



# Children's Hearings (Scotland) Act 2011

## 2011 asp 1

VALID FROM 24/06/2013

### PART 9

#### CHILDREN'S HEARING

##### *Key definitions*

#### **83 Meaning of “compulsory supervision order”**

- (1) In this Act, “compulsory supervision order”, in relation to a child, means an order—
- (a) including any of the measures mentioned in subsection (2),
  - (b) specifying a local authority which is to be responsible for giving effect to the measures included in the order (the “implementation authority”), and
  - (c) having effect for the relevant period.
- (2) The measures are—
- (a) a requirement that the child reside at a specified place,
  - (b) a direction authorising the person who is in charge of a place specified under paragraph (a) to restrict the child's liberty to the extent that the person considers appropriate having regard to the measures included in the order,
  - (c) a prohibition on the disclosure (whether directly or indirectly) of a place specified under paragraph (a),
  - (d) a movement restriction condition,
  - (e) a secure accommodation authorisation,
  - (f) subject to section 186, a requirement that the implementation authority arrange—
    - (i) a specified medical or other examination of the child, or
    - (ii) specified medical or other treatment for the child,
  - (g) a direction regulating contact between the child and a specified person or class of person,
  - (h) a requirement that the child comply with any other specified condition,

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- (i) a requirement that the implementation authority carry out specified duties in relation to the child.
- (3) A children's hearing and the sheriff must, when making a compulsory supervision order in relation to a child, consider whether to include in the order a measure of the type mentioned in subsection (2)(g).
- (4) A compulsory supervision order may include a movement restriction condition only if—
- (a) one or more of the conditions mentioned in subsection (6) applies, and
  - (b) the children's hearing or, as the case may be, the sheriff is satisfied that it is necessary to include a movement restriction condition in the order.
- (5) A compulsory supervision order may include a secure accommodation authorisation only if—
- (a) the order contains a requirement of the type mentioned in subsection (2)(a) which requires the child to reside at—
    - (i) a residential establishment which contains both secure accommodation and accommodation which is not secure accommodation, or
    - (ii) two or more residential establishments, one of which contains accommodation which is not secure accommodation,
  - (b) one or more of the conditions mentioned in subsection (6) applies, and
  - (c) having considered the other options available (including a movement restriction condition) the children's hearing or, as the case may be, the sheriff is satisfied that it is necessary to include a secure accommodation authorisation in the order.
- (6) The conditions are—
- (a) that the child has previously absconded and is likely to abscond again and, if the child were to abscond, it is likely that the child's physical, mental or moral welfare would be at risk,
  - (b) that the child is likely to engage in self-harming conduct,
  - (c) that the child is likely to cause injury to another person.
- (7) In subsection (1), “relevant period” means the period beginning with the making of the order and ending with—
- (a) where the order has not been continued, whichever of the following first occurs—
    - (i) the day one year after the day on which the order is made,
    - (ii) the day on which the child attains the age of 18 years,
  - (b) where the order has been continued, whichever of the following first occurs—
    - (i) the end of the period for which the order was last continued,
    - (ii) the day on which the child attains the age of 18 years.
- (8) In subsection (2)—
- “medical” includes psychological,
  - “specified” means specified in the order.

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#### **84 Meaning of “movement restriction condition”**

In this Act, “movement restriction condition”, in relation to a child, means—

- (a) a restriction on the child's movements in a way specified in the movement restriction condition, and
- (b) a requirement that the child comply with arrangements specified in the movement restriction condition for monitoring compliance with the restriction.

#### **85 Meaning of “secure accommodation authorisation”**

In this Act, “secure accommodation authorisation”, in relation to a child, means an authorisation enabling the child to be placed and kept in secure accommodation within a residential establishment.

#### **86 Meaning of “interim compulsory supervision order”**

(1) In this Act “interim compulsory supervision order”, in relation to a child, means an order—

- (a) including any of the measures mentioned in section 83(2),
- (b) specifying a local authority which is to be responsible for giving effect to the measures included in the order (“the implementation authority”), and
- (c) having effect for the relevant period.

(2) An interim compulsory supervision order may, instead of specifying a place or places at which the child is to reside under section 83(2)(a), specify that the child is to reside at any place of safety away from the place where the child predominantly resides.

(3) In subsection (1), “relevant period” means the period beginning with the making of the order and ending with whichever of the following first occurs—

- (a) the next children's hearing arranged in relation to the child,
- (b) the disposal by the sheriff of an application made by virtue of section 93(2)(a) or 94(2)(a) in relation to the child,
- (c) a day specified in the order,
- (d) where the order has not been extended under section 98 or 99, the expiry of the period of 22 days beginning on the day on which the order is made,
- (e) where the order has been extended (or extended and varied) under section 98 or 99, the expiry of the period of 22 days beginning on the day on which the order is extended.

(4) Subsections (3) to (6) (except subsection (5)(a)) of section 83 apply to an interim compulsory supervision order as they apply to a compulsory supervision order.

#### **87 Meaning of “medical examination order”**

(1) In this Act “medical examination order”, in relation to a child, means an order authorising for the relevant period any of the measures mentioned in subsection (2).

(2) The measures are—

- (a) a requirement that the child attend or reside at a specified clinic, hospital or other establishment,

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- (b) subject to section 186, a requirement that a specified local authority arrange a specified medical examination of the child,
  - (c) a prohibition on the disclosure (whether directly or indirectly) of a place specified under paragraph (a),
  - (d) a secure accommodation authorisation,
  - (e) a direction regulating contact between the child and a specified person or class of person,
  - (f) any other specified condition appearing to the children's hearing to be appropriate for the purposes of ensuring that the child complies with the order.
- (3) A medical examination order may include a secure accommodation authorisation only if—
- (a) the order authorises the keeping of the child in a residential establishment,
  - (b) one of the conditions mentioned in subsection (4) applies, and
  - (c) having considered the other options available the children's hearing is satisfied that it is necessary to do so.
- (4) The conditions are—
- (a) that the child has previously absconded and is likely to abscond again and, if the child were to abscond, it is likely that the child's physical, mental or moral welfare would be at risk,
  - (b) that the child is likely to engage in self-harming conduct,
  - (c) that the child is likely to cause injury to another person.
- (5) In this section—
- “medical” includes psychological,
- “relevant period”, in relation to a medical examination order, means the period beginning with the making of the order and ending with whichever of the following first occurs—
- (a) the beginning of the next children's hearing arranged in relation to the child,
  - (b) a day specified in the order,
  - (c) the expiry of the period of 22 days beginning on the day on which the order is made,
- “specified” means specified in the order.

## **88 Meaning of “warrant to secure attendance”**

- (1) In this Act, “warrant to secure attendance”, in relation to a child, means a warrant effective for the relevant period—
- (a) authorising an officer of law—
    - (i) to search for and apprehend the child,
    - (ii) to take the child to, and detain the child in, a place of safety,
    - (iii) to bring the child before the relevant proceedings, and
    - (iv) so far as is necessary for the execution of the warrant, to break open shut and lockfast places,
  - (b) prohibiting disclosure (whether directly or indirectly) to any person specified in the warrant of the place of safety.

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- (2) A warrant to secure attendance may include a secure accommodation authorisation but only if—
- (a) the warrant authorises the keeping of the child in a residential establishment,
  - (b) one or more of the conditions mentioned in subsection (3) applies, and
  - (c) having considered the other options available the children's hearing or sheriff is satisfied that it is necessary to do so.
- (3) The conditions are—
- (a) that the child has previously absconded and is likely to abscond again and, if the child were to abscond, it is likely that the child's physical, mental or moral welfare would be at risk,
  - (b) that the child is likely to engage in self-harming conduct,
  - (c) that the child is likely to cause injury to another person.
- (4) In this section—
- “relevant period”, in relation to a warrant to secure attendance, means—
- (a) where the warrant is granted by a children's hearing, the period beginning with the granting of the warrant and ending with the earlier of—
    - (i) the beginning of the relevant proceedings, or
    - (ii) the expiry of the period of 7 days beginning with the day on which the child is first detained in pursuance of the warrant,
  - (b) where the warrant is granted by the sheriff under section 103(7), the period beginning with the granting of the warrant and ending with the earlier of—
    - (i) the beginning of the continued hearing, or
    - (ii) the expiry of the period of 14 days beginning with the day on which the child is first detained in pursuance of the warrant,
  - (c) where the warrant is granted by the sheriff under any other provision in respect of attendance at proceedings under Part 10, the period beginning with the granting of the warrant and ending with the earlier of—
    - (i) the beginning of the relevant proceedings, or
    - (ii) the expiry of the period of 14 days beginning with the day on which the child is first detained in pursuance of the warrant,
  - (d) where the warrant is granted by the sheriff in respect of attendance at a children's hearing arranged by virtue of section 108, 115, 117(2)(b) or 156(3)(a), the period beginning with the granting of the warrant and ending with the earlier of—
    - (i) the beginning of the relevant proceedings, or
    - (ii) the expiry of the period of 7 days beginning with the day on which the child is first detained in pursuance of the warrant,
- “relevant proceedings”, in relation to a warrant to secure attendance, means the children's hearing or, as the case may be, proceedings before the sheriff in respect of which it is granted.

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### *Statement of grounds*

#### **89 Principal Reporter's duty to prepare statement of grounds**

- (1) This section applies where the Principal Reporter is required by virtue of section 69(2) to arrange a children's hearing in relation to a child.
- (2) The Principal Reporter must prepare the statement of grounds.
- (3) In this Act “statement of grounds”, in relation to a child, means a statement setting out—
  - (a) which of the section 67 grounds the Principal Reporter believes applies in relation to the child, and
  - (b) the facts on which that belief is based.

### *Grounds hearing*

#### **90 Grounds to be put to child and relevant person**

- (1) At the opening of a children's hearing arranged by virtue of section 69(2) or 95(2) (the “grounds hearing”) the chairing member must—
  - (a) explain to the child and each relevant person in relation to the child each section 67 ground that is specified in the statement of grounds, and
  - (b) ask them whether they accept that each ground applies in relation to the child.
- (2) This section is subject to section 94.

#### **91 Grounds accepted: powers of grounds hearing**

- (1) This section applies where—
  - (a) each ground specified in the statement of grounds is accepted, or
  - (b) at least one of the grounds specified in the statement of grounds is accepted and the grounds hearing considers that it is appropriate to make a decision on whether to make a compulsory supervision order on the basis of the ground or grounds that have been accepted.
- (2) If the grounds hearing considers that it is appropriate to do so, the grounds hearing may defer making a decision on whether to make a compulsory supervision order until a subsequent children's hearing.
- (3) If the grounds hearing does not exercise the power conferred by subsection (2) the grounds hearing must—
  - (a) if satisfied that it is necessary to do so for the protection, guidance, treatment or control of the child, make a compulsory supervision order, or
  - (b) if not so satisfied, discharge the referral.
- (4) In subsection (1), “accepted” means accepted by the child and (subject to sections 74 and 75) each relevant person in relation to the child.

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## **92 Powers of grounds hearing on deferral**

- (1) This section applies where under section 91(2) the grounds hearing defers making a decision in relation to a child until a subsequent children's hearing.
- (2) If the grounds hearing considers that the nature of the child's circumstances is such that for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that an interim compulsory supervision order be made, the grounds hearing may make an interim compulsory supervision order in relation to the child.
- (3) If the grounds hearing considers that it is necessary to do so for the purpose of obtaining any further information, or carrying out any further investigation, that is needed before the subsequent children's hearing, the hearing may make a medical examination order.

## **93 Grounds not accepted: application to sheriff or discharge**

- (1) This section applies where—
  - (a) at least one of the grounds specified in the statement of grounds is accepted but the grounds hearing does not consider that it is appropriate to make a decision on whether to make a compulsory supervision order on the basis of the ground or grounds that have been accepted, or
  - (b) none of the grounds specified in the statement of grounds is accepted.
- (2) The grounds hearing must—
  - (a) direct the Principal Reporter to make an application to the sheriff for a determination on whether each ground that is not accepted by the child and (subject to sections 74 and 75) each relevant person in relation to the child is established, or
  - (b) discharge the referral.
- (3) Subsections (4) and (5) apply if the grounds hearing gives a direction under subsection (2)(a).
- (4) The chairing member must—
  - (a) explain the purpose of the application to the child and (subject to sections 74 and 75) each relevant person in relation to the child, and
  - (b) inform the child that the child is obliged to attend the hearing before the sheriff unless excused by the sheriff.
- (5) If the grounds hearing considers that the nature of the child's circumstances is such that for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that an interim compulsory supervision order be made, the grounds hearing may make an interim compulsory supervision order in relation to the child.
- (6) An interim compulsory supervision order made under subsection (5) may not include a measure of the kind mentioned in section 83(2)(f)(i).
- (7) In subsection (1), “accepted” means accepted by the child and (subject to sections 74 and 75) each relevant person in relation to the child.

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#### **94 Child or relevant person unable to understand grounds**

- (1) Subsection (2) applies where the grounds hearing is satisfied that the child or a relevant person in relation to the child—
  - (a) would not be capable of understanding an explanation given in compliance with section 90(1) in relation to a ground, or
  - (b) has not understood the explanation given in compliance with section 90(1) in relation to a ground.
- (2) The grounds hearing must—
  - (a) direct the Principal Reporter to make an application to the sheriff to determine whether the ground is established, or
  - (b) discharge the referral in relation to the ground.
- (3) In the case mentioned in subsection (1)(a), the chairing member need not comply with section 90(1) in relation to that ground as respects the person who would not be capable of understanding an explanation of the ground.
- (4) If the grounds hearing gives a direction under subsection (2)(a), the chairing member must—
  - (a) in so far as is reasonably practicable comply with the requirement in paragraph (a) of section 93(4), and
  - (b) comply with the requirement in paragraph (b) of that section.
- (5) If the grounds hearing gives a direction under subsection (2)(a), section 93(5) applies.

#### **95 Child fails to attend grounds hearing**

- (1) This section applies where—
  - (a) a child fails to attend a grounds hearing arranged by virtue of section 69(2) or subsection (2), and
  - (b) the child was not excused from attending the grounds hearing.
- (2) The grounds hearing may require the Principal Reporter to arrange another grounds hearing.

*Children's hearing to consider need for further interim order*

#### **96 Children's hearing to consider need for further interim compulsory supervision order**

- (1) This section applies where—
  - (a) under section 93(5) a grounds hearing makes an interim compulsory supervision order in relation to a child, and
  - (b) the order will cease to have effect before the disposal of the application to the sheriff to which it relates.
- (2) The Principal Reporter may arrange a children's hearing for the purpose of considering whether a further interim compulsory supervision order should be made in relation to the child.
- (3) If the children's hearing is satisfied that the nature of the child's circumstances is such that for the protection, guidance, treatment or control of the child it is necessary that



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a further interim compulsory supervision order be made, the children's hearing may make a further interim compulsory supervision order in relation to the child.

- (4) The children's hearing may not make a further interim compulsory supervision order in relation to the child if the effect of the order would be that the child would be subject to an interim compulsory supervision order for a continuous period of more than 66 days.

*Application of Part where compulsory supervision order in force*

**97 Application of Part where compulsory supervision order in force**

- (1) This Part has effect in relation to a child mentioned in subsection (2) with the modifications set out in subsections (3) to (6).
- (2) The child is a child in relation to whom a compulsory supervision order is in force.
- (3) References to a decision on whether to make a compulsory supervision order are to be read as references to a decision on whether to review the compulsory supervision order.
- (4) Section 91 applies as if for subsections (2) and (3) there were substituted—
- “(2) The grounds hearing is to be treated as if it were a hearing to review the compulsory supervision order (and sections 138, 139 and 142 apply accordingly).”
- (5) References to an interim compulsory supervision order are to be read as references to an interim variation of the compulsory supervision order.
- (6) Section 96(4) does not apply.

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