

CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9 – Children's Hearing

Key definitions

Section 83 – Meaning of “compulsory supervision order”

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

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

Section 84 – Meaning of “movement restriction condition”

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

Section 85 – Meaning of “secure accommodation authorisation”

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

Section 86 – Meaning of “interim compulsory supervision order”

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

Section 87 – Meaning of “medical examination order”

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

Section 88 – Meaning of “warrant to secure attendance”

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

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.