

# DRAFT

# Children's Hearings (Scotland) Bill

## PART 1

### ADMINISTRATION

#### CHAPTER 1

##### THE CHILDREN'S PANEL

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

- (1) The Children's Panel is established.
- (2) Schedule 1 makes further provision about the Children's Panel.

#### **2 Children's hearings**

- (1) The President must ensure that a children's hearing is conducted for the purpose of performing any function that, by virtue of this or any other enactment, must be performed by a children's hearing.
- (2) The President may give directions to area support teams in relation to—
  - (a) the selection of members of the Children's Panel to conduct a children's hearing, and
  - (b) the selection of one of those members to chair the children's hearing.
- (3) Each member of an area support team to whom a function is delegated under section 32(2)(c) (identifying those members of the Children's Panel who will constitute a children's hearing) must comply with a direction given to that team under subsection (2).
- (4) The President may, despite any direction given under subsection (2), do either or both of the following—
  - (a) select members of the Children's Panel to conduct a children's hearing,
  - (b) select one of the members constituting a children's hearing to chair the hearing.
- (5) The President must, in giving a direction under subsection (2) or making a selection under subsection (4), ensure that—
  - (a) three members are selected for each children's hearing,
  - (b) both male and female members are selected for each children's hearing, and

- (c) a children's hearing arranged in relation to a child includes at least one member who lives or works in the local authority area for the child.

## **CHAPTER 2**

### **SCOTTISH CHILDREN'S HEARINGS TRIBUNAL**

#### **3 Establishment**

- (1) The Scottish Children's Hearings Tribunal is established.
- (2) Schedule 2 makes further provision about the Tribunal.

#### **4 Functions**

- (1) The functions of the Tribunal are—
  - (a) to assist the President in carrying out the functions given to the President by virtue of this and any other enactment,
  - (b) to facilitate the carrying out of those functions,
  - (c) to provide suitable accommodation and facilities for children's hearings,
  - (d) any other function given to the Tribunal by virtue of this and any other enactment.
- (2) Accommodation and facilities must be provided for each local government area but need not be sited in that area.
- (3) Accommodation and facilities must be dissociated from courts exercising criminal jurisdiction and police stations.

#### **5 Powers**

- (1) The Tribunal may do anything which it considers appropriate for the purposes of or in connection with its functions.
- (2) In particular, the Tribunal may—
  - (a) acquire and dispose of land and other property,
  - (b) enter into contracts,
  - (c) carry out research relevant to the carrying out of its functions by virtue of this and any other enactment,
  - (d) publish or assist in the publication of materials relevant to the carrying out of its functions by virtue of this and any other enactment,
  - (e) promote or assist in the promotion of publicity relevant to the carrying out of its functions by virtue of this and any other enactment.

#### **6 Restriction on powers**

Nothing in this Act is to be taken to authorise the Tribunal to direct or guide the President in the carrying out of the functions given to the President by virtue of this or any other enactment.

**7 Directions**

- (1) The Scottish Ministers may give the Tribunal directions in writing of a general or specific character about the carrying out of its functions.
- (2) The Tribunal must comply with such a direction.
- (3) The Scottish Ministers may vary or revoke such a direction in writing.

**8 Grants**

- (1) The Scottish Ministers may make grants to the Tribunal of amounts that they determine.
- (2) A grant is made subject to the conditions determined by the Scottish Ministers (including conditions about repayment).

**9 Annual reports**

- (1) The Tribunal must, as soon as is reasonably practicable after the end of each financial year, prepare and submit to the Scottish Ministers a report on the carrying out of its functions during the year.
- (2) The report must include a copy of so much of the report made to the Tribunal by the President as relates to the year.
- (3) The Tribunal may include in the report any other information that it considers appropriate.
- (4) The Scottish Ministers must lay before the Scottish Parliament each report submitted to them.
- (5) In this section, “financial year” means—
  - (a) the period beginning with the establishment of the Tribunal and ending on 31 March next occurring or, if that period is of less than 6 months duration, on 31 March after that, and
  - (b) each subsequent period of a year ending on 31 March.

**10 Accounts**

- (1) The Tribunal must—
  - (a) keep proper accounts and accounting records,
  - (b) prepare for each financial year a statement of accounts giving a true and fair view of the state of its financial affairs, and
  - (c) send the statement of accounts, by the time directed by the Scottish Ministers, to the Auditor General for Scotland for auditing.
- (2) Every statement of accounts prepared by the Tribunal must comply with any directions given by the Scottish Ministers relating to one or more of the following matters—
  - (a) the information to be contained in the statement of accounts,
  - (b) the manner in which that information is to be presented,
  - (c) the methods and principles according to which the statement of accounts is to be prepared.
- (3) In this section, “financial year” means—

- (a) the period beginning with the establishment of the Tribunal and ending on 31 March next occurring or, if that period is of less than 6 months duration, on 31 March after that, and
- (b) each subsequent period of a year ending on 31 March.

## **11 Provision of returns etc. to Scottish Ministers**

- (1) The Scottish Ministers may direct the Tribunal to give them any returns, accounts or other information specified in the direction with respect to the Tribunal's property and activities or proposed activities.
- (2) The Tribunal must—
  - (a) give the Scottish Ministers any returns, accounts or other information that it is directed to give under subsection (1),
  - (b) give the Scottish Ministers facilities for the verification of the information given,
  - (c) permit any person authorised by the Scottish Ministers to inspect and make copies of the accounts, books, documents and papers of the Tribunal for the purposes of verifying the information given, and
  - (d) give the person an explanation, reasonably required by the person, of anything that the person is entitled to inspect.

## **CHAPTER 3**

### PRESIDENT OF THE TRIBUNAL

## **12 Office of President**

- (1) The President is to be the chief officer of the Tribunal.
- (2) The President is not a member of the Tribunal.
- (3) Schedule 3 makes further provision about the President.

## **13 Functions of President**

- (1) The functions of the President are—
  - (a) to recruit and train members of the Children's Panel,
  - (b) to monitor the performance of members of the Children's Panel,
  - (c) to arrange children's hearings, including—
    - (i) identifying those members of the Children's Panel who will constitute a children's hearing,
    - (ii) giving notice of children's hearings to any person to whom the President is required to give notice by virtue of this or any other enactment,
    - (iii) giving information and documents in relation to children's hearings to any person to whom the President is required to give that information or document by virtue of this or any other enactment,
  - (d) to advise the constituting members of a children's hearing on—
    - (i) procedure under this and any other enactment,

- (ii) the orders and warrants available to a children's hearing under this and any other enactment,
  - (e) to take a record of business meetings and children's hearings,
  - (f) to provide comments to local authorities on children's services plans,
  - (g) any other function conferred on the President under this or any other enactment.
- (2) The President may provide advice under subsection (1)(d)—
  - (a) at the request of the constituting members of the children's hearing or on the President's own initiative, and
  - (b) at the hearing or outside the hearing.
- (3) The President must ensure that the advice is made known to the child and the recognised carers of the child either by giving the advice to the children's hearing in the presence of the child and those persons or by making a copy of the advice available to those persons.

#### **14 Power of Scottish Ministers to change President's functions**

- (1) The Scottish Ministers may by order do one or more of the following—
  - (a) give additional functions to the President,
  - (b) remove functions from the President,
  - (c) transfer functions from another person or body to the President,
  - (d) transfer functions from the President to another person or body,
  - (e) specify the manner in which, or period within which, a function is to be performed.
- (2) An order under this section is subject to the affirmative procedure.

#### **15 Powers of President**

The President may do anything which the President considers appropriate for the purposes of or in connection with the President's functions.

#### **16 Annual reports**

- (1) The President must, as soon as is reasonably practicable after the end of each financial year, prepare and submit to the Tribunal a report on the carrying out of the President's functions during the year.
- (2) The President may include in the report any other information that the President considers appropriate.
- (3) In this section, "financial year" means—
  - (a) the period beginning with the appointment of the first President and ending on 31 March next occurring or, if that period is of less than 6 months duration, on 31 March after that, and
  - (b) each subsequent period of a year ending on 31 March.

## CHAPTER 4

### SCOTTISH CHILDREN'S REPORTER ADMINISTRATION

#### **17 Continuing the Scottish Children's Reporter Administration**

- (1) There continues to be a body known as the Scottish Children's Reporter Administration.
- (2) Schedule 4 makes further provision about the Administration.

#### **18 Functions of the Administration**

The functions of the Administration are—

- (a) to assist the Principal Reporter in carrying out the functions given to the Principal Reporter by virtue of this and any other enactment,
- (b) to facilitate the carrying out of those functions, and
- (c) any other functions given to the Administration by virtue of this and any other enactment.

#### **19 Powers of the Administration**

- (1) The Administration may do anything which it considers appropriate for the purposes of or in connection with its functions.
- (2) In particular, the Administration may—
  - (a) acquire and dispose of land and other property,
  - (b) enter into contracts,
  - (c) carry out research relevant to the carrying out of its functions by virtue of this or any other enactment,
  - (d) publish or assist in the publication of materials relevant to the carrying out of its functions by virtue of this and any other enactment,
  - (e) promote or assist in the promotion of publicity relevant to the carrying out of its functions by virtue of this or any other enactment.

#### **20 Restriction on powers**

Nothing in this Act is to be taken to authorise the Administration to direct or guide the Principal Reporter in the carrying out of the functions given to the Principal Reporter by virtue of this or any other enactment.

#### **21 Directions by Scottish Ministers**

- (1) The Scottish Ministers may give the Administration directions in writing of a general or specific character about the carrying out of its functions.
- (2) The Administration must comply with such a direction.
- (3) The Scottish Ministers may vary or revoke such a direction in writing.

#### **22 Grants**

- (1) The Scottish Ministers may make grants to the Administration of amounts that they determine.

- (2) A grant is made subject to the conditions determined by the Scottish Ministers (including conditions about repayment).

## **23 Annual reports**

- (1) The Administration must, as soon as is reasonably practicable after the end of each financial year, prepare and submit to the Scottish Ministers a report on the carrying out of its functions during the year.
- (2) The report must include a copy of so much of the report made to the Administration by the Principal Reporter as relates to the year.
- (3) The Administration may include in the report any other information that it considers appropriate.
- (4) The Scottish Ministers must lay before the Scottish Parliament each report submitted to them.
- (5) In this section, “financial year” means each period of a year ending on 31 March.

## **24 Accounts**

- (1) The Administration must—
  - (a) keep proper accounts and accounting records,
  - (b) prepare for each financial year a statement of accounts giving a true and fair view of the state of its financial affairs, and
  - (c) send the statement of accounts, by the time directed by the Scottish Ministers, to the Auditor General for Scotland for auditing.
- (2) Every statement of accounts prepared by the Administration must comply with any directions given by the Scottish Ministers relating to one or more of the following matters—
  - (a) the information to be contained in the statement of accounts,
  - (b) the manner in which that information is to be presented,
  - (c) the methods and principles according to which the statement of accounts is to be prepared.
- (3) In this section, “financial year” means each period of a year ending on 31 March.

## **25 Provision of returns etc. to Scottish Ministers**

- (1) The Scottish Ministers may direct the Administration to give them any returns, accounts or other information specified in the direction with respect to the Administration’s property and activities or proposed activities.
- (2) The Administration must—
  - (a) give the Scottish Ministers any returns, accounts or other information that it is directed to give under subsection (1),
  - (b) give the Scottish Ministers facilities for the verification of the information given,
  - (c) permit any person authorised by the Scottish Ministers to inspect and make copies of the accounts, books, documents and papers of the Administration for the purposes of verifying the information given, and

- (d) give the person an explanation, reasonably required by the person, of anything that the person is entitled to inspect.

## CHAPTER 5

### PRINCIPAL REPORTER

#### **26 Office of Principal Reporter**

- (1) The office of Principal Reporter is continued.
- (2) Nothing in this section affects any appointment in force on the commencement of this section.
- (3) The Principal Reporter is to be the chief officer of the Administration.
- (4) The Principal Reporter is not a member of the Administration.
- (5) Schedule 5 makes further provision about the Principal Reporter.

#### **27 Functions of Principal Reporter**

- (1) The functions of the Principal Reporter are—
  - (a) to receive information about children in relation to grounds for considering the compulsory supervision of a child,
  - (b) to assess and investigate whether there are such grounds,
  - (c) to assess whether a compulsory supervision order is necessary for a child,
  - (d) to refer such grounds to a children's hearing where they are found to exist,
  - (e) to make applications to the sheriff for a determination of whether grounds for considering the compulsory supervision of a child exist,
  - (f) to assist the sheriff in making a determination on whether such grounds exist by gathering evidence.
- (2) The Principal Reporter also has any other functions conferred on the Principal Reporter under this and any other enactment.

#### **28 Power of Scottish Ministers to change Principal Reporter's functions**

- (1) The Scottish Ministers may by order do one or more of the following—
  - (a) confer additional functions on the Principal Reporter,
  - (b) remove functions from the Principal Reporter,
  - (c) transfer functions from another person or body to the Principal Reporter,
  - (d) transfer functions from the Principal Reporter to another person or body,
  - (e) specify the manner in which, or period within which, a function is to be performed.
- (2) An order under this section is subject to the affirmative procedure.

#### **29 Powers of Principal Reporter**

The Principal Reporter may do anything which the Principal Reporter considers appropriate for the purposes of or in connection with the Principal Reporter's functions.



**30 Rights of audience**

- (1) The Scottish Ministers may, by regulations, empower the Principal Reporter to conduct any proceedings before the sheriff which are to be heard by the sheriff under this Act.
- (2) They may do so even if the Principal Reporter, or the person exercising the power on the Principal Reporter's behalf, is not an advocate or solicitor.
- (3) They may prescribe any qualification, training or experience that is to be acquired by the Principal Reporter, or anyone exercising the power on the Principal Reporter's behalf, before exercising the power.

**31 Annual reports**

- (1) The Principal Reporter must, as soon as is reasonably practicable after the end of each financial year, prepare and submit to the Administration a report on the carrying out of the Principal Reporter's functions under this and any other enactment during the year.
- (2) The Principal Reporter may include in the report any other information that the Principal Reporter considers appropriate.
- (3) In this section, "financial year" means each period of a year ending on 31 March.

**CHAPTER 6****OTHER SUPPORTING BODIES***Area support teams***32 Area support teams**

- (1) The President may, in writing—
  - (a) determine an area that is to have an area support team,
  - (b) appoint a person as a member of an area support team,
  - (c) delegate a function of the kind mentioned in subsection (2) to a member or members of an area support team.
- (2) The functions that may be delegated by the President are—
  - (a) to recruit and train members of the Children's Panel,
  - (b) to monitor the performance of members of the Children's Panel,
  - (c) to identify those members of the Children's Panel who will constitute a children's hearing,
  - (d) to provide comments to local authorities on children's services plans.
- (3) The President may pay to a member of an area support team who is not an employee of the Tribunal an allowance determined by the President with the approval of the Scottish Ministers.
- (4) The President may, in writing, revoke or vary—
  - (a) the specification of an area that is to have an area support team,
  - (b) the appointment of a person as a member of an area support team,

- (c) the delegation of a function of the kind mentioned in subsection (2) to a member or members of an area support team.

### *Safeguarders*

#### **33 Children's hearing to consider appointing safeguarder**

- (1) Each children's hearing in relation to a child must consider whether to appoint, or to continue the appointment of, a person to safeguard the interests of the child (a "safeguarder").
- (2) If the children's hearing appoints a safeguarder, it must give reasons for its decision.

#### **34 Sheriff to consider appointing safeguarder**

- (1) The sheriff must, at each hearing under this Act other than a hearing on whether an emergency protection order should be made, consider whether to appoint, or continue the appointment of, a person ( a "safeguarder") to safeguard the interests of the child who is the subject of the hearing.
- (2) If the sheriff appoints a safeguarder, the sheriff must give reasons for the decision.
- (3) The sheriff must not appoint a curator *ad litem* for the child.
- (4) Subsection (3) applies despite any power granted the sheriff to appoint a curator *ad litem* under an enactment or any other rule of law.

#### **35 Functions of safeguarder**

- (1) The function of a safeguarder is—
  - (a) where the safeguarder is appointed for a child by a children's hearing, to safeguard the interests of the child in relation to the hearing, and
  - (b) where the safeguarder is appointed for a child by the sheriff, to safeguard the interests of the child in relation to the hearing before the sheriff.
- (2) In particular, the safeguarder must—
  - (a) attend the hearing with the child,
  - (b) when the safeguarder is appointed, prepare a written report setting out anything that, in the opinion of the safeguarder, is relevant to the consideration of the matter before the hearing, and
  - (c) prepare any report that the safeguarder is required to prepare by a children's hearing or the sheriff.
- (3) A safeguarder may prepare any other report that, in the opinion of the safeguarder, should be prepared in relation to the child for consideration by a children's hearing or the sheriff.

#### **36 Appointment ceases**

If the appointment of a safeguarder is not continued at a children's hearing (other than the children's hearing at which the original appointment is made), the appointment ceases at the end of that hearing.

**37 Regulations about safeguarders**

- (1) The Scottish Ministers may by regulations make provision for—
  - (a) the establishment of a panel of persons from which safeguarders are to be appointed,
  - (b) the qualifications to be held by persons who are members or potential members of the panel,
  - (c) the training of persons who are members or potential members of the panel,
  - (d) the payment of the expenses of persons who are members or potential members of the panel,
  - (e) the payment of fees and allowances to persons who are members or potential members of the panel,
  - (f) other aspects of the management of the panel.
- (2) The Scottish Ministers may give directions in writing to a local authority, or a class of local authority, about any function carried out by the local authority, or a local authority of that class, under regulations made under subsection (1).
- (3) Such a direction may be general or specific.

**CHAPTER 7****MUTUAL ASSISTANCE OBLIGATION****38 Mutual assistance obligation**

- (1) Each of the bodies referred to in subsection (2) must comply with a request by another of those bodies for assistance in the exercise of the other body's functions under this Act, provided the request conforms with subsection (4).
- (2) The bodies are—
  - (a) the Tribunal,
  - (b) the President,
  - (c) the Administration,
  - (d) the Principal Reporter.
- (3) Each local authority must comply with a request by another local authority for assistance in the exercise of the other local authority's functions under this Act, provided the request conforms with subsection (4).
- (4) The request—
  - (a) must be compatible with the statutory and other functions of the body to whom it is directed, and
  - (b) must not unduly prejudice the carrying out by the body to which the request is directed of its functions.

**PART 2****WELFARE OF CHILD AND OTHER GENERAL CONSIDERATIONS****39 Welfare of child and other general considerations**

- (1) Subsection (2) applies where by virtue of this Act a children's hearing or a court is coming to a decision about a matter relating to a child.
- (2) The children's hearing or court is to regard the need to safeguard and promote the welfare of the child throughout the child's childhood as the paramount consideration.
- (3) Subsection (4) applies where as respects a child—
  - (a) a children's hearing is carrying out any of the functions mentioned in subsection (5),
  - (b) the sheriff is considering any of the matters mentioned in subsection (6).
- (4) The children's hearing or sheriff must, so far as is reasonably practicable and taking account of the age and maturity of the child—
  - (a) give the child an opportunity to indicate whether the child wishes to express the child's views,
  - (b) if the child wishes to do so, give the child an opportunity to express them, and
  - (c) have regard to any views expressed by the child.
- (5) Those functions are—
  - (a) considering whether to make a compulsory supervision order,
  - (b) reviewing a compulsory supervision order,
  - (c) considering whether to grant an interim compulsory supervision order,
  - (d) considering whether to continue an interim compulsory supervision order,
  - (e) providing advice by virtue of section 52,
  - (f) preparing a report under section 126(2).
- (6) Those matters are—
  - (a) whether to vary or terminate an emergency protection order,
  - (b) whether to make, vary or terminate an emergency assessment order,
  - (c) whether to make an interim compulsory supervision order,
  - (d) whether to continue an interim compulsory supervision order,
  - (e) whether to confirm or overturn a decision of a children's hearing.
- (7) Subsection (8) applies where—
  - (a) a children's hearing is carrying out a function mentioned in subsection (5)(a), (b) or (c), or
  - (b) the sheriff is considering a matter mentioned in subsection (6).
- (8) The children's hearing or sheriff may make, vary or terminate an order as mentioned in subsection (5)(a) to (d) and (6) only if the children's hearing or sheriff considers that it would be better for the child if the order were made than not.

- (9) Without prejudice to the generality of subsection (4), a child who is aged 12 or over is presumed to be of sufficient age and maturity to form a view for the purposes of that subsection.

#### **40 Exceptional case where section 2 inapplicable**

A children's hearing or a court may make a decision that is inconsistent with the requirement imposed by section 39 if the children's hearing or court considers that it is necessary for the purpose of protecting members of the public from serious harm (whether physical or not) that the decision be made.

### **PART 3**

#### **EMERGENCY ORDERS**

#### **CHAPTER 1**

#### **EMERGENCY PROTECTION ORDERS**

#### *Emergency protection orders*

#### **41 Emergency protection orders**

- (1) An emergency protection order is an order to do one or more of the following—
- (a) direct any person in a position to do so to produce the child in respect of whom the order is made to the applicant for the order,
  - (b) authorise the removal of the child by the applicant to a place of safety and, once removed, keeping the child in that place,
  - (c) authorise the prevention of the removal of the child from any place where the child is staying.
- (2) An emergency protection order may include—
- (a) a direction about contact with the child,
  - (b) a direction about parental rights or responsibilities in relation to the child,
  - (c) a direction that the location of any place of safety at which the child is being kept should not be disclosed to any person or class of person specified in the order,
  - (d) any other authorisation or direction necessary to safeguard or promote the welfare of the child.

#### **42 Application**

- (1) Any person may apply to the sheriff for an emergency protection order.
- (2) An application for an emergency protection order must—
- (a) identify the applicant,
  - (b) in so far as is practicable, identify the child in respect of whom the order is sought,
  - (c) state the grounds on which the application is made,
  - (d) be accompanied by supporting evidence, whether documentary or otherwise, sufficient to enable the sheriff to determine the application.

**43 Consideration by sheriff**

- (1) Where the application for an emergency protection order in respect of a child is made by a local authority, the sheriff may make the order if the sheriff is satisfied that—
  - (a) the local authority has reasonable grounds to suspect that—
    - (i) the child is suffering or will suffer significant harm because of the way in which the child is treated,
    - (ii) the child is suffering or will suffer significant harm because the child is neglected, or
    - (iii) the child will be treated or neglected in a way that will cause significant harm to the child,
  - (b) the local authority is making enquiries to allow it to decide whether to take action to safeguard the welfare of the child, or causing those enquiries to be made,
  - (c) those enquiries are being frustrated by access to the child being unreasonably denied, and
  - (d) the local authority has reasonable cause to believe that access is required as a matter of urgency.
- (2) Where the application for an emergency protection order in respect of a child is made by any person (including a local authority), the sheriff may make an emergency protection order in respect of a child if the sheriff is satisfied that—
  - (a) there are reasonable grounds to believe that—
    - (i) the child is suffering or will suffer significant harm because of the way in which the child is treated,
    - (ii) the child is suffering or will suffer significant harm because the child is neglected,
    - (iii) the child will be treated or neglected in a way that will cause significant harm to the child,
    - (iv) the child will suffer significant harm if the child is not removed to and kept in a place of safety,
    - (v) the child will suffer significant harm if the child does not remain in the place at which the child is staying (whether or not the child is resident there), and
  - (b) an emergency protection order is necessary to protect the child from that harm, or from further harm.

**44 Contact directions**

- (1) If the sheriff makes an emergency protection order in respect of a child, the sheriff must consider whether to include in the order a direction about contact between the child and—
  - (a) any parent of the child,
  - (b) any person with parental responsibilities for the child,
  - (c) any other person or class of person specified in the direction.

- (2) A direction about contact may, in particular—
  - (a) prohibit contact by any of the persons mentioned in subsection (1)(a) to (c) with the child, or
  - (b) make contact by any of those persons with the child subject to any conditions which the sheriff considers appropriate to safeguard and promote the welfare of the child.
- (3) A direction about contact ceases to have effect on the earlier of—
  - (a) the day on which the sheriff directs that it be terminated,
  - (b) the day on which the emergency protection order in which it is included ceases to have effect.

#### **45 Parental responsibility directions**

- (1) A person applying to the sheriff for an emergency protection order in respect of a child may, at the same time, apply to the sheriff for a direction about the carrying out of parental rights or responsibilities in relation to the child.
- (2) The sheriff may include such a direction in an emergency protection order if the sheriff is satisfied that it is necessary to do so to safeguard or promote the welfare of the child.
- (3) The sheriff may give the direction in the terms the sheriff considers necessary to safeguard and promote the welfare of the child.
- (4) Such a direction may, in particular, require—
  - (a) an examination of the physical or mental state of the child, subject to section 197,
  - (b) an assessment or interview of the child,
  - (c) the treatment of the child arising out of that examination or assessment, subject to section 197.
- (5) A direction about parental rights or responsibilities ceases to have effect on the earlier of—
  - (a) the day on which the sheriff directs that it be terminated,
  - (b) the day on which the emergency protection order in which it is included ceases to have effect.

#### **46 Notice of emergency protection order**

If an emergency protection order is made by the sheriff, the applicant must immediately give notice of the making of the order to—

- (a) the child in respect of whom it is made,
- (b) each recognised carer of the child,
- (c) the relevant local authority for the child (unless the local authority is the applicant),
- (d) the Principal Reporter,
- (e) the President.

**47 Obligations of local authority where child to reside**

- (1) This section applies if, in reliance on an emergency protection order in respect of a child, the child is removed to a place of safety provided by a local authority.
- (2) Subject to the emergency protection order, the local authority has the same duties towards the child as the local authority would have by virtue of section 17 of the 1995 Act towards a child looked after by the local authority.

*Review of certain orders***48 Review where child in place of safety**

- (1) This section applies where—
  - (a) an emergency protection order made under section 43 is in effect in respect of a child,
  - (b) the child has been taken to a place of safety by virtue of the order,
  - (c) the President has not received notice in accordance with section 51 of an application to the sheriff to terminate or vary the order.
- (2) The President must arrange a children's hearing to consider whether the emergency protection order should be continued.
- (3) The President must, in addition to giving notice of the hearing under sections 158 to 160, give notice in writing of the children's hearing to—
  - (a) the person who applied for the emergency protection order,
  - (b) the relevant local authority for the child (unless the authority is the applicant),
  - (c) the Principal Reporter,
  - (d) any other person to whom the President is required to give notice under the rules.
- (4) The President must arrange for the children's hearing to take place on the second working day after the day on which the child is taken to that place.
- (5) The children's hearing may—
  - (a) if it is satisfied that the conditions for making the order are established, continue or continue and vary the order, or
  - (b) if it is not satisfied of that, terminate the order.

**49 Review where order prevents removal of child**

- (1) This section applies where—
  - (a) an emergency protection order made under section 43 is in effect in respect of a child,
  - (b) the child is prevented from being removed from a place by virtue of the order,
  - (c) the President has not received notice in accordance with section 51 of an application to the sheriff to terminate or vary the order.
- (2) The President must arrange a children's hearing to consider whether the emergency protection order should be continued.
- (3) The President must, in addition to giving notice of the hearing under sections 158 to 160, give notice in writing of the children's hearing to—



- (a) the person who applied for the emergency protection order,
  - (b) the relevant local authority for the child (unless the authority is the applicant),
  - (c) the Principal Reporter,
  - (d) any other person to whom the President is required to give notice under the rules.
- (4) The President must arrange for the children's hearing to take place on the second working day after the day on which the emergency protection order is made.
- (5) The children's hearing may—
  - (a) if it is satisfied that the conditions for making the order are established, continue or continue and vary the order, or
  - (b) if it is not satisfied of that, terminate the order.

*Termination of order by Principal Reporter*

**50 Power of Principal Reporter to terminate order**

- (1) If the Principal Reporter is satisfied that the conditions for the making of an emergency protection order in respect of the child are no longer satisfied, the Principal Reporter may, by notice in writing to the applicant for the emergency protection order, terminate the order.
- (2) The Principal Reporter may not terminate the order if the Principal Reporter is given notice that—
  - (a) a children's hearing has been arranged under section 49 to consider whether the order should be continued, or
  - (b) an application has been made to the sheriff to terminate or vary the order.

*Variation or termination of order by sheriff*

**51 Application**

- (1) An application may be made by or on behalf of any of the following persons to the sheriff to vary or terminate an emergency protection order made under section 43—
  - (a) the child in respect of whom the order is made,
  - (b) a recognised carer of the child,
  - (c) the person who applied for the emergency protection order,
  - (d) any other person prescribed by the rules.
- (2) An application under this section may only be made—
  - (a) before the commencement of a children's hearing arranged under section 49 to consider whether the order should be continued, or
  - (b) if the children's hearing, under section 49, continues the emergency protection order, within two working days after the day on which the emergency protection order is continued.
- (3) The person making the application under this section must immediately give notice of the application to—
  - (a) the child (unless the child is the applicant),

- (b) each recognised carer of the child (unless the recognised carer is the applicant),
- (c) the relevant local authority for the child (unless the local authority is the applicant),
- (d) the Principal Reporter,
- (e) the President, and
- (f) any other person to whom the applicant is required to give notice under the rules.

## **52 Children's hearing to provide advice to sheriff**

The President may arrange a children's hearing for the purpose of providing any advice the children's hearing may consider appropriate to assist the sheriff in the determination of the application.

## **53 Determination by sheriff**

- (1) This section applies where an application is made under section 51 in relation to an emergency protection order.
- (2) The sheriff must give the following persons an opportunity to make representations to the sheriff before determining the application—
  - (a) the child in respect of whom the emergency protection order is made,
  - (b) each recognised carer of the child,
  - (c) the applicant for the emergency protection order,
  - (d) the relevant local authority for the child (if the authority did not apply for the emergency protection order),
  - (e) the Principal Reporter.
- (3) The application must be determined within three working days after the day on which it is made.
- (4) The emergency protection order ceases to have effect at the end of that period if the application is not determined within that period.
- (5) The sheriff may—
  - (a) terminate the emergency protection order if the sheriff is not satisfied of—
    - (i) in any case, the matters mentioned in section 43(1), or
    - (ii) in a case where the applicant for the emergency protection order is a local authority, the matters mentioned in section 43(2),
  - (b) vary the emergency protection order, including by terminating, varying or adding a direction about contact or about parental rights or responsibilities, or
  - (c) confirm the emergency protection order.
- (6) If the sheriff orders that the emergency protection order is to be terminated, the order ceases to have effect at the end of the hearing before the sheriff.

*Automatic termination where order not implemented***54 Automatic termination where order not implemented within 24 hours**

An emergency protection order ceases to have effect at the end of a period of 24 hours beginning when it was made if the applicant for the order has not attempted to implement it within that period.

*Alternative procedure where application to sheriff not practicable***55 Application to a justice of the peace**

- (1) A person may apply to a justice of the peace for an order to do one or more of the following—
  - (a) direct any person in a position to do so to produce the child in respect of whom the order is made to the applicant for the order,
  - (b) authorise the removal of the child by the applicant to a place of safety and, once removed, keeping the child in that place,
  - (c) authorise the prevention of the removal of the child from any place where the child is staying.
- (2) A justice of the peace may make an order under this section if—
  - (a) the justice of the peace is satisfied of—
    - (i) in any case, the matters mentioned in section 43(1), or
    - (ii) in a case where the applicant for the order is a local authority, the matters mentioned in section 43(2), and
  - (b) the justice of the peace is satisfied that it is not practicable in the circumstances for the application—
    - (i) to be made to the sheriff, or
    - (ii) to be considered by the sheriff.
- (3) The order ceases to have effect within 12 hours after it is made if—
  - (a) where the order authorises the removal of the child to a place of safety, the child has not been taken, or is not being taken, to that place within that period,
  - (b) where the order authorises the prevention of the removal of a child from a place of safety, arrangements have not been made within that period to prevent that removal.
- (4) Otherwise, the order ceases to have effect on the earlier of—
  - (a) the end of the period of 24 hours beginning when the order is made, or
  - (b) the determination by the sheriff of an application to the sheriff for an emergency protection order in respect of the child.
- (5) If the Principal Reporter is satisfied that the conditions for the making of an emergency protection order by the justice of the peace are no longer satisfied, the Principal Reporter may, by notice in writing to the applicant for the emergency protection order, terminate the order.
- (6) If notice is given by the Principal Reporter under subsection (5), the child must be released.

- (7) The Scottish Ministers may make regulations about the duties in respect of a child removed to or kept in a place of safety under an emergency protection order made under this section.
- (8) In particular, the regulations may require notice to be given to a person specified in the regulations of—
  - (a) the removal of the child to the place of safety,
  - (b) the location of the place of safety,
  - (c) the emergency protection order ceasing to have effect by virtue of subsection (3) or (4).

## **56 Power of constable to take and detain**

- (1) A constable may remove a child to a place of safety and keep the child there if—
  - (a) the constable is satisfied of the matters mentioned in section 43(1), and
  - (b) it is not practicable in the circumstances for an application for an emergency protection order—
    - (i) to be made to the sheriff, or
    - (ii) to be considered by the sheriff, and
  - (c) the constable has reasonable cause to believe that it is necessary to remove the child to a place of safety to protect the child from significant harm or further significant harm.
- (2) The child must not be kept in a place of safety under this section for a period of more than 24 hours.
- (3) The child must not be kept in a place of safety under this section if—
  - (a) an emergency protection order is in effect in respect of the child, or
  - (b) an application has been made to the sheriff for an emergency protection order or to a justice of the peace for an order under section 55 on the basis of the facts before the constable and that application has been refused.
- (4) If the Principal Reporter is satisfied that the conditions for placing the child in the place of safety are no longer satisfied, the Principal Reporter may, by notice in writing to the constable, require that the child be released.
- (5) If notice is given by the Principal Reporter under subsection (4), the child must be released.
- (6) The Scottish Ministers may make regulations about the duties in respect of a child removed to or kept in a place of safety under an emergency protection order made under this section.
- (7) In particular, the regulations may require notice to be given to a person specified in the regulations of—
  - (a) the removal of the child to the place of safety,
  - (b) the location of the place of safety.

*Offences***57 Offences**

- (1) A person who intentionally obstructs—
  - (a) a person acting under an emergency protection order,
  - (b) a person acting under an order under section 55(2), or
  - (c) a constable acting under section 56(1),commits an offence.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**CHAPTER 2**

## EMERGENCY ASSESSMENT ORDERS

**58 Emergency assessment orders**

- (1) A local authority may apply to the sheriff for an emergency assessment order in respect of a child.
- (2) An emergency assessment order is an order—
  - (a) requiring any person having charge or control of the child to hand over the child to an officer of a local authority,
  - (b) authorising the carrying out during the specified period (being a period not exceeding seven days) of an assessment of—
    - (i) the child's health or development, and
    - (ii) the way in which the child has been or is being treated,
  - (c) authorising during the specified period the removal to and keeping of the child in any place, and
  - (d) authorising specified contact between the child and specified persons.
- (3) If the sheriff considers that the conditions in subsection (4) are satisfied, the sheriff may make an emergency assessment order in respect of the child.
- (4) The conditions are—
  - (a) that the local authority has reasonable cause to suspect—
    - (i) that the child has been or is being treated in such a way that the child is suffering or is likely to suffer significant harm, or
    - (ii) that the child has been or is being neglected and as a result of the neglect the child is suffering or is likely to suffer significant harm,
  - (b) that, in order to establish whether there is reasonable cause to believe that the child is suffering or is likely to suffer significant harm, it is necessary to carry out an assessment of the child's health or development, and
  - (c) that it is unlikely that the assessment could be carried out, or carried out satisfactorily, unless an emergency assessment order were made.
- (5) Subsections (6) and (7) apply if—
  - (a) an application is made under subsection (1), and

- (b) the sheriff considers that the conditions in section 43 are satisfied.
- (6) The sheriff may, instead of making an emergency assessment order, make an emergency protection order.
- (7) The emergency protection order is to be treated as if made under section 43.
- (8) In this section, “specified” means specified in the order.

## PART 4

### COMPULSORY SUPERVISION ORDERS

#### CHAPTER 1

##### GROUNDS FOR CONSIDERING COMPULSORY SUPERVISION OF A CHILD

#### **59      Grounds for considering compulsory supervision of a child**

- (1) There is ground for considering the compulsory supervision of a child where—
  - (a) the child has committed an offence,
  - (b) the child has misused alcohol,
  - (c) the child has misused a drug (whether or not a controlled drug),
  - (d) the child’s conduct has had, or is likely to have, a serious adverse effect on the health, safety or development of the child or another person,
  - (e) the child is not within the control of a recognised carer,
  - (f) the child is of school age and has, without reasonable excuse, regularly failed to attend school,
  - (g) the child is, or has been, exposed to a person dealing in controlled drugs,
  - (h) the child is, or has been, exposed to a person whose conduct (including past conduct) is such that there is reason to believe that the person may—
    - (i) abuse or harm the child, or
    - (ii) have a serious adverse effect on the health, safety or development of the child,
  - (i) the child is, or has been, exposed to domestic abuse,
  - (j) the child is, or has been, exposed to a person who has been convicted of murder or an offence under Part 1 or 4 of the Sexual Offences (Scotland) Act 2009 (asp 00)),
  - (k) the lack of parental care of the child is such that—
    - (i) the child is likely to suffer unnecessarily, or
    - (ii) the health or development of the child is likely to be seriously impaired,
  - (l) in the circumstances where the child is being provided with accommodation by a local authority under section 25 of the 1995 Act, special measures are needed to support the child, or
  - (m) in the circumstances where the child is subject to a permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007 (asp 4)), special measures are needed to support the child.

- (2) A person's conduct is taken to give reason for the belief mentioned in subsection (1)(h) if the person commits an offence mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (c.46).
- (3) In this section, "controlled drug" means a controlled drug as defined in section 2(1)(a) of the Misuse of Drugs Act 1971 (c.38).
- (4) A child is "exposed" to a person for the purposes of this section if the child—
  - (a) is, or is likely to become, a member of the same household as the person, or
  - (b) has significant contact with the person.

## CHAPTER 2

### GIVING INFORMATION TO PRINCIPAL REPORTER

#### **60 Duty on local authority**

- (1) This section applies where the relevant local authority for a child has information which suggests that there is ground for considering the compulsory supervision of the child.
- (2) The local authority must make all necessary inquiries into the child's circumstances.
- (3) Having satisfied subsection (2), if the local authority considers that—
  - (a) there is ground for considering the compulsory supervision of the child, and
  - (b) a compulsory supervision order may be necessary for the protection, guidance, treatment or control of the child,

the local authority must give any information the local authority has about the child to the Principal Reporter.

#### **61 Duty on constables: general**

- (1) This section applies where a constable has reasonable cause to believe that there is ground for considering the compulsory supervision of a child.
- (2) The constable must give the Principal Reporter all relevant information which the constable has been able to discover in relation to the child.

#### **62 Duty on constables: copying reports given to the prosecutor**

Where a constable gives the appropriate prosecutor a report under section 17(1)(b) of the Police (Scotland) Act 1967 (c.77), the constable must give a copy of the report to the Principal Reporter.

#### **63 Information arising in course of certain court proceedings**

- (1) This section applies where a court, in the course of any relevant proceedings, is satisfied that there is ground for considering the compulsory supervision of a child.
- (2) The court must give the Principal Reporter—
  - (a) a statement (with reasons) as to which ground the court is satisfied is established, and
  - (b) any other information about the child which the court considers relevant.

- (3) In this section “relevant proceedings” are—
- (a) an action for—
    - (i) divorce,
    - (ii) judicial separation,
    - (iii) declarator of marriage,
    - (iv) nullity of marriage,
    - (v) dissolution or declarator of a civil partnership,
    - (vi) separation of civil partners, or
    - (vii) parentage or non-parentage, or
  - (b) proceedings—
    - (i) relating to parental rights and responsibilities under Part 1 of the 1995 Act,
    - (ii) for an adoption under the Adoption and Children (Scotland) Act 2007 (asp 4),
    - (iii) for the making, variation or revocation of a permanence order under that Act in respect of a child who is not subject to a compulsory supervision order, or
    - (iv) for an offence under section 35 (failure by parent to secure regular attendance by child at a public school), 41 (failure to comply with attendance order) or 42(3) (failure to permit examination of child) of the Education (Scotland) Act 1980 (c.58).

#### **64 Lord Advocate’s directions**

- (1) The Lord Advocate may direct that in any specified case or class of case evidence lawfully obtained in the investigation of a crime or suspected crime must be given to the Principal Reporter.
- (2) The evidence must in that case, or in a case of that class, be given to the Principal Reporter even if the Principal Reporter has not made a request under section 81.

#### **65 Information from other persons**

- (1) This section applies where a person has reasonable cause to believe that there is ground for considering the compulsory supervision of a child.
- (2) The person may give the Principal Reporter all relevant information which the person has in relation to the child.

### **CHAPTER 3**

#### **FUNCTIONS OF PRINCIPAL REPORTER**

#### **66 Duty to assess case**

- (1) This section applies where the Principal Reporter receives—
  - (a) information from a local authority under section 60,
  - (b) information from a constable under section 61,



- (c) a copy of a report from a constable under section 62,
  - (d) information from a court under section 63,
  - (e) notice of an emergency protection order under section 46,
  - (f) evidence from a prosecutor in pursuance of a direction of the Lord Advocate under section 64, or
  - (g) information from a person under section 65.
- (2) The Principal Reporter must assess, in relation to the child to whom the report, information, notice or evidence relates, whether—
  - (a) there is ground for considering the compulsory supervision of the child, and
  - (b) a compulsory supervision order is necessary for the protection, guidance, treatment or control of the child.

## **67 Local authority reports**

- (1) This section applies where the Principal Reporter—
  - (a) has received a report, information, notice or evidence of the kind mentioned in section 66(1), but
  - (b) considers there to be insufficient information to make an assessment under section 66(2).
- (2) The Principal Reporter may—
  - (a) make any investigations the Principal Reporter considers necessary, or
  - (b) direct a local authority to give the Principal Reporter a report on—
    - (i) the child, and
    - (ii) any specified circumstances concerning the child.
- (3) The Principal Reporter may require the local authority, in preparing the report, to—
  - (a) obtain information from a particular person or source, and
  - (b) include that information in the report.
- (4) The local authority must comply with the direction or requirement.
- (5) The report may contain information in addition to any information given to the Principal Reporter under section 60.

## **68 Duties where no referral is made**

- (1) This section applies where the Principal Reporter, having made an assessment under section 66(2), is of the opinion that—
  - (a) none of the grounds for considering the compulsory supervision of the child is established, or
  - (b) a compulsory supervision order is not necessary for the guidance, treatment, protection or control of the child.
- (2) The Principal Reporter—
  - (a) must inform the following persons that the question of the compulsory supervision of the child will not be referred to a children's hearing—

- (i) the child,
    - (ii) each recognised carer,
    - (iii) the local authority,
    - (iv) any person who has given the Principal Reporter a report, information or evidence in relation to the child under sections 60 to 65, and
  - (b) may, if the Principal Reporter considers it appropriate, inform any other person of that fact.
- (3) After informing persons under subsection (2), the Principal Reporter must not refer the question of the compulsory supervision of the child to a children's hearing unless the Principal Reporter receives new information about the child.

**69 President to arrange hearing**

- (1) This section applies where the Principal Reporter, having made an assessment under section 66(2), is of the opinion that—
- (a) at least one ground for considering the compulsory supervision of the child is established, and
  - (b) a compulsory supervision order is necessary for the protection, treatment, guidance or control of the child.
- (2) The Principal Reporter must refer the child to a children's hearing to consider the compulsory supervision of the child by requesting the President to arrange an initial children's hearing.

**70 President to arrange hearing: antisocial behaviour**

- (1) This section applies where—
- (a) the sheriff requires the Principal Reporter to make a request under section 12(1) of the Antisocial Behaviour (Scotland) Act 2004 (asp 8) to the President to arrange a children's hearing for a child's case, and
  - (b) the child is not already subject to a compulsory supervision order.
- (2) The Principal Reporter is taken to be of the opinion that—
- (a) at least one ground for considering the compulsory supervision of the child is established, and
  - (b) a compulsory supervision order for the child is necessary for the protection, guidance, treatment or control of the child.

**71 Provision of documents to President**

- (1) This section applies where the President is required, by virtue of this Act, to arrange an initial children's hearing under section 69(2).
- (2) The President must notify the Principal Reporter that the President is arranging the initial children's hearing.
- (3) The Principal Reporter, on being notified under subsection (2), must give the President the following documents—
- (a) the statement of grounds, and

- (b) a copy of any report or information the Principal Reporter has which the Principal Reporter believes is relevant to the consideration of the matter before the children's hearing.
- (4) The "statement of grounds", in relation to a child, is a statement setting out—
  - (a) which of the grounds for considering the compulsory supervision of the child the Principal Reporter believes is established, and
  - (b) the facts upon which that belief is based.

## **72 Arranging a children's hearing**

- (1) This section applies where the Principal Reporter makes a request to the President to arrange a children's hearing under section 69(2).
- (2) The President must, as soon as reasonably practicable after the request is made—
  - (a) arrange a children's hearing to consider the compulsory supervision of the child,
  - (b) notify the constituting members of the children's hearing of the grounds for considering the compulsory supervision of the child as stated by the Principal Reporter under section 71(3)(a), and
  - (c) provide the constituting members with the information given to the President under section 71(3).

## **CHAPTER 4**

### **INITIAL CHILDREN'S HEARINGS**

## **73 Chairing member: duties**

- (1) At the opening of the initial children's hearing to consider a referral by the Principal Reporter under section 69(2), the chairing member must—
  - (a) explain to the child and any recognised carer present the ground or grounds on which the compulsory supervision of the child is being considered, and
  - (b) ask whether each of the grounds is accepted.
- (2) The obligation in this section is subject to section 79.

## **74 Acceptance of grounds**

- (1) This section applies where all of the grounds are accepted by the child and each recognised carer present at the initial children's hearing.
- (2) The children's hearing must consider—
  - (a) the grounds,
  - (b) any information given to the children's hearing under section 158, and
  - (c) any other relevant information available to the hearing.
- (3) Unless a decision is deferred under subsection (4), the children's hearing must, after that consideration—
  - (a) make a compulsory supervision order, if the children's hearing is satisfied that it is necessary to do so for the protection, guidance, treatment or control of the child, or

- (b) discharge the referral.
- (4) The children's hearing must defer a decision on whether to make a compulsory supervision order to a subsequent hearing if, after that consideration, the children's hearing is satisfied that—
  - (a) further information is needed before the matter can be properly dealt with,
  - (b) a statement, notification, document or other information has been given to the children's hearing, child or a recognised carer of the child before the hearing, but there has been insufficient time before the hearing for its proper consideration by the hearing or one of those persons, or
  - (c) the children's hearing orders that a statement, notification, document or other information that has been withheld from the child or a recognised carer of the child under section 161, 162 or 164 be given to that person,
  - (d) the children's hearing orders under section 163 that further steps be taken by the President to find a recognised carer,
  - (e) it is desirable that a person who is not present at the hearing be present when the matter is dealt with.

## **75 Acceptance of some grounds**

- (1) This section applies where some of the grounds are accepted by the child and each recognised carer present at the initial children's hearing.
- (2) The children's hearing must consider whether it is appropriate to make a decision on whether to make a compulsory supervision order on the basis of the accepted grounds.
- (3) If the children's hearing considers that it is, the children's hearing must proceed under section 76.
- (4) If the children's hearing considers that it is not, the children's hearing must proceed under section 77.

## **76 Accepted grounds: consideration by hearing**

- (1) If the initial children's hearing considers that it is appropriate to make a decision on the basis of the accepted grounds, the children's hearing must consider—
  - (a) the accepted grounds,
  - (b) any information given to the children's hearing under section 158, and
  - (c) any other relevant information available to the hearing.
- (2) Unless a decision is deferred under subsection (3), the children's hearing must, after that consideration—
  - (a) make a compulsory supervision order, if the children's hearing is satisfied that it is necessary to do so for the protection, guidance, treatment or control of the child, or
  - (b) discharge the referral.
- (3) The children's hearing may defer a decision on whether to make a compulsory supervision order to a subsequent hearing if, after that consideration, the children's hearing is satisfied that—
  - (a) further information is needed before the matter can be properly dealt with,

- (b) a statement, notification, document or other information has been given to the children's hearing, child or a recognised carer of the child before the hearing, but there has been insufficient time before the hearing for its proper consideration by the hearing or one of those persons, or
- (c) the children's hearing orders that a statement, notification, document or other information that has been withheld from the child or a recognised carer of the child under section 161, 162 or 164 be given to that person,
- (d) the children's hearing orders under section 163 that further steps be taken by the President to find a recognised carer,
- (e) it is desirable that a person who is not present at the hearing be present when the matter is dealt with.

## **77 Accepted grounds: application to sheriff or discharge**

- (1) If the initial children's hearing considers that it is not appropriate to make a decision on the basis of the accepted grounds, the children's hearing must—
  - (a) direct the Principal Reporter to make an application to the sheriff for a determination on whether those grounds that are not accepted are established, or
  - (b) discharge the referral.
- (2) If the children's hearing directs that an application be made to the sheriff, the chairing member must—
  - (a) explain the purpose of the application to the child and any recognised carer present, and
  - (b) inform the child that the child is obliged to attend the hearing before the sheriff, unless excused by the sheriff.
- (3) If the children's hearing directs that an application be made to the sheriff, the children's hearing may—
  - (a) make an interim compulsory supervision order, if the children's hearing is satisfied, based on the information available to it, that the child's circumstances are so urgent or serious that it is necessary to make the order for the protection, guidance, treatment or control of the child, and
  - (b) issue a warrant to secure attendance, if the children's hearing is satisfied that there is reason to believe that the child would not otherwise attend the hearing before the sheriff.
- (4) If an interim compulsory supervision order is made under subsection (3)(a), no further interim compulsory supervision order may be made by a children's hearing until the application to the sheriff is determined.

## **78 Non-acceptance of grounds**

- (1) This section applies where none of the grounds is accepted by the child or a recognised carer of the child present at the initial children's hearing.
- (2) The children's hearing must—
  - (a) direct the Principal Reporter to make an application to the sheriff to determine whether each of the grounds is established, or
  - (b) discharge the referral.

- (3) If the children's hearing directs that an application be made to the sheriff, the chairing member must—
  - (a) explain the purpose of the application to the child and any recognised carer present, and
  - (b) inform the child that the child is obliged to attend the hearing before the sheriff, unless excused by the sheriff.
- (4) If the children's hearing directs that an application be made to the sheriff, the children's hearing may—
  - (a) make an interim compulsory supervision order, if the children's hearing is satisfied, based on the information available to it, that the child's circumstances are so urgent or serious that it is necessary to make the order for the protection, guidance, treatment or control of the child, and
  - (b) issue a warrant to secure attendance, if the children's hearing is satisfied that there is reason to believe that the child would not otherwise attend the hearing before the sheriff.
- (5) If an interim compulsory supervision order is made under subsection (4)(a), no further interim compulsory supervision order may be made by a children's hearing until the application to the sheriff is determined.

## **79 Child or recognised carer unable to understand grounds**

- (1) This section applies if, at the initial children's hearing, the children's hearing is satisfied that the child or a recognised carer of the child present at the hearing—
  - (a) would not be capable of understanding an explanation given in compliance with section 73(1), or
  - (b) has not understood the explanation given in compliance with section 73(1) in relation to a ground.
- (2) The children's hearing must—
  - (a) direct the Principal Reporter to make an application to the sheriff to determine whether the ground is established,
  - (b) discharge the referral to the extent that it relates to the ground and proceed under sections 74 to 78 in relation to the remainder of the grounds, or
  - (c) discharge the referral.
- (3) In the case mentioned in subsection (1)(a), the chairing member need not comply with section 73(1) in relation to that ground, in so far as it relates to the person who is not capable of understanding an explanation of the ground.
- (4) If the children's hearing directs that an application be made to the sheriff, the chairing member must—
  - (a) explain (in so far as is reasonably practicable) to the child and each recognised carer of the child present at the children's hearing the purpose of the application, and
  - (b) inform the child that the child is obliged to attend the children's hearing before the sheriff, unless excused by the sheriff.
- (5) If the children's hearing directs that an application be made to the sheriff, the children's hearing may—

- (a) make an interim compulsory supervision order, if the children's hearing is satisfied, based on the information available to it, that the child's circumstances are so urgent or serious that it is necessary to make the order for the protection, guidance, treatment or control of the child, and
  - (b) issue a warrant to secure attendance, if the children's hearing is satisfied that there is reason to believe that the child would not otherwise attend the hearing before the sheriff.
- (6) If an interim compulsory supervision order is made under subsection (5)(a), no further interim compulsory supervision order may be made by a children's hearing until the application to the sheriff is determined.

## **80 Information about ground given by court**

- (1) This section applies where information about a ground for considering the compulsory supervision of a child was given to the Principal Reporter by a court by virtue of section 63.
- (2) This Act applies as if—
  - (a) application had been made to the sheriff to determine whether the ground was established, and
  - (b) the sheriff had found that the ground was established.

## **CHAPTER 5**

### **SHERIFF TO ESTABLISH GROUNDS**

#### *Further information*

## **81 Evidence held in connection with crime**

- (1) The Principal Reporter may exercise the powers conferred by this section for the purpose of assisting the sheriff in determining whether a ground for considering the compulsory supervision of a child is established.
- (2) The Principal Reporter may request any prosecutor to give the Principal Reporter with any evidence held by the prosecutor in connection with the investigation of a crime or suspected crime.
- (3) The request may relate only to evidence lawfully obtained in the course of the investigation.
- (4) The prosecutor may refuse to comply with the request if the prosecutor reasonably believes that it is necessary to retain the evidence for the purposes of any proceedings in respect of a crime (whether or not the proceedings have already commenced).

#### *Procedure*

## **82 Hearing of application**

- (1) An application to the sheriff to determine whether a ground for considering the compulsory supervision of a child is established must be heard within 28 days after the application is lodged.
- (2) The application must not be heard in open court.

**83 Attendance by child**

- (1) The child must attend the hearing of the application unless excused by the sheriff.
- (2) The children's hearing may excuse the child from attending all or part of the children's hearing where—
  - (a) the ground which is applied to be established involves the committing of an offence mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (c. 46) and the attendance of the child at the hearing, or that part of the hearing, is not necessary for a fair hearing,
  - (b) the attendance of the child at the hearing of the application, or that part of the hearing of the application, would place the child's physical, mental or moral welfare at risk, or
  - (c) taking account of the child's age and maturity, the child would not be capable of understanding what happens at the hearing of the application or that part of the hearing of the application.

**84 Child's right to attend hearing**

The child may attend the hearing of the application even if the child need not do so.

**85 Representation**

- (1) The child may be represented at the hearing of the application by another person, whether legally qualified or not.
- (2) A recognised carer of the child may be represented at the hearing of the application by another person, whether legally qualified or not.

**86 Warrant to secure attendance**

The sheriff may issue a warrant to secure attendance at a hearing of the application if the sheriff is satisfied that there is reason to believe that the child would not otherwise attend the hearing.

*Special cases***87 Ground later accepted: application on direction under section 77 or 78**

- (1) This section applies where—
  - (a) an application for a hearing is made on a direction under section 77(1) or 78(2) in relation to a ground, and
  - (b) the ground is later accepted by the child and each recognised carer of the child who was present at the initial hearing.
- (2) Unless the sheriff is satisfied in all the circumstances that evidence in relation to the ground should be heard, the sheriff must—
  - (a) dispense with hearing such evidence, and
  - (b) determine that the ground is established.



**88 Ground accepted by recognised carers: application on direction under section 79(2)**

- (1) This section applies where—
  - (a) an application for a children's hearing is made on a direction under section 79(2) in relation to a ground on the basis that the child would not understand, or has not understood, an explanation given in compliance with section 73(1), and
  - (b) the ground is accepted by each recognised carer of the child who was present at the initial hearing to consider the referral by the Principal Reporter based on that ground.
- (2) The sheriff may determine the application without a hearing, unless—
  - (a) the child, the recognised carer of the child or the Principal Reporter requests that a hearing on the application be held, or
  - (b) the sheriff is of the opinion that it is not appropriate to determine the application without a hearing being held for the purpose.
- (3) Where there is no hearing, the sheriff must determine the application within 7 days of its being made.

*Determination and other orders***89 Where ground established**

- (1) This section applies where the sheriff determines that a ground is established.
- (2) The sheriff must direct the President to arrange a children's hearing to determine whether to make a compulsory supervision order in relation to the child.
- (3) The President must arrange the children's hearing.
- (4) The sheriff may make an interim compulsory supervision order if the sheriff is satisfied, based on the information available to the sheriff, that the child's circumstances are so urgent or serious that it is necessary to make the order for the protection, guidance, treatment or control of the child.
- (5) The sheriff may issue a warrant to secure the attendance of the child at the children's hearing if there is reason to believe that the child would not otherwise attend the hearing.

*Offence by child***90 Application where ground child committed offence: jurisdiction**

- (1) This section applies where one of the grounds to which the application relates is that the child has committed an offence.
- (2) The application must be made to the sheriff who would have jurisdiction if the child were being prosecuted for that offence.
- (3) The standard of proof in relation to that ground is that which would apply in criminal proceedings.

*Sexual abuse cases***91 Sexual abuse cases: evidence before sheriff**

- (1) This section applies where—

- (a) an application is made to the sheriff—
    - (i) to determine whether a ground for considering the compulsory supervision of a child is established, or
    - (ii) to review a determination that such a ground is established, and
  - (b) the ground involves the sexual behaviour of any person.
- (2) In hearing the application the sheriff must not, unless the sheriff makes an order under section 95, admit evidence, or allow questioning of a witness designed to elicit evidence, which shows or tends to show one or more of the circumstances mentioned in section 94 in relation to a person mentioned in section 93.
- (3) In this section, “sexual behaviour” includes undergoing or being made subject to any experience of a sexual nature.

## **92 Sexual abuse cases: evidence on commission**

- (1) This section applies where—
- (a) a commissioner is appointed under section 19 of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3) to take evidence for the purposes of a hearing by the sheriff—
    - (i) to determine whether a ground for considering the compulsory supervision of a child is established, or
    - (ii) to review a determination that such a ground is established, and
  - (b) the ground involves the sexual behaviour of any person.
- (2) The commissioner must not, unless the sheriff makes an order under section 95, take evidence which shows or tends to show one or more of the circumstances mentioned in section 94 in relation to a person mentioned in section 93.

## **93 Persons to whom special rules apply**

The persons are—

- (a) the child,
- (b) a person giving evidence for the purposes of the hearing,
- (c) any other person evidence of whose statements is given for the purposes of the hearing.

## **94 Matters to which special rules apply**

- (1) The circumstances are that the person—
- (a) is not of good character (whether in relation to sexual matters or otherwise),
  - (b) has, at any time, engaged in sexual behaviour not forming part of the subject-matter of the ground,
  - (c) has, at any time (other than shortly before, at the same time as or shortly after the acts which form part of the subject-matter of the ground), engaged in behaviour (not being sexual behaviour) that might found an inference that the person is not credible or the person’s evidence is not reliable,

- (d) has, at any time, been subject to any condition or predisposition that might found the inference that the person is not credible or the person's evidence is not reliable.
- (2) In this section, "sexual behaviour" includes undergoing or being made subject to any experience of a sexual nature.

**95 Circumstances in which sheriff may allow evidence in sexual abuse cases**

- (1) On the application of a person mentioned in subsection (2), the sheriff may, if satisfied of the matters set out in subsection (3)—
  - (a) admit evidence of the kind mentioned in section 91(2),
  - (b) allow questioning of the kind mentioned in that section,
  - (c) order that evidence of the kind mentioned in section 92(2) be taken.
- (2) Those persons are—
  - (a) the child,
  - (b) a recognised carer of the child,
  - (c) the Principal Reporter,
  - (d) if a safeguarder for the child has been appointed by the sheriff for the purposes of the hearing, the safeguarder.
- (3) Those matters are—
  - (a) the evidence or questioning will relate only to—
    - (i) a specific occurrence or specific occurrences of sexual or other behaviour demonstrating the character of the person,
    - (ii) specific facts demonstrating the character of the person,
    - (iii) a specific occurrence or specific occurrences of sexual or other behaviour demonstrating a condition or predisposition to which the person is or has been subject, or
    - (iv) specific facts demonstrating a condition or predisposition to which the person is or has been subject,
  - (b) the occurrence, occurrences or facts are relevant to establishing the ground, and
  - (c) the probative value of the evidence is significant and is likely to outweigh any risk of prejudice to the proper administration of justice arising from its being admitted or elicited.
- (4) In this section—
  - "sexual behaviour" includes undergoing or being made subject to any experience of a sexual nature, and
  - "proper administration of justice" includes—
    - (a) appropriate protection of the person's dignity and privacy, and
    - (b) ensuring the facts and circumstances of which the sheriff is made aware are relevant to an issue to be put before the sheriff and commensurate with the importance of that issue to the sheriff's decision on the question whether the ground is established.

*Review by sheriff***96 Application of sections 97 to 105**

- (1) Sections 97 to 105 apply where the sheriff makes a determination that a ground for considering the compulsory supervision of a child is established (a “grounds determination”).
- (2) Those sections do not apply where the grounds determination is as a result of a previous application of the sections.

**97 Application for review of a grounds determination**

The following persons may apply to the sheriff for a review of the grounds determination—

- (a) the person who is the subject of the grounds determination (even if that person is no longer a child),
- (b) a person who is, or was at the time the grounds determination was made, a recognised carer of the child.

**98 Circumstances in which sheriff must review grounds determination**

- (1) The sheriff must review the grounds determination and make orders in accordance with section 100 if—
  - (a) there is evidence that would have been admissible in relation to the ground that was not considered by the sheriff when making the grounds determination,
  - (b) there is a reasonable explanation for the failure to lead that evidence before the grounds determination was made, and
  - (c) the evidence is significant and is relevant to the question of whether the grounds determination should have been made.
- (2) Otherwise the sheriff must dismiss the application.

**99 Principal Reporter may gather evidence**

- (1) The Principal Reporter may exercise the powers conferred by subsections (2) to (4) for the purpose of assisting the sheriff in reviewing a grounds determination.
- (2) The Principal Reporter may request any prosecutor to give the Principal Reporter any evidence held by the prosecutor in connection with the investigation of a crime or suspected crime.
- (3) The request may relate only to evidence lawfully obtained in the course of the investigation.
- (4) The prosecutor may refuse to comply with the request only if the prosecutor reasonably believes that it is necessary to retain the evidence for the purposes of any proceedings in respect of a crime (whether or not the proceedings have already commenced).

**100 Orders on review**

- (1) If, on reviewing the grounds determination, the sheriff determines that the ground is not established, the sheriff must make an order discharging the referral to the extent that it relates to the ground.
- (2) If, on making an order under subsection (1), one or more grounds for considering compulsory supervision specified in the referral by the Principal Reporter that gave rise to the grounds determination is accepted or established, the sheriff may direct the President to arrange a children's hearing to review any compulsory supervision order made as a result of that referral.
- (3) If, on making an order under subsection (1), none of the grounds for considering compulsory supervision specified in the referral by the Principal Reporter that gave rise to the grounds determination is accepted or established, the sheriff must make orders in accordance with sections 101 and 102.

**101 Compulsory supervision order must be terminated**

- (1) The sheriff must terminate any compulsory supervision order in effect in relation to the person who is the subject of the grounds determination and, if that person is still a child, consider whether the child will require supervision or guidance.
- (2) Where that person is still a child and the sheriff considers that the child will require supervision or guidance, the sheriff must order the relevant local authority for the child to provide it.
- (3) The relevant local authority for the child must comply with the sheriff's order.
- (4) The relevant local authority for the child is taken to have complied with the sheriff's order if—
  - (a) the authority offers the child the necessary supervision or guidance,
  - (b) the child is of sufficient age and maturity to understand what is being offered, and
  - (c) the child is unwilling to accept the offer.

**102 Where other grounds for considering compulsory supervision established**

If the sheriff is satisfied that there is sufficient evidence to establish any ground for considering compulsory supervision that was not included in the referral by the Principal Reporter that gave rise to the grounds determination, the sheriff must—

- (a) determine that the ground is established, and
- (b) where the subject of the grounds determination is still a child, direct the President to arrange a children's hearing to determine whether to make a compulsory supervision order in relation to the child.

**103 Where President directed to arrange a children's hearing**

The President must arrange a children's hearing if directed to do so by the sheriff under section 102(b).

**104 Warrant to secure attendance**

The sheriff may issue a warrant to secure the attendance of the child at the children's hearing if there is reason to believe that the child would not otherwise attend the hearing.

**105 Interim compulsory supervision order**

The sheriff may make an interim compulsory supervision order for the child if the sheriff is satisfied that, based on the information available to the sheriff, the child's circumstances are so urgent or serious that it is necessary to make the order for the protection, guidance, treatment or control of the child.

**CHAPTER 6****CHILDREN'S HEARINGS ON GROUNDS****106 Children's hearing to consider ground established before the sheriff**

- (1) This section applies where a children's hearing is arranged by the President in compliance with section 89 or 103.
- (2) The children's hearing must consider—
  - (a) the grounds,
  - (b) any information given to the children's hearing under section 158, and
  - (c) any other relevant information available to the children's hearing.
- (3) Unless a decision is deferred under subsection (4), the children's hearing must, after that consideration—
  - (a) make a compulsory supervision order, if the children's hearing is satisfied that it is necessary to do so for the protection, guidance, treatment or control of the child, or
  - (b) discharge the referral.
- (4) The children's hearing must defer a decision on whether to make a compulsory supervision order to a subsequent hearing if, after that consideration, the children's hearing is satisfied that—
  - (a) further information is needed before the matter can be properly dealt with,
  - (b) a statement, notification, document or other information has been given to the children's hearing, child or a recognised carer of the child before the hearing, but there has been insufficient time before the hearing for its proper consideration by the hearing or one of those persons, or
  - (c) the children's hearing orders that a statement, notification, document or other information that has been withheld from the child or a recognised carer of the child under section 161, 162 or 164 be given to that person,
  - (d) the children's hearing orders under section 163 that further steps be taken by the President to find a recognised carer,
  - (e) it is desirable that a person who is not present at the hearing be present when the matter is dealt with.

**CHAPTER 7****DEFERRAL OF CONSIDERATION****107 Application of sections 108 to 113**

- (1) Sections 108 to 113 apply where a decision on whether to make a compulsory supervision order is deferred to a subsequent children's hearing.
- (2) In those sections—
  - (a) the children's hearing that defers the decision is referred to as the "current hearing", and
  - (b) the children's hearing to which the decision is deferred is referred to as the "subsequent hearing".

**108 Warrant to secure attendance**

The current hearing may issue a warrant to secure the attendance of the child at the subsequent hearing if there is reason to believe that the child would not otherwise attend the subsequent hearing.

**109 Interim compulsory supervision order**

The current hearing may make an interim compulsory supervision order if it is satisfied that, based on the information available to it, the child's circumstances are so urgent or serious that it is necessary to make the order for the protection, guidance, treatment or control of the child.

**110 Medical examination order**

- (1) The current hearing may make a medical examination order, for the purposes of obtaining any further information, or carrying out any further investigation, needed before the decision is made.
- (2) The order may be made—
  - (a) on the initiative of the current hearing, or
  - (b) on an application by the Principal Reporter.

**111 Excusal from attendance at subsequent hearing**

- (1) The current hearing may, if it is satisfied that one of the circumstances in section 167(3) exists, excuse the child from attending the subsequent children's hearing.
- (2) The current hearing may, if it is satisfied that one of the circumstances in section 168(3) exists, excuse a recognised carer of the child to which those circumstances apply from attending the subsequent children's hearing.

**112 President must arrange hearing**

The President must arrange the subsequent hearing.

**113 Subsequent hearing: deferral of decision**

- (1) The subsequent hearing may defer the decision on whether to make a compulsory supervision order to another children's hearing only if—
  - (a) further information is needed before the matter can be properly dealt with,
  - (b) a statement, notification, document or other information has been given to the children's hearing, child or a recognised carer of the child before the hearing, but there has been insufficient time before the hearing for its proper consideration by the hearing or one of those persons, or
  - (c) the children's hearing orders that a statement, notification, document or other information that has been withheld from the child or a recognised carer of the child under sections 161, 162 or 164 be given to that person,
  - (d) the children's hearing orders under section 163 that further steps be taken by the President to find a recognised carer,
  - (e) it is desirable that a person who is not present at the hearing be present when the matter is dealt with.
- (2) Where a child or recognised carer of the child is excused under section 111, the subsequent hearing may, despite the excusal, defer its decision to a subsequent children's hearing without further excusing the person.

**CHAPTER 8****COMPULSORY SUPERVISION ORDERS***Compulsory supervision orders***114 Compulsory supervision orders**

- (1) A compulsory supervision order is an order requiring one or more of the following—
  - (a) a child to reside at a place or places specified in the order,
  - (b) a child to comply with a condition or conditions specified in the order,
  - (c) a local authority to perform the duty or duties specified in the order in relation to the child.
- (2) It includes any authorisation or direction that—
  - (a) the children's hearing making the order is entitled to make, and
  - (b) is included in the order.
- (3) A children's hearing must, when making a compulsory supervision order, consider whether to impose a condition regulating contact between the child and a person or class of person specified in the order.
- (4) A children's hearing must, when making a compulsory supervision order, nominate the local authority which, in the opinion of the children's hearing, is the relevant local authority for the child.
- (5) That local authority is taken to be the relevant local authority for the child for the purposes of this Act, unless another local authority is found to be the relevant local authority for the child on review or appeal.



*Residence***115 Order dealing with place or places at which child is to reside**

- (1) This section applies where a children's hearing makes a compulsory supervision order specifying a place or places at which a child is to reside.
- (2) The children's hearing may also do either or both of the following as part of the compulsory supervision order—
  - (a) authorise a person in charge of a place at which the child is to reside to restrict the child's liberty to the extent that person considers appropriate having regard to the terms of the order,
  - (b) direct that the place or places at which the child is to reside are not to be disclosed to a person or class of person specified in the order.

**116 Secure accommodation authorisation**

- (1) This section applies where a children's hearing makes a compulsory supervision order requiring a child to reside at a residential establishment.
- (2) The children's hearing may include a secure accommodation authorisation in the order if—
  - (a) either—
    - (i) the child has previously absconded, is likely to abscond again and, if the child absconded, it is likely that the child's physical, mental or moral welfare will be at risk, or
    - (ii) the child is likely to self harm or cause injury to another person, and
  - (b) having considered the other options available, including the imposition of a movement restriction condition, the children's hearing is satisfied that it is necessary to do so.

*Conditions***117 Conditions**

The conditions imposed on the child by a compulsory supervision order may include, in particular—

- (a) a condition that the child submit to any medical or other examination or treatment, subject to section 197,
- (b) a condition regulating contact between the child and a person or class of person, and
- (c) in the circumstances mentioned in section 119, a movement restriction condition.

**118 Movement restriction conditions**

- (1) A movement restriction condition is a condition—
  - (a) restricting the child's movements in a specified way, and
  - (b) requiring the child to comply with specified arrangements for monitoring compliance with the restriction.
- (2) In subsection (1), "specified" means specified in the movement restriction condition.

- (3) The Scottish Ministers may prescribe by regulations restrictions or monitoring arrangements that may be imposed as part of a movement restriction condition.
- (4) In particular, the Scottish Ministers may—
  - (a) prescribe the method or methods of monitoring compliance with a movement restriction,
  - (b) specify the devices that may be used for the purpose of that monitoring,
  - (c) prescribe the person or class of person who may be designated to carry out the monitoring, and
  - (d) require that the condition be varied to designate another person if the person designated ceases to be prescribed, or fall within a class of person, prescribed under paragraph (c).
- (5) The Scottish Ministers may—
  - (a) make arrangements (contractual or otherwise) to secure the services of such persons as they think fit to carry out monitoring, and
  - (b) make those arrangements in a way that provides differently for different areas or different forms of monitoring.
- (6) Nothing in any enactment or rule of law prevents the disclosure to a person providing a service under an arrangement made under subsection (5) of information relating to a child where the disclosure is made for the purposes only of the full and proper provision of monitoring.

## **119 Circumstances in which movement restriction condition may be imposed**

The circumstances in which a children's hearing may impose a movement restriction condition are—

- (a) either—
  - (i) the child has previously absconded, is likely to abscond again and, if the child absconds, it is likely that the child's physical, mental or moral welfare will be at risk, or
  - (ii) the child is likely to self harm or cause injury to another person, and
- (b) having considered any other, less intrusive, option available, the children's hearing is satisfied that it is necessary to do so.

### *Duties on local authorities*

## **120 General duty of local authority**

- (1) The relevant local authority for a child must give effect to a compulsory supervision order made in relation to the child.
- (2) In particular, the relevant local authority for the child must perform any duties imposed on it in relation to a child by the compulsory supervision order.

## **121 Duty to secure or facilitate services from elsewhere**

The duties which a local authority may be required to perform under a compulsory supervision order include securing or facilitating the provision for the child of services of a kind which the relevant local authority does not itself provide.

**122 Duty where child to reside in certain places**

- (1) Subsection (2) applies where, under a compulsory supervision order, a child is required to reside—
  - (a) in accommodation provided by the parents or relatives of the child, or by any person associated with them or the child, or
  - (b) in any other accommodation not provided by a local authority.
- (2) The relevant local authority for the child must from time to time—
  - (a) investigate whether, while the child is resident in that accommodation, any conditions imposed under the compulsory supervision order are being complied with, and
  - (b) if the local authority considers that conditions are not being complied with, take such steps as the local authority considers reasonable.

**CHAPTER 9****REVIEW OF COMPULSORY SUPERVISION ORDERS***Requirement for review***123 Requirement for review of compulsory supervision order**

A children's hearing may, when making a compulsory supervision order, require it to be reviewed by a children's hearing on a day or within a period specified in the order.

**124 Excusal from attendance**

- (1) This section applies where a children's hearing, when making a compulsory supervision order, requires the order to be reviewed on a day or within a period specified in the order.
- (2) The children's hearing may, if it is satisfied that one of the circumstances in section 167(3) exists, excuse the child from attending the children's hearing constituted to consider the review of the compulsory supervision order ("the review hearing").
- (3) The children's hearing may, if it is satisfied that one of the circumstances in section 168(3) exists, excuse the recognised carer of the child to which those circumstances apply from attending the review hearing.
- (4) Where a child or recognised carer of the child is excused under this section, the review hearing may, despite the excusal, defer its decision to a subsequent children's hearing without further excusing the person excused under this section.

**125 Duty on relevant local authority to require review**

- (1) The relevant local authority for a child must, by giving notice in writing to the President, require a review of a compulsory supervision order in relation to a child where the local authority is satisfied that one or more of the circumstances set out in subsection (2) exist.
- (2) Those circumstances are—
  - (a) the compulsory supervision order ought to cease to have effect or be varied,

- (b) the compulsory supervision order is not being complied with,
  - (c) the best interests of the child would be served by the authority making one of the following applications, and the authority intends to make such an application—
    - (i) an application under section 80 of the Adoption and Children (Scotland) Act 2007 (asp 4) (the “2007 Act”) for a permanence order,
    - (ii) an application under section 92 of the 2007 Act for variation of such an order,
    - (iii) an application under section 93 of the 2007 Act for amendment of such an order,
    - (iv) an application under section 98 of the 2007 Act for revocation of such an order,
  - (d) the best interests of the child would be served by the authority placing the child for adoption and the authority intends to place the child for adoption,
  - (e) the authority is aware that an application has been made and is pending, or is about to be made, under section 29 or 30 of the 2007 Act for an adoption order in respect of the child.
- (3) The Scottish Ministers may make regulations specifying the period within which a review requirement under subsection (2)(a) to (d) may be made.
  - (4) Different periods may be specified for different review requirements, or classes of review requirement.
  - (5) A review requirement under subsection (2)(e) must be made as soon as the authority becomes aware of the application.

#### **126 Duties on children’s hearing where review required under section 125**

- (1) This section applies where a review of a compulsory supervision order in relation to a child is required under section 125(2)(c), (d) or (e).
- (2) The children’s hearing that carries out the review must prepare a report providing advice in respect of the proposed application or adoption for any court that may subsequently need to come to a decision about the application or adoption.
- (3) The report must be prepared regardless of any other action taken by the children’s hearing.
- (4) The report must be in the form prescribed by the Scottish Ministers.
- (5) The court must have regard to the report when coming to its decision about the application or adoption.

#### **127 Right of child or recognised carer to require review**

- (1) A child who is the subject of a compulsory supervision order may require a review of the order.
- (2) A recognised carer of a child who is the subject of a compulsory supervision order may require a review of the order.
- (3) If a review is required under subsection (1) or (2), the order may not be reviewed until after the end of the period of three months beginning on—
  - (a) the day on which the order is made,

- (b) if the order has been continued or varied, the last day on which that was done.
- (4) The review may be required by giving notice in writing to the President.

### **128 President's duty to initiate a review**

The President must initiate a review of a compulsory supervision order in relation to a child if—

- (a) the order will expire within three months, and
- (b) the order would not otherwise be reviewed before it expires.

### **129 Duty to initiate a review if child to be taken out of Scotland**

- (1) This section applies where—
  - (a) a child is subject to a compulsory supervision order,
  - (b) a recognised carer proposes to take the child to live outwith Scotland, and
  - (c) that action would not be in accordance with the order or with an order under section 11 of the 1995 Act.
- (2) The recognised carer must give notice in writing of the proposal to the President and the relevant local authority for the child no later than 28 days before the day on which the carer proposes to take the child to live outwith Scotland.
- (3) If the President receives notice under subsection (2), the President must initiate a review of the compulsory supervision order.

### **130 Review: secure accommodation authorisation**

- (1) This section applies where a compulsory supervision order includes a secure accommodation authorisation.
- (2) The President must initiate a review of the compulsory supervision order if no review has taken place within the period of three months beginning on the day the order is made or, in a case where it is varied or continued, the day on which it is varied or continued.

### *Functions of President and children's hearing*

### **131 Application of sections 132 and 133**

- (1) Sections 132 and 133 apply where a review of a compulsory supervision order in relation to a child is required or is to be initiated under one of the following provisions—
  - (a) section 123,
  - (b) section 125,
  - (c) section 127,
  - (d) section 128,
  - (e) section 129,
  - (f) section 130.
- (2) Sections 132 and 133 also apply where—

- (a) a case is referred to the President to arrange a review under section 96(3) or 106 of the Adoption and Children (Scotland) Act 2007 (asp 4),
- (b) a case is referred to the President to arrange a review under section 12(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), or
- (c) a case is referred for review by virtue of any other enactment.

### **132 President's duty to arrange hearing**

The President must—

- (a) arrange a children's hearing to review the compulsory supervision order,
- (b) request—
  - (i) the Principal Reporter to give the President any information which the Principal Reporter may wish to give to assist the children's hearing,
  - (ii) the relevant local authority for the child to give the President any reports that the local authority has prepared, and any other information which the local authority may wish to give to assist the children's hearing,
- (c) give that information to the children's hearing, and
- (d) make any arrangements incidental to the review.

### **133 Powers of children's hearing on review**

- (1) A children's hearing carrying out a review of a compulsory supervision order may defer a decision on review to a subsequent children's hearing if satisfied that—
  - (a) further information is needed before the matter can be properly dealt with,
  - (b) a statement, notification, document or other information has been given to the children's hearing, child or a recognised carer of the child before the hearing, but there has been insufficient time before the hearing for its proper consideration by the hearing or one of those persons, or
  - (c) the children's hearing orders that a statement, notification, document or other information that has been withheld from the child or a recognised carer of the child under section 161, 162 or 164 be given to that person,
  - (d) the children's hearing orders under section 163 that further steps be taken by the President to find a recognised carer,
  - (e) it is desirable that a person who is not present at the hearing be present when the matter is dealt with.
- (2) Sections 108 to 111 apply in the same way where it is a decision on review that is deferred to a subsequent hearing as they would apply where it is a decision on whether a compulsory supervision order should be made that is deferred.
- (3) A children's hearing may, on reviewing a compulsory supervision order—
  - (a) terminate the compulsory supervision order,
  - (b) vary the compulsory supervision order, including by adding or removing a direction, authorisation, condition or requirement of a kind mentioned in sections 114 to 118, or
  - (c) continue the compulsory supervision order, with or without such variation.

- (4) A children's hearing may only vary or continue a compulsory supervision order if the children's hearing is satisfied that it is necessary to do so for the protection, guidance, treatment or control of the child.
- (5) If a children's hearing varies or continues a compulsory supervision order, the children's hearing must consider whether to impose a condition regulating contact between the child and a person or class of person specified in the order.
- (6) If the children's hearing terminates the compulsory supervision order, the children's hearing must—
  - (a) consider whether supervision or guidance is needed by the child, and
  - (b) if so, make a statement to that effect.
- (7) If the children's hearing states that supervision or guidance is needed by the child, it is the duty of the relevant local authority for the child to give such supervision or guidance as the child will accept.
- (8) The relevant local authority for the child is taken to have complied with the children's hearing's statement if—
  - (a) the authority offers the child the necessary supervision or guidance,
  - (b) the child is of sufficient age and maturity to understand what is being offered, and
  - (c) the child is unwilling to accept the offer.

*Enforcement of local authority's duties*

**134 Breach of duties imposed by sections 120 to 122**

- (1) This section applies where, on the review of a compulsory supervision order, it appears to the children's hearing reviewing the order that the relevant local authority for the child is in breach of a duty in relation to the child imposed on the authority under section 120, 121 or 122.
- (2) The children's hearing may direct the President to give the relevant local authority for the child notice in accordance with subsection (3) of an intended application to enforce the authority's duty.
- (3) The notice must—
  - (a) be in writing,
  - (b) set out the respects in which the authority is in breach of its duty in relation to the child, and
  - (c) state that if the authority does not perform that duty within the period of 21 days beginning with the day on which the notice is given, the President may make an application to enforce the authority's duty.
- (4) The President must, at the same time as giving the notice, send a copy of the notice to—
  - (a) the child,
  - (b) each recognised carer of the child,
  - (c) if a safeguarder has been appointed for the child, the safeguarder.

- (5) If a children's hearing gives a direction under subsection (2), the children's hearing must determine that a further review of the compulsory supervision order is to take place on or as soon as is reasonably practicable after the expiry of the period of 28 days beginning on the day on which the notice is given.
- (6) If, on that further review, it appears to the children's hearing carrying out the further review that the relevant local authority for the child continues to be in breach of its duty, the children's hearing may authorise the President to make an application under section 135.

### **135 Application for order**

- (1) The President may, if authorised to do so under section 134(6) apply to the relevant sheriff principal for an order to enforce the relevant local authority's duty in relation to a child.
- (2) The relevant sheriff principal is the sheriff principal of the sheriffdom in which the principal office of the authority is situated.
- (3) The President may not make such an application, despite the authorisation given under section 134(6) unless—
  - (a) the President has given the relevant local authority notice in relation to the duty in compliance with a direction given under 134(2), and
  - (b) the authority has failed to perform the duty within the period specified in the notice.
- (4) In deciding whether to make an application to enforce the authority's duty in relation to the child, the President must not take into account any factor relating to the adequacy of the means available to the authority to enable it to comply with the duty.
- (5) The application is to be made by summary application.

### **136 Order for enforcement**

- (1) The sheriff principal may, on an application by the President under section 135, make an order requiring the relevant local authority for a child that is in breach of a duty imposed by virtue of a compulsory supervision order to perform that duty.
- (2) Such an order is final.

#### *Review where new grounds referred*

### **137 Referral where child already subject to compulsory supervision order**

- (1) This section applies where—
  - (a) a referral is made by the Principal Reporter for the compulsory supervision of a child, and
  - (b) at the time the referral is considered by the initial children's hearing, a compulsory supervision order is in effect in relation to the child.
- (2) The children's hearing must review the existing compulsory supervision order before taking action under those provisions.



*Duration of compulsory supervision order***138 General consideration**

No child is to be subject to a compulsory supervision order for any period longer than is necessary in the interests of promoting or safeguarding the child's welfare.

**139 Maximum duration**

Unless varied or continued on review, a compulsory supervision order in relation to a child ceases to have effect at the end of the period of one year beginning on the day on which it is made.

**140 Automatic termination**

A compulsory supervision order in relation to a child ceases to have effect on the day on which the child attains the age of 18 years.

*Expedited initial hearing where child arrested***141 Expedited initial hearing where child arrested**

- (1) This section applies where a constable informs the Principal Reporter under subsection (5) of section 43 of the Criminal Procedure (Scotland) Act 1995 (c.46) that—
  - (a) a person who is apparently a child has been apprehended and is being kept in a place of safety under subsection (4) of that section, and
  - (b) it has been decided not to proceed with a charge against the child.
- (2) Where the Principal Reporter is not satisfied that the child must for the protection or control of the child be kept in a place of safety until a children's hearing is held, the Principal Reporter may direct that the child is no longer to be kept in a place of safety.
- (3) Where the Principal Reporter is satisfied that the child must for the protection or control of the child be kept in a place of safety, the Principal Reporter must immediately refer the child to a children's hearing under section 69(2).
- (4) The initial children's hearing must be held, unless it is not practicable to do so, not later than three days after the Principal Reporter is informed under subsection (1).

*Regulations***142 Regulations**

The Scottish Ministers may by regulations make provision about—

- (a) the transmission of information regarding a child who is the subject of a compulsory supervision order to any person who, by virtue of the order, has or is to have control over the child,
- (b) the temporary accommodation of such a child,
- (c) the taking of such a child to any place in which the child is required to reside under the compulsory supervision order,
- (d) the taking of the child to —
  - (i) a place of safety under section 199(6) or 200(6),

- (ii) a person to whom the child falls to be taken to under section 199(2) or
- (iii) a place to which the child falls to be taken to under section 200(2).

## PART 5

### WARRANTS AND ANCILLARY ORDERS

#### CHAPTER 1

##### WARRANTS TO SECURE ATTENDANCE

#### **143 Warrants to secure attendance**

- (1) A warrant to secure attendance is a warrant authorising an officer of law to secure the attendance of a child at a children's hearing by—
  - (a) searching for and apprehending the child,
  - (b) if the warrant authorises that, until the children's hearing, the child may be kept in a place of safety away from the place where the child predominantly resides, taking the child to that place until the children's hearing,
  - (c) bringing the child before the children's hearing,
  - (d) detaining the child in a police station, police cell or other convenient place until the child is taken to the place of safety or the children's hearing, and
  - (e) so far as is necessary, breaking open shut and lockfast places.
- (2) A child may be kept in the place of safety until the earlier of—
  - (a) the beginning of the children's hearing, and
  - (b) the end of the period of seven days beginning on the day on which the child is first taken to the place of safety.
- (3) A warrant to secure attendance may direct that the place or places at which the child is to reside under the warrant are not to be disclosed to a person or class of person specified in the warrant.
- (4) Where a warrant to secure attendance authorises the child to be kept in a place of safety, the President must use the President's best endeavours to arrange a children's hearing to sit on the first working day after the child is taken to the place of safety.
- (5) A children's hearing or sheriff issuing a warrant to secure attendance may include a secure accommodation authorisation where—
  - (a) the warrant authorises that the child be kept in a residential establishment, and
  - (b) either—
    - (i) the child has previously absconded, is likely to abscond again and, if the child absconded, it is likely that the child's physical, mental or moral welfare will be at risk, or
    - (ii) the child is likely to self harm or cause injury to another person, and
  - (c) having considered the other options available the children's hearing or sheriff is satisfied that it is necessary to do so.

## CHAPTER 2

### INTERIM COMPULSORY SUPERVISION ORDERS

#### **144 Interim compulsory supervision orders**

- (1) An interim compulsory supervision order is an interim order requiring one or more of the following—
  - (a) a child to reside at a place or places specified in the order,
  - (b) a child to comply with a condition or conditions specified in the order,
  - (c) a local authority to perform the duty or duties specified in the order in relation to the child.
- (2) Sections 115 to 121 apply, subject to subsection (3), in relation to interim compulsory supervision orders as they apply in relation to compulsory supervision orders.
- (3) An interim compulsory supervision order may, as an alternative to specifying a place or places at which the child is to reside, specify that the child is to reside at any place of safety away from the place where the child predominantly resides.
- (4) An interim compulsory supervision order ceases to have effect on the earliest of—
  - (a) the beginning of the next children's hearing arranged to consider the compulsory supervision of the child after the order is made,
  - (b) a day specified in the order, or
  - (c) the end of the period of 22 days beginning on the day on which the order is made.
- (5) A children's hearing may not make a child subject to an interim compulsory supervision order where the effect of the order would be that the child would be subject to an interim compulsory supervision order for a continuous period exceeding 66 days.
- (6) An officer of law may enforce an interim compulsory supervision order by—
  - (a) searching for and apprehending the child,
  - (b) taking the child to a place where the child resides or, by virtue of the order, is to reside,
  - (c) in the meantime, detaining the child in a police station, police cell or other convenient place, and
  - (d) so far as is necessary, breaking open shut and lockfast places.

#### **145 Extension of order**

- (1) This section applies where—
  - (a) a child is subject to an interim compulsory supervision order ("the current order"), and
  - (b) the next children's hearing would be unable, by virtue of section 77(4), 78(5), 79(6) or 144(5), to make a further interim compulsory supervision order.
- (2) The Principal Reporter may, at any time prior to the expiry of the current order, apply to the sheriff for an extension of that order.

- (3) The Principal Reporter may, at the same time as applying for an extension of the current order, apply to the sheriff for the order to be varied (including by variation or termination of a secure accommodation authorisation included in the order).
- (4) The current order may be extended, or extended and varied, only if the sheriff is satisfied that, based on the information available, the child's circumstances are so urgent or serious that it is necessary to extend, or extend and vary, the current order for the protection, guidance, treatment or control of the child.
- (5) An extended order, or extended and varied order, ceases to have effect on the earlier of—
  - (a) a day on which a children's hearing makes a compulsory supervision order in respect of the child,
  - (b) a day specified in the extended order, or
  - (c) the end of the period of 22 days beginning on the day on which the extended order, or extended and varied order, is made.
- (6) The sheriff may, on the application of the Principal Reporter, further extend, or further extend and vary the order if the sheriff is satisfied that, based on the information available, the child's circumstances are so urgent or serious that it is necessary to extend, or extend and vary, the order for the protection, guidance, treatment or control of the child.
- (7) A further extension, or further extension and variation, ceases to have effect on the earlier of—
  - (a) a day on which a children's hearing makes a compulsory supervision order in respect of the child,
  - (b) a day specified in the further extended or further extended and varied order, or
  - (c) the end of the period of 22 days beginning on the day on which the further extended order, or extended and varied order, is made.

### CHAPTER 3

#### MEDICAL EXAMINATION ORDERS

##### **146 Medical examination orders**

- (1) A medical examination order is an order requiring a child —
  - (a) to attend or reside at any clinic, hospital or other establishment specified in the order, or
  - (b) subject to section 197, to submit to any medical examination specified in the order.
- (2) A medical examination order may also—
  - (a) regulate contact between the child and any specified person or class of person while the order is being complied with,
  - (b) direct that the place or places at which the child is to reside under the order are not to be disclosed to a person or class of person specified in the order, or
  - (c) contain any other conditions appearing to the children's hearing to be appropriate for the purposes of ensuring the child complies with the order.

- (3) A medical examination order ceases to have effect on the earliest of—
  - (a) the beginning of the next children's hearing arranged to consider the compulsory supervision of the child after the order is made,
  - (b) a day specified in the order, or
  - (c) the end of the period of 22 days beginning on the day on which the order is made.
- (4) A children's hearing may not make a child subject to a medical examination order where the effect of the order would be that the child would be subject to a medical examination order for a continuous period exceeding 66 days.
- (5) An officer of law may enforce a medical examination order by—
  - (a) searching for and apprehending the child,
  - (b) taking the child to any clinic, hospital or other establishment specified in the order,
  - (c) in the meantime, detaining the child in a police station, police cell or other convenient place, and
  - (d) so far as is necessary, breaking open shut and lockfast places.
- (6) A children's hearing or sheriff making a medical examination order may include a secure accommodation authorisation where—
  - (a) the child is required under the order to reside in a residential establishment, and
  - (b) either—
    - (i) the child has previously absconded, is likely to abscond again and, if the child absconded, it is likely that the child's physical, mental or moral welfare will be at risk, or
    - (ii) the child is likely to self harm or cause injury to another person, and
  - (c) having considered the other options available the children's hearing or sheriff is satisfied that it is necessary to do so.
- (7) In subsection (1)(b), "medical" includes "psychological".

#### **147 Extension of order**

- (1) This section applies where—
  - (a) a child is subject to a medical examination order (the "current order"), and
  - (b) the next children's hearing would be unable, by virtue of section 146(4), to make a further medical examination order.
- (2) The Principal Reporter may, at any time prior to the expiry of the current order, apply to the sheriff for an extension of that order.
- (3) The Principal Reporter may, at the same time as applying for an extension of the current order, apply to the sheriff for the order to be varied (including by variation or termination of a secure accommodation authorisation attached to the order).
- (4) The current order may be extended, or extended and varied, only if the sheriff is satisfied that, the extension, or extension and variation, is necessary to allow the children's hearing to complete its consideration of whether the child is in need of compulsory supervision.

- (5) An extended order, or extended and varied order, ceases to have effect on the earlier of—
  - (a) the beginning of the next children's hearing arranged to consider the compulsory supervision of the child after the extension is granted, or
  - (b) a day specified in the extended order.
- (6) The sheriff may, on the application of the Principal Reporter, further extend, or further extend and vary the order if the sheriff is satisfied that, based on the information available, the child's circumstances are so urgent or serious that it is necessary to extend, or extend and vary, the order for the protection, guidance, treatment or control of the child.
- (7) A further extension, or further extension and variation, ceases to have effect on the earlier of—
  - (a) a day on which a children's hearing makes a compulsory supervision order in respect of the child,
  - (b) a day specified in the further extended or further extended and varied order, or
  - (c) the end of the period of 22 days beginning on the day on which the further extended order, or extended and varied order, is made.

## CHAPTER 4

### SECURE ACCOMMODATION AUTHORISATIONS

#### **148 Secure accommodation authorisations**

- (1) A secure accommodation authorisation is an authorisation to place and keep a child in secure accommodation—
  - (a) within a residential establishment specified in the authorisation, and
  - (b) for the period the person in charge of the residential establishment, with the agreement of the chief social work officer of the relevant local authority for the child, considers necessary.
- (2) A residential establishment is—
  - (a) an establishment in Scotland (whether managed by a local authority, by a voluntary organisation or by any other person) which provides residential accommodation for children for the purposes of this Act, the 1995 Act or the Social Work (Scotland) Act 1968 (c. 49),
  - (b) a home in England or Wales that is—
    - (i) a community home within the meaning of the Children Act 1989 (c. 41),
    - (ii) a voluntary home within the meaning of that Act, or
    - (iii) a private children's home within the meaning of that Act, or
  - (c) a home in Northern Ireland that is—
    - (i) provided under Part VIII of the Children (Northern Ireland) Order 1995,
    - (ii) a voluntary home within the meaning of that Order, or
    - (iii) a registered children's home within the meaning of that Order.

- (3) Secure accommodation is accommodation provided in a residential establishment, approved under regulations made by virtue of section 29 of the Regulation of Care (Scotland) Act 2001 (asp 8), for the purpose of restricting the liberty of children.

**149 Regulations: further provision about orders**

- (1) The Scottish Ministers may by regulations make provision about—
- (a) the placement of a child in secure accommodation in circumstances not already dealt with by this or another enactment,
  - (b) the maximum period during which a child may be kept in secure accommodation in those circumstances,
  - (c) the duties of the President and Principal Reporter towards a child placed in secure accommodation in those circumstances,
  - (d) the duties of the relevant local authority for a child placed in secure accommodation in those circumstances,
  - (e) who is to be notified of the placement of the child in secure accommodation in those circumstances and when,
  - (f) the content of a notice mentioned in paragraph (e),
  - (g) the review by a children's hearing or by the sheriff of a decision to place a child in secure accommodation in those circumstances,
  - (h) who may require a review by a children's hearing, or apply for a review by the sheriff,
  - (i) the period within which the review must take place after a child is placed in secure accommodation in those circumstances, and
  - (j) the protection of the welfare of a child placed in secure accommodation in those circumstances.
- (2) A child must not be kept in secure accommodation under a provision made under the regulations for a period of more than 66 days.

**150 Regulations: procedure etc.**

The Scottish Ministers may by regulations make provision about—

- (a) the duties of the President and Principal Reporter towards a child placed in secure accommodation in circumstances dealt with by this or another enactment,
- (b) the duties of the relevant local authority for a child placed in secure accommodation in those circumstances,
- (c) who is to be notified of the placement of the child in secure accommodation in those circumstances and when,
- (d) the content of a notice mentioned in paragraph (c),
- (e) procedural matters relating to the placement of a child in secure accommodation in those circumstances, and
- (f) the protection of the welfare of a child placed in secure accommodation in those circumstances.

**PART 6**

## CHILDREN'S HEARINGS

**CHAPTER 1**

## BUSINESS MEETINGS

**151 President's power to refer certain matters for pre-hearing consideration**

- (1) The President may refer a matter of the kind mentioned in subsection (2) to the constituting members of a children's hearing for consideration before the hearing.
- (2) Those matters are—
  - (a) whether the child or a recognised carer of the child is excused from attending the hearing,
  - (b) any matter on which the President may require direction or guidance in carrying out the President's functions in relation to the child,
  - (c) any matter on which the Principal Reporter may require direction or guidance in carrying out the Principal Reporter's functions in relation to the child,
  - (d) any other matter prescribed by rules made by the Scottish Ministers for the purposes of this section.
- (3) The President may refer the matter—
  - (a) on the President's own initiative, or
  - (b) on request by—
    - (i) the child,
    - (ii) any recognised carer of the child,
    - (iii) the Principal Reporter, or
    - (iv) if there is a safeguarder appointed for the child, the safeguarder.

**152 Notice of referral by President**

- (1) If the President refers a matter under section 151, the President must give notice in writing of the referral to—
  - (a) each of the constituting members of the children's hearing,
  - (b) the child,
  - (c) each recognised carer of the child,
  - (d) the Principal Reporter, and
  - (e) if there is a safeguarder appointed for the child, the safeguarder.
- (2) The President must, when giving notice to the child and recognised carers, notify them that—
  - (a) they may require the matter to be dealt with by a meeting between all of the constituting members of the children's hearing, and
  - (b) they may notify the President of their views on the matter.



**153 Consideration of matter**

- (1) The child, or a recognised carer of the child, may require that the matter be dealt with in a meeting between the constituting members of the children's hearing by giving notice to the President.
- (2) If notice is given under subsection (1), the matter must be dealt with in that way.
- (3) If no such notice is given, the chairing member of the children's panel may deal with the matter without such a meeting.
- (4) The President must convey any views on the matter made known to the President under section 152(2)(b)—
  - (a) to the chairing member if there is to be no meeting,
  - (b) to all of the constituting members of the children's hearing if there is to be a meeting.

**154 Decision on consideration of matter**

The chairing member of the children's hearing or, if a meeting is convened, the constituting members of the children's hearing may, on considering the matter—

- (a) excuse the child or a recognised carer of the child from attending the children's hearing,
- (b) given direction or guidance to the President in carrying out the President's functions in relation to the child,
- (c) give direction or guidance to the Principal Reporter in carrying out of the Principal Reporter's functions in relation to the child,
- (d) do anything else that the chairing member is, or the constituting members are, empowered to do by rules made by the Scottish Ministers for the purposes of this section.

**CHAPTER 2****PROCEDURE***Provision of documents to President***155 Provision of documents to President in certain cases**

- (1) This section applies where the President is required, by virtue of this Act, to arrange a children's hearing other than an initial children's hearing.
- (2) The President must notify the Principal Reporter that the President is arranging the children's hearing.
- (3) The Principal Reporter must, on being notified under subsection (2), give the President a copy of any report (including any local authority report) or information the Principal Reporter has which the Principal Reporter believes is relevant to the consideration of the matter before the children's hearing.

**156 Provision of additional reports to President**

- (1) This section applies if the Principal Reporter receives a copy of an additional report.

- (2) The Principal Reporter must, as soon as reasonably practicable after receiving the copy of the additional report, give the President a copy of the additional report.
- (3) An “additional report” is a copy of—
  - (a) a local authority report on the child, or
  - (b) any other report or information which the Principal Reporter believes is relevant to the consideration of the matter before the children’s hearing,
 received by the Principal Reporter after the Principal Reporter gives the President documents under section 71(3) or 155(3), but before the relevant children’s hearing is held.

*Provision of documents by President*

**157 Application of sections 158 to 160**

Sections 158 to 160 apply where by virtue of this Act the President is required to arrange a children’s hearing.

**158 Provision of documents to constituting members of children’s hearing**

- (1) The President must carry out the following functions—
  - (a) notify the constituting members of the children’s hearing in writing of—
    - (i) the purpose of the children’s hearing, and
    - (ii) the date and time fixed for the children’s hearing and the place where it is to take place,
  - (b) give those constituting members a copy of the following documents—
    - (i) any documents given to the President by the Principal Reporter under section 71(3) or 155(3),
    - (ii) any judicial remit or reference or any reference by a local authority,
    - (iii) any order made, or warrant issued, by virtue of this Act to which the child is subject,
    - (iv) any report on the child prepared by a safeguarder,
    - (v) any views of the child given in writing to the President under section 152(2)(b),
    - (vi) any other report or information the President has which the President believes is relevant to the consideration of the child’s case.
- (2) The President must—
  - (a) notify the constituting members under subsection (1)(a) not less than seven days before the children’s hearing, and
  - (b) give those constituting members copies of the documents mentioned in subsection (1)(b)—
    - (i) as soon as reasonably practicable after the notification under subsection (1)(a), but
    - (ii) not later than three days before the children’s hearing.

- (3) The President must give the constituting members of the children's hearing a copy of any additional report as soon as reasonably practicable after the report is received by the President.

## **159 Provision of documents to child**

- (1) The President must carry out the following functions—
  - (a) notify the child in writing—
    - (i) of the purpose of the children's hearing,
    - (ii) of the date and time fixed for the children's hearing and the place where it is to take place, and
    - (iii) that the child has a right to attend the children's hearing, and must attend the hearing unless excused,
  - (b) give the child a copy of each of the documents given to the constituting members of the children's hearing under section 158(1)(b).
- (2) The President must—
  - (a) notify the child under subsection (1)(a) not less than seven days before the children's hearing, and
  - (b) give the child copies of the documents mentioned in subsection (1)(b)—
    - (i) as soon as reasonably practicable after the notification under subsection (1)(a), but
    - (ii) not later than three days before the children's hearing.
- (3) The President must give the child a copy of any additional report as soon as reasonably practicable after the report is received by the President.
- (4) The President need not notify the child under subsection (1)(a) where the President is satisfied that, taking account of the child's age and maturity, the child would not be capable of understanding the notification.
- (5) The President need not give the child a copy of the statement of grounds before an initial children's hearing under subsection (1)(b) where the President is satisfied that, taking account of the child's age and maturity, the child would not be capable of understanding the statement.
- (6) The President need not give the child any other document under subsection (1)(b), or any additional report, where the President is satisfied that—
  - (a) to do so would place the child's physical, mental or moral welfare at risk, or
  - (b) taking account of the child's age and maturity, the child would not be capable of understanding the document or additional report.
- (7) For the purposes of subsections (4), (5) and (6)(b), the President may, unless satisfied to the contrary, presume a child under 12 years to be of insufficient age and maturity to understand any notification, statement, document or additional report.

## **160 Provision of documents to recognised carers of child**

- (1) The President must carry out the following functions—
  - (a) notify each recognised carer of the child in writing—

- (i) of the purpose of the children's hearing, and
    - (ii) of the date and time fixed for the children's hearing and the place where it is to take place,
    - (iii) that the recognised carer has a right to attend the children's hearing, and must attend the hearing unless excused,
  - (b) give each recognised carer of the child a copy of each of the documents given to the constituting members of the children's hearing under section 158(1)(b).
- (2) The President must—
- (a) notify the recognised carer of the child under subsection (1)(a) not less than seven days before the children's hearing, and
  - (b) give the recognised carer copies of the documents mentioned in subsection (1)(b)—
    - (i) as soon as reasonably practicable after the notification under subsection (1)(a), but
    - (ii) not later than three days before the children's hearing.
- (3) The President must give each recognised carer of the child a copy of any additional report as soon as reasonably practicable after the report is received by the President.
- (4) Where the whereabouts of a recognised carer of the child are unknown, the President must take reasonable steps to find the recognised carer for the purpose of complying with the requirements of subsections (1) and (3).
- (5) If, after taking such steps, the whereabouts of the recognised carer of the child remain unknown, the President need not comply with the requirements of subsection (1) or (3).
- (6) Subsection (7) applies where—
- (a) one of the following orders or warrants is in effect and contains a direction that a child's whereabouts or the whereabouts of a recognised carer of the child (a "protected carer") are not to be disclosed to a specified person or class of person—
    - (i) an emergency protection order,
    - (ii) a compulsory supervision order,
    - (iii) an interim compulsory supervision order,
    - (iv) a medical examination order, and
    - (v) a warrant to secure attendance, or
  - (b) the President is satisfied that the disclosure to a recognised carer of a child of a document would be in breach of that direction.
- (7) Despite subsections (1) and (3), the President may, for the purposes of ensuring the direction is complied with—
- (a) if the whole of the document is affected by the direction, withhold the document from the recognised carer, or
  - (b) otherwise, before providing the document to the recognised carer, remove from the document or obscure any part of it which would, or might, otherwise disclose the child or protected carer's whereabouts.

*Provision of documents: directions***161 Provision of documents: child capable of understanding**

- (1) This section applies where—
  - (a) by virtue of subsection (4), (5) and (6)(b) of section 159, the President has not complied with the requirements of subsection (1) of that section, or
  - (b) by virtue of subsection (6)(b) of section 159, the President has not complied with the requirements of subsection (3) of that section.
- (2) If the children's hearing is satisfied that, taking account of the child's age and maturity, the child would be capable of understanding the statement of grounds, notification, document or additional report, the children's hearing must direct the President to comply with the requirements.
- (3) The President must comply with the direction.

**162 Provision of documents: no risk to child's welfare**

- (1) This section applies where, by virtue of subsection (6)(a) of section 159, the President has not complied with the requirements of subsection (1) or (3) of that section.
- (2) If the children's hearing is not satisfied that the giving of a copy of the document or additional report would place the child's physical, mental or moral welfare at risk, the children's hearing must direct the President to comply with the requirements.
- (3) The President must comply with the direction.

**163 Provision of documents: recognised carer**

- (1) This section applies where, by virtue of subsection (5) of section 160, the President has not complied with the requirements of subsection (1) or (3) of that section.
- (2) If the children's hearing is not satisfied that the President has taken reasonable steps to find the recognised carer of the child, the children's hearing must direct the President to take steps to find the recognised carer for the purposes of complying with the requirements.
- (3) The President must comply with the direction.

**164 Provision of documents: no risk to welfare of child or recognised carer**

- (1) This section applies where, by virtue of subsection (6)(b) of section 160, the President has not, under subsection (7) of that section, complied with the requirements of subsection (1) or (3) of that section.
- (2) If the children's hearing is not satisfied that giving a copy of the document or additional report or a part of the document or report that has been withheld or obscured would place the child's physical, mental or moral welfare at risk, the children's hearing must direct the President to comply with the requirements in relation to the whole, or that part, of the document.
- (3) The President must comply with the direction.

*Special case***165 Special case**

Where a children's hearing must take place, by virtue of this Act, within a period of less than seven days, the President must carry out the functions mentioned in sections 155, 156, 158, 159, and 160 as soon as reasonably practicable after the children's hearing is arranged.

*Rules***166 Power of Scottish Ministers to make rules**

- (1) The Scottish Ministers may make rules about the procedure to be followed before, during or after children's hearings.
- (2) The rules may, in particular, make provision about—
  - (a) the manner in which the Principal Reporter is to state the grounds when referring a child to a children's hearing,
  - (b) the recording and transmission of information,
  - (c) notifications made under this Act,
  - (d) the procedure in relation to business meetings,
  - (e) the procedure in relation to safeguarders,
  - (f) the representation of persons at children's hearings,
  - (g) appeals, and
  - (h) the payment of expenses.

*Attendance at hearings***167 Child's duty to attend children's hearing**

- (1) This section applies where the President gives a child notice of a children's hearing in compliance with this Act.
- (2) The child must attend the children's hearing unless the child is excused from attendance under this section or section 154(a).
- (3) The children's hearing may excuse the child from attending all or part of the children's hearing where—
  - (a) the child is referred to the hearing on a ground involving the committing of an offence mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (c. 46) and the attendance of the child at the hearing, or that part of the hearing, is not necessary for a fair hearing,
  - (b) the attendance of the child at the hearing, or that part of the hearing, would place the child's physical, mental or moral welfare at risk, or
  - (c) taking account of the child's age and maturity, the child would not be capable of understanding what happens at the hearing or that part of the hearing.

- (4) Where the children's hearing is an initial children's hearing, the children's hearing may only excuse the child from attendance during an explanation of the grounds on which the compulsory supervision of the child is being considered if it is satisfied that, taking account of the child's age and maturity, the child would not be capable of understanding the explanation.

#### **168 Recognised carer's duty to attend children's hearing**

- (1) This section applies where the President gives a recognised carer of a child notice of a children's hearing in compliance with this Act.
- (2) The recognised carer must attend the children's hearing unless—
  - (a) excused from the children's hearing under subsection (3) or section 154(a), or
  - (b) excluded from the children's hearing under section 170(2).
- (3) The children's hearing may excuse the recognised carer from attending all or part of the children's hearing where—
  - (a) it would be unreasonable to require the recognised carer's attendance at the hearing, or that part of the hearing, or
  - (b) the attendance of the recognised carer at the hearing, or that part of the hearing, is unnecessary for the proper consideration of the matter before the hearing.
- (4) A recognised carer is guilty of an offence if the recognised carer is obliged to attend a children's hearing under subsection (2) and fails to do so.
- (5) The recognised carer is liable on summary conviction to a fine not exceeding level three on the standard scale.

#### **169 Power to proceed in absence of recognised carer**

- (1) This section applies where a recognised carer is obliged to attend a children's hearing under section 168(2) and fails to do so.
- (2) The children's hearing may, if it considers it appropriate to do so, proceed with the children's hearing in the recognised carer's absence.

#### **170 Power to exclude recognised carer from children's hearing**

- (1) This section applies where a children's hearing is satisfied that—
  - (a) the presence of a recognised carer at the hearing is preventing the children's hearing from obtaining the views of the child, or
  - (b) the presence of a recognised carer at the hearing is causing, or likely to cause, significant distress to the child.
- (2) The children's hearing may exclude the recognised carer and any representative of the recognised carer from the children's hearing for as long as is necessary.
- (3) The chairing member of the children's hearing must explain to each excluded person the substance of what has taken place in the person's absence.

#### **171 Rights of certain persons to attend children's hearing**

- (1) The following persons have a right to attend a children's hearing—

- (a) the child (whether or not the child has been excused from attending),
  - (b) a recognised carer of the child (unless that person is excluded under section 170),
  - (c) a member of the Administrative Justice and Tribunals Council or the Scottish Committee of that Council (acting in that person's capacity as such),
  - (d) a member of an area support team (acting in that person's capacity as such),
  - (e) subject to subsection (5), a representative of a newspaper or news agency.
- (2) No other person may attend a children's hearing unless—
- (a) the person's attendance at the hearing is considered by the chairing member of the children's hearing to be necessary for the proper consideration of the matter before the children's hearing, or
  - (b) the person is otherwise granted permission to attend by the chairing member of the children's hearing.
- (3) The chairing member may not grant permission to a person under subsection (2)(b) if the child or a recognised carer of the child objects to the person attending the children's hearing.
- (4) The chairing member must 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.
- (5) The children's hearing may exclude a representative of a newspaper or news agency from any part of the hearing where it is satisfied that—
- (a) it is necessary to do so to obtain the views of the child, or
  - (b) the presence of that person is causing, or is likely to cause, significant distress to the child.
- (6) Where a person is excluded under subsection (5), after the exclusion has ended, the chairing member may explain to the person the substance of what has taken place in the person's absence.

### *Establishing child's age*

#### **172 Declaration**

- (1) At each children's hearing, the chairing member must ask the person in respect of whom the hearing has been arranged to declare the person's age.
- (2) The person may make another declaration as to the person's age at any time.

#### **173 Determination**

Any children's hearing may make a determination of the age of a person who is the subject of the hearing.

#### **174 Age taken to be that declared or determined**

- (1) A person is taken for the purposes of this Act to be of the age—
  - (a) worked out on the basis of the person's most recent declaration, or
  - (b) if a determination of age by a children's hearing is in effect, worked out in accordance with that determination.



- (2) Nothing done by a children's hearing in relation to a person is invalidated if it is subsequently proved that the age of the person is not that worked out under subsection (1).

*Cases remitted under section 49 of Criminal Procedure (Scotland) Act 1995*

**175 Cases remitted under section 49 of Criminal Procedure (Scotland) Act 1995**

- (1) This section applies where a court remits a case for disposal to a children's hearing under section 49 of the Criminal Procedure (Scotland) Act 1995 (c.46).
- (2) A certificate signed by the clerk of the court stating that the child or person concerned has pleaded guilty to, or has been found guilty of, the offence to which the remit relates is conclusive evidence for the purposes of the remit that the offence has been committed by the child or person.

**176 Cases remitted under section 49(7) of Criminal Procedure (Scotland) Act 1995**

Where a court has remitted a case for disposal to a children's hearing under section 49(7) of the Criminal Procedure (Scotland) Act 1995 (c.46), this Act applies to the person concerned as if the person were a child.

*Parenting order*

**177 Parenting order**

- (1) This section applies where a children's hearing constituted for any purpose in respect of a child 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 (asp 8) (the "2004 Act").
- (2) The children's hearing may require the Principal Reporter to consider whether to apply under section 102(3) of the 2004 Act for such an order.
- (3) The children's hearing must specify in the requirement—
- (a) the parent in respect of whom it might be appropriate for the order to be made, and
  - (b) by reference to section 102(4) to (6) of the 2004 Act, the condition in respect of which the application might be made.
- (4) In this section, "parent" and the "child" have the meanings given by section 117 of the 2004 Act.

**CHAPTER 3**

PUBLISHING RESTRICTIONS

**178 Protected information**

In this Chapter—

"protected information" means—

- (a) information in relation to one of the following—
  - (i) a children's hearing,
  - (ii) a review of a decision of a children's hearing,

- (iii) a hearing by the sheriff to determine whether a ground for considering the compulsory supervision of a child is established,
  - (iv) a review of such a determination,
  - (v) an appeal from any decision of the sheriff or sheriff principal made under this Act, or
  - (b) information given to the Principal Reporter in respect of a child in reliance on, or satisfaction of, a provision of this or another enactment, and
- “publish” includes in particular—
- (a) to publish matter in a programme service, as defined by section 201 of the Broadcasting Act 1990 (c.42), and
  - (b) to cause matter to be published.

### **179 Publication of protected information: offence**

- (1) A person must not publish protected information if—
  - (a) the publication of the information will, or is likely to, identify—
    - (i) any child mentioned in the protected information, or
    - (ii) the address or school of such a child, and
  - (b) the person—
    - (i) intends that outcome,
    - (ii) knows that the outcome will, or is likely to, occur, or
    - (iii) has reason to suspect that the outcome will, or is likely to, occur.
- (2) A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale in respect of each such contravention.
- (3) In any proceedings before the sheriff under this Act, the sheriff may, if the sheriff is satisfied that it is in the interests of justice to do so and to the extent that the sheriff considers appropriate, find that no offence has been committed.
- (4) The Court of Session in any appeal made to the Court under this Act may, if the Court is satisfied that it is in the interests of justice to do so and to the extent that the Court considers it appropriate, find that no offence has been committed.
- (5) The Scottish Ministers may, in respect of any children’s hearing, if they are satisfied that it is in the interests of justice to do so and to the extent that they consider appropriate, find that no offence has been committed.
- (6) The publication by or on behalf of a local authority or an adoption agency of information about a child for the purposes of making arrangements in relation to the child under this or that Act is not an offence under this section.
- (7) In subsection (6), “adoption agency” has the meaning given by the Adoption and Children (Scotland) Act 2007 (asp 4).

**PART 7**

## REVIEWS AND APPEALS

*Review of decision of children's hearings by sheriff***180 Application to sheriff for review of decision of children's hearing**

- (1) This section applies where a children's hearing makes a decision in relation to a child to—
  - (a) make, vary or continue a compulsory supervision order,
  - (b) discharge a referral by the Principal Reporter,
  - (c) terminate a compulsory supervision order,
  - (d) make, or fail to make, a secure accommodation authorisation,
  - (e) make an interim compulsory supervision order,
  - (f) make a medical examination order, or
  - (g) issue a warrant to secure attendance.
- (2) The child or a recognised carer of the child may apply to the sheriff for review of the decision.
- (3) An application for review may be made jointly by—
  - (a) the child and one or more recognised carers of the child, or
  - (b) recognised carers of the child.
- (4) An application for review must be made within the period of three weeks beginning on the day on which the decision is made.

**181 Procedure**

- (1) Where an application for review is made under section 180, the President must lodge with the sheriff clerk a copy of—
  - (a) the decision, and the reasons for the decision, of the children's hearing,
  - (b) all documentation provided to the children's hearing, and
  - (c) the President's report of the children's hearing.
- (2) The sheriff may review the decision of the children's hearing with or without hearing evidence.
- (3) The sheriff may hear evidence from—
  - (a) the child,
  - (b) a recognised carer of the child,
  - (c) an author or compiler of a report or statement provided to the children's hearing that made the decision,
  - (d) the Principal Reporter,
  - (e) where the review is of a decision to make a secure accommodation authorisation in respect of the child—
    - (i) the person in charge of the secure accommodation specified in the secure accommodation authorisation, and

- (ii) the chief social work officer of the relevant local authority for the child, and
- (f) any other person whom the sheriff considers may give material additional evidence.
- (4) The sheriff may require any person (including a safeguarder) to give a report to the sheriff to assist in determining the review.

## **182 Confirmation of determination**

- (1) This section applies where the sheriff determines that the decision of a children's hearing is justified.
- (2) The sheriff must confirm the decision of the children's hearing.
- (3) Subsections (4) and (5) apply where the sheriff is satisfied that the child's circumstances have changed since the day of the decision of the children's hearing.
- (4) The sheriff may do one or more of the following—
  - (a) refer the matter to a children's hearing for consideration of whether compulsory supervision of the child is necessary for the protection, treatment, guidance or control of the child,
  - (b) continue, vary or terminate any order or warrant which is in effect,
  - (c) where no compulsory supervision order is in effect in respect of the child, discharge the referral by the Principal Reporter that gave rise to the decision, or
  - (d) make an order or issue a warrant which a children's hearing may make in relation to the child in the circumstances.
- (5) The fact that a sheriff makes, continues or varies an order or warrant under subsection (4) does not prevent a children's hearing continuing, varying or terminating the order or warrant.

## **183 Overturning of decision**

- (1) This section applies where the sheriff determines that the decision of a children's hearing is not justified.
- (2) The sheriff must overturn the decision of the children's hearing.
- (3) On overturning the decision, the sheriff may do one or more of the following—
  - (a) refer the matter to a children's hearing for consideration whether compulsory supervision of the child is necessary for the protection, treatment, guidance or control of the child,
  - (b) continue, vary or terminate any order or warrant which is in effect,
  - (c) where no compulsory supervision order is in effect in respect of the child, discharge the referral by the Principal Reporter that gave rise to the decision, or
  - (d) make an order or issue a warrant which a children's hearing may make in relation to the child in the circumstances.
- (4) The fact that a sheriff makes, continues or varies an order or warrant under subsection (3) does not prevent a children's hearing continuing, varying or terminating the order or warrant.

**184 Frivolous or vexatious applications**

- (1) This section applies where the sheriff confirms a decision of a children's hearing.
- (2) If the sheriff is satisfied that the application for review of the decision of the children's hearing is frivolous or vexatious, the sheriff may order that during the period of 12 months beginning on the day of the order, the applicant may not make an application for review of a decision of a children's hearing in relation to a compulsory supervision order in respect of the child.

*Warrants to secure attendance***185 Warrants to secure attendance**

- (1) This section applies where an application for review under section 180 includes an application for review of a decision of a children's hearing to issue a warrant to secure attendance.
- (2) The review must be heard and disposed of within three days after the day on which the application for review is made.
- (3) If the review is not disposed of within that period, the warrant ceases to have effect.
- (4) If the sheriff determines that the decision of the children's hearing is not justified, the sheriff must recall the warrant.

*Interim compulsory supervision orders and medical examination orders***186 Interim compulsory supervision orders and medical examination orders**

- (1) This section applies where an application for review under section 180 includes an application for review of a decision of a children's hearing to make—
  - (a) an interim compulsory supervision order, or
  - (b) a medical examination order.
- (2) The review must be heard and disposed of within three days after the day on which the application for review is made.
- (3) If the review is not disposed of within that period, the order ceases to have effect.
- (4) If the sheriff determines that the decision of the children's hearing is not justified, the sheriff must terminate the order.

*Secure accommodation authorisations***187 Secure accommodation authorisations**

- (1) This section applies where an application for review under section 180 includes an application for review of a decision of a children's hearing to make, or fail to make, a secure accommodation authorisation in relation to a child.
- (2) The review must be heard and disposed of within three days after the day on which the application for review is made.
- (3) Where such a review is not disposed of within three days after the lodging of the application, the secure accommodation authorisation is recalled.

**188 Secure accommodation authorisation: determination**

- (1) This section applies where an application for review under section 180 includes an application for review of a decision of the children's hearing to make a secure accommodation authorisation.
- (2) Where the sheriff determines that the decision of the children's hearing to make a secure accommodation authorisation is not justified, the sheriff must recall the secure accommodation authorisation.
- (3) Where the sheriff determines that the decision of the children's hearing to make a secure accommodation authorisation is justified, the sheriff may, in confirming the decision of the children's hearing, vary the order.

**189 Failure to make secure accommodation authorisation: determination**

- (1) This section applies where an application for review under section 180 includes an application for review of the failure of a children's hearing to make a secure accommodation authorisation.
- (2) Where the sheriff determines that the children's hearing has unjustifiably failed to make a secure accommodation authorisation, the sheriff may make a secure accommodation authorisation.

*Compulsory supervision orders: suspension pending review***190 Compulsory supervision orders: suspension pending review**

- (1) This section applies where an application is made under section 180 for review of a decision to make a compulsory supervision order.
- (2) Where the application is made by the child or a recognised carer of the child, that person may request the President to arrange a children's hearing to consider whether the decision should be suspended until the determination of the review.
- (3) As soon as practicable after the request is made under subsection (2), the President must arrange a children's hearing to consider whether the decision should be suspended pending the determination of the review.

*Local authority***191 Local authority**

- (1) This section applies where a duty is imposed on a local authority by virtue of an order made under this Act (other than an order under this section) by—
  - (a) a children's hearing, or
  - (b) the sheriff.
- (2) If the local authority is satisfied that it is not the relevant local authority for the child in respect of whom the duty is imposed, the local authority may apply to the sheriff for a review of the decision or determination to impose the duty on it.
- (3) The sheriff may review the decision or determination to impose the duty with or without hearing evidence.
- (4) The sheriff may hear evidence from—
  - (a) any local authority,

- (b) the President, and
  - (c) the Principal Reporter,
- (5) Where the duty is imposed on the local authority by a children's hearing, the sheriff may require the President to lodge with the sheriff clerk a copy of the decision (and reasons) of the children's hearing.
- (6) The sheriff must determine which local authority is the relevant local authority for the child.
- (7) Where the local authority that made the application under subsection (2) is the relevant local authority for the child, the sheriff must confirm the decision of the children's hearing or the determination of the sheriff.
- (8) Where another local authority is the relevant local authority for the child, the sheriff—
  - (a) must vary the order which imposed the duty so that the duty falls on that local authority, and
  - (b) may make an order for that local authority to reimburse such sums as the sheriff may determine to the local authority which made the application under subsection (2) for any costs incurred in relation to the duty.

### *Appeals*

#### **192 Appeal from determination of sheriff**

- (1) This section applies where the sheriff—
  - (a) determines that a ground is, or is not, established,
  - (b) determines that an application for review of a finding that a ground is established,
  - (c) confirms a decision of a children's hearing,
  - (d) overturns a decision of a children's hearing, or
  - (e) makes an order under section 191(8)(b).
- (2) The following persons may appeal by stated case to the sheriff principal or the Court of Session against the sheriff's determination—
  - (a) the child,
  - (b) a recognised carer of the child, and
  - (c) except where the sheriff confirms a decision of a children's hearing, the Principal Reporter.
- (3) An appeal may be made jointly by—
  - (a) the child and one or more recognised carers of the child, or
  - (b) recognised carers of the child.
- (4) An appeal under this section must be made within a period of 28 days beginning with the day on which the determination appealed against is made.
- (5) An appeal under this section may be made—
  - (a) on a point of law, or
  - (b) in respect of any procedural irregularity.

- (6) On determining an appeal under subsection (2), the sheriff principal or the Court of Session must remit the case to the sheriff for disposal in accordance with such directions as the court may give.

### **193 Appeal to Court of Session from sheriff principal's determination**

- (1) This section applies where the sheriff principal determines an appeal under section 192.
- (2) The following persons may, with leave of the sheriff principal, by stated case appeal to the Court of Session against the sheriff principal's determination—
  - (a) the child,
  - (b) a recognised carer of the child, and
  - (c) the Principal Reporter.
- (3) An appeal may be made jointly by—
  - (a) the child and one or more recognised carers of the child, or
  - (b) recognised carers of the child.
- (4) An appeal under this section must be made within a period of 28 days beginning with the day on which the determination appealed against is made.
- (5) An appeal under this section may be made—
  - (a) on a point of law, or
  - (b) in respect of any procedural irregularity.
- (6) On determining an appeal under subsection (2) the Court of Session must remit the case to the sheriff for disposal in accordance with such directions as the court may give.
- (7) A decision by the Court of Session is final.

## **PART 8**

### **MISCELLANEOUS**

#### *Transfers in cases of urgent necessity*

### **194 Transfers in cases of urgent necessity**

- (1) This section applies where a child ("child A") is residing at a particular place by virtue of—
  - (a) a compulsory supervision order containing a requirement of the type mentioned in section 114(1)(a), or
  - (b) an interim compulsory supervision order containing a requirement of the type mentioned in section 144(1)(a).
- (2) If it is in the interests of child A or another child in the place that child A be moved out of the place as a matter of urgent necessity then, despite the requirement, the chief social work officer may transfer child A to another place.
- (3) A children's hearing must review the compulsory supervision order or interim compulsory supervision order before the expiry of the period of three days beginning with the day on which child A is transferred to the other place.



*Proceedings before sheriff under Act***195 Application of section 32 of Sheriff Courts (Scotland) Act 1971**

- (1) All proceedings before the sheriff under this Act are civil proceedings for the purposes of section 32 of the Sheriff Courts (Scotland) Act 1971 (c.58) (power of Court of Session to regulate civil procedure in the sheriff court).
- (2) Rules made under that section may, in particular, make provision about—
  - (a) the functions of safeguarders appointed by the sheriff,
  - (b) the rights of safeguarders appointed by the sheriff to information relating to the proceedings,
  - (c) the circumstances in which a person may apply to the court to have an emergency assessment order varied or discharged,
  - (d) the persons (including the child, or a recognised carer of the child) to whom notice of the making of an emergency protection order must be given by the applicant for the order.
- (3) Rules may permit a party to proceedings, in the circumstances specified in the rules, to be represented by a person who is neither an advocate nor a solicitor.

*Copies of orders and warrants to be given to President***196 Duty to give President a copy of order or warrant**

- (1) This section applies where an order is made or a warrant is issued under this Act.
- (2) Where the order is made, or warrant is issued, by a children's hearing, the children's hearing must give the President a copy of the order or warrant.
- (3) Where the order is made, or warrant is issued, by the sheriff, the sheriff must give the President a copy of the order or warrant.

*Consent of child to medical examination or treatment***197 Consent of child to medical examination or treatment**

- (1) Nothing in this Act prejudices any capacity of a child enjoyed by virtue of section 2(4) of the Age of Legal Capacity (Scotland) Act 1991 (c.50) (capacity of child with sufficient understanding to consent to surgical, medical or dental procedure or treatment).
- (2) In particular, where—
  - (a) under an order mentioned in subsection (3) a child is required to submit to any examination or treatment, and
  - (b) the child has the capacity mentioned in section 2(4) of the Age of Legal Capacity (Scotland) Act 1991 (c. 50),the examination or treatment may be carried out only if the child consents to it.
- (3) Those orders are—
  - (a) an emergency protection order,
  - (b) an emergency assessment order,
  - (c) a compulsory supervision order,

- (d) an interim compulsory supervision order,
- (e) a medical examination order.

*Transfer of staff, property etc.*

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

Schedule 6 makes provision about the transfer of staff, property, rights, liabilities and obligations to the Tribunal.

*Absconding*

**199 Child absconds from place required to stay**

- (1) This section applies where—
  - (a) a child is obliged to stay at a particular place by virtue of one of the following—
    - (i) an emergency protection order,
    - (ii) an emergency assessment order,
    - (iii) a compulsory supervision order,
    - (iv) an interim compulsory supervision order,
    - (v) a medical examination order,
    - (vi) a warrant to secure attendance, and
  - (b) the child absconds from that place or, at the end of a period of leave, fails to return to that place.
- (2) The child may be arrested without warrant and taken to that place.
- (3) If a court is satisfied that there are reasonable grounds for believing that the child is within premises, the court may issue a warrant authorising an officer of law to—
  - (a) enter premises, and
  - (b) search for the child.
- (4) The court may authorise the officer of law to use reasonable force for those purposes.
- (5) Where the child is returned to the place mentioned in subsection (1), but the occupier of that place is unwilling or unable to receive the child, the officer of law returning the child must immediately notify the Principal Reporter of that fact.
- (6) The child must be kept in a place of safety until—
  - (a) if the child is the subject of an emergency protection order, but—
    - (i) the Principal Reporter decides that there is no ground for considering the compulsory supervision of the child, or
    - (ii) the Principal Reporter decides that the compulsory supervision of the child is not necessary for the protection, guidance, treatment or control of the child,  
 the day on which that decision is notified to the officer of law holding the child, or
  - (b) in any other case, the next children's hearing or hearing before the sheriff at which a matter is considered in relation to the child by virtue of this Act.

**200 Child absconds from person's control**

- (1) This section applies where—
  - (a) a child is obliged to remain under the control of a particular person by virtue of one of the following—
    - (i) an emergency protection order,
    - (ii) an emergency assessment order,
    - (iii) a compulsory supervision order,
    - (iv) an interim compulsory supervision order,
    - (v) a medical examination order,
    - (vi) a warrant to secure attendance, and
  - (b) the child absconds from that person.
- (2) The child may be arrested without warrant and taken to that person.
- (3) If a court is satisfied that there are reasonable grounds for believing that the child is within premises, the court may issue a warrant authorising an officer of law to—
  - (a) enter premises, and
  - (b) search for the child.
- (4) The court may authorise the officer of law to use reasonable force for those purposes.
- (5) Where the child is returned to the person mentioned in subsection (1), but the person is unwilling or unable to receive the child, the officer of law returning the child must immediately notify the Principal Reporter of that fact.
- (6) The child must be kept in a place of safety until—
  - (a) if the child is the subject of an emergency protection order, but—
    - (i) the Principal Reporter decides that there is no ground for considering the compulsory supervision of the child, or
    - (ii) the Principal Reporter decides that the compulsory supervision of the child is not necessary for the protection, guidance, treatment or control of the child,the day on which that decision is notified to the officer of law holding the child, or
  - (b) in any other case, the day of the next children's hearing or hearing before the sheriff at which a matter is considered in relation to the child by virtue of this Act.

**201 Offences related to absconding**

- (1) This section applies where—
  - (a) a child is obliged to stay at a particular place by virtue of one of the following—
    - (i) an emergency protection order,
    - (ii) an emergency assessment order,
    - (iii) a compulsory supervision order,
    - (iv) an interim compulsory supervision order,

- (v) a medical examination order,
  - (vi) a warrant to secure attendance, or
- (b) a child is obliged to remain under the control of a particular person by virtue of such an order or warrant.
- (2) A person commits an offence if the person—
  - (a) knowingly assists or induces the child to abscond,
  - (b) knowingly and persistently attempts to induce the child to abscond,
  - (c) knowingly harbours or conceals a child who has absconded, or
  - (d) knowingly prevents a child from returning to the place or person.
- (3) The person is liable on summary conviction to—
  - (a) a fine not exceeding level five on the standard scale,
  - (b) to imprisonment for a term not exceeding six months, or
  - (c) to both such fine and imprisonment.
- (4) This section is subject to—
  - (a) section 38(3) and (4) of the 1995 Act,
  - (b) section 51(5) and (6) of the Children Act 1989 (c.41), and
  - (c) Article 70(5) and (6) of the Children (Northern Ireland) Order 1995 (S.I. 1995/755).

## PART 9

### GENERAL

#### *Formal communications*

#### **202 Formal communications**

- (1) The following are formal communications—
  - (a) a notice,
  - (b) a determination,
  - (c) a direction,
  - (d) a report,
  - (e) a statement.
- (2) A formal communication must be in writing.
- (3) That requirement is satisfied by a formal communication in electronic form which is—
  - (a) sent by electronic means, and
  - (b) capable of being reproduced in legible form.
- (4) A formal communication sent in accordance with subsection (3) is to be taken to be received on the day it is sent.

*Forms***203 Forms**

- (1) It is for the Scottish Ministers to determine—
  - (a) the form of documents produced by virtue of this Act, and
  - (b) the manner in which those documents are to be conveyed.
- (2) The Scottish Ministers may, in particular, determine that documents may be conveyed by electronic means.

*Subordinate legislation***204 Subordinate legislation**

- (1) Any power of the Scottish Ministers to make subordinate legislation under this Act is exercisable by statutory instrument.
- (2) Any such power includes power to make—
  - (a) such incidental, supplementary, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
  - (b) different provision for different purposes.
- (3) Unless contrary provision is made, subordinate legislation under this Act is subject to the negative procedure.
- (4) Subsection (3) does not apply to an order under section 216(2).

**205 Negative procedure**

- (1) This section applies where subordinate legislation under this Act is subject to the negative procedure.
- (2) The statutory instrument containing the subordinate legislation is subject to annulment in pursuance of a resolution of the Scottish Parliament.

**206 Affirmative procedure**

- (1) This section applies where subordinate legislation under this Act is subject to the affirmative procedure.
- (2) The subordinate legislation must not be made unless a draft of the statutory instrument containing the subordinate legislation has been laid before, and approved by a resolution of, the Scottish Parliament.

*Interpretation***207 Interpretation**

In this Act—

“1994 Act” means the Local Government etc. (Scotland) Act 1994 (c.39),

“1995 Act” means the Children (Scotland) Act 1995 (c.36),

“additional report” has the meaning given by section 156(3),

“Administration” means the Scottish Children’s Reporters Administration,

“affirmative procedure” is to be construed in accordance with section 206,

- “area support team” is to be construed in accordance with section 32,
- “business meeting” means a meeting conducted in accordance with section 154,
- “chief social work officer” means an officer appointed under section 3 of the Social Work (Scotland) Act 1968 (c.49),
- “child” means a person who has not attained the age of 18 years,
- “Children’s Panel” means the Children’s Panel established under section 1,
- “children’s services plan” means a plan prepared by a local authority in compliance with section 19 of the 1995 Act,
- “compulsory supervision order” has the meaning given by section 114,
- “constable” means a constable of a police force within the meaning of the Police (Scotland) Act 1967 (c.77),
- “constituting members of a children’s hearing” means the members of the Children’s Panel selected by the President, or in accordance with a direction by the President under section 2, to conduct the hearing,
- “crime” has the meaning given in section 307(1) of the Criminal Procedure (Scotland) Act 1995 (c.46),
- “emergency assessment order” means an order made under section 58,
- “ground for considering the compulsory supervision of a child” has the meaning given by section 59(1).
- “grounds determination” has the meaning given by section 96,
- “initial children’s hearing” means the children’s hearing mentioned in section 69(2),
- “interim compulsory supervision order” has the meaning given by section 144,
- “local authority” means a council constituted under section 2 of the 1994 Act, and “area” in relation to a local authority, means the local government area for which the authority is constituted,
- “medical examination order” has the meaning given by section 146,
- “movement restriction condition” has the meaning given by section 118,
- “negative procedure” is to be construed in accordance with section 205,
- “officer of law” has the meaning given in section 307(1) of the Criminal Procedure (Scotland) Act 1995 (c.46),
- “place of safety”, in relation to a child, means—
- (a) a residential or other establishment provided by a local authority,
  - (b) a community home within the meaning of section 53 of the Children Act 1989 (c.41),
  - (c) a police station,
  - (d) a hospital, or surgery, the person or body of persons responsible for the management of which is willing temporarily to receive the child,
  - (e) the dwelling-house of a suitable person who is so willing, or
  - (f) any other suitable place the occupier of which is so willing,

“prosecutor” has the meaning given in section 307(1) of the Criminal Procedure (Scotland) Act 1995 (c.46),

“residential establishment” has the meaning given by section 148(2),

“safeguarder” means a person appointed to act as a safeguarder under section 33,

“school age” has the meaning given by section 31 of the Education (Scotland) Act 1980 (c.44),

“secure accommodation” has the meaning given by section 148(3),

“secure accommodation authorisation” has the meaning given by section 148(1),

“statement of grounds” has the meaning given by section 71(4),

“subordinate legislation” means—

- (a) an order,
- (b) regulations, or
- (c) rules,

“Tribunal” means the Scottish Children’s Hearings Tribunal,

“warrant to secure attendance” has the meaning given by section 143, and

“working day” means every day except—

- (a) Saturday and Sunday,
- (b) 25 and 26 December, and
- (c) 1 and 2 January.

## **208 Case where Act applies to persons aged between 16 and 18 years**

This Act does not apply in relation to a person who is 16 years of age or older unless the person has been the subject of a compulsory supervision order before attaining the age of 16 years.

## **209 References to “decisions of a children’s hearing”**

References in this Act to a decision of a children’s hearing are references to a decision of a majority of the constituting members of a children’s hearing.

## **210 Meaning of “local authority for the child”**

- (1) Subject to subsections (2) and (3), in this Act the “local authority area for the child” is—
  - (a) the local authority area in which the child predominantly resides, or
  - (b) if the child does not predominantly reside in a particular local authority area, the local authority area with which the child has the closest connection.
- (2) In determining the local authority area in which a child predominantly resides, disregard—
  - (a) any period of residence in a residential establishment, and
  - (b) any other period of residence, or residence in any other place, prescribed by the Scottish Ministers for the purpose of this subsection by regulations.

- (3) In determining the local authority area with which the child has the closest connection, disregard—
  - (a) any connection with an area that relates to a period of residence in a residential establishment in that area, and
  - (b) any other connection prescribed by the Scottish Ministers for the purposes of this subsection by regulations.

## **211 Meaning of “relevant local authority for a child”**

- (1) Subsection to subsections (2) and (3), in this Act the “relevant local authority for a child” is—
  - (a) the local authority in whose area the child predominantly resides, or
  - (b) if the child does not predominantly reside in a particular local authority area, the local authority with whose area the child has the closest connection.
- (2) In determining the area in which a child predominantly resides, disregard—
  - (a) any period of residence in a residential establishment, and
  - (b) any other period of residence, or residence in any other place, prescribed by the Scottish Ministers for the purpose of this subsection by regulations.
- (3) In determining the area with which the child has the closest connection, disregard—
  - (a) any connection with an area that relates to a period of residence in a residential establishment in that area, and
  - (b) any other connection prescribed by the Scottish Ministers for the purposes of this subsection by regulations.

## **212 Meaning of “recognised carer of a child”**

- (1) In this Act, the following persons are “recognised carers of a child”—
  - (a) a parent having parental rights or responsibilities in respect of the child under Part 1 of the 1995 Act,
  - (b) a person in whom parental rights or responsibilities are vested by virtue of the 1995 Act,
  - (c) a person in whom parental rights or responsibilities are vested by virtue of a permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007 (asp 4)),
  - (d) any other person who, other than by reason of the person’s employment, ordinarily has charge of, or control over, the child.
- (2) A person ceases to be a recognised carer of a child if parental rights and responsibilities are removed from the person under section 11 of the 1995 Act.

### *General*

## **213 Consequential amendments and repeals**

Schedule 7, which contains consequential amendments and repeals of enactments, has effect.



**214 Ancillary provision**

- (1) The Scottish Ministers may by order make such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- (2) An order under subsection (1) may modify any enactment (including this Act).
- (3) An order under this section containing provisions which add to, replace or omit any part of the text of an Act, is subject to the affirmative procedure.

**215 Transitional provision etc.**

- (1) The Scottish Ministers may by order make such provision as they consider necessary or expedient for transitory, transitional or saving purposes in connection with the coming into force of any provision of this Act.
- (2) An order under subsection (1) may modify any enactment (including this Act).
- (3) An order under this section containing provisions which add to, replace or omit any part of the text of an Act, is subject to the affirmative procedure.

**216 Short title and commencement**

- (1) This Act may be cited as the Children's Hearings (Scotland) Act 2009.
- (2) The provisions of this Act, other than this Part, come into force in accordance with provision made by order by the Scottish Ministers.

SCHEDULE 1  
(introduced by section 1)

THE CHILDREN'S PANEL

*Appointment*

- 1 The President must appoint persons to be members of the Children's Panel.
- 2 The President must ensure that—
  - (a) the number of members that the President considers appropriate is appointed, and
  - (b) the panel includes members from all areas of Scotland.
- 3 The President may specify the period of appointment.
- 4 The President may reappoint a person whose appointment has ceased (other than because of removal under paragraph 11).

*Recruitment and training*

- 5 The President may make arrangements to recruit and train members, or potential members, of the Children's Panel.

*Expenses of panel members*

- 6 The President may, with the approval of the Scottish Ministers, determine the allowances to be paid to panel members or potential panel members.
- 7 Different determinations may be made for different cases or different classes of case.
- 8 The President may pay to a member or potential member of the Children's Panel the relevant allowance under paragraph 6.

*Publication of list of members of the Children's Panel*

- 9 The President must publish a list setting out the following information in relation to each member of the Children's Panel—
  - (a) the member's name,
  - (b) the local authority area in which the member resides,
  - (c) the local authority area in which the member works.
- 10 The list must be open for public inspection.

*Removal of panel members*

- 11 The President may remove a panel member from office at any time.

SCHEDULE 2  
(introduced by section 3)

SCOTTISH CHILDREN'S HEARINGS TRIBUNAL

*The Tribunal*

- 1 The Tribunal is a body corporate.
- 2 (1) The Tribunal—
  - (a) is not a servant or agent of the Crown, and
  - (b) does not enjoy any status, immunity or privilege of the Crown.
- (2) The Tribunal's property is not property of, or property held on behalf of, the Crown.

*Membership of the Tribunal*

- 3 (1) The members of the Tribunal are to be appointed by the Scottish Ministers.
- (2) The Scottish Ministers may reappoint any person who has ceased to be a member of the Tribunal for any reason other than removal under paragraph 9.
- 4 (1) There must be no fewer than five and no more than eight members at any time.
- (2) The Scottish Ministers may, by order, change the number of persons that are to be members at any time.
- (3) The statutory instrument is subject to the negative procedure.
- 5 The Scottish Ministers may appoint a person to be a member of the Tribunal only if satisfied that the person has knowledge and experience relevant to the functions of the Tribunal and the President.
- 6 (1) The Scottish Ministers may appoint a person to be a member of the Tribunal only if satisfied that the person, after appointment, will have no financial or other interest that is likely to prejudicially affect the performance of the person's functions as a member of the Tribunal.
- (2) The Scottish Ministers must from time to time satisfy themselves that the members of the Tribunal have no financial or other interest that is likely to prejudicially affect the performance of their functions as members of the Tribunal.
- (3) The Scottish Ministers may request a member of the Tribunal to give them any information that the Scottish Ministers consider necessary to enable them to comply with sub-paragraph (2).
- (4) The member must comply with the request.
- 7 (1) A person is disqualified from appointment as a member of the Tribunal if the person is, or has in the period of 12 months immediately preceding appointment been—
  - (a) a member of the House of Commons,
  - (b) a member of the Scottish Parliament,
  - (c) a member of the European Parliament, or
  - (d) a civil servant.
- (2) A person is disqualified from holding office as a member of the Tribunal if the person becomes—

- (a) a member of the House of Commons,
  - (b) a member of the Scottish Parliament,
  - (c) a member of the European Parliament, or
  - (d) a civil servant.
- 8 A member holds and vacates office on terms and conditions determined by the Scottish Ministers.
- 9 (1) The Scottish Ministers may revoke the appointment of a member of the Tribunal if—
  - (a) the member becomes insolvent,
  - (b) the member is incapacitated by physical or mental illness,
  - (c) the member has been absent from meetings of the Tribunal for a period longer than three months without the permission of the Tribunal,
  - (d) the person is otherwise unable or unfit to discharge the functions of a member or is unsuitable to continue as a member, or
  - (e) in a case where there are also other circumstances specified in the terms and conditions of appointment in which the appointment may be revoked, those circumstances arise.
- (2) For the purposes of sub-paragraph (1)(a) a member becomes insolvent on—
  - (a) the approval of a voluntary arrangement proposed by the member,
  - (b) being adjudged bankrupt,
  - (c) the member's estate being sequestrated,
  - (d) entering into a debt arrangement programme under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) as the debtor,
  - (e) granting a trust deed for creditors.
- 10 A member of the Tribunal may resign office by giving notice in writing to the Scottish Ministers.
- 11 (1) The Scottish Ministers may make a determination that the Tribunal is to pay one or more of the following—
  - (a) remuneration to a member of the Tribunal,
  - (b) an allowance to a member of the Tribunal in respect of expenses properly incurred by the member in the performance of the member's functions,
  - (c) a pension, allowance or gratuity to, or in respect of, a member or former member of the Tribunal, or
  - (d) a contribution or other payment towards such a pension, allowance or gratuity,
  - (e) compensation to a person who has ceased to be a member of the Tribunal for reasons other than the expiry of the person's appointment.
- (2) The Scottish Ministers may make a determination under sub-paragraph (1)(e) only if they are satisfied that there are special circumstances which make it right that the person who has ceased to be a member of the Tribunal should receive compensation.
- (3) The Tribunal must comply with a determination made under sub-paragraph (1).

- 12 (1) The Scottish Ministers must appoint one of the members of the Tribunal to be the chairing member.
- (2) The chairing member holds and vacates that office on terms and conditions determined by the Scottish Ministers.
- (3) If a person is appointed as the chairing member for a period that extends beyond the period of the person's appointment as member, the person's appointment as member is taken to have been extended so that it ends on the same day as the period of appointment as chairing member.
- (4) The chairing member may resign that office by giving notice in writing to the Scottish Ministers.
- (5) If the chairing member is for any reason unable to chair a meeting of members of the Tribunal, a majority of the members present at the meeting may elect one of those members to chair the meeting.

#### *Procedure of the Tribunal*

- 13 The Tribunal may determine its own procedure, including the number of members required to constitute a quorum.
- 14 The validity of proceedings or actions of the Tribunal is not affected by—
- (a) any vacancy in the membership of the Tribunal,
- (b) any defect in the appointment of a member of the Tribunal,
- (c) the disqualification of a person as a member of the Tribunal after appointment.

#### *Committees*

- 15 (1) The Tribunal may establish committees.
- (2) A committee may be comprised of both persons who are members and persons who are not members of the Tribunal.
- (3) No committee is to consist entirely of persons who are not members of the Tribunal.
- (4) The Tribunal must pay a person who is not a member of the Tribunal and who is appointed to a committee the remuneration and allowances (if any) determined by the Scottish Ministers.
- (5) The Tribunal may determine the procedure of any committee established by it.
- (6) The committee must comply with any directions given to it by the Tribunal.

#### *Employees of the Tribunal*

- 16 The Tribunal may employ any staff necessary to ensure the carrying out of the Tribunal's functions.
- 17 Staff are employed on the terms and conditions determined by the Tribunal and approved by the Scottish Ministers.
- 18 (1) The Tribunal may—
- (a) pay a pension, allowance or gratuity, including by way of compensation for loss of employment, to or in respect of an eligible person,

- (b) make payments towards the provision of a pension, allowance or gratuity, including by way of compensation for loss of employment, to or in respect of an eligible person,
    - (c) provide and maintain schemes (whether contributory or not) for the payment of a pension, allowance or gratuity, including by way of compensation for loss of employment, to or in respect of an eligible person.
  - (2) The Tribunal may, with the approval of the Scottish Ministers, determine—
    - (a) who, of the persons who are or have ceased to be employees of the Tribunal, are to be eligible persons, and
    - (b) the amount that may be paid or provided for.
  - (3) Sub-paragraphs (4) and (5) apply where—
    - (a) a person employed by the Tribunal becomes a member of the Tribunal, and
    - (b) the person was (because the person was an employee of the Tribunal) a participant in a pension scheme established and administered by the Tribunal for the benefit of its employees.
  - (4) The Tribunal may determine that the person's service as a member of the Tribunal is to be treated for the purposes of the scheme as service as an employee of the Tribunal whether or not any benefits are to be payable to or in respect of the person under paragraph 11.
  - (5) Any discretion which the scheme confers on the Tribunal as to the benefits payable to or in respect of the person is to be exercised only with the approval of the Scottish Ministers.
- 19 (1) The functions of the Tribunal, whether conferred by virtue of this or any other enactment, may be carried out on its behalf by—
- (a) a committee established by the Tribunal,
  - (b) a member of the Tribunal,
  - (c) a person employed by the Tribunal,
  - (d) authorised (whether specially or generally) by it for the purpose.
- (2) Nothing in sub-paragraph (1) prevents the Tribunal from carrying out any function delegated under that sub-paragraph.

### SCHEDULE 3

*(introduced by section 12)*

#### THE PRESIDENT

- 1 (1) The first President is to be appointed by the Scottish Ministers.
- (2) Subsequent appointments are to be made by the Tribunal with the approval of the Scottish Ministers.
- 2 The Scottish Minister may by regulations prescribe the qualifications to be held by the President.
- 3 (1) A person is disqualified from appointment as the President if the person is, or has in the period of 12 months immediately preceding appointment been—

- (a) a member of the House of Commons,
  - (b) a member of the Scottish Parliament,
  - (c) a member of the European Parliament,
  - (d) a civil servant.
- (2) A person is disqualified from holding office as the President of the Administration if the person becomes—
  - (a) a member of the House of Commons,
  - (b) a member of the Scottish Parliament,
  - (c) a member of the European Parliament,
  - (d) a civil servant.
- 4 The President holds and vacates that office on terms and conditions determined by the Tribunal and approved by the Scottish Ministers.
- 5 (1) The President may appeal to the Scottish Ministers against dismissal by the Tribunal.
- (2) The Tribunal is the respondent in an appeal under this paragraph.
- (3) The Scottish Ministers may by regulations prescribe one or more of the following—
  - (a) the procedure for appeals under this paragraph,
  - (b) the effect of making an appeal under this paragraph,
  - (c) the powers of the Scottish Ministers to dispose of appeals under this paragraph (including powers to make directions about liability for expenses),
  - (d) the effect of the exercise of those powers.
- (4) Regulations made under this paragraph are subject to the negative procedure.
- 6 (1) The functions of the President, whether given under this or any other enactment, may be carried out on the President's behalf by a person employed by the Tribunal who is—
  - (a) authorised (whether specially or generally) by it for the purpose, or
  - (b) a member of a class of person authorised (whether specially or generally) by it for the purpose.
- (2) Nothing in sub-paragraph (1) prevents the President from exercising any function delegated under that sub-paragraph.
- (3) The Scottish Ministers may by regulations prescribe the qualifications to be held by a person employed by the Tribunal to whom a function, or a function of a class, specified in the regulations is delegated.
- (4) If the President delegates a function to a member or members of an area support team under section 32(1)(c), the function may not also be delegated to an employee of the Tribunal who is not a member of the area support team.

SCHEDULE 4  
(introduced by section 17)

SCOTTISH CHILDREN'S REPORTER ADMINISTRATION

*The Administration*

- 1 The Administration is a body corporate.
- 2 (1) The Administration—
  - (a) is not a servant or agent of the Crown, and
  - (b) does not enjoy any status, immunity or privilege of the Crown.
- (3) The Administration's property is not property of, or property held on behalf of, the Crown.

*Membership of the Administration*

- 3 (1) The members of the Administration are to be appointed by the Scottish Ministers.
  - (2) The Scottish Ministers may reappoint any person who has ceased to be a member of the Administration for any reason.
- 4 (1) There must be no fewer than 5 and no more than 8 members at any time.
  - (2) The Scottish Ministers may, by order, change the number of persons that are to be members at any time.
  - (3) An order made under this paragraph is subject to the negative procedure.
- 5 The Scottish Ministers may appoint a person to be a member of the Administration only if satisfied that the person has knowledge or experience relevant to the functions of the Administration and of the Principal Reporter.
- 6 (1) The Scottish Ministers may appoint a person to be a member of the Administration only if satisfied that the person, after appointment, will have no financial or other interest that is likely to prejudicially affect the performance of the person's functions as a member of the Administration.
  - (2) The Scottish Ministers must from time to time satisfy themselves that the members of the Administration have no financial or other interest that is likely to prejudicially affect the performance of their functions as members of the Administration.
  - (3) The Scottish Ministers may request a member of the Administration to give them any information that the Scottish Ministers consider necessary to enable them to comply with sub-paragraph (2).
  - (4) The member must comply with the request.
- 7 (1) A person is disqualified from appointment as a member of the Administration if the person is, or has in the period of 12 months immediately preceding appointment been—
  - (a) a member of the House of Commons,
  - (b) a member of the Scottish Parliament,
  - (c) a member of the European Parliament, or
  - (d) a civil servant.
- (2) A person is disqualified from holding office as a member of the Administration if the person becomes—



- (a) a member of the House of Commons,
  - (b) a member of the Scottish Parliament,
  - (c) a member of the European Parliament,
  - (d) a civil servant.
- 8 A member of the Administration may resign office by giving notice in writing to the Scottish Ministers.
- 9 (1) The Scottish Ministers may make a determination that the Tribunal is to pay one or more of the following—
  - (a) remuneration to a member of the Administration,
  - (b) an allowance to a member of the Administration in respect of expenses properly incurred by the member in the performance of the member's functions,
  - (c) a pension, allowance or gratuity to, or in respect of, a member or former member of the Administration, or
  - (d) a contribution or other payment towards such a pension, allowance or gratuity,
  - (e) compensation to a person who has ceased to be a member of the Administration for reasons other than the expiry of the person's appointment.
- (2) The Scottish Ministers may make a determination under sub-paragraph (1)(e) only if they are satisfied that there are special circumstances which make it right that the person who has ceased to be a member of the Administration should receive compensation.
- (3) The Administration must comply with a determination made under sub-paragraph (1).
- 10 (1) The Scottish Ministers must appoint one of the members of the Administration to be the chairing member.
- (2) The chairing member holds and vacates that office on terms and conditions determined by the Scottish Ministers.
- (3) If a person is appointed as the chairing member for a period that extends beyond the period of the person's appointment as member, the person's appointment as member is taken to have been extended so that it ends on the same day as the period of appointment as chairing member.
- (4) The chairing member may resign that office by giving notice in writing to the Scottish Ministers.
- (5) If the chairing member is for any reason unable to chair a meeting of members of the Administration, a majority of the members present at the meeting may elect one of those members to chair the meeting.

#### *Procedure of the Administration*

- 11 The Administration may determine its own procedure, including the number of members required to constitute a quorum.
- 12 The validity of proceedings or actions of the Administration is not affected by—
  - (a) any vacancy in the membership of the Administration,
  - (b) any defect in the appointment of a member of the Administration,
  - (c) the disqualification of a person as a member of the Administration after appointment.

*Committees*

- 13 (1) The Administration may establish committees.
- (2) A committee may be comprised of both persons who are members and persons who are not members of the Administration.
  - (3) No committee is to consist entirely of persons who are not members of the Administration.
  - (4) The Administration must pay a person who is not a member of the Administration and who is appointed to a committee the remuneration and allowances (if any) determined by the Scottish Ministers.
  - (5) The Administration may determine the procedure of any committee established by it.
  - (6) The committee must comply with any directions given to it by the Administration.

*Employees of the Administration*

- 14 The Administration may employ any staff necessary to ensure in the carrying out of the Administration's functions.
- 15 Staff are employed on the terms and conditions determined by the Administration and approved by the Scottish Ministers.
- 16 (1) The Administration may—
- (a) pay a pension, allowance or gratuity, including by way of compensation for loss of employment, to or in respect of an eligible person,
  - (b) make payments towards the provision of a pension, allowance or gratuity, including by way of compensation for loss of employment, to or in respect of an eligible person,
  - (c) provide and maintain schemes (whether contributory or not) for the payment of a pension, allowance or gratuity, including by way of compensation for loss of employment, to or in respect of an eligible person.
- (2) The Administration may, with the approval of the Scottish Ministers, determine—
- (a) who, of the persons who are or have ceased to be employees of the Administration, are to be eligible persons, and
  - (b) the amount that may be paid or provided for.
- (3) Sub-paragraphs (4) and (5) apply where—
- (a) a person employed by the Administration becomes a member of the Administration, and
  - (b) the person was (because the person was an employee of the Administration) a participant in a pension scheme established and administered by the Administration for the benefit of its employees.
- (4) The Administration may determine that the person's service as a member of the Administration is to be treated for the purposes of the scheme as service as an employee of the Administration whether or not any benefits are to be payable to or in respect of the person under paragraph 9.

- (5) Any discretion which the scheme confers on the Administration as to the benefits payable to or in respect of the person or class of persons is to be exercised only with the approval of the Scottish Ministers.
- 17 (1) A person who is an employee of the Administration, or one of a class of employees of the Administration, prescribed in regulations made by the Scottish Ministers may appeal to them against dismissal by the Administration.
- (2) The Administration is the respondent in an appeal under this paragraph.
- (3) The Scottish Ministers may by regulations prescribe one or more of the following—
  - (a) the procedure for appeals under this paragraph,
  - (b) the effect of making an appeal under this paragraph,
  - (c) the powers of the Scottish Ministers to dispose of appeals under this paragraph (including powers to make directions about liability for expenses),
  - (d) the effect of the exercise of those powers.
- (4) Regulations made under this paragraph are subject to the negative procedure.
- 18 (1) The functions of the Administration, whether conferred by virtue of this or any other enactment, may be carried out on its behalf by—
  - (a) a committee established by the Administration,
  - (b) a member of the Administration,
  - (c) a person employed by the Administration,authorised (whether specially or generally) by it for the purpose.
- (2) Nothing in sub-paragraph (1) prevents the Administration from carrying out any function delegated under that sub-paragraph.

SCHEDULE 5  
(introduced by section 26 )

THE PRINCIPAL REPORTER

- 1 The Principal Reporter is to be appointed by the Administration with the approval of the Scottish Ministers.
- 2 The Scottish Ministers may by regulations prescribe qualifications to be held by the Principal Reporter.
- 3 (1) A person is disqualified from appointment as the Principal Reporter if the person is, or has in the period of 12 months immediately preceding appointment been—
  - (a) a member of the House of Commons,
  - (b) a member of the Scottish Parliament,
  - (c) a member of the European Parliament,
  - (d) a civil servant.
- (2) A person is disqualified from holding office as the Principal Reporter of the Administration if the person becomes—
  - (a) a member of the House of Commons,
  - (b) a member of the Scottish Parliament,

- (c) a member of the European Parliament,
  - (d) a civil servant.
- 4 The Principal Reporter holds and vacates that office on terms and conditions determined by the Administration and approved by the Scottish Ministers.
- 5 (1) The Principal Reporter may appeal to the Scottish Ministers against dismissal by the Administration.
- (2) The Administration is the respondent in an appeal under this paragraph.
  - (3) The Scottish Ministers may by regulations prescribe one or more of the following—
    - (a) the procedure for appeals under this paragraph,
    - (b) the effect of making an appeal under this paragraph,
    - (c) the powers of the Scottish Ministers to dispose of appeals under this paragraph (including powers to make directions about liability for expenses),
    - (d) the effect of the exercise of those powers.
  - (4) Regulations made under this paragraph are subject to the negative procedure.
- 6 (1) The functions of the Principal Reporter, whether given under this or any other enactment, may be carried out on the Principal Reporter's behalf by a person employed by the Administration who is—
  - (a) authorised (whether specially or generally) by it for the purpose, or
  - (b) a member of a class of person authorised (whether specially or generally) by it for the purpose.
- (2) Nothing in sub-paragraph (1) prevents the Principal Reporter from carrying out any function delegated under that sub-paragraph.
  - (3) The Scottish Ministers may by regulations prescribe the qualifications to be held by a person employed by the Administration to whom a function, or a function of a class, specified in the regulations is delegated.
  - (4) A function of the Principal Reporter must not be delegated to a person who is employed by both the Administration and a local authority, unless the Administration consents to the delegation.
  - (5) The Principal Reporter may give directions about the carrying out of a delegated function.
  - (6) The persons to whom the function is delegated must comply with the direction.

## SCHEDULE 6

*(introduced by section 198)*

### TRANSFER OF STAFF AND PROPERTY TO THE TRIBUNAL

#### *Interpretation*

- 1 In this schedule—
  - “recognised” has the meaning given by section 178(3) of the Trade Union and Labour Relations (Consolidation) Act 1992 (c.52),
  - “trade union” has the meaning given by section 1 of that Act, and

“transfer day”, in relation to a person, means the day on which a staff transfer order comes into force in relation to the person.

*Staff transfer orders*

- 2 (1) The Scottish Ministers may by order (a “staff transfer order”) make provision for or in connection with—
- (a) the transfer of persons employed by the Administration to the Tribunal,
  - (b) the transfer of persons employed by local authorities from authorities to the Tribunal.
- (2) A staff transfer order may in particular—
- (a) prescribe rules by which the transfer of persons, or classes of person, specified in the order can be determined,
  - (b) require—
    - (i) in relation to persons employed by the Administration, the Administration and the Tribunal acting jointly, or
    - (ii) in relation to persons employed by a local authority specified in the order, the local authority and the Tribunal acting jointly,to make a scheme in relation to the transfer of the persons to whom the order relates.
- (3) Sub-paragraphs (4) and (5) apply where—
- (a) an order includes a requirement of the sort mentioned in sub-paragraph (2)(b)(i) and the Administration and the Tribunal are unable to comply with the requirement, or
  - (b) an order includes a requirement of the sort mentioned in sub-paragraph (2)(b)(ii) and the local authority and the Tribunal are unable to comply with the requirement.
- (4) The Scottish Ministers may determine the content of the scheme.
- (5) The scheme is to be treated as if made in accordance with the requirement imposed by the order.
- (6) A staff transfer order is subject to the negative procedure.

*Schemes for transfer of staff: consultation*

- 3 (1) Sub-paragraph (2) applies where a staff transfer order includes a requirement of the type mentioned in paragraph 2(2)(b)(i).
- (2) The Administration must consult the persons mentioned in sub-paragraph (3) about the content of the scheme.
- (3) Those persons are—
- (a) persons employed by the Administration,
  - (b) the Principal Reporter,
  - (c) representatives of any trade union recognised by the Administration.
- (4) Sub-paragraph (5) applies where a staff transfer order includes a requirement of the type mentioned in paragraph 2(2)(b)(ii).

- (5) The local authority must consult the persons mentioned in sub-paragraph (6) about the content of the scheme.
- (6) Those persons are—
  - (a) persons employed by the local authority,
  - (b) the Principal Reporter,
  - (c) representatives of any trade union recognised by the local authority.

*Effect on existing contracts of employment*

- 4 (1) This paragraph applies where—
- (a) a person is to be transferred by virtue of a staff transfer order, and
  - (b) immediately before the transfer day the person has a contract of employment with a local authority (the “employer”).
- (2) On and after the transfer day the contract of employment has effect as if originally made between the person and the Tribunal.
- (3) On the transfer day the rights, powers, duties and liabilities of the employer under or in connection with the contract of employment of the person are transferred to the Tribunal.
- (4) Anything done before the transfer day by or in relation to the employer in respect of the contract of employment or the person is to be treated on and after that day as having been done by or in relation to the Tribunal.
- (5) If, before the transfer day, the person gives notice to the Tribunal or the person’s employer that the person objects to becoming a member of staff of the Tribunal—
- (a) the contract of employment with the employer is, on the day immediately preceding the day that would, but for the objection, have been the transfer day, terminated, and
  - (b) the person is not to be treated (whether for the purpose of any enactment or otherwise) as having been dismissed by virtue of the giving of such notice.
- (6) Nothing in this schedule prejudices any right of the person to terminate the contract of employment if a substantial detrimental change in the person’s working conditions is made.
- (7) The person has the right to terminate the contract of employment if—
- (a) the identity of the person’s employer changes by virtue of the making of the staff transfer order, and
  - (b) it is shown that, in all the circumstances, the change is significant and detrimental to the person.

*Transfer of property etc. to Tribunal*

- 5 (1) The Scottish Ministers may make a transfer scheme.
- (2) A transfer scheme is a scheme making provision for or in connection with the transfer to the Tribunal of property, rights, liabilities and obligations of any of the following—
- (a) the Administration,
  - (b) a local authority,

- (c) the Scottish Ministers.
- (3) A transfer scheme must specify a date (the “transfer date”) on which the transfer is to take effect.
- (4) A transfer scheme may—
  - (a) specify different dates in relation to different property, rights, liabilities and obligations,
  - (b) make different provision in relation to different cases or classes of case.
- (5) On the transfer date—
  - (a) any property or rights to which a transfer scheme applies transfer to and vest in the Tribunal,
  - (b) any liabilities or obligations to which such a scheme applies become liabilities or obligations of the Tribunal.
- (6) A transfer scheme may make provision for the creation of rights, or the imposition of liabilities, in relation to the property, rights, liabilities or obligations transferred by virtue of the scheme.
- (7) A certificate issued by the Scottish Ministers that any property, right, liability or obligation has, or has not, been transferred by virtue of a transfer scheme is conclusive evidence of the transfer or the fact that there has not been a transfer.
- (8) A transfer scheme may in particular make provision about the continuation of legal proceedings.
- (9) A transfer scheme may make provision for the Tribunal to make any payment which—
  - (a) before a day specified in the scheme could have been made by a person specified in sub-paragraph (2)(a) or (b), but
  - (b) is not a liability which can become a liability of the Tribunal by virtue of a transfer scheme.
- (10) A transfer scheme may make provision for the payment by the Tribunal of compensation in respect of property and rights transferred by virtue of the scheme.
- (11) Before making a transfer scheme, the Scottish Ministers must consult—
  - (a) the Tribunal,
  - (b) the person mentioned in sub-paragraph (2)(a) or (b) whose property, rights, liabilities and obligations (or any of them) are to be transferred by virtue of the scheme, and
  - (c) any other person with an interest in the property, rights, liabilities or obligations which are to be so transferred.

SCHEDULE 7  
(introduced by section 213)

CONSEQUENTIAL AMENDMENTS AND REPEALS

*The 1994 Act*

- 1 (1) The 1994 Act is amended as follows.
- (2) Part 3 is repealed.
- (3) Schedule 12 is repealed.

*The 1995 Act*

- 2 (1) The 1995 Act is amended as follows.
- (2) Sections 39 to 75 are repealed.
- (3) Sections 81 to 85 are repealed.
- (4) Sections 90 and 91 are repealed.
- (5) Schedule 1 is repealed.

*The Vulnerable Witnesses (Scotland) Act 2004 (asp 3)*

- 3 (1) The Vulnerable Witnesses (Scotland) Act 2004 is amended as follows.
- (2) In section 11 (definition of “civil proceedings”), in subsection (5), for the definition of “civil proceedings”, substitute—  
““civil proceedings” includes proceedings before the sheriff under the Children’s Hearings (Scotland) Act 2009 (asp 00),”.
- (3) In section 16 (Principal Reporter may act for a vulnerable witness)—
  - (a) the existing provision becomes subsection (1), and
  - (b) after that subsection, insert—  
“(2) The Principal Reporter may, on the witness’s behalf—
    - (a) lodge a child witness notice in satisfaction of section 12(2),
    - (b) make an application under section 12(6) for an order authorising the use of special measures, or
    - (c) make an application under section 13(1) for a review of arrangements for taking the witness’s evidence.”.
- (4) After section 22 (prior statements), insert—  
**“22A Proceedings to establish grounds for considering the compulsory supervision of a child: prior statements**
  - (1) This section applies where—
    - (a) an application is made—



- (i) by the Principal Reporter in compliance with a direction given under section 77 or 78 of the Children's Hearings (Scotland) Act 2009 (asp 00) to determine whether a ground for considering the compulsory supervision of a child is established, or
    - (ii) under 192 of that Act for a review of a finding that such a ground is established, and
  - (b) the ground involves the sexual behaviour of any person.
- (2) The special measures which may be authorised by virtue of section 12 or 13 for the purpose of taking the evidence of a vulnerable witness in a hearing to consider such an application include (in addition to those listed in section 18(1)) the giving of evidence-in-chief in the form of a prior statement in accordance with subsections (3) to (10).
  - (3) Where that special measure is to be used, a statement made by the vulnerable witness (a "prior statement") may be lodged in evidence for the purposes of this section by or on behalf of the party citing the vulnerable witness.
  - (4) A prior statement is admissible as the witness's evidence-in-chief, or as part of the witness's evidence-in-chief, without the witness being required to adopt or otherwise speak to the statement in giving evidence.
  - (5) A prior statement is admissible as evidence of any matter stated in it of which direct oral evidence by the vulnerable witness would be admissible if given at the hearing.
  - (6) A prior statement is admissible under this section only if—
    - (a) it is contained in a document, and
    - (b) at the time the statement was made, the vulnerable witness would have been a competent witness for the purposes of the hearing.
  - (7) Subsection (6) does not apply to a prior statement—
    - (a) contained in a precognition on oath, or
    - (b) made in other proceedings (whether criminal or civil and whether taking place in the United Kingdom or elsewhere).
  - (8) Such a prior statement is not admissible for the purposes of this section unless it is sufficiently authenticated.
  - (9) This section does not affect the admissibility of any statement made by any person which is admissible otherwise than by virtue of this section.
  - (10) In this section, "statement"—
    - (a) includes—
      - (i) any representation, however made or expressed, of fact or opinion, and
      - (ii) any part of a statement, and
    - (b) does not include a statement in a precognition other than a precognition on oath."