



Children (Scotland) Act 1995

1995 CHAPTER 36

PART II

PROMOTION OF CHILDREN'S WELFARE BY LOCAL AUTHORITIES AND BY CHILDREN'S HEARINGS ETC.

CHAPTER 2

CHILDREN'S HEARINGS

Constitution of children's hearings

39 Formation of children's panel and children's hearings

- (1) For every local government area there shall be a children's panel for the purposes of this Act, and any other enactment conferring powers on a children's hearing (or on such a panel).
- (2) Schedule 1 to this Act shall have effect with respect to the recruitment, appointment, training and expenses of members of a children's panel and the establishment of Children's Panel Advisory Committees and joint advisory committees.
- (3) Sittings of members of the children's panel (to be known as "children's hearings") shall be constituted from the panel in accordance with subsection (5) below.
- (4) A children's hearing shall be constituted for the performance of the functions given to such a hearing by or by virtue of—
 - (a) this Act; or
 - (b) any other enactment conferring powers on a children's hearing.
- (5) A children's hearing shall consist of three members, one of whom shall act as chairman; and shall not consist solely of male, or solely of female, members.

Qualifications, employment and duties of reporters

40 Qualification and employment of reporters

- (1) The qualifications of a reporter shall be such as the Secretary of State may prescribe.
- (2) A reporter shall not, without the consent of the Scottish Children’s Reporter Administration, be employed by a local authority.
- (3) The Secretary of State may make regulations in relation to the functions of any reporter under this Act and the Criminal Procedure (Scotland) Act 1975.
- (4) The Secretary of State and the Lord Advocate may—
 - (a) by regulations empower a reporter, whether or not he is an advocate or solicitor, to conduct before a sheriff any proceedings which under this Chapter or Chapter 3 of this Part of this Act are heard by the sheriff;
 - (b) prescribe such requirements as they think fit as to qualifications, training or experience necessary for a reporter to be so empowered.
- (5) In this section, “reporter” means—
 - (a) the Principal Reporter; or
 - (b) any officer of the Scottish Children’s Reporter Administration to whom there is delegated, under section 131(1) of the Local Government etc. (Scotland) Act 1994, any of the functions which the Principal Reporter has under this or any other enactment.

Safeguards for children

41 Safeguarding child’s interests in proceedings

- (1) Subject to subsection (2) below, in any proceedings under this Chapter or Chapter 3 of this Part of this Act either at a children’s hearing or before the sheriff, the hearing or, as the case may be, the sheriff—
 - (a) shall consider if it is necessary to appoint a person to safeguard the interests of the child in the proceedings; and
 - (b) if they, or he, so consider, shall make such an appointment, on such terms and conditions as appear appropriate.
- (2) Subsection (1) above shall not apply in relation to proceedings under section 57 of this Act.
- (3) Where a children’s hearing make an appointment under subsection (1)(b) above, they shall state the reasons for their decision to make that appointment.
- (4) The expenses of a person appointed under subsection (1) above shall—
 - (a) in so far as reasonably incurred by him in safeguarding the interests of the child in the proceedings, and
 - (b) except in so far as otherwise defrayed in terms of regulations made under section 101 of this Act,
 be borne by the local authority—
 - (i) for whose area the children’s panel from which the relevant children’s hearing has been constituted is formed;

- (ii) where there is no relevant children’s hearing, within whose area the child resides.
- (5) For the purposes of subsection (4) above, “relevant children’s hearing” means, in the case of proceedings—
- (a) at before a children’s hearing, that hearing;
 - (b) under section 68 of this Act, the children’s hearing who have directed the application;
 - (c) on an appeal under section 51 of this Act, the children’s hearing whose decision is being appealed against.

Conduct of proceedings at and in connection with children’s hearing

42 Power of Secretary of State to make rules governing procedure at children’s hearing etc

- (1) Subject to the following provisions of this Act, the Secretary of State may make rules for constituting and arranging children’s hearings and other meetings of members of the children’s panel and for regulating their procedure.
- (2) Without prejudice to the generality of subsection (1) above, rules under that subsection may make provision with respect to—
- (a) the conduct of, and matters which shall or may be determined by, a business meeting arranged under section 64 of this Act;
 - (b) notification of the time and place of a children’s hearing to the child and any relevant person in relation to the child and to such other persons as may be prescribed;
 - (c) how the grounds for referring the case to a children’s hearing under section 65(1) of this Act are to be stated, and the right of the child and any such relevant person to dispute those grounds;
 - (d) the making available by the Principal Reporter, subject to such conditions as may be specified in the rules, of reports or information received by him to—
 - (i) members of the children’s hearing;
 - (ii) the child concerned;
 - (iii) any relevant person; and
 - (iv) any other person or class of persons so specified;
 - (e) the procedure in relation to the disposal of matters arising under section 41(1) of this Act;
 - (f) the functions of any person appointed by a children’s hearing under section 41(1) of this Act and any right of that person to information relating to the proceedings in question;
 - (g) the recording in writing of any statement given under section 41(3) of this Act;
 - (h) the right to appeal to the sheriff under section 51(1)(a) of this Act against a decision of the children’s hearing and notification to such persons as may be prescribed of the proceedings before him;
 - (i) the right of the child and of any such relevant person to be represented at a children’s hearing;
 - (j) the entitlement of the child, of any such relevant person and of any person who acts as the representative of the child or of any such relevant person to the refund of such expenses, incurred by the child or as the case may be the

person or representative, as may be prescribed in connection with a children’s hearing and with any proceedings arising from the hearing;

- (k) persons whose presence shall be permitted at a children’s hearing.

43 Privacy of proceedings at and right to attend children’s hearing

- (1) Subject to subsection (3) below, a children’s hearing shall be conducted in private, and, subject to any rules made under section 42 of this Act, no person other than a person whose presence is necessary for the proper consideration of the case which is being heard, or whose presence is permitted by the chairman, shall be present.
- (2) The chairman shall take all reasonable steps to ensure that the number of persons present at a children’s hearing at any one time is kept to a minimum.
- (3) The following persons have the right to attend a children’s hearing—
 - (a) a member of the Council on Tribunals, or of the Scottish Committee of that Council, in his capacity as such; and
 - (b) subject to subsection (4) below, a *bona fide* representative of a newspaper or news agency.
- (4) A children’s hearing may exclude a person described in subsection (3)(b) above from any part or parts of the hearing where, and for so long as, they are satisfied that—
 - (a) it is necessary to do so, in the interests of the child, in order to obtain the child’s views in relation to the case before the hearing; or
 - (b) the presence of that person is causing, or is likely to cause, significant distress to the child.
- (5) Where a children’s hearing have exercised the power conferred by subsection (4) above to exclude a person, the chairman may, after that exclusion has ended, explain to the person the substance of what has taken place in his absence.

44 Prohibition of publication of proceedings at children’s hearing

- (1) No person shall publish any matter in respect of proceedings at a children’s hearing, or before a sheriff on an application under section 57, section 60(7), section 65(6) or (8), section 76(1) or section 85(1) of this Act, or on any appeal under this Part of this Act, which is intended to, or is likely to, identify—
 - (a) any child concerned in the proceedings or appeal; or
 - (b) an address or school as being that of any such child.
- (2) Any person who contravenes subsection (1) above shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale in respect of each such contravention.
- (3) It shall be a defence in proceedings for an offence under this section for the accused to prove that he did not know, and had no reason to suspect, that the published matter was intended, or was likely, to identify the child or, as the case may be, the address or school.
- (4) In this section “to publish” includes, without prejudice to the generality of that expression,—
 - (a) to publish matter in a programme service, as defined by section 201 of the Broadcasting Act 1990 (definition of programme service); and

- (b) to cause matter to be published.
- (5) The requirements of subsection (1) above may, in the interests of justice, be dispensed with by—
- (a) the sheriff in any proceedings before him;
 - (b) the Court of Session in any appeal under section 51(11) of this Act; or
 - (c) the Secretary of State in relation to any proceedings at a children’s hearing,
- to such extent as the sheriff, the Court or the Secretary of State as the case may be considers appropriate.

45 Attendance of child and relevant person at children’s hearing

- (1) Where a child has been notified in accordance with rules made under subsection (1) of section 42 of this Act by virtue of subsection (2)(b) of that section that his case has been referred to a children’s hearing, he shall—
- (a) have the right to attend at all stages of the hearing; and
 - (b) subject to subsection (2) below, be under an obligation to attend those stages in accordance with the notice.
- (2) Without prejudice to subsection (1)(a) above and section 65(4) of this Act, where a children’s hearing are satisfied—
- (a) in a case concerned with an offence mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1975, that the attendance of the child is not necessary for the just hearing of that case; or
 - (b) in any case, that it would be detrimental to the interests of the child for him to be present at the hearing of his case,
- they may release the child from the obligation imposed by subsection (1)(b) above.
- (3) Subject to subsection (2) above, the Principal Reporter shall be responsible for securing the attendance of the child at the hearing of his case by a children’s hearing (and at any subsequent hearing to which the case is continued under section 69(1)(a) of this Act).
- (4) On the application of the Principal Reporter, a children’s hearing, if satisfied on cause shown that it is necessary for them to do so, may issue, for the purposes of subsection (3) above, a warrant under this subsection to find the child, to keep him in a place of safety and to bring him before a children’s hearing.
- (5) Where a child has failed to attend a children’s hearing in accordance with such notice as is mentioned in subsection (1) above, they may, either on the application of the Principal Reporter or of their own motion, issue a warrant under this subsection, which shall have the same effect as a warrant under subsection (4) above.
- (6) A child who has been taken to a place of safety under a warrant granted under this section shall not be kept there after whichever is the earlier of—
- (a) the expiry of seven days beginning on the day he was first so taken there; or
 - (b) the day on which a children’s hearing first sit to consider his case in accordance with subsection (7) below.
- (7) Where a child has been found in pursuance of a warrant under this section and he cannot immediately be brought before a children’s hearing, the Principal Reporter shall, wherever practicable, arrange a children’s hearing to sit on the first working day after the child was so found.

- (8) Subject to section 46 of this Act, a person who is a relevant person as respects a child shall, where a children’s hearing are considering the case of the child—
- (a) have the right to attend at all stages of the hearing; and
 - (b) be obliged to attend at all stages of the hearing unless the hearing are satisfied that it would be unreasonable to require his attendance or that his attendance is unnecessary for the proper consideration of the case.
- (9) Any person who fails to attend a hearing which, under subsection (8)(b) above, he is obliged to attend shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

46 Power to exclude relevant person from children’s hearing

- (1) Where a children’s hearing are considering the case of a child in respect of whom a person is a relevant person, they may exclude that person, or that person and any representative of his, or any such representative, from any part or parts of the hearing for so long as is necessary in the interests of the child, where they are satisfied that—
- (a) they must do so in order to obtain the views of the child in relation to the case before the hearing; or
 - (b) the presence of the person or persons in question is causing, or is likely to cause, significant distress to the child.
- (2) Where a children’s hearing exercise the power conferred by subsection (1) above, the chairman of the hearing shall, after that exclusion has ended, explain to any person who was so excluded the substance of what has taken place in his absence.

47 Presumption and determination of age

- (1) Where a children’s hearing has been arranged in respect of any person, the hearing—
- (a) shall, at the commencement of the proceedings, make inquiry as to his age and shall proceed with the hearing only if he declares that he is a child or they so determine; and
 - (b) may, at any time before the conclusion of the proceedings, accept a declaration by the child, or make a fresh determination, as to his age.
- (2) The age declared to, or determined by, a children’s hearing to be the age of a person brought before them shall, for the purposes of this Part of this Act, be deemed to be the true age of that person.
- (3) No decision reached, order continued, warrant granted or requirement imposed by a children’s hearing shall be invalidated by any subsequent proof that the age of a person brought before them had not been correctly declared to the hearing or determined by them.

Transfer etc. of cases

48 Transfer of case to another children’s hearing

- (1) Where a children’s hearing are satisfied, in relation to a case which they are hearing, that it could be better considered by a children’s hearing constituted from a children’s panel for a different local government area, they may at any time during the course of

the hearing request the Principal Reporter to arrange for such other children’s hearing to dispose of the case.

- (2) Where a case has been transferred in pursuance of subsection (1) above, the grounds of referral accepted or established for the case shall not require to be further accepted or established for the purposes of the children’s hearing to which the case has been transferred.

49 Referral or remission to children’s hearing where child guilty of an offence

- (1) In section 173 of the Criminal Procedure (Scotland) Act 1975 (reference or remission to children’s hearing where child guilty of an offence: solemn proceedings), for subsections (1) to (3) there shall be substituted—

“(1) Where a person who is charged with an offence and pleads guilty to, or is found guilty of, that offence is a child who is not subject to a supervision requirement, the court on that plea or finding may—

- (a) instead of making an order, remit the case to the Principal Reporter to arrange a children’s hearing to dispose of the case; or
- (b) request the Principal Reporter to arrange a children’s hearing for the purpose of obtaining their advice as to the treatment of the child.

(2) Where a person, who is charged with an offence and pleads guilty to, or is found guilty of, that offence, is aged sixteen years or over and is subject to a supervision requirement, the court if it is—

- (a) the High Court, may; and
- (b) the sheriff court shall,

proceed in accordance with either paragraph (a) or (b) of subsection (1) above.

(3) Where a child who is charged with an offence and pleads guilty to, or is found guilty of, that offence—

- (a) is aged under sixteen years; and
- (b) is subject to a supervision requirement,

the court dealing with the case if it is—

- (i) the High Court, may; and
- (ii) the sheriff court, shall,

request the Principal Reporter to arrange a children’s hearing for the purpose of obtaining their advice as to the treatment of the child.

(3A) Where a court has obtained the advice of a children’s hearing in pursuance—

- (a) of paragraph (b) of subsection (1) above; or
- (b) of subsection (3) above,

the court, after consideration of the advice received from the children’s hearing may, as it thinks proper, itself dispose of the case or remit the case as mentioned in paragraph (a) of the said subsection (1).”.

- (2) In section 372 of that Act (reference or remission to children’s hearing where child guilty of an offence: summary proceedings), for subsections (1) to (3) there shall be substituted—

- “(1) Where a person who is charged with an offence and pleads guilty to, or is found guilty of, that offence is a child who is not subject to a supervision requirement the court on that plea or finding may—
- (a) instead of making an order, remit the case to the Principal Reporter to arrange a children’s hearing to dispose of the case; or
 - (b) request the Principal Reporter to arrange a children’s hearing for the purpose of obtaining their advice as to the treatment of the child.
- (2) Where a person, who is charged with an offence and pleads guilty to, or is found guilty of, that offence, is aged sixteen years or over and is subject to a supervision requirement, the court shall proceed in accordance with either paragraph (a) or (b) of subsection (1) above.
- (3) Where a child who is charged with an offence and pleads guilty to, or is found guilty of, that offence and—
- (a) is aged under sixteen years; and
 - (b) is subject to a supervision requirement,
- the court dealing with the case shall request the Principal Reporter to arrange a children’s hearing for the purpose of obtaining their advice as to the treatment of the child.
- (3A) Where a court has obtained the advice of a children’s hearing in pursuance—
- (a) of paragraph (b) of subsection (1) above; or
 - (b) of subsection (3) above,
- the court, after consideration of the advice received from the children’s hearing may, as it thinks proper, itself dispose of the case or remit the case as mentioned in paragraph (a) of the said subsection (1).”.

50 Treatment of child’s case on remission by court

- (1) Where a court has, under section 173, 372 or 373 of the Criminal Procedure (Scotland) Act 1975, remitted a case to a children’s hearing for disposal, a certificate signed by the clerk of the court stating that the child or person concerned has pled guilty to, or has been found guilty of, the offence to which the remit relates shall be conclusive evidence for the purposes of the remit that the offence has been committed by the child or person.
- (2) Where a court has under the said section 373 remitted a case to a children’s hearing for disposal, the provisions of this Act shall apply to the person concerned as if he were a child.

Appeals

51 Appeal against decision of children’s hearing or sheriff

- (1) Subject to subsection (15) below, a child or a relevant person (or relevant persons) or both (or all)—
 - (a) may, within a period of three weeks beginning with the date of any decision of a children’s hearing, appeal to the sheriff against that decision; and
 - (b) where such an appeal is made, shall be heard by the sheriff.

- (2) The Principal Reporter shall, in respect of any appeal under subsection (1) above, ensure that all reports and statements available to the hearing, along with the reports of their proceedings and the reasons for the decision, are lodged with the sheriff clerk.
- (3) The sheriff may, on appeal under subsection (1) above, hear evidence from, or on behalf of, the parties in relation to the decision; and, without prejudice to that generality the sheriff may—
 - (a) examine the Principal Reporter;
 - (b) examine the authors or compilers of any reports or statements; and
 - (c) call for any further report which he considers may assist him in deciding the appeal.
- (4) Where the sheriff decides that an appeal under this section has failed, he shall confirm the decision of the children’s hearing.
- (5) Where the sheriff is satisfied that the decision of the children’s hearing is not justified in all the circumstances of the case he shall allow the appeal, and—
 - (a) where the appeal is against a warrant to find and keep or, as the case may be, to keep a child in a place of safety, he shall recall the warrant;
 - (b) where the child is subject to a supervision requirement containing a condition imposed under section 70(9) of this Act, he shall direct that the condition shall cease to have effect; and
 - (c) in any case, he may, as he thinks fit—
 - (i) remit the case with reasons for his decision to the children’s hearing for reconsideration of their decision; or
 - (ii) discharge the child from any further hearing or other proceedings in relation to the grounds for the referral of the case; or
 - (iii) substitute for the disposal by the children’s hearing any requirement which could be imposed by them under section 70 of this Act.
- (6) Where a sheriff imposes a requirement under subsection (5)(c)(iii) above, that requirement shall for the purposes of this Act, except of this section, be treated as a disposal by the children’s hearing.
- (7) Where the sheriff is satisfied that an appeal under subsection (1) above against the decision of a children’s hearing arranged under section 73(8) of this Act is frivolous, he may order that no subsequent appeal against a decision to continue (whether with or without any variation) the supervision requirement in question shall lie until the expiration of twelve months beginning with the date of the order.
- (8) An appeal under subsection (1) above in respect of the issue of a warrant by a children’s hearing shall be disposed of within three days of the lodging of the appeal; and failing such disposal the warrant shall cease to have effect at the end of that period.
- (9) Where a child or a relevant person appeals under subsection (1) above against a decision of a children’s hearing in relation to a supervision requirement, the child or the relevant person may make application to a children’s hearing for the suspension of the requirement appealed against.
- (10) It shall be the duty of the Principal Reporter forthwith to arrange a children’s hearing to consider the application under subsection (9) above, and that hearing may grant or refuse the application.

Status: This is the original version (as it was originally enacted).

- (11) Subject to subsections (13) and (15) below, an appeal shall lie by way of stated case either on a point of law or in respect of any irregularity in the conduct of the case—
- (a) to the sheriff principal from any decision of the sheriff—
 - (i) on an appeal under subsection (1) of this section;
 - (ii) on an application made under section 65(7) or (9) of this Act; or
 - (iii) on an application made under section 85(1) of this Act; and
 - (b) to the Court of Session from any decision of the sheriff such as is mentioned in sub-paragraphs (i) to (iii) of paragraph (a) above and, with leave of the sheriff principal, from any decision of the sheriff principal on an appeal under that paragraph; and the decision of the Court of Session in the matter shall be final.
- (12) An appeal under subsection (11) above may be made at the instance of—
- (a) the child or any relevant person, either alone or together; or
 - (b) the Principal Reporter on behalf of the children’s hearing.
- (13) An application to the sheriff, or as the case may be the sheriff principal, to state a case for the purposes of an appeal under subsection (11)(a) or (b) above shall be made within a period of twenty-eight days beginning with the date of the decision appealed against.
- (14) On deciding an appeal under subsection (11) above the sheriff principal or as the case may be the Court of Session shall remit the case to the sheriff for disposal in accordance with such directions as the court may give.
- (15) No appeal shall lie under this section in respect of—
- (a) a decision of the sheriff on an application under section 57 of this Act; or
 - (b) a decision of a children’s hearing continuing a child protection order under section 59(4) of this Act.