined in this section. The relevant local authority for the child is the local authority for the area in which the child predominantly resides or (if that criterion does not apply) the area which the child has the closest connection to. In determining the relevant local authority no account is taken of a period of residence in a residential establishment, any other period of residence, residence in any other place, or connections with an area which may be prescribed in regulations. The child’s relevant local authority may change during the child’s involvement in the Children’s Hearings system.

### ***Section 202 – Interpretation***

330. This section defines certain terms that are used in the Act.

## **General**

### ***Section 203 – Consequential amendments and repeals***

331. **Section 203(1)** introduces schedule 5 which contains minor amendments and amendments consequential on the provisions of the Act. Subsection (2) introduces schedule 6 which contains the repeal of certain enactments to the extent specified.

### ***Section 204 – Ancillary provision***

332. This section allows the Scottish Ministers, by order, to make consequential, supplementary or incidental provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of the Act. Such an order may modify any enactment including this Act itself. If the order makes textual changes to an Act it will be subject to the affirmative procedure.

### ***Section 205 – Transitional provision etc.***

333. This section enables the Scottish Ministers, by order, to make transitory, transitional or saving provision, as they consider necessary or expedient, in connection with the coming into force of any provision of the Act.

### ***Section 206 – Short title and commencement***

334. This section states the short title of the Act and provides for sections 193 to 202 and section 204 to 206 to come into force on Royal Assent, with the remaining sections to be commenced by order made by the Scottish Ministers. An order under subsection (2) may include transitional, transitory or saving provision.

### ***Schedule 1 – Children’s Hearings Scotland***

335. **Schedule 1** makes provision as regards CHS and the National Convener. It is introduced by section 3.

## **Status**

336. **Paragraph 1** relates to the status of CHS. It makes clear that CHS is not to be regarded as a servant or agent of the Crown and that CHS’s property is not to be regarded as property of the Crown. This has legal implications in relation to immunities which are applied to servants or agents of the Crown and also in relation to particular statutory provisions which relate to Crown property.

## **Membership**

337. Paragraphs 2(1) and (7) make provision for the Scottish Ministers to appoint members to CHS and allow the Scottish Ministers to re-appoint former members for a further term of office. Paragraph 2(2) provides that CHS may comprise of between 5 and 8 members. Ministers may substitute, by order (subject to negative procedure), a different minimum or maximum number of members. Paragraph 2(4) provides for a member of CHS to hold and vacate office in accordance with the terms and conditions of the member's appointment as determined by Ministers. Paragraph 2(5) provides for the appointment of members based on their individual knowledge and experience relevant to the functions of CHS and the National Convener.
338. Paragraph 2(6) provides that Ministers must satisfy themselves that potential members have no financial or other interest that would be likely to conflict with their role as a member of CHS and so prejudice their ability to carry out that role should they be appointed.

## **Persons disqualified from membership**

339. Paragraph 3 disqualifies a person from being appointed as a member of CHS if the person is a member of the Scottish Parliament, the House of Commons or a member of the European Parliament. It also disqualifies a person from continuing to hold office as a member of CHS if the person subsequently becomes a member of the Scottish Parliament, the House of Commons or a member of the European Parliament.

## **Resignation of members**

340. Paragraph 4 provides for CHS members to resign office by giving written notice to the Scottish Ministers.

## **Removal of members**

341. Paragraph 5 sets out the circumstances in which Ministers may revoke the appointment of a member of CHS and clarifies when a member will be considered insolvent, where this may apply to a termination of an appointment.

## **Remuneration, allowances etc.**

342. Paragraph 6 makes provision for the payment of remuneration, allowances, gratuities, and pensions to members and former members of CHS, and for such payments to be determined by Ministers and to be made by CHS. Ministers may determine that a person who ceases to be a member other than on the expiry of their term of office should receive compensation. Where Ministers so determine, CHS are required to make such a payment.

## **Chairing meetings**

343. Paragraph 7 deals with the office of "chairing member" and provides a duty on the Scottish Ministers to appoint a chairing member from amongst the membership of CHS.

## **The National Convener**

344. Paragraph 8 deals with the appointment of the National Convener. The Scottish Ministers are to appoint the first National Convener of CHS under section 1(2). Under paragraphs 8(1) and 8(2), subsequent appointments are to be made by CHS with the approval of the Scottish Ministers. Paragraph 8(3) provides for a duty on CHS to take reasonable steps to involve persons who are under 21 in the process of selection for appointment or re-appointment to the post of National Convener before making any such appointment or re-appointment. Paragraph 8(5) provides for the terms and conditions of appointment of the National Convener to be determined by CHS and

approved by the Scottish Ministers. Paragraph 8(6) provides for Scottish Ministers to make regulations to prescribe qualifications which must be held by the National Convener. Paragraph 8(7) provides that members of the Scottish Parliament, the House of Commons and the European Parliament are disqualified from appointment and from holding office as National Convener.

345. Paragraphs 8(8) and 8(9) entitle the National Convener to appeal against dismissal to the Scottish Ministers should the National Convener be dismissed by CHS. Paragraph 8(10) provides the Scottish Ministers with the power to make regulations as to the procedure for the making of an appeal, the effect of making an appeal, the powers of Ministers to dispose of an appeal and the effect of exercising those powers.

### **Supplementary powers of National Convener**

346. Paragraph 9 provides the National Convener with a general power to do anything which the National Convener thinks appropriate for the purposes of, or in connection with, any of the National Convener's functions. This would include anything incidental or conducive to the achievement of the National Convener's functions, such as research and publicity, contracting and asset management.

### **Delegation of National Convener's functions**

347. Paragraph 10 allows the National Convener to delegate certain of his or her functions to any other person except the Principal Reporter, SCRA or a local authority. Persons to whom functions might be delegated include employees of CHS, volunteers, or members of area support teams. Any of the National Convener's functions (other than preparing and submitting an annual report, and appointing panel members) may be delegated.
348. Paragraph 10(4) prevents the National Convener from delegating any function of providing legal and other advice to a Children's Hearing to any person employed by SCRA or a local authority. Paragraph 10(5) provides that where the National Convener delegates the function of providing legal or other advice to a Children's Hearing, that person may not also perform other functions on behalf of the National Convener. For example, a person authorised by the National Convener to provide legal advice to Children's Hearings on behalf of the National Convener, may not also be involved in the recruitment of panel members. Paragraph 10(6) provides that even where the National Convener has delegated a function under paragraph 10(1), the National Convener may still carry out that function personally. This is similar to current arrangements for the Principal Reporter and the performance of the Principal Reporter's functions.
349. Paragraph 10(7) enables the Scottish Ministers to make regulations relating to the qualifications to be held by persons carrying out functions or classes of functions delegated by the National Convener.
350. Paragraph 10(8) relates to accountability and makes clear that persons authorised to perform delegated functions must comply with any direction given by the National Convener as to the carrying out of that function. Paragraph 10(9) allows CHS to pay persons, to whom a function is delegated, such expenses and allowances determined by the Scottish Ministers.

### **Staff**

351. Paragraph 11 makes provision as to the staffing of CHS. Paragraph 11(1) provides for CHS to make appropriate staffing arrangements to ensure the proper functioning of CHS. Paragraph 11(2) provides for CHS to appoint employees and determine terms and conditions of employment. Such terms and conditions of employment will be subject to the approval of the Scottish Ministers.
352. Paragraphs 11(3) provides for CHS to pay or contribute to payments for pensions, allowances or gratuities, including compensation for loss of employment to eligible

employees. CHS may also provide and maintain payment schemes for pension, allowances or gratuities. Paragraph 11(4) provides for CHS to decide, subject to the approval of Ministers, which former employees should be eligible for these payments and the amount that may be paid or provided for.

353. Paragraph 11(5), 11(6) and 11(7) relate to reckonable service where a person who has participated in CHS's pension scheme as an employee later becomes a member of CHS, and provide for CHS to treat such members as employees for the purpose of a pension scheme. Any discretion which the pension scheme confers on CHS as to benefits payable must only be exercised with the approval of Ministers.

### **Area support teams: establishment and membership**

354. Paragraph 12 requires the National Convener to establish and maintain committees known as area support teams for designated areas which will consist of one or more local authority areas. Those constituent local authorities must consent before the National Convener establishes the area support teams. Paragraph 12(4) specifies that area support teams must comprise a person nominated by each constituent local authority, such other persons nominated by a local authority as the National Convener considers appropriate, a member of the Children's Panel who works or lives in the area of the area support team and sufficient other persons to ensure that the number of members nominated by local authorities never totals more than one-third of the total membership of that area support team. Paragraph 12(5) stipulates that an area support team cannot include the Principal Reporter, a member of the SCRA board or an employee of SCRA. Paragraph 12(6) provides for area support teams to establish sub-committees from within their own membership.

### **Transfer of members from CPACs**

355. Paragraph 13 applies when the National Convener first establishes an area support team under paragraph 12 and is a transitional provision. The National Convener must, under paragraph 13(2) notify members of existing CPACs under the 1995 Act, who have been appointed by the Scottish Ministers, that they can transfer membership from the CPAC to the area support team. Paragraph 13(3) states that this notification must state that the relevant CPAC member will become a member of the area support team unless that member notifies the National Convener that they do not wish to become a member of the area support team within 28 days of receipt of the notice of transfer. Paragraph 13(4) defines the relevant CPAC member as someone who is a member of a CPAC that falls within the area of the area support team and who was appointed to that CPAC by Scottish Ministers. Paragraph 13(5) places a duty on the National Convener to appoint relevant CPAC members to the area support team, unless that member notifies the National Convener as in paragraph 13(3). Paragraph 13(6) states that on appointment to an area support team, that person ceases to be a member of the CPAC. Paragraph 13(7) provides that an area in relation to a CPAC means the area of the local authority (or authorities) which formed the CPAC, and includes a joint advisory committee.

### **Area support teams: functions**

356. Paragraph 14(1) places a duty on area support teams to carry out the functions conferred on the National Convener by section 6.
357. Paragraph 14(2) provides for area support teams to carry out delegated functions of the National Convener, for example in relation to recruitment campaigns and the identification of training requirements. Paragraph 14(3) provides that the National Convener cannot delegate to area support teams the function of providing legal or other advice to panel members. Paragraph 14(4) places a duty on the National Convener to consult with local authorities about what functions will be carried out by an area support team for their area.

358. Paragraph 14(5) makes clear that if the National Convener delegates a function to a member of an area support team, the function must not be sub delegated to a person who is not a member of the area support team. Paragraph 14(6) allows the National Convener to also carry out a delegated function. Paragraphs 14(7) and 14(8) allow the National Convener to give directions to area support teams as to the carrying out of delegated functions after consulting with relevant local authorities, and requires area support teams to comply with any such directions.

### **Committees**

359. Paragraph 15 provides that CHS may set up committees comprising of members of CHS only or of members and non-members. Such a committee must act in accordance with directions given by CHS. CHS must pay such remuneration and allowances to non-members as CHS, with the approval of the Scottish Ministers, determines.

### **CHS's supplementary powers**

360. Paragraph 16 provides CHS with a general supplementary power to do anything for the purposes of or in connection with its functions. A non-exhaustive list of ways in which the general supplementary power may be exercised is given. This includes research, publishing, and contracting.

### **Procedure**

361. Paragraph 17 provides that CHS and area support teams may determine their own procedures and quorum (and those of any of their sub-committees).

### **Delegation of CHS's functions**

362. Paragraph 18 provides that CHS functions may be carried out by a CHS member, a committee, or an employee. CHS may continue to carry out any function that has been delegated to a CHS member, committee or employee.

### **Financial interests**

363. Paragraph 19 provides that the Scottish Ministers must satisfy themselves from time to time that members of CHS have no financial or other interest that conflicts with their role as a member of CHS. Ministers may request information from a member in relation to conflicts of interest and the member is obliged to comply with any such request.

### **Grants**

364. Paragraph 20 concerns the funding of CHS. The Scottish Ministers may determine the level of funding and make payment by grant award in keeping with terms and conditions determined by the Scottish Ministers.

### **Accounts**

365. Paragraph 21 places a duty on CHS to keep proper accounts and prepare and send an annual statement of accounts for each financial year to the Scottish Ministers, which they in turn must send to the Auditor General for Scotland for auditing. Paragraph 21(2) provides for the Scottish Ministers to direct CHS with regard to the information to be contained in the statement of accounts, the manner of presentation, and the methods and principles according to which it is to be prepared.

### **Provision of accounts and other information to Scottish Ministers**

366. Paragraph 22 provides for the Scottish Ministers to direct CHS to give them any accounts or other information in relation to CHS's property and activities or proposed



activities. CHS must comply with any direction and co-operate with the requirements of any related audit and inspection.

### **CHS's annual report**

367. [Paragraph 23](#) places a duty on CHS to prepare an annual report and submit it to the Scottish Ministers after the end of each financial year. The Scottish Ministers must, in turn, lay each report before Parliament. The annual report must include information as to how CHS has fulfilled its functions during the year along with any other information that CHS considers appropriate. The report must include a copy of the annual report submitted separately to CHS by the National Convener under paragraph 24 of schedule 1. Separate reports are required in the first instance to reflect the independence of functions between CHS and the National Convener.

### **National Convener's annual report**

368. [Paragraph 24](#) places a duty on the National Convener to prepare an annual report and submit it to CHS as soon as practicable after the end of the financial year for which it is prepared. The annual report must include information as to how the National Convener has fulfilled the National Convener's functions during the year. The National Convener may include any other information that they consider appropriate.

### **Validity of proceedings and actions**

369. [Paragraph 25](#) makes clear that the validity of proceedings of CHS remains unaffected by any irregularities associated with vacancies, disqualification or the process of appointments.

### ***Schedule 2 – The Children's Panel***

370. [Schedule 2](#) is introduced by section 4 and makes provision concerning the recruitment, appointment, tenure, training and allowances of panel members, and for the publication of a list of panel members.

### **Recruitment and tenure of panel members**

371. [Paragraph 1\(1\) to 1\(5\)](#) deals with the recruitment, appointment and re-appointment of panel members. The term of appointment is 3 years. The National Convener may re-appoint eligible panel members for consecutive terms of office. Paragraph 1(6) makes provision for the National Convener to remove panel members in certain circumstances. This can only be done with the consent of the Lord President of the Court of Session.

### **List of panel members**

372. [Paragraph 2](#) places a duty on the National Convener to publish (and make available for public inspection) a list of panel member's names, the local authority area in which they live, and the local authority area in which they work, in the interests of public accountability.

### **Training**

373. [Paragraph 3\(1\)](#) provides for the National Convener to make arrangements for the training of panel members and potential panel members. Paragraph 3(2) places a duty on the National Convener to take reasonable steps to involve people under 25 years of age, who have previously been to a Children's Hearing, in the development and delivery of training of panel members and potential panel members. Paragraph 3(3) places a duty on the National Convener, when training or making arrangements for the training of panel members, to have regard to the need to train panel members on how best to gain the child's views at a Children's Hearing. Paragraph 3(4) provides for the National Convener to make arrangements for monitoring the performance of panel members.

## **Allowances**

374. [Paragraph 4](#) gives the National Convener the power, with the approval of the Scottish Ministers, to set the level of allowances payable to panel members and potential panel members, and provides for the National Convener to make such payments.

## ***Schedule 3 – The Scottish Children's Reporter Administration***

### **Status**

375. [Schedule 3](#) is introduced by section 16. It makes provision concerning the status, governance, constitution and proceedings of SCRA and other administrative matters in relation to members and employees. Paragraph 1 makes clear that SCRA is not to be regarded as a servant or agent of the Crown and that SCRA's property is not to be regarded as property of the Crown. This has legal implications in relation to immunities which are applied to servants or agents of the Crown and also in relation to particular statutory provisions which relate to Crown property.

### **Membership**

376. Under paragraph 2(1) and (7), the Scottish Ministers may appoint new members to SCRA and may re-appoint eligible members for a further term of office. Section 205 will allow for provisions to provide for continuity of membership in the transition of this enactment.
377. [Paragraph 2\(2\)](#) states that membership of SCRA is to consist of between 5 and 8 members and paragraph 2(3) allows for Ministers to substitute, by order made by statutory instrument, different numbers of minimum or maximum members.
378. [Paragraph 2\(5\)](#) provides the Scottish Ministers may only appoint members if satisfied of the member's individual knowledge and experience relative to the functions of SCRA and of the Principal Reporter. In addition, under paragraph 2(6), Ministers must satisfy themselves that a person to be appointed has no financial or other interests that conflict with the person's role as a member of SCRA.

### **Persons disqualified from membership**

379. [Paragraph 3](#) provides that members of the Scottish Parliament, members of the House of Commons and members of the European Parliament are disqualified from appointment as members of SCRA. Paragraph 3 also disqualifies a member of SCRA from holding office if the person subsequently becomes a member of the Scottish Parliament, the House of Commons or a member of the European Parliament.

### **Resignation of members**

380. [Paragraph 4](#) provides for members to resign office by giving written notice to the Scottish Ministers.

### **Removal of members**

381. [Paragraph 5](#) sets out the circumstances in which the Scottish Ministers may revoke the appointment of a member of SCRA and clarifies when a member will be considered insolvent, where this may apply to a termination of an appointment.

### **Remuneration, allowances etc.**

382. [Paragraph 6](#) provides for the remuneration, allowances or gratuities, and pensions of members and former members of SCRA to be determined by the Scottish Ministers and paid by SCRA. Paragraphs 6(3) and 6(4) provide for the Scottish Ministers to determine any compensation arrangements for any former member of SCRA and for SCRA to make such payments.

## **Chairing meetings**

383. Paragraph 7 provides for the Scottish Ministers to appoint a chairing member from the membership of SCRA and for Ministers to determine the terms and conditions of appointment. Paragraph 7(3) provides for an adjustment of a member's appointment so that the member may continue in office until the expiry of the chairing membership.

## **The Principal Reporter**

384. Paragraphs 8 to 10 deal with the terms and conditions of appointment of the Principal Reporter and the delegation of functions of the Principal Reporter. Paragraph 8(1) provides for SCRA to appoint the Principal Reporter with the approval of the Scottish Ministers. Paragraph 8(2) requires SCRA to take reasonable steps to involve persons under 21 in the selection process for appointment to the post of Principal Reporter. Paragraph 8(3) provides for SCRA to determine the terms and conditions of the appointment of the Principal Reporter with the approval of Ministers. Paragraph 8(4) provides flexibility for Ministers to prescribe qualifications which must be held by the Principal Reporter.
385. Paragraph 8(5) provides that members of the Scottish Parliament, members of the House of Commons and members of the European Parliament are disqualified from appointment and from holding office as Principal Reporter. Paragraph 8(6) entitles the Principal Reporter to appeal against dismissal to Ministers should the Principal Reporter be dismissed by SCRA. Paragraph 8(8) enables Ministers to prescribe the procedure for the making of an appeal, the effect of making an appeal, the powers of Ministers to dispose of an appeal and the effect of exercising the appeal.

## **Supplementary powers of Principal Reporter**

386. Paragraph 9 provides the Principal Reporter with the necessary general powers that are incidental or conducive to the achievement of the Principal Reporter's functions.

## **Delegation of Principal Reporter's functions**

387. Paragraph 10 provides for the Principal Reporter to delegate the Principal Reporter's functions to authorised members of staff of SCRA. There are no restrictions on the Principal Reporter to prevent the Principal Reporter from carrying out any of the delegated functions. Paragraph 10(4) prevents the Principal Reporter from delegating any functions to a person who may be employed jointly by SCRA and a local authority without the approval of SCRA.

## **Staff**

388. Paragraphs 11(1) and 11(2) provide SCRA with the necessary powers to make appropriate staffing arrangements to assist the Principal Reporter in the performance of their functions. SCRA may appoint employees and determine terms and conditions of employment. These terms and conditions will be subject to the approval of the Scottish Ministers.
389. Paragraph 11(3) provides for SCRA to pay or contribute to payments for pensions, allowances or gratuities, including compensation for loss of employment to eligible employees. SCRA may also provide and maintain payment schemes for pensions, allowances or gratuities. Paragraph 11(4) provides for SCRA, with the approval of the Scottish Ministers to determine the eligibility of employees and former employees and the amount of payments due. Paragraph 11(5) to 11(7) relate to reckonable service where a former employee who has participated in SCRA's pension later becomes a member of SCRA and provides for members to be treated as employees for the purpose of any remuneration scheme. Any discretion as to payable benefits and eligibility must meet with the approval of the Scottish Ministers.

### **Appeals against dismissal**

390. [Paragraph 12](#) provides a right of appeal for certain employees of SCRA against dismissal. Paragraph 12 enables the Scottish Ministers to make provision by regulations about the appeal procedure, the effect of making an appeal and the powers of the Ministers to dispose of such appeals.

### **Committees**

391. [Paragraph 13](#) provides for SCRA to set up committees comprising members and non-members, to give directions to such committees and to pay such remuneration and allowances to non-members as the Scottish Ministers approve.

### **SCRA's supplementary powers**

392. [Paragraph 14](#) provides SCRA with the necessary general powers that are incidental or conducive to the achievement of SCRA's functions including the ability to conduct research and publish material relating to its functions, to enter into contracts and to manage assets.

### **Procedure**

393. [Paragraph 15](#) provides for SCRA to determine its own procedures.

### **Delegation of SCRA's functions**

394. Under paragraph 16, SCRA may authorise any person, employee, member or any of its committees to exercise its functions. Any delegation does not affect the entitlement of SCRA to exercise any of its functions.

### **Financial interests**

395. [Paragraph 17](#) requires the Scottish Ministers to satisfy themselves that members of SCRA have no financial or other interest that is likely to conflict with the member's role as a member of SCRA. Ministers may request information from a member in relation to conflicts of interest and the member is obliged to comply with any such request.

### **Grants**

389. [Paragraph 18](#) concerns funding of SCRA. The Scottish Ministers may determine the level of funding and make payment by grant award with such terms and conditions as are determined by the Ministers.

### **Accounts**

396. [Paragraph 19](#) concerns the duties on SCRA to keep accounts and accounting records and to prepare financial statements. It includes specific details about the power of the Scottish Ministers to make directions about the form, content and preparation of accounts.

### **Provision of accounts and other information to Scottish Ministers**

397. [Paragraph 20](#) is based on section 136(1) of the 1994 Act and provides for the Scottish Ministers to direct SCRA to give them accounts or other information in relation to SCRA's property and activities or proposed activities. SCRA must comply with any direction and co-operate with the requirements of any related audit and inspection.

### **SCRA's annual report**

398. [Paragraph 21](#) places a duty on SCRA to prepare an annual report and submit it to the Scottish Ministers at the end of each financial year. The Scottish Ministers must, in

turn, lay the report before Parliament. The annual report must include information as to how SCRA has fulfilled its functions during the year along with any other information that SCRA considers appropriate. The report must include a copy of the annual report submitted separately to SCRA by the Principal Reporter under paragraph 22. Separate reports are required in the first instance to preserve the independence of functions between SCRA and the Principal Reporter.

### **Principal Reporter's annual report**

399. [Paragraph 22](#) places a duty on the Principal Reporter to prepare an annual report each year on the carrying out of their statutory functions, along with any other information that they consider appropriate. The report must be submitted to SCRA as soon as practicable after the end of the financial year for which it is prepared.

### **Validity of proceedings and actions**

400. [Paragraph 23](#) makes clear that the validity of proceedings or actions of SCRA and any of its committees remains unaffected by any irregularities associated with vacancies, disqualification of members or the process of appointments.

### ***Schedule 4 – Transfer of staff and property to CHS***

#### **Interpretation**

401. [Schedule 4](#) is introduced by section 24 and makes provision about the transfer of staff, property, rights and liabilities to CHS.

#### **Staff transfer orders**

402. [Paragraphs 2 to 4](#) set out the arrangements for the transfer to CHS of staff working in SCRA and local authorities whose functions are to be taken on by CHS. [Paragraph 2\(1\)](#) and [2\(2\)](#) enable the Scottish Ministers to make a “staff transfer order” to effect this transfer. Where a staff transfer order makes provision for the transfer of SCRA employees to CHS the order may require SCRA and CHS acting jointly to make a scheme in relation to the transfer of those staff. Where a staff transfer order makes provision for the transfer of local authority employees to CHS, the order may require the local authority and CHS acting jointly to make a scheme in relation to the transfer of those staff. If SCRA and CHS or the local authority and CHS are unable to comply with the requirement to make a staff transfer scheme, [paragraph 2\(4\)](#) provides for Ministers to create the scheme.

#### **Schemes for transfer of staff: consultation**

403. [Paragraph 3\(2\)](#) requires SCRA to consult their employees, the Principal Reporter and trade union representatives about the content of a staff transfer scheme which SCRA would be required to make under a staff transfer order. Similarly, [paragraph 3\(5\)](#) requires local authorities to consult their employees and trade union representatives about the content of a staff transfer scheme which the local authority is required to make under a staff transfer order.

#### **Effect on existing contracts of employment**

404. [Paragraph 4](#) makes a number of provisions concerning employees of SCRA or local authorities who are subject to a staff transfer order. [Paragraphs 4\(2\)](#) to [4\(4\)](#) establish that contract rights and obligations transfer from the former employer to CHS on the transfer day. [Paragraph 4\(5\)](#) provides that employed staff may object in advance to their contract being transferred to CHS, in which case their contract is terminated at the end of the day before the intended transfer day. This termination will not be treated as dismissal. [Paragraph 4\(7\)](#) provides that an employee may terminate their contract of



employment by virtue of the staff transfer if they can show that the change of employer was both significant and detrimental.

### **Transfer of property etc. to CHS**

405. **Paragraph 5** makes provision for the Scottish Ministers to make a transfer scheme in respect of the transfer of property, rights, liabilities and obligations from SCRA, a local authority or the Scottish Ministers to CHS. Before making a transfer scheme, Ministers must consult with CHS and, if their property, rights, liabilities or obligations are to be transferred, Ministers must also consult with SCRA, the local authority or any other person with an interest in the property, rights, liabilities or obligations.

### **Schedule 5 – Minor and consequential amendments**

406. **Schedule 5** is introduced by section 203(1) and makes consequential amendments to certain enactments. Power to make further consequential amendment is provided by sections 195 and 204.

### **Legal Aid (Scotland) Act 1986 (c.47)**

407. **Paragraph (1)** makes provision relating to children's legal aid.

### **Children (Scotland) Act 1995 (c.36)**

408. **Paragraph (2)** provides for amendments to sections of the Children (Scotland) Act 1995 which remain in force after the commencement of this Act.

### **Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)**

409. **Paragraph 3** makes consequential amendments to the Antisocial Behaviour etc. (Scotland) Act 2004. These amendments provide that the sheriff must provide a "section 12 statement" setting out which ground for referral the sheriff considers applies in relation to the child, why the ground applies and any other information about the child that may be relevant.

### **Schedule 6 – Repeals**

410. **Schedule 6** is introduced by section 203(2) and repeals provisions of the following enactments:

Rehabilitation of Offenders Act 1974

Legal Aid (Scotland) Act 1986

Tribunals and Inquiries Act 1992

Local Government etc (Scotland) Act 1994

Children (Scotland) Act 1995

Vulnerable Witnesses (Scotland) Act 2004

Antisocial Behaviour etc. (Scotland) Act 2004

Legal Profession and Legal Aid (Scotland) Act 2007

411. Power to make further repeals is provided by sections 195 and 204.