



# Children (Scotland) Act 1995

## 1995 CHAPTER 36

### PART II

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

### CHAPTER 2

#### CHILDREN'S HEARINGS

##### *Conduct of proceedings at and in connection with children's hearing*

#### **42 Power of Secretary of State to make rules governing procedure at children's hearing etc.**

- (1) Subject to the following provisions of this Act, the Secretary of State may make rules for constituting and arranging children's hearings and other meetings of members of the children's panel and for regulating their procedure.
- (2) Without prejudice to the generality of subsection (1) above, rules under that subsection may make provision with respect to—
  - (a) the conduct of, and matters which shall or may be determined by, a business meeting arranged under section 64 of this Act;
  - (b) notification of the time and place of a children's hearing to the child and any relevant person in relation to the child and to such other persons as may be prescribed;
  - (c) how the grounds for referring the case to a children's hearing under section 65(1) of this Act are to be stated, and the right of the child and any such relevant person to dispute those grounds;
  - (d) the making available by the Principal Reporter, subject to such conditions as may be specified in the rules, of reports or information received by him to—
    - (i) members of the children's hearing;

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- (ii) the child concerned;
- (iii) any relevant person; and
- (iv) any other person or class of persons so specified;
- (e) the procedure in relation to the disposal of matters arising under section 41(1) of this Act;
- (f) the functions of any person appointed by a children’s hearing under section 41(1) of this Act and any right of that person to information relating to the proceedings in question;
- (g) the recording in writing of any statement given under section 41(3) of this Act;
- (h) the right to appeal to the sheriff under section 51(1)(a) of this Act against a decision of the children’s hearing and notification to such persons as may be prescribed of the proceedings before him;
- (i) the right of the child and of any such relevant person to be represented at a children’s hearing;
- (j) the entitlement of the child, of any such relevant person and of any person who acts as the representative of the child or of any such relevant person to the refund of such expenses, incurred by the child or as the case may be the person or representative, as may be prescribed in connection with a children’s hearing and with any proceedings arising from the hearing;
- (k) persons whose presence shall be permitted at a children’s hearing.

#### **Commencement Information**

- II** S. 42 wholly in force at 1.4.1997; s. 42 not in force at Royal Assent see s. 105(10); s. 42 in force for certain purposes at 12.12.1996 by [S.I. 1996/3201](#), [art. 3\(1\)](#) (with [arts. 4-6](#) (as inserted (7.3.1997) by [S.I. 1997/744](#), [art. 3](#))); s. 42 in force at 1.4.1997 insofar as not already in force by [S.I. 1996/3201](#), [art. 3\(7\)](#) (with [arts. 4-6](#)) (as amended (7.3.1997) by [S.I. 1997/744](#), [arts. 2, 3](#))

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

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

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- (5) Where a children’s hearing have exercised the power conferred by subsection (4) above to exclude a person, the chairman may, after that exclusion has ended, explain to the person the substance of what has taken place in his absence.

#### 44 Prohibition of publication of proceedings at children’s hearing.

- (1) No person shall publish [<sup>F1</sup>any matter in respect of a case about which the Principal Reporter has from any source received information or] any matter in respect of proceedings at a children’s hearing, or before a sheriff on an application under section 57, section 60(7), section 65(7) or (9), section 76(1) or section 85(1) of this Act, or on any appeal under this Part of this Act, which is intended to, or is likely to, identify—
- (a) [<sup>F2</sup>the child concerned in, or any other child connected (in any way) with, the case,] proceedings or appeal; or
  - (b) an address or school as being that of any such child.
- (2) Any person who contravenes subsection (1) above shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale in respect of each such contravention.
- (3) It shall be a defence in proceedings for an offence under this section for the accused to prove that he did not know, and had no reason to suspect, that the published matter was intended, or was likely, to identify the child or, as the case may be, the address or school.
- (4) In this section “to publish” includes, without prejudice to the generality of that expression,—
- (a) to publish matter in a programme service, as defined by section 201 of the <sup>M1</sup>Broadcasting Act 1990 (definition of programme service); and
  - (b) to cause matter to be published.
- (5) The requirements of subsection (1) above may, in the interests of justice, be dispensed with by—
- (a) the sheriff in any proceedings before him;
  - (b) the Court of Session in any appeal under section 51(11) of this Act; or
  - (c) the Secretary of State in relation to any proceedings at a children’s hearing, to such extent as the sheriff, the Court or the Secretary of State as the case may be considers appropriate.

#### Textual Amendments

**F1** Words in s. 44(1) inserted (S.) (27.6.2003) by *Criminal Justice (Scotland) Act 2003 (asp 7)*, **ss. 52(a)(i)**, 89; S.S.I. 2003/288, **art. 2**, Sch.

**F2** Words in s. 44(1)(a) substituted (S.) (27.6.2003) by *Criminal Justice (Scotland) Act 2003 (asp 7)*, **ss. 52(a)(ii)**, 89; S.S.I. 2003/288, **art. 2**, Sch.

#### Marginal Citations

**M1** 1990 c.42.

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

- (1) Where a child has been notified in accordance with rules made under subsection (1) of section 42 of this Act by virtue of subsection (2)(b) of that section that his case has been referred to a children’s hearing, he shall—
  - (a) have the right to attend at all stages of the hearing; and
  - (b) subject to subsection (2) below, be under an obligation to attend those stages in accordance with the notice.
- (2) Without prejudice to subsection (1)(a) above and section 65(4) of this Act, where a children’s hearing are satisfied—
  - (a) in a case concerned with an offence mentioned in [F3Schedule 1 of the Criminal Procedure (Scotland) Act 1995], that the attendance of the child is not necessary for the just hearing of that case; or
  - (b) in any case, that it would be detrimental to the interests of the child for him to be present at the hearing of his case,
 they may release the child from the obligation imposed by subsection (1)(b) above.
- (3) Subject to subsection (2) above, the Principal Reporter shall be responsible for securing the attendance of the child at the hearing of his case by a children’s hearing (and at any subsequent hearing to which the case is continued under section 69(1)(a) of this Act).
- (4) On the application of the Principal Reporter, a children’s hearing, if satisfied on cause shown that it is necessary for them to do so, may issue, for the purposes of subsection (3) above, a warrant under this subsection to find the child, to keep him in a place of safety and to bring him before a children’s hearing.
- (5) Where a child has failed to attend a children’s hearing in accordance with such notice as is mentioned in subsection (1) above, they may, either on the application of the Principal Reporter or of their own motion, issue a warrant under this subsection, which shall have the same effect as a warrant under subsection (4) above.
- (6) A child who has been taken to a place of safety under a warrant granted under this section shall not be kept there after whichever is the earlier of—
  - (a) the expiry of seven days beginning on the day he was first so taken there; or
  - (b) the day on which a children’s hearing first sit to consider his case in accordance with subsection (7) below.
- (7) Where a child has been found in pursuance of a warrant under this section and he cannot immediately be brought before a children’s hearing, the Principal Reporter shall, wherever practicable, arrange a children’s hearing to sit on the first working day after the child was so found.
- (8) Subject to section 46 of this Act, a person who is a relevant person as respects a child shall, where a children’s hearing are considering the case of the child—
  - (a) have the right to attend at all stages of the hearing; and
  - (b) be obliged to attend at all stages of the hearing unless the hearing are satisfied that it would be unreasonable to require his attendance or that his attendance is unnecessary for the proper consideration of the case.
- (9) Any person who fails to attend a hearing which, under subsection (8)(b) above, he is obliged to attend shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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### Textual Amendments

**F3** Words in s. 45(2)(a) substituted (1.4.1996) by 1996 c. 40, ss. 5, 7(2), **Sch. 4 para. 97(2)**

### Modifications etc. (not altering text)

**C1** S. 45(4)(5) amended (form prescribed) (1.4.1997) by **S.I. 1996/3261, Rule 27, Sch.**

## 46 Power to exclude relevant person from children’s hearing.

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

## 47 Presumption and determination of age.

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

**Status:**

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