

CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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.