

CORONAVIRUS (SCOTLAND) ACT 2020

EXPLANATORY NOTES

DETAIL ABOUT PROVISIONS

Schedule 3 - Children and vulnerable adults

Part 1 - Children

Requirements as to members of children's hearings

44. Section 5 of the Children's Hearings (Scotland) Act 2011 ("the 2011 Act") provides that a children's hearing must consist of three members of the Children's Panel. Section 6 provides that the National Convener of Children's Hearings Scotland must ensure that the children's hearing includes both male and female members. Section 79 requires a pre-hearing panel to consist of three members.
45. Paragraph 1(2) of schedule 3 modifies section 5 of the 2011 Act to provide that a children's hearing can consist of fewer than three members where it is not practicable for a hearing to consist of three members.
46. Paragraph 1(3) modifies section 6 of the 2011 to provide that the duty to include both male and female members applies so far as practicable.
47. Paragraph 1(4) modifies section 79 of the 2011 Act to provide that a pre-hearing panel may consist of fewer than three members where it is not practicable for the panel to consist of three members.
48. Subparagraphs (5) to (9) of paragraph 1 make consequential modifications to references in other legislation to panel members.

Child assessment and child protection orders

49. Section 35 of the 2011 Act provides for the local authority to apply to the sheriff for a child assessment order authorising an assessment to be made of a child's health or development or of the way in which the child has been or is being treated or neglected. Section 35(5) provides that the period during which the order has effect must begin no later than 24 hours after the order is granted, and must not exceed three days.
50. Paragraph 2(2) of schedule 3 of the Act modifies section 35(5) of the 2011 Act so that the period during which the order has effect must begin no later than 48 hours after the order is granted, and must not exceed 5 days.
51. Under section 37 of the 2011 Act, a person can apply to the sheriff for a child protection order ("CPO") to authorise the taking of certain steps in order to protect a child, such as the taking of a child to a place of safety or preventing the removal of a child from a place. Where a CPO is in force in respect of a child authorising such steps, sections 45 and 46 of the 2011 Act provide for the review of such a CPO by a children's hearing which must be held on the second working day after the day on which the child is taken to the place of safety or, where the CPO prevents removal of a child, the day on which

the CPO is made (referred to as a “second working day hearing”). Section 47 of the 2011 Act enables the children’s hearing to continue, vary or terminate the CPO.

52. Section 48 of the 2011 Act provides that certain persons can make an application to the sheriff to vary or terminate a CPO before commencement of the second working day hearing or, if that hearing has continued the CPO, within 2 working days of the hearing. The sheriff must then determine the application in accordance with section 51.
53. Although under section 53 of the 2011 Act, the Principal Reporter has the power to terminate or vary a CPO, subsection (4) provides that this power does not apply if a children’s hearing arranged under section 45 or 46 has commenced or proceedings before a sheriff under section 48 have commenced.
54. Section 54 provides that a CPO will cease to have effect after a maximum period of 8 working days from the day on which the child is taken to a place of safety or, where the CPO prevents removal of a child, from the day on which the CPO is made. Commencement of a children’s hearing arranged under section 69 or the Principal Reporter giving notice of a decision to not proceed to a children’s hearing will result in earlier termination of the CPO.
55. Subparagraphs (3) to (5) of paragraph 2 respectively repeal (temporarily) sections 45 to 47 of the 2011 Act and the requirement to hold a second working day hearing and modify the timescales for an application for its variation or termination under section 48 and its determination by the sheriff under section 51. Paragraph 2(6) makes a consequential modification to section 53(4) of the 2011 Act. Paragraph 2(7) provides that these modifications of the 2011 Act do not apply in relation to a CPO made before these provisions come into force.

Maximum period for which a compulsory supervision order has effect

56. Under section 83(1) of the 2011 Act, a compulsory supervision order is an order authorising certain measures in relation to a child (subsection (2)) which must be implemented by a specified local authority. Section 83(7) of the 2011 Act provides that a compulsory supervision order ceases to have effect, if it has not been continued, the day one year after the day on which the order is made, or the day on which the child attains the age of 18 years (if earlier). Where the order has previously been continued, it expires at the end of the period for which the order was last continued, or on the day on which the child turns 18 (if earlier). Section 133 requires the Principal Reporter to initiate a review of a compulsory supervision order where the order will expire within 3 months and would not otherwise be reviewed before it expires.
57. This means a child’s order could lapse if an order was not able to be reviewed and continued within the period referred to in section 83(7).
58. Paragraph 3(2) of schedule 3 modifies section 83 of the 2011 Act to provide that no compulsory supervision order shall lapse if its original end date has passed, except where it has not otherwise been reviewed and continued within 6 months of its expiry date.
59. This means that if an order has not been continued within its current lifespan, the order will not expire, unless the child has attained the age of 18 years.
60. Paragraph 3(3) modifies section 133 of the 2011 Act to provide that the Principal Reporter must initiate a hearing as soon as practicable.
61. Paragraph 3(4) provides that the modifications in paragraphs 3(2) and (3) apply to a compulsory supervision order (as defined in paragraph 3(5)) which was in effect the day before paragraph 3 comes into force or any such order which is made on or after that date.

Maximum period for which interim compulsory supervision order or interim variation of compulsory supervision order has effect

62. Sections 86(3) and 140(4) of the 2011 Act stipulate the maximum period for which respectively an interim compulsory supervision order or an interim variation of a compulsory supervision order has effect, whether such an order is made by a children's hearings or by a sheriff. In relation to both types of order, this is currently for a maximum period of 22 days beginning on the day on which the order is made.
63. This means that a children's hearing or court can issue an interim order for 22 days which will lapse if it is not renewed within that timescale (although certain other events, such as the next children's hearing arranged in relation to the child taking place, can cause the interim order or variation to cease to have effect earlier than this).
64. Subparagraphs (2) and (3) of paragraph 4 respectively modify sections 86(3) and 140(4) of the 2011 Act to provide that the maximum period for which an interim compulsory supervision order or an interim variation of compulsory supervision orders has effect is:
- where the order is made by a children's hearings, the period of 44 days, or
 - where the order is made by a sheriff, such other period as the sheriff may specify.
65. Paragraph 4(4) provides that the modifications in paragraphs 4(2) and (3) do not apply in relation to interim compulsory supervision orders or interim variations of such orders (as those terms are defined in paragraph 4(5) by reference to the 2011 Act) which are made, extended or varied before those modifications came into force but those modifications do apply in relation to interim compulsory supervision orders made before that day but extended or varied on or after that day.

Period within which children's hearing must be heard in certain cases

66. Section 109(7) of the 2011 Act provides that where a sheriff makes an interim compulsory supervision order under section 109(3) or (5), specifying that the child is to reside at a place of safety, a children's hearing must be arranged to take place no later than the third day after the day on which the child begins to reside at the place of safety.
67. Section 143 of the 2011 Act provides that where a child is residing at a particular place, because of a requirement for them to do so in a compulsory supervision order, the chief social work officer may transfer the child to another place if it is in the interests of the child or another child in the place that the child is being moved out of. Section 137(3) of the 2011 Act provides that where a child is transferred in this way, a children's hearing must be arranged to take place before the expiry of 3 working days, beginning with the day on which the child was transferred.
68. Paragraph 5(2) of schedule 3 of the Act modifies the time limit in section 109(7) of the 2011 Act to 7 days, instead of 3 days.
69. Paragraph 5(3) modifies the time limit in section 137(3) of the 2011 Act to 7 working days, instead of 3 working days.
70. Paragraph 5(4) provides that the modifications in paragraph 5(2) and (3) do not apply in relation to an interim compulsory supervision order (as defined in paragraph 5(5) by reference to the 2011 Act) made the day before those modifications come into force or in relation to the transfer of a child before that date.

Children in secure accommodation

71. Regulation 5(1) of the Secure Accommodation (Scotland) Regulations 2013 ("the 2013 Regulations") provides that the maximum time for which a child may be kept in secure accommodation without the authority of the children's hearing or the sheriff is an aggregate of 72 hours (whether or not consecutive) in any period of 28 consecutive days.

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72. Regulations 7(5) and 8(6) of the 2013 Regulations provide a timescale of 72 hours for the Principal Reporter to arrange a children's hearing where a child has been placed in secure accommodation.
73. Paragraph 6(2) of schedule 3 modifies Regulation 5(1) of the 2013 Regulations to provide that the maximum time for which a child may be kept in secure accommodation without the authority of the children's hearing or the sheriff is an aggregate of 96 hours (whether or not consecutive) in any period of 28 consecutive day.
74. Subparagraphs (3) and (4) of paragraph 6 respectively modify Regulations 7 and 8 of the 2013 Regulations to provide that where the Principal Reporter considers that it would not be reasonably practicable to arrange a children's hearing within 72 hours, the Principal Reporter will have an additional 24 hours to arrange such a hearing.
75. Paragraph 6(5) provides that the modifications made in paragraphs 6(2) to (4) do not apply in relation to a child placed in secure accommodation before the day on which these modifications come into force.

Modification of certain time limits for making and determination of appeals etc.

76. There are specified time limits for the lodging of court applications and for the making of and disposal of appeals under the 2011 Act and associated enactments.
 - The time limit for making an appeal under section 154(5) of the 2011 Act is 21 days.
 - The time limit for making an appeal under section 160(6)(a) of the 2011 Act is 7 days.
 - The time limit for making an appeal under section 161(6)(a) of the 2011 Act is 21 days.
 - The time limit for making an appeal under section 163(8), 164(4) and 165(4) of the 2011 Act is 28 days.
 - The time limit for disposal of appeals under sections 157(2), 160(6)(b) and 161(6)(b) of the 2011 Act is 3 days.
 - The time limit for making an application under section 93(2)(a) or 94(2)(a) of the 2011 Act to the sheriff under rule 3.45(1) of the Act of Sederunt (Child Care and Maintenance Rules) 1997 is 7 days.
 - The time limit for disposal of appeals under regulation 11A(2)(b) of the Secure Accommodation (Scotland) Regulations 2013 is 3 days.
 - The time limit for making an appeal against a decision of the chief social worker under regulation 11(2)(a) of the Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013 is 21 days.
 - The time limit for determining an appeal against a decision of the chief social worker under regulation 11(2)(b) of the Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013 is 3 days.
77. Paragraph 7 of schedule 3 modifies the time limits for the making, disposal or determination of appeals or the making or lodging of applications to extend them as follows:
 - In relation to making an appeal under section 154(5) of the 2011 Act, 42 days.
 - In relation to making an appeal under section 160(6)(a) of the 2011 Act, 21 days.
 - In relation to making an appeal under section 161(6)(a) of the 2011 Act, 42 days.

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- In relation to making an appeal under section 163(8), 164(4) and 165(4) of the 2011 Act, 56 days.
 - In relation to disposal of appeals under sections 157(2), 160(6)(b) and 161(6)(b) of the 2011 Act, 7 days.
 - In relation to lodging an application under section 93(2)(a) or 94(2)(a) of the 2011 Act is 14 days.
 - In relation to the disposal of appeals under regulation 11A(2)(b) of the Secure Accommodation (Scotland) Regulations 2013, 7 days.
 - In relation to making an appeal against a decision of the chief social worker under regulation 11(2)(a) of the Children’s Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013, 42 days.
 - In relation to determining an appeal against a decision of the chief social worker under regulation 11(2)(b) of the Children’s Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013, 7 days.
78. Paragraph 7(7) provides that the above modifications do not apply in relation to appeals against decisions or determinations made before the day on which paragraph 7 comes into force.

Attendance at children’s hearings etc.

79. Rule 19 of the Children’s Hearings (Scotland) Act 2011 (Rules of Procedure in Children’s Hearings) Rules 2013 (“the 2013 Rules”) currently makes provision for the remote attendance of a child or relevant person at a pre-hearing panel or a children’s hearing.
80. Paragraph 8 of schedule 3 modifies rule 19 of the 2013 Rules to facilitate the remote attendance of other persons who have right to attend a pre-hearing panel or a children’s panel by virtue of section 78(1) of the 2011 Act.

Authentication of children’s hearings documents

81. Rule 98(1) of the Children’s Hearings (Scotland) Act 2011 (Rules of Procedure in Children’s Hearings) Rules 2013 (“the 2013 Rules”) states that any order, warrant to secure the attendance of a child, notice, report, record or other writing required to be made, granted, given or kept by the children’s hearing or pre-hearing panel or chairing member of that hearing under or by virtue of those Rules is sufficiently authenticated if it is signed by the chairing member of the relevant children’s hearing or pre-hearing panel.
82. Paragraph 9 of schedule 3 modifies rule 98(1) of the 2013 Rules to also enable the Principal Reporter to authenticate documents as mentioned in that rule.

Looked after children

83. The Looked After Children (Scotland) Regulations 2009 (“the 2009 Regulations”) make provision for the placing of children with kinship carers and with foster carers. Paragraph 10 of schedule 3 makes a number of modifications to the 2009 Regulations.
84. Subparagraphs (1) to (5) make modifications to the 2009 Regulations to allow local authorities to place more than the current maximum of three children with a foster carer, and to allow a foster carer to look after more children than their current approval allows.

85. Regulation 36(1) of the 2009 Regulations provides that a child can be placed, in an emergency, with a kinship carer or a foster carer for a period not exceeding three working days. Subparagraph (6) modifies the time limit from three working days, to five working days.
86. Regulation 38 of the 2009 Regulations makes provision for when an emergency placement should be reviewed by a local authority. Subparagraph (7)(a) modifies regulation 38(2) so that the local authority must review the child's case within 5 working days, instead of 3 working days, to determine whether the placement continues to be in the best interests of the child. Subparagraph (7)(b) also inserts a new regulation 38(3A) into the 2009 Regulations which allows a local authority not to carry out such a review where the chief social work officer is satisfied that placement is in the best interests of the child, placement of the child with that carer is in the best interests of the child and it is not reasonably practicable for the authority to carry out the review within that period. It also inserts a new regulation 38(3B) which provides that where a local authority has not complied with the duty to review the placement within 5 working days, as a result of the chief social work officer being so satisfied, it must still carry out a review as soon as reasonably practicable.
87. Regulation 39 of the 2009 Regulations allows a local authority to extend placements in certain circumstances for a period not exceeding 12 weeks and with a requirement to review before the expiry of six weeks. Subparagraph (8) modifies this to a period not exceeding 24 weeks, with a requirement to review before the expiry of 12 weeks.
88. Regulation 45 of the 2009 Regulations makes provision for review where a child has been placed in kinship care under regulation 11. Subparagraph (9) modifies this so that the first review must be carried out within 3 months of the placement, instead of six weeks, and so that subsequent reviews must then be carried out within six months of the date of the previous review.
89. Subparagraph (10) makes transitional provision that the changes made by subparagraphs (6), (7) and (8) do not apply to a child who has been placed under regulation 36 of the 2009 Regulations before the day on which those subparagraphs come into force. It also provides that subparagraph (9) does not apply to a child who has been placed under regulation 11 of the 2009 Regulations before the day on which that subparagraph comes into force.

Part 2 – Vulnerable adults

Care of adults with incapacity

90. Subparagraph (1) of paragraph 11 of schedule 3 contains modifications of section 13ZA of the Social Work (Scotland) Act 1968 (“the 1968 Act”). These are primarily aimed at permitting local authorities to provide services more swiftly to incapacitated persons.
91. When local authorities are carrying out their functions under section 13ZA they are obliged to follow the principles in section 1 of the Adults with Incapacity (Scotland) Act 2000 (“the 2000 Act”). Subparagraph (1)(a) limits the application of the principles to those set out in subsections (2) and (3) of section 1 of the 2000 Act. It removes the requirement for the local authority to apply the principles in section 1(4) of the 2000 Act, which are to take into account the present and past wishes and feelings of the adult and the views of other interested parties described in the subsection.
92. Subparagraph (1)(b) disapplies section 13ZA(4) of the 1968 Act. This therefore allows local authorities to take steps to provide a community care service to an incapacitated adult despite them having a guardian, welfare attorney or an intervener with powers relating to the proposed steps, or there being an application in process in relation to an intervention order or a guardianship order under the 2000 Act.

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93. Subparagraph (2) deals with modifications to section 58A of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”). Section 58A pertains to guardianship orders under the 1995 Act. Section 58A(5) provides that such orders are generally to be for a period of 3 years or such other period as the court determines, which may be indefinitely. Subparagraph (2) has the effect of ‘stopping the clock’ on the duration of the orders, which are time limited, whilst this subparagraph is in force. However whilst the ‘clock is stopped’ the guardianship order will continue to have effect. This does not affect any other ground which would cause the guardianship order to cease to have effect.
94. Subparagraph (3)(a) deals with section 47 certificates which authorise treatment for incapacitated adults under the 2000 Act. Section 47 certificates are granted to permit treatment for a limited period of time. The provisions in subparagraph (3)(a) have the effect of ‘stopping the clock running’ on the period of time the authority is granted for in the certificate, whilst the provisions in this subparagraph are in force. However whilst the ‘clock is stopped’ the certificate and the authority therein will continue to have effect. Nothing in this subparagraph shall affect any other ground which would cause the certificate to cease to have effect e.g. revocation.
95. Subparagraph (3)(b) makes modifications to section 58 of the 2000 Act. Section 58 concerns the disposal of an application for guardianship. Section 58(4) provides that guardianship orders will generally be for a period of 3 years or such other period (including an indefinite period) as the court determines. If the guardianship order is for a limited time then subparagraph (3)(b) will have the effect of ‘stopping the clock running’ on the period of time the guardian has been appointed for whilst these provisions are in force. Whilst the ‘clock is stopped’ the guardianship order will continue to have effect. This does not affect any other ground which would cause the guardianship order to cease to have effect.
96. Subparagraph (3)(c) modifies section 60 of the 2000 Act. Section 60 pertains to the renewal of guardianship orders. Section 60(4)(b) permits a sheriff to continue an existing guardianship order for 5 years or such period as the sheriff determines. Subparagraph 3(c) has the effect of ‘stopping the clock running’ on the period of renewal of the guardian’s appointment whilst these provisions are in force. This shall not apply where the order has been continued indefinitely. Whilst the ‘clock is stopped’ the guardianship order will continue to have effect. This does not affect any other ground which would cause the guardianship order to cease to have effect.