



Children's Hearings (Scotland) Act 2011

2011 asp 1

PART 3

GENERAL CONSIDERATIONS

25 Welfare of the child

- (1) This section applies where by virtue of this Act a children's hearing, pre-hearing panel or court is coming to a decision about a matter relating to a child.
- (2) The children's hearing, pre-hearing panel 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.

26 Decisions inconsistent with section 25

- (1) A children's hearing or a court may make a decision that is inconsistent with the requirement imposed by section 25(2) if—
 - (a) the children's hearing or court considers that, for the purpose of protecting members of the public from serious harm (whether physical or not), it is necessary that the decision be made, and
 - (b) in coming to the decision, the children's hearing or court complies with subsection (2).
- (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 a primary consideration rather than the paramount consideration.

27 Views of the child

- (1) This section applies where by virtue of this Act a children's hearing or the sheriff is coming to a decision about a matter relating to a child.
- (2) This section does not apply where the sheriff is deciding whether to make a child protection order in relation to a child.

Status: This is the original version (as it was originally enacted).

- (3) The children's hearing or the sheriff must, so far as 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.
- (4) Without prejudice to the generality of subsection (3), 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.
- (5) In this section “coming to a decision about a matter relating to a child”, in relation to a children's hearing, includes—
 - (a) providing advice by virtue of section 50,
 - (b) preparing a report under section 141(2).

28 Children's hearing: pre-condition for making certain orders and warrants

- (1) Subsection (2) applies where a children's hearing is—
 - (a) considering whether to make a compulsory supervision order,
 - (b) considering whether to vary or continue a compulsory supervision order,
 - (c) considering whether to make an interim compulsory supervision order,
 - (d) considering whether to make an interim variation of a compulsory supervision order,
 - (e) considering whether to make a medical examination order, or
 - (f) considering whether to grant a warrant to secure attendance.
- (2) The children's hearing may make, vary or continue the order or interim variation or grant the warrant, only if the children's hearing considers that it would be better for the child if the order, interim variation or warrant were in force than not.

29 Sheriff: pre-condition for making certain orders and warrants

- (1) Subsection (2) applies where—
 - (a) the sheriff is considering making a child assessment order,
 - (b) the sheriff is considering making or varying a child protection order,
 - (c) by virtue of section 156(1)(b) or (2)(b), the sheriff is considering—
 - (i) varying or continuing a compulsory supervision order,
 - (ii) making or varying an interim compulsory supervision order or an interim variation of a compulsory supervision order,
 - (iii) varying a medical examination order, or
 - (iv) granting a warrant to secure attendance,
 - (d) the sheriff is otherwise considering—
 - (i) making an interim compulsory supervision order or an interim variation of a compulsory supervision order, or
 - (ii) granting a warrant to secure attendance, or
 - (e) the sheriff is considering extending or varying an interim compulsory supervision order under section 98 or 99.

- (2) The sheriff may make, vary, continue or extend the order or interim variation or grant the warrant, only if the sheriff considers that it would be better for the child if the order, interim variation or warrant were in force than not.

30 Children's hearing: duty to consider appointing safeguarder

- (1) A children's hearing must consider whether to appoint a person to safeguard the interests of the child to whom the children's hearing relates (a "safeguarder").
- (2) A children's hearing may appoint a safeguarder at any time when the children's hearing is still deciding matters in relation to the child.
- (3) A children's hearing must record an appointment made under subsection (2).
- (4) If a children's hearing appoints a safeguarder, it must give reasons for its decision.
- (5) Subsection (1) does not apply where a safeguarder has already been appointed.

31 Sheriff: duty to consider appointing safeguarder

- (1) This section applies where—
 - (a) proceedings are being taken before the sheriff under Part 10 or 15 in relation to a child, and
 - (b) a safeguarder has not been appointed for the child in relation to proceedings under those Parts.
- (2) The sheriff must consider whether to appoint a safeguarder for the child.
- (3) The sheriff may appoint a safeguarder for the child.
- (4) A safeguarder appointed under this section is to be treated for the purposes of this Act (other than this section) as having been appointed by a children's hearing by virtue of section 30.
- (5) An appointment under subsection (3) must be recorded.
- (6) If the sheriff appoints a safeguarder, the sheriff must give reasons for the decision.