

The Children's Panel
— Life Changing.



Practice and Procedure Manual



children's
hearings
scotland



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Part 1: Introduction





Part 1: Summary

This manual is about the law, procedure and practice at a children's hearing. It has been written to help panel members with their preparation and/or to help answer questions arising at the hearing centre.

a. Children's Hearings (Scotland) Act 2011

- the legislation by which a children's hearing operates is the Children's Hearings (Scotland) Act 2011 ('the 2011 Act') – this Act entered into force on 24 June 2013
- the 2011 Act is underpinned by a variety of Rules, the most important of which to a children's hearing are the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 ('the 2013 Rules')

b. The European Convention on Human Rights (ECHR) and the United Nations Convention on the Rights of the Child (UNCRC)

- panel members should be aware of the rights contained in the European Convention on Human Rights and the United Nations Convention on the Rights of the Child

1.1 The Children's Hearings (Scotland) Act 2011 ('The 2011 Act') s8 allows the National Convener to provide advice to children's hearings. This can be:

- giving advice on specific questions asked by individual children's hearings
- giving information and support of a general nature to every children's panel member across Scotland

1.2 The practice and procedure manual will help panel members with questions about the law and procedure at a children's hearing. It also contains guidance from the National Convener about how the law and procedure could operate in practice. In addition to the manual, the National Convener has provided panel members with training materials and resource and reference materials, which provide more guidance and support on the practice expectations of being a panel member.

The manual

1.3 The manual is about the children's hearing itself. More information on the Children's Hearings System can be found elsewhere in materials provided by Children's Hearings Scotland (CHS) and the training materials.

The manual is split into nine parts designed to follow the flow of a children's hearing:



there is a summary in a green box at the start of each part, which highlights the key points contained in that part for easy reference



legislation and legal options open to a children's hearing are contained in blue boxes



case examples are provided in some parts and are in pink boxes



Each part of the manual sets out both the legal requirements of panel members and areas of 'best practice'. The differences between legal requirements and 'best practice' are highlighted where necessary.

- 1.4 CHS will review the manual regularly and issue updates when, for example, new legislation or case law needs to be included or more information is needed in a particular area. CHS will also update the electronic version of the manual. Panel members who use a hard copy of the manual are expected to keep their own copy up to date when updates are sent to them by CHS. Area Support Teams (ASTs) will make sure that hard copies are in every hearing centre, where possible, and that these are kept up to date.

Practice support for panel members

- 1.5 There is an expectation that panel members prepare thoroughly in advance of every children's hearing (national standard 5.1). This manual is intended to be a key tool to help panel members with that preparation. It is not the only source of support available to panel members when preparing for a hearing. In addition, panel members are encouraged to:
- consult training materials provided
 - consult the practice section of the CHS online portal
 - ask a member of their Area Support Team, specifically a lead or panel representative who is an experienced panel member, to help with general queries
 - contact CHS for help with general queries

a. The Children's Hearings (Scotland) Act 2011

- 1.6 The legislation under which the Children's Hearings System operates is the **Children's Hearings (Scotland) Act 2011**. This Act entered into force on 24 June 2013. Alongside the 2011 Act are a variety of different Rules which contain much of the detail about how the system operates. The key Rules for a children's hearing are the **Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013** ('the 2013 Rules'). References in the manual to section or rule numbers are to the 2011 Act or 2013 Rules unless stated otherwise.
- 1.7 The 2011 Act made some fundamental structural changes to the Children's Hearings System:
- the post of National Convener was created
 - a new public body, Children's Hearings Scotland, was created to support the work of the National Convener
 - a national Children's Panel was created
 - a national Panel of Safeguarders was created

For further information about the role of the National Convener and CHS please see www.chscotland.gov.uk.



For further information about the National Panel of Safeguarders please see www.children1st.org.uk/services/175/safeguarders-panel.

- 1.8 In addition, some changes were made to the law by which a children's hearing makes decisions:
- the grounds of referral were revised and modernised
 - pre-hearing panels were created to make some procedural decisions in advance of the children's hearing
 - the legal orders panel members can make were simplified and modernised
 - more flexibility was given to the interim decisions panel members can make
 - changes were made to how a solicitor is available to assist a child, relevant person and certain others at a hearing

b. The European Convention on Human Rights and the United Nations Convention on the Rights of the Child

- 1.9 Since the Children's Hearings System started in 1971 'rights' have become a bigger part of the Scottish legal system. This is largely as a result of the United Kingdom being part of various international conventions. Therefore panel members should have some awareness of the context within which the Hearings System operates as a result of international law.

The most important conventions to the Children's Hearings System are the **European Convention on Human Rights** and the **United Nations Convention on the Rights of the Child**.

European Convention on Human Rights (ECHR)

- 1.10 The European Convention on Human Rights was drafted by the Council of Europe in 1950 and entered into force in September 1953. The rights contained within the European Convention on Human Rights are part of Scots Law as a result of the Human Rights Act 1998. In addition, under the Scotland Act 1998 (which created the Scottish Parliament), the Scottish Parliament is only able to pass legislation which is compatible with the convention rights. The rights apply to everyone – adults and children.

- 1.11 The main rights for the Children's Hearings System are:



"In the determination of his civil rights and obligations [which includes a children's hearing] or of any criminal charge against him, everyone is entitled to a fair... hearing within a reasonable time by an independent and impartial tribunal established by law" Article 6

"Everyone has the right to respect for his private and family life, his home and his correspondence" Article 8



- 1.12 Some of the most important changes to the Children's Hearings System since it started in 1971 have come from challenges made under the European Convention on Human Rights. For example children, where appropriate, and relevant persons are now sent the same papers as panel members; unmarried fathers are automatically recognised as relevant persons in the same way as unmarried mothers are and children and relevant persons, in some circumstances, have access to legal aid to pay for the help of a solicitor at a children's hearing.

United Nations Convention on the Rights of the Child (UNCRC)

- 1.13 One of the aims of the 2011 Act is to strengthen and promote children's rights within the Hearings System. The main international Convention in relation to children's rights is the United Nations Convention on the Rights of the Child. The UNCRC was adopted by the General Assembly of the United Nations in November 1989 and is unique amongst international Conventions in terms of the number of States which have signed it and the range of rights it contains for children.
- 1.14 There are 54 articles in total which apply to all individuals aged under 18 years. A full list of the articles within the convention is at Appendix 2. More information on all of the articles can be found on the website of Scotland's Commissioner for Children and Young People at www.sccyp.org.uk.
- 1.15 The United Kingdom has signed the Convention, however it is not yet fully part of Scots Law. This means that a child cannot make an application to court claiming that their rights under the UNCRC have been infringed in the same way as they can with the European Convention on Human Rights. However, both the Scottish and UK Parliaments are expected to abide by the terms of the convention in the legislation they pass, and public bodies (including a children's hearing) should have regard to the convention in any action they take. Panel members should therefore know about and act within the spirit of the Convention.
- 1.16 Some of the key articles from the United Nations Convention on the Rights of the Child for the purposes of children's hearings are as follows:



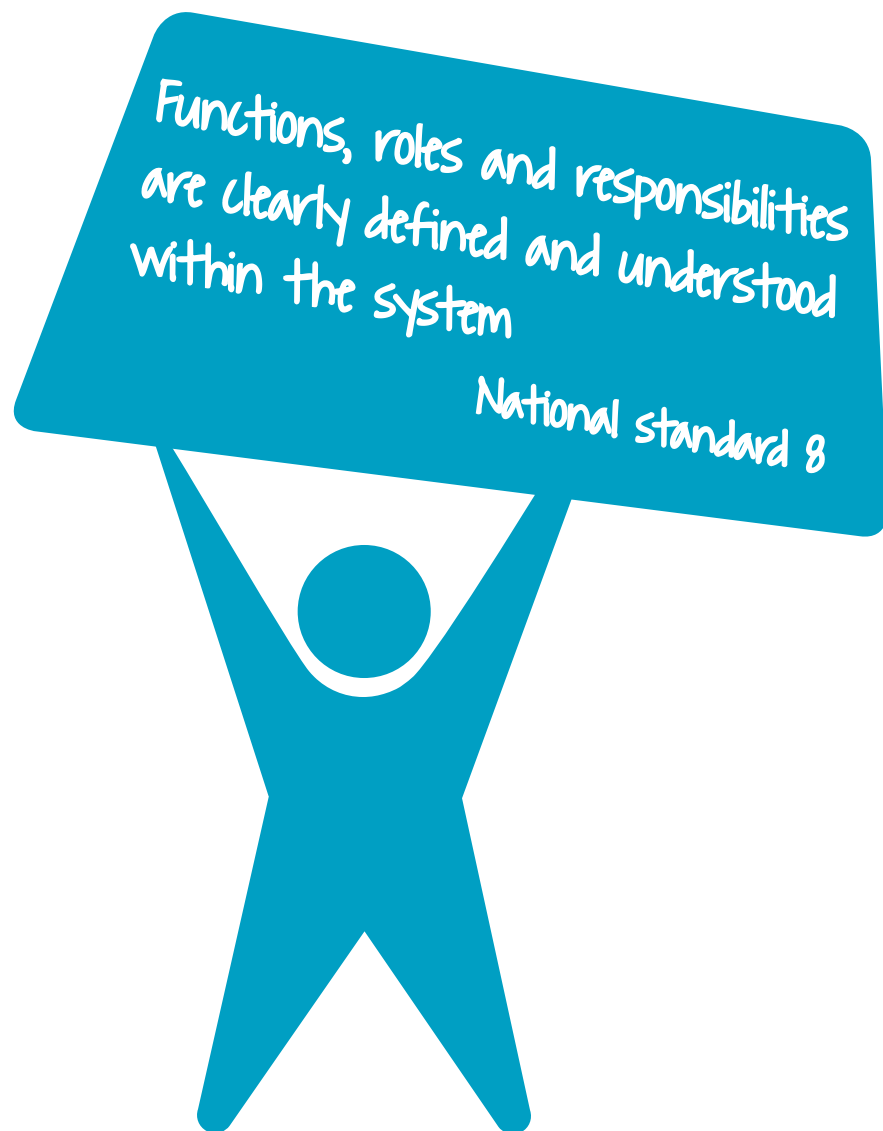
“In all actions concerning children...the best interests of the child shall be a primary consideration” Article 3

“States parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine...that such separation is necessary for the best interests of the child” Article 9

“States parties shall assure to the child who is capable of forming his or her own views the right to express those views freely and in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child” Article 12



Part 2: Roles





Part 2: Summary

a. Panel member

- is a decision maker
- *"a children's hearing should be a conversation, not a confrontation"* (children and young people, 'All About Me' event, Dundee 2012)
- core values and principles are contained in the National Standards for the Children's Panel

b. Children's Reporter

- has a legal responsibility to receive and make decisions on referrals about children who may be in need of statutory measures of care
- has the right to attend a children's hearing
- has four parts to their role at a children's hearing:
 1. fulfilling legal obligations
 2. supporting fair process
 3. assisting attendees
 4. health and safety duties

c. Safeguarder

- is a person appointed by a pre-hearing panel, children's hearing or Sheriff to safeguard the interests of the child
- is appointed from the national Panel of Safeguarders maintained by CHILDREN 1st on behalf of the Scottish Government

d. Solicitor

- is a legally qualified person who must be registered with, and is regulated by, the Law Society of Scotland
- legal aid is available in some circumstances to a child, relevant person and selected others for assistance in relation to a children's hearing
- only solicitors who are registered and signed up to the code of practice from the Scottish Legal Aid Board are eligible to apply for legal assistance on behalf of a child, relevant person or other eligible person

a. Panel member

- 2.1 A children's hearing is a legal tribunal. A panel member is one of a group of three who make up a children's hearing and who takes legally binding decisions about a child. Although decisions are made individually, panel members work as a team throughout the hearing.

A panel member is a decision maker. A panel member is not a social worker, a counsellor, or a problem solver.

- 2.2 In research carried out about the Children's Hearings System, children and young people who have attended children's hearings have been asked what they think about panel members. Children and young people have said that:



- they read panel members body language or behaviours to tell if they are really listening to them
- panel members should give young people the time to say what they need to say
- panel members should check understanding and give time and space for thinking and responding
- panel members should consider if 'the past' really needs to be brought up and if so how this is done as this can be difficult for some children and young people to deal with
- *"a children's hearing should be a conversation, not a confrontation."* (children and young people, 'All About Me' event, Dundee 2012)

2.3 When asked what qualities a panel member should have, children and young people have identified the following:

- | | | |
|-----------------|----------------------------------|---------------------|
| ● genuine | ● polite | ● kind |
| ● open | ● chatty | ● good communicator |
| ● honest | ● understands and likes children | ● patient |
| ● good listener | ● reliable | ● non judgemental |
| ● interested | | ● welcoming |

For further information about the views of children and young people on the Children's Hearings System, please see the research section of the CHS website and portal.

National Standards for the Children's Panel

2.4 The National Standards for the Children's Panel set out the core values and principles which panel members (and those who support panel members) are expected to follow. They were published by Children's Hearings Scotland in 2012 following an extensive consultation with panel members and others.

- Standard 1** Children and young people are at the centre of everything we do.
- Standard 2** Panel members are well equipped and supported to undertake their role.
- Standard 3** Panel member practice is consistent across Scotland.
- Standard 4** Every children's hearing is managed fairly and effectively.
- Standard 5** Every children's hearing makes decisions based on sound reasons in the best interests of the child or young person.
- Standard 6** Area Support Team members are well equipped and supported to undertake their roles.
- Standard 7** Communication and information sharing across the Children's Panel, ASTs and CHS is clear, appropriate and purposeful.
- Standard 8** Functions, roles and responsibilities are clearly defined and understood within the system.

Standards one to five, and the detail which comes within each of them, apply in particular to the responsibilities of a panel member at a children's hearing. There are references



to these standards at the start of each part of the manual. This is not, however, to the exclusion of the other standards.

For further detail please see National Standards for the Children's Panel (CHS) (2012), available on the CHS website.

b. Children's Reporter

- 2.5 A Children's Reporter is employed by the Scottish Children's Reporter Administration (SCRA). The 2011 Act gives certain responsibilities to the Principal Reporter and in practice these are delegated to a Children's Reporter, trainee or Assistant Reporter.

It is not necessary that a Children's Reporter has a particular qualification and therefore Children's Reporters come from a variety of backgrounds, such as law, social work or education.

- 2.6 The Children's Reporter is responsible for receiving referrals about children who may be in need of legal intervention ('statutory measures of care') either because they are in need of care and protection and/or they are alleged to have committed an offence.

When a referral is received the Children's Reporter must carry out the level of investigation they see fit (typically by requesting necessary reports from a variety of agencies) before making a decision about whether a children's hearing is needed. The decisions of the Children's Reporter are made in line with the SCRA's Framework for Decision Making by Reporters: http://www.scra.gov.uk/cms_resources/Framework%20for%20Decision%20Making%20by%20Reporters.pdf

- 2.7 The Children's Reporter must arrange a hearing for a child if:

- one of the grounds in s67 of the 2011 Act exists
- AND
- he or she is satisfied that a compulsory supervision order is necessary for the child

If the Children's Reporter is satisfied that a compulsory supervision order (CSO) is not necessary for the child, they may refer the child to the local authority, or another agency, for voluntary support.

The role of the Children's Reporter at a children's hearing

- 2.8 The Children's Reporter has a right to attend a children's hearing. There are four parts to the role of a Children's Reporter at the hearing:

1. **Fulfilling legal obligations.** This is mainly in relation to the record of proceedings.
2. **Supporting fair process.** This can include offering a view to the hearing about a legal or procedural issue in the same way as any other hearing participant. This view can be offered in response to a question or on the Children's Reporter's initiative.
3. **Assisting attendees.** This includes introducing themselves to the other participants on arrival and being available to assist with any practical issues in advance of the



hearing. During the hearing the Children's Reporter may raise an issue if one of the hearing participants has asked them to do so before the hearing, where the person is not present at the start of the hearing or the Children's Reporter otherwise considers it appropriate to do so.

4. Health and safety duties. This includes making appropriate arrangements if any safety or security concerns are identified before or during the hearing.

2.9 Children's Reporters are directed by the Principal Reporter to carry out their role in a way which supports the independence and impartiality of the hearing.

2.10 There should be minimal, if any, contact between the panel members and the Children's Reporter prior to the hearing. During the hearing the Children's Reporter may intervene to express a view where the Children's Reporter thinks there is a procedural irregularity or that one may develop. The Children's Reporter can also respond to any questions asked by panel members, where other hearing participants are also asked the same question.

Panel members are under no obligation to accept the view of the Children's Reporter, or a view offered by anyone else at the hearing.

2.11 After the hearing the Children's Reporter should leave the hearing room along with the other hearing participants. If the Children's Reporter still has some paperwork to complete when the formal hearing is over, the child and relevant persons present should be invited to stay by the chairing member while the Children's Reporter completes this paperwork. The Children's Reporter cannot remain in the hearing room at the end of the hearing unless the child and relevant persons present have been offered the same opportunity to stay. The Children's Reporter must have no involvement in the writing of the reasons for decisions.

2.12 After the hearing the Children's Reporter is responsible for notifying the outcome of the hearing to those entitled to it. The Children's Reporter must be notified of any appeal to the Sheriff following the hearing decision and will be involved when the Sheriff considers the appeal.

c. Safeguarder

2.13 A safeguarder is an independent person who can be appointed by a children's hearing, pre-hearing panel or a Sheriff. The role of the safeguarder is to safeguard the interests of the child to whom the hearing relates. Specifically this may involve ensuring that:

- the child's rights are protected
- the views of the child are established and communicated to the hearing
- any proposals being made are in the child's best interests

The national Safeguarders Panel is operated and managed on behalf of the Scottish Government by CHILDREN 1ST. Safeguarders come from a variety of backgrounds such as legal, social work, health, education and the children's panel.

For further information about the decision of a hearing to appoint, or not appoint, a safeguarder please see Part 8.



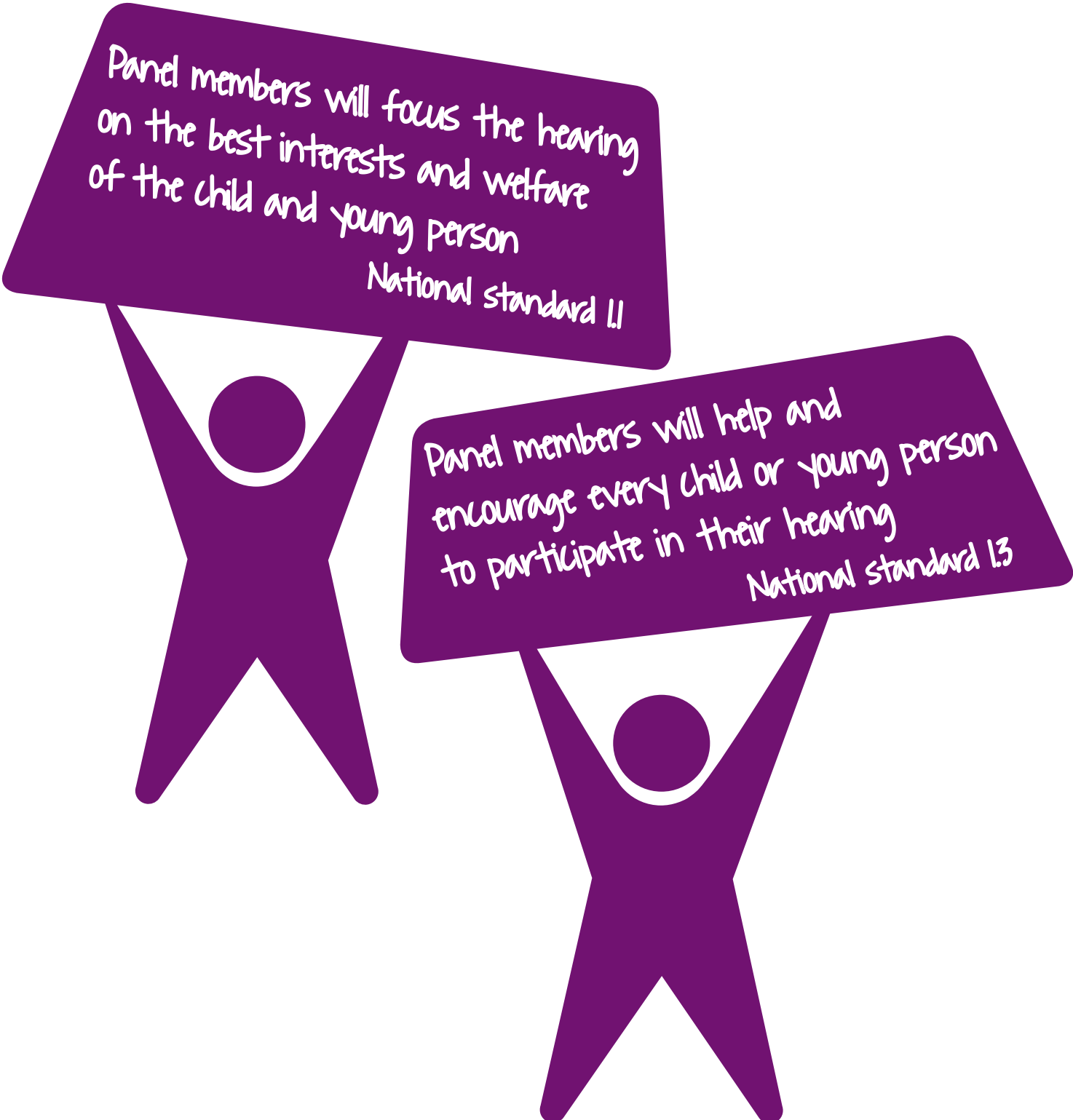
d. Solicitor

- 2.14 A child, relevant person and selected others have the right to be accompanied at the hearing by a representative. They may choose that this representative is a solicitor. In some circumstances the cost of the solicitor can be paid from the Scottish Legal Aid Fund and is known as children's legal assistance.
- 2.15 Solicitors are legally qualified persons who must be registered with, and are regulated by, the Law Society of Scotland.
- 2.16 The role of the solicitor at the children's hearing is to assist the child or relevant person to participate effectively in the hearing. This can include giving the child or relevant person's views directly to the hearing, assisting them to give their own views, ensuring that the rights of the person are respected or a combination of these. Solicitors must act on the instructions of the person they are representing.
- 2.17 Children's legal assistance can be available to pay for the solicitor to assist an eligible child or relevant person both by advising them outwith the hearing and attending the hearing. Children's legal assistance is administered on behalf of the Scottish Government by the Scottish Legal Aid Board. Only solicitors who are registered with the Scottish Legal Aid Board, and signed up to its code of practice for children's legal assistance, are eligible to apply on behalf of the child or relevant person for children's legal assistance.
- 2.18 The code of practice sets out five competencies that a solicitor must demonstrate to the Scottish Legal Aid Board in order to be registered as eligible to provide children's legal assistance:
1. An understanding and detailed knowledge of the provisions of the Children's Hearings (Scotland) Act 2011 and associated Rules and Regulations.
 2. An understanding and detailed knowledge of children's legal assistance as set out in Part 19 of the 2011 Act and associated Regulations.
 3. An understanding of the ethos of the Children's Hearings System.
 4. Detailed knowledge or experience of representing clients at children's hearings and related court proceedings.
 5. A general understanding of child development and the principles of communicating with children, if representing children.

Registered solicitors are expected to maintain these competencies and this will be monitored by the Scottish Legal Aid Board. The code of conduct can be read in full at www.slab.org.uk.

For further information on decisions the hearing can make about the appointment of a solicitor for a child or relevant person please see Part 8.

Part 3: The 'overarching principles'

The illustration features two stylized human figures, one on the left and one on the right, both rendered in a solid blue color. Each figure has a circular head and a simple, angular body with arms raised to hold a rectangular sign. The signs are tilted at an angle and contain white text. The background is a solid light blue.

Panel members will focus the hearing
on the best interests and welfare
of the child and young person
National standard 11

Panel members will help and
encourage every child or young person
to participate in their hearing
National standard 13



Part 3: Summary

There are three 'overarching principles' which apply when hearings are making decisions about a child:

1. The need to safeguard and promote the welfare of the child throughout the child's childhood is the paramount consideration (s25).
2. The child must be given an opportunity to express a view and this view must be taken into account in line with the child's age and maturity (s27).
3. An order is only to be made if it is considered better for the child than if no order was made (s28).

It is important to separate these principles from reasons for making a decision. For example a reason for making a decision would not be 'that it is in the child's best interests' it would be **why** the decision is in the child's best interests.

a. The need to safeguard and promote the welfare of the child throughout the child's childhood is the paramount consideration (s25)

- 3.1 This principle is also known as the 'paramountcy principle', 'the welfare principle' and the 'best interests of the child principle'. It applies to children's hearings, pre-hearing panels and Courts when making decisions about children. This principle is in line with Article 3 of the UNCRC which says the welfare of the child should be a primary consideration of the decision maker.
- 3.2 This principle means every children's hearing should consider, above all else, the welfare of the child when making decisions about the child which are within the hearing's discretion. In particular the welfare of the child *throughout the child's childhood*, is to be the paramount consideration. Panel members should therefore consider the longer term impact of the decisions they take for the child, although not at the expense of the short or medium term.
- 3.3 'Welfare' can include all parts of a child's life, for example physical, emotional or educational.
- 3.4 There is one exception to this principle and this is where the children's hearing considers that, for the purposes of protecting members of the public from serious harm (whether physical or not), it is necessary that the decision be made. In this situation the welfare of the child must still be a primary consideration as opposed to the paramount consideration. This is an exception that panel members will very rarely use. It may apply, for example, where it is necessary to make a secure accommodation authorisation for a child who has committed a very serious offence against a member of the public, where there is an assessment that the child is at high risk of re-offending.



b. The child must be given an opportunity to express a view and this view must be taken into account in line with the child's age and maturity (s27)

- 3.5 The participation of the child is the central feature of a children's hearing and this principle reflects this. It is **not an obligation to follow** the child's views and there will be situations where the children's hearing will find it necessary to depart from the child's views. It is important when explaining this principle to children and young people that this is made clear at the outset. If a children's hearing does make a decision which is different from the child's view, the reasons why the hearing have reached a different decision should be very carefully explained to the child.
- 3.6 A child aged 12 years or over is presumed able to form and express a view, however this is not to say that younger children will not also be able to form and express their views. This principle should therefore be applied differently to each individual child. Panel members should consult their training materials about how to gather the views of children of all ages.
- 3.7 In addition to this overarching principle, which applies to all parts of a children's hearing, the reports submitted to the hearing must contain the child's views, as known to the report writer. The chairing member must take steps at the beginning of the hearing to ascertain whether the views of the child are accurately reflected in the reports submitted in advance of the hearing (set out in Part 6).
- 3.8 It is important for panel members to be aware that some children will not want to offer their views personally within a children's hearing and they should not be forced to do so.

There are various other ways a child can share their views. For example:

- the child has the right to be accompanied by a representative to help them be involved in the discussion, in particular to share the child's views, or support the child to share their own views, at the hearing
- the hearing may wish to consider deferring the hearing to another day to enable the child's views to be ascertained by a trusted adult outwith the hearing
- a safeguarder may be appointed to speak with the child
- the child could complete an 'All About Me' form in advance of the hearing

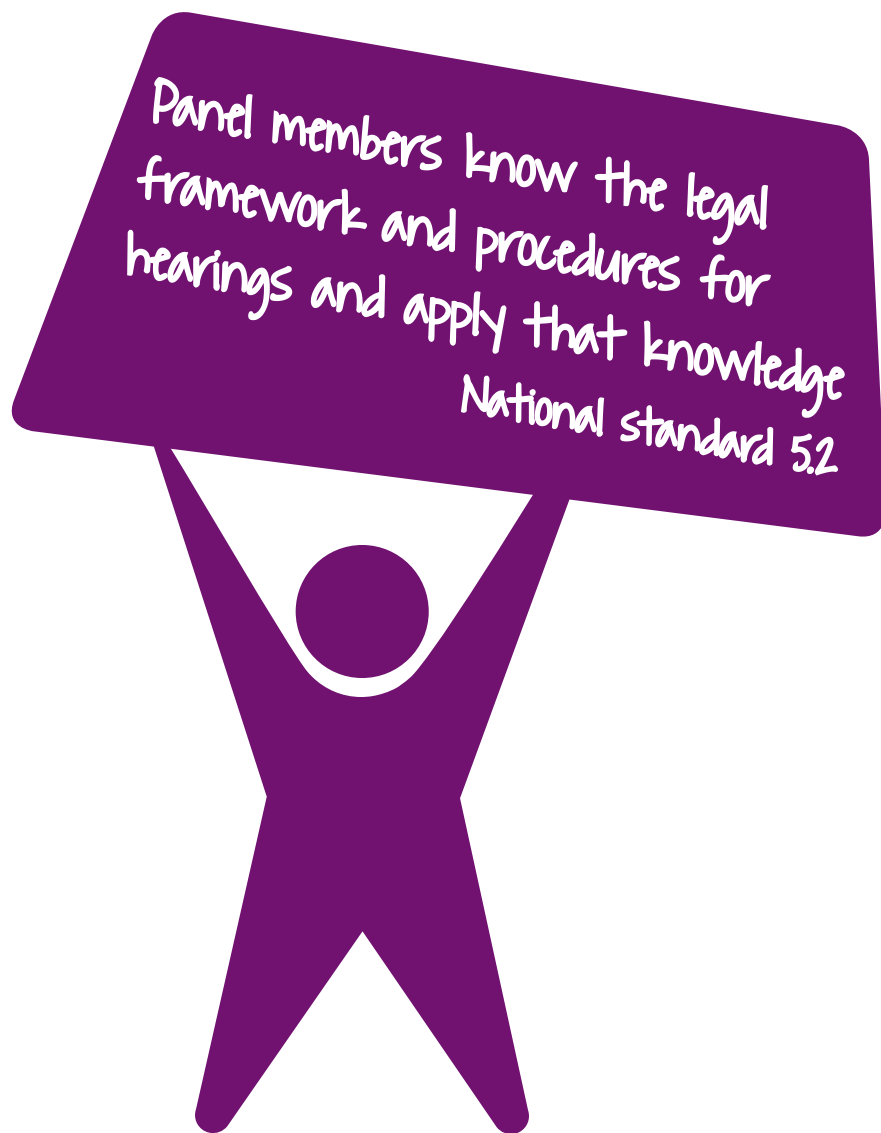
Strictly within the terms of the 2011 Act this second principle does not apply to a pre-hearing panel. However it would be good practice to give the child an opportunity to express a view, if he or she is present, or to ascertain from others present, the reports or All About Me from, what the child's view on the particular matter before the pre-hearing panel is. This practice would be in line with the United Nations Convention on the Rights of the Child.



c. An order is only to be made if it is considered better for the child than if no order was made (s28)

- 3.9 This principle is referred to as the 'no order principle', the 'minimum intervention principle' or the 'no non-beneficial order principle'.
- 3.10 In effect this principle means a children's hearing must be **positively persuaded** that an order is **necessary** for the child. In other words a hearing must be satisfied that there is a reason for imposing an order that demonstrates a benefit to the child. The principle also applies to any measures included in the order, so the hearing must be positively persuaded that any measure included in the order is necessary for the child. The reason or reasons must be said in both the verbal and written reasons provided by the hearing.
- 3.11 It is important to separate these principles from reasons for making a decision. For example a reason for making a decision would not be 'that it is in the child's best interests' it would be **why** the decision is in the child's best interests.

Part 4: Definitions





Part 4: Summary

a. "Child"

- defined in s199 of the 2011 Act

b. "Relevant person"

- there are two categories of relevant persons
- 'automatic' relevant persons are defined in s200
- 'deemed' relevant persons are defined in s81(3)
- a deemed relevant person is someone who has, or has recently had, a significant involvement in the upbringing of the child
- only a hearing or pre-hearing panel can deem someone to be a relevant person

c. Hearing orders

- there are four orders a hearing can make:
 1. Compulsory supervision order (CSO)
 2. Interim compulsory supervision order (ICSO)
 3. Medical examination order (MEO)
 4. Warrant to secure attendance
- with the exception of a warrant to secure attendance only one of the other orders should be in force at one time

a. "Child" (s199)



A person is a "child" under the 2011 Act if they are:

- under the age of 16 years
- aged 16 or 17 years and subject to a compulsory supervision order
- under the age of 16 years when referred to the Children's Reporter until the Children's Reporter decides not to arrange a children's hearing or a substantive decision is made by a children's hearing
- of school age where the ground of referral is non school attendance
- aged 16 or 17 years and whose case has been remitted to the Principal Reporter by the Sheriff after they have pleaded guilty to, or been found guilty of, an offence until a substantive decision is made by the hearing



b. “Relevant Person” (ss200 and 81(3))

4.1 There are two categories of ‘relevant person’:



1. A person is automatically a relevant person for a child if they are:
 - a parent of a child, unless they have had their parental rights and responsibilities removed by a court
 - a person who holds parental rights and responsibilities for a child under a court order. This court order can be a parental rights and responsibilities order or residence order granted under the Children (Scotland) Act 1995 or a Permanence Order under the Adoption and Children (Scotland) Act 2007 (Scottish legislation)
 - a person with parental responsibility under the Children Act 1989 or the Adoption and Children Act 2002 (English and Welsh legislation)

4.2 The 2011 Act introduced a second category of relevant persons for the first time – ‘deemed relevant persons’. **Only a children’s hearing, or pre-hearing panel, can deem a person to be a relevant person.**



2. A person will be a deemed relevant person for a child if:
 - the individual has (or has recently had) a significant involvement in the upbringing of the child

4.3 This is a factual test. Decisions should therefore be based on the facts and circumstances of each individual child. Making decisions in this area will sometimes involve sensitive issues and some complexity. There are no set rules as each child’s relationships must be considered individually. Some suggested factors to consider are given below, along with some case examples, however **these should not be considered as fixed rules to be applied**. It is likely that interpretation of the definition will develop over time as a result of case law.

4.4 The test is of **significant** involvement in the **upbringing** of the child, rather than any particular care of, or contact with, the child. The Oxford English Dictionary definition of ‘upbringing’ is *“the treatment and instruction received by a child from its parents throughout its childhood”*. Other considerations such as the best interests of the child or the character of the individual are not relevant considerations for being deemed a relevant person.



4.5 In general terms the children's hearing might consider the following criteria:

- the nature of the involvement in the child's life, for example is the person fulfilling a parental role in relation to the child – this could be involvement in key decisions in relation to the child, such as education or medical treatment, without necessarily having care of the child
- the length of time the person has been involved in the child's life
- living arrangements, for example do the child and person live in the same house
- where the person and the child do not live in the same house, the level and quality of contact the person has with the child
- the child's view, if they are old enough to provide it, of the significance of their relationship with the person

4.6 This is not a complete list and the hearing should consider any factual information presented to it which appears relevant to deciding if a person has, or has recently had, a significant involvement in the upbringing of a child. What is significant in the upbringing of one child may not necessarily be as significant in the upbringing of another child. No one factor will lead to an automatic decision of relevant person status. It is the strength and combination of factors which requires careful consideration.

4.6a Where an individual's involvement in the child's upbringing has been restricted by the intervention of the State, for example through a children's hearing or court decision, this by itself should not impact on the individual's deemed relevant person status. The question to be considered is whether 'but for' the hearing or court decision the individual would have, or have recently had, a significant involvement in the child's upbringing. An exception to this may be where the lack of the person's involvement in the child's upbringing is through the choice of the person, despite provision being made for their involvement. Such a decision should not, however, be made lightly.

4.7 Possible examples are given in the following pages of when a person may, and may not, be deemed a relevant person. These are not to be considered as set in stone and panel members may arrive at a different conclusion following discussion with those present at a hearing.



Case examples 1 and 2: Partner of a parent



Example 1:

A seven year old child lives in the same house as his mother and her partner, who is not the child's biological father. The child's mother has been in a relationship with her partner for five years and they have lived together as a family unit for four years. The child has no contact with his biological father and regards the mother's partner as a father figure. The partner is involved in the same level of decision making in relation to the child as the mother.

Specific factors to consider: the living arrangements; length of time the family unit has lived together in comparison to the age of the child; involvement in decision making in relation to the child; that the child recognises the mother's partner as a father figure.

This is perhaps the most straightforward of examples in that it is highly likely that the mother's partner would meet the test of having a significant involvement in the child's upbringing.



Example 2:

A 13 year old child lives with her father. The father has been in a relationship with his partner for the last eight months. They do not live in the same house, but the partner stays over approximately three times per week.

Specific factors to consider: the living arrangements; length of relationship in comparison to the age of the child; level of contact between the child and the partner.

In the absence of any further information it is unlikely that the father's partner would meet the test of having a significant involvement in the upbringing of the child. However, hearing members may wish to ask some further questions, such as the level of contact between the partner and the child when the partner stays over in the house, the child's view of her relationship with the partner and the partner's involvement in decision making.

Case examples 3 and 4: Foster carers

As a group, many long term foster carers are likely to meet the test to become a deemed relevant person for the child they have in their care. However, this is not an absolute rule and panel members must closely consider whether the carer has a significant involvement in the upbringing of the child. Being a foster carer alone will not automatically mean a person is a deemed relevant person.

**Example 3:**

An eight year old child has lived with a foster carer for the past year. The foster carer meets the child's daily needs, as well as attending all school meetings and social work reviews with the child. The recommendation to the hearing is that the child continues to live with the foster carer.

Factors to consider: the length of time the child has lived with the foster carer in comparison to the age of the child; the involvement of the foster carer in meetings; the recommendation that the child continues to stay with the foster carer.

It is likely that the foster carer would meet the definition of having a significant involvement in the child's upbringing at this time.

At the next children's hearing the eight year old child is returned to the care of his parents. It is likely that the foster carer would continue to be a relevant person in relation to the child at the end of the review hearing, having recently had a significant involvement in the upbringing of the child.

**Example 4:**

A 12 year old child has been placed with a temporary foster carer for the last two months while her mother recovers from an operation in hospital. The foster carer offers day to day advice and guidance as required. It is likely that the child will remain with the foster carer for a further month.

Factors to consider: the length of time the child has lived with the foster carer in comparison to the age of the child; the short term nature of the foster carer's involvement.

It is unlikely that the foster carer would meet the test of significant involvement in the upbringing of the child.



Case example 5: Child care



Example 5:

A three year old child is looked after five afternoons per week by a family friend whilst her mother is at work. The family friend collects the child from nursery at 1:00pm and looks after the child at the child's house until 3:30pm when the mother returns home. Although the family friend attends to all the child's needs during this time, she has no input into decision making in the upbringing of the child.

Factors to consider: the length and frequency of contact between the child and the family friend; the involvement of the friend in the life of the child outwith the periods of child care.

It is unlikely that the family friend would meet the test of having a significant involvement in the upbringing of the child.

Case example 6: Wider family relationships

The most difficult, sensitive and complex decisions around deemed relevant person status will likely involve existing family relationships. Wider family members may be very important to the child, however this does not necessarily mean that a person has a 'significant involvement' in the upbringing of the child. This may require very careful explanation to the child and person concerned.

Example 6:

The grandparents of a six month old child have contact with the child approximately once per week for a couple of hours at their own home, as well as caring for the child overnight on an ad hoc basis when his parents need it (typically once every couple of months). The grandparents provide practical advice and some financial assistance at times to the child's parents but all major decisions are taken by the child's parents.

Factors to consider: the level and frequency of contact between the child and the grandparents; the involvement of the grandparents in decision making; provision of advice and financial assistance to the child's parents.

It is unlikely that the grandparents would meet the test of having a significant involvement in the upbringing of the child. It is likely that the grandparents are significant people to the child, but this is not the same as having a significant involvement in the upbringing of the child for the purposes of the deemed relevant person status.



c. Hearing orders (ss 83, 86, 87, 88)

4.8 There are four different legal orders a hearing can make – one as a substantive decision and three on deferral of a hearing. The 2011 Act provides that there should only be one order in force at any one time, with the exception of a warrant to secure attendance. For example if a compulsory supervision order is in force and a short term decision needs to be taken for a child, this order should be varied on an interim basis, rather than a separate interim compulsory supervision order being issued.

The four orders are:

- I. Compulsory supervision order
- II. Interim compulsory supervision order
- III. Medical examination order
- IV. Warrant to Secure Attendance.

I. Compulsory supervision order (CSO) (s83)

4.9 If a hearing is satisfied that **it is necessary for the child's protection, guidance, treatment or control** it may make a compulsory supervision order. A compulsory supervision order is a substantive decision and should only be made following the acceptance or establishment of s67 grounds and a full discussion at a hearing.

The three requirements

4.10 There are three requirements for an order to be a compulsory supervision order:

1. It must contain at least one of the measures listed below:

- a) the child resides at a specified place
- b) authorisation for the person in charge of the specified place to restrict the child's liberty
- c) non-disclosure (either directly or indirectly) of the specified place
- d) a movement restriction condition (see Part 8)
- e) a secure accommodation authorisation (see Part 8)
- f) that the implementation authority arranges a specified medical examination and/or treatment of the child, subject to the child giving consent if of an age where he or she can provide consent
- g) a contact direction (**it is an absolute requirement that this be considered by each hearing making a compulsory supervision order**)
- h) any other condition which the child must comply with
- i) the implementation authority carries out specified duties in relation to the child

In practice every compulsory supervision order should contain a measure that 'the implementation authority must provide supervision and support for the child'. This means that the first requirement of a valid compulsory supervision order is met in situations where it is not necessary to include one of the specific measures in a) to g) above. Therefore when making a decision to make, continue and/or vary a compulsory supervision order, panel members should specify this measure as part of their decision and provide a reason for it.

**2. It must specify a local authority which is responsible for giving effect to the order.**

This is called ‘the implementation authority’. The implementation authority should be ‘the relevant local authority’ which is defined as:

- a) the local authority in whose area the child predominantly resides
- or
- b) where the child does not predominantly reside in the area of a particular local authority, the local authority with whose area the child has the closest connection

When considering ‘relevant local authority’ no account must be taken of any period of residence in a residential establishment. For example, where a child lives in a residential placement in a different local authority area from where he normally lives with his parents, the implementation authority remains the local authority where he would normally live with his parents and not the local authority where his residential placement is.

The implementation authority may request that another local authority or health board assist them to implement the compulsory supervision order. In the case of a health board, if the implementation authority considers that the health board has unreasonably failed to respond to the request, it may refer the matter to Scottish Ministers.

Although not a legal requirement, it is best practice for a representative of the proposed implementation authority to be present at the hearing, where practicable, or to have otherwise submitted a report. This is particularly the case where a change of implementation authority is being proposed.

3. It must specify ‘the relevant period’.

The relevant period is how long the compulsory supervision order will last. The relevant period begins with the day the hearing makes the order and can last for a maximum of one year, or to the child’s 18th birthday, whichever comes first.

Where the order is continued, the relevant period can be specified by a hearing. Unless it is not in the interests of the child, the relevant period specified by the hearing should be one year.

Substantive decisions on review of a compulsory supervision order

4.11 A compulsory supervision order can be:

- continued
- varied
- continued and varied
- or
- terminated

These are all substantive decisions which should only be made following the full consideration of the hearing.

4.12 A **continued** compulsory supervision order is where the compulsory supervision order is continued for a further ‘relevant period’ without any changes to the measures attached to it.



- 4.13 A **continued and varied** compulsory supervision order is where the compulsory supervision order is continued for a further 'relevant period' with a variation to one or more of the existing measures, a new measure attached or a variation to the implementation authority.
- 4.14 A **varied** compulsory supervision order is where one or more of the measures attached to the compulsory supervision order is varied, a new measure attached or a variation is made to the implementation authority. **The relevant period, however, would remain unchanged.** For example a compulsory supervision order is due to expire in December 2013. A children's hearing takes place in April 2013 and decides to vary the compulsory supervision order. The compulsory supervision order would still expire in December 2013 and therefore the child would attend a further children's hearing before then. Only if the children's hearing continued and varied the compulsory supervision order, specifying the relevant period to be one year, would the expiry date of the order move to April 2014.
- 4.15 In the event that a children's hearing wishes a child to attend a children's hearing within a year, it would be best practice to continue the compulsory supervision order with a relevant period of a year and requiring an early review within the appropriate timescale. Panel members should, however, consider the impact on the child and relevant persons of having to attend several hearings within a short space of time.

Interim decisions on review of a compulsory supervision order

- 4.16 Where a children's hearing has decided to defer a decision to a further day, there are interim decisions that can be made in relation to a current compulsory supervision order:
- an interim variation to the order
 - an extension of the order until the next children's hearing
 - an extension of the order until the next children's hearing with an interim variation to the order
- 4.17 A compulsory supervision order can be varied on an interim basis by making an **interim variation to the compulsory supervision order (IVCSO)**. Where a review hearing cannot reach a substantive decision, but is satisfied that **as a matter of urgency** it is necessary for the protection, guidance, treatment or control of the child, the hearing may make an interim variation to the order. An interim variation is not an order in itself, but rather a short term variation to the existing compulsory supervision order. The interim variation would have effect for the 'relevant period' which is whichever occurs first; the next children's hearing in relation to the child; the disposal of the proof application by the Sheriff; a day specified in the order; a period of 22 days.
- 4.18 On deferral of a hearing, the hearing can decide to extend a compulsory supervision order to the next children's hearing. This power would typically be used where the order is due to expire but there is a need to defer the hearing. It is possible to make an interim variation of the compulsory supervision order at the same time if the hearing is satisfied that it is necessary **as a matter of urgency** for the protection, guidance, treatment or control of the child.
- 4.19 In law, there is no limit on the number of times a compulsory supervision order can be varied on an interim basis or extended to the next children's hearing, although hearings should consider the impact on the child of successive deferred hearings.



II. Interim compulsory supervision order (ICSO) (s86)

4.20 An interim compulsory supervision order can only be issued if there is no existing compulsory supervision order in place. If a compulsory supervision order is in existence then an interim variation should be considered instead. The test for making an interim compulsory supervision order is 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 the interim compulsory supervision order be made.

The three requirements

4.21 Similar to a compulsory supervision order, there are three requirements for an order to be an interim compulsory supervision order.

1. It must contain at least one of the following measures:

- a) the child resides at a specified place
- b) authorisation for the person in charge of the specified place to restrict the child's liberty
- c) non-disclosure (either directly or indirectly) of the specified place
- d) a movement restriction condition (see Part 8)
- e) a secure accommodation authorisation (see Part 8)
- f) that the implementation authority arranges a specified medical examination and/or treatment of the child, subject to the child giving consent if of an age where he or she can provide consent (where a proof application is ongoing this can only be a requirement to arrange a specified treatment)
- g) a contact direction (**it is an absolute requirement that this be considered by each hearing making an interim compulsory supervision order**)
- h) any other condition which the child must comply with
- i) the implementation authority carries out specified duties in relation to the child

Similar to a compulsory supervision order, in practice every interim compulsory supervision order should contain a measure that 'the implementation authority must provide supervision and support for the child'. This means that the first requirement of a valid interim compulsory supervision order is met in the rare situation where it is not necessary to include one of the specific measures listed at a) to g) above. Therefore when making a decision to make an interim compulsory supervision order, panel members should specify this measure and the reason for attaching this to the order.

2. It must specify an implementation authority

In the same way as for a compulsory supervision order the implementation authority is 'the relevant local authority'. The relevant local authority for a child is defined as:

- a) The local authority in whose area the child predominantly resides
- or
- b) Where the child does not predominantly reside in the area of a particular local authority the local authority with whose area the child has the closest connection.



When considering the local authority area where the child resides, or is connected with, no account must be taken of any period of residence in a residential establishment. For example, where a child is placed in a residential establishment in a different local authority area from where he normally resides with his parents, the implementation authority remains the local authority where he would normally reside with his parents and not the local authority where his residential placement is.

The implementation authority may request that another local authority or health board assist them to implement the compulsory supervision order. In the case of a health board, if the implementation authority considers that the health board has unreasonably failed to respond to the request, it may refer the matter to Scottish Ministers.

Although not a legal requirement, it is best practice for a representative of the proposed implementation authority to be present at the hearing, where practicable, or to have otherwise submitted a report. This is particularly the case where a change of implementation authority is being proposed.

3. It must specify the relevant period.

The relevant period is the length of time the order will last. The relevant period for an interim compulsory supervision order is whichever occurs first: the date of the next children's hearing; the disposal of a proof application by the Sheriff; a day specified in the order; a period of 22 days.

Further interim compulsory supervision orders

4.22 A hearing may make a further interim compulsory supervision order if it is satisfied that the nature of the child's circumstances is such that it is necessary for the child's protection, treatment, guidance or control. Prior to s67 grounds being established a maximum of three orders can be issued by children's hearings, after which an application may be made by the Children's Reporter to the Sheriff for a further order if required. Where s67 grounds have been accepted or established there is no limit on the number of interim compulsory supervision orders successive hearings can make. However panel members should consider the impact of a series of short term decisions, and the uncertainty this causes, on the child and relevant persons.

III. Medical examination order (MEO) (s87)

4.23 A medical examination order is an interim order a children's hearing can make in the situation where a child has an unmet medical need.

4.24 A medical examination order can only be issued if a s67 ground has been accepted or established but there is no compulsory supervision order already in place. If there is an existing compulsory supervision order in place then an interim variation to the compulsory supervision order should be considered instead.

4.25 A medical examination order may be made where the hearing is satisfied that it is necessary for the purposes of obtaining any further information, or carrying out any further investigation needed before the subsequent children's hearing.



4.26 A medical examination order is an order authorising any of the following measures for the relevant period:

- the child attends or lives at a specified clinic, hospital or other place
- a specified local authority arranges a medical examination of the child, subject to the child's consent where the child is able to consent
- non-disclosure (either directly or indirectly) of the place where the child is to stay
- a secure accommodation authorisation
- a contact direction
- any other condition to ensure the child complies with the order

4.27 The relevant period (the time the order lasts) for a medical examination order is whichever comes first: the beginning of the next children's hearing; a day specified in the order; the expiry of 22 days. Further medical examination orders can be issued by subsequent hearings, however the impact on the child and relevant persons of successive deferred hearings should be considered.

4.28 In some situations, it will be necessary for panel members to decide whether to issue an interim compulsory supervision order or a medical examination order. Where the principal issue of concern to the children's hearing is that the child receives medical assessment, examination or treatment a medical examination order is likely to be the most appropriate order. In all other circumstances an interim compulsory supervision order is likely to be the most appropriate order.

IV. Warrant to secure attendance (s88)

4.29 A warrant to secure attendance gives a police officer the power to search for and apprehend the child, keep the child in a place of safety and bring the child before a children's hearing. The police officer may break open locked places if necessary.

4.30 **A warrant to secure attendance can only be issued by a hearing on the application of the Children's Reporter. It cannot be issued by the hearing alone.** Where an application has not been made by the Children's Reporter, but panel members think a warrant to secure attendance should be considered, they can ask the Children's Reporter to consider making the application. However, **the Children's Reporter cannot be required to make the application and may decline to do so.**

4.31 A warrant to secure attendance at a children's hearing should only be issued where it is the only realistic prospect of securing the attendance of the child. It must be used in a proportionate way, in that it is the least intrusive way to secure the child's attendance.

4.32 Where an application is made by the Children's Reporter, the hearing should enquire whether the child is aware of the hearing, for example through having been notified by recorded delivery, and of his obligation to attend that hearing. Only in exceptional circumstances should a hearing issue a warrant to secure attendance where the child is unaware of his/her duty to attend the hearing. This may be where, for example, knowledge of the hearing would place the child at greater risk, such as in a case of forced marriage, or where the child has repeatedly failed to attend previous hearings and there is no realistic prospect of the child attending a future hearing.



- 4.33 The hearing should consider alternative options in the first instance, such as someone to help the child travel to the hearing or the child being re-notified of a further hearing.
- 4.34 Where the decision is to issue a warrant to secure attendance the warrant may contain a measure prohibiting the disclosure of the child's address or a secure authorisation if appropriate.
- 4.35 A warrant to secure attendance can last for a maximum of seven days from the time the child is first detained. It will, however, come to an end if the child attends a children's hearing before then. Where the warrant is issued by a Sheriff the maximum length is 14 days.

Part 5: Pre-hearing panels





The chairing member's checklist: pre-hearing panels*

1. Introductions

- Who is present and why are they present?
- Purpose of pre-hearing panel.

2. Attendance

- Who has a right to attend the pre hearing panel?

3. Notification and papers

- Have those with a right to attend received the correct notification and papers?
If not, what are the legal options?

4. Procedure

- Does anyone present wish to make a relevant person claim which has not been the subject referred to the pre-hearing panel?
- A relevant person determination **must** be made before any other matters referred to the pre-hearing panel.
- Discussion with all those present about the matter referred to the pre-hearing panel **only** – the only other matters which can be considered are the appointment of a safeguarder and whether a solicitor may be required for a child or relevant person.

5. Verbal decisions and reasons

- Has each member of the pre-hearing panel (including the chairing member) given a decision and reasons for all parts of the decision clearly?

6. Confirming the decision of the pre-hearing panel

- What is the decision of the pre-hearing panel?
- Do the child and relevant persons present understand the decision?

7. Appeal rights (if applicable)

- A child, relevant person(s) and person deemed not to be a relevant person can appeal the relevant person determination by the pre-hearing panel within seven days beginning with the date of the decision – the Sheriff must decide on the appeal within three days.

8. Next steps

- Explanation to those present of what happens next.

9. Reasons for decision

- Completion of written reasons for decision.
- Signature of the record of proceedings by the chairing member.

* Although this is called the chairing member's checklist this does not stop another of the panel members from helping with these parts of the pre-hearing panel.



a. Purpose

- 5.1 A pre-hearing panel is a meeting of three panel members to discuss a matter which needs to be decided in advance of a children's hearing. The following matters can be referred to a pre-hearing panel:
- whether a person should be a deemed relevant person
 - whether a person should continue to be a deemed relevant person
 - whether the child should be excused from attending the hearing
 - whether a relevant person should be excused from attending the hearing
 - whether it is likely that the hearing will consider making a compulsory supervision order with a secure accommodation authorisation
- 5.2 The Children's Reporter must refer the question of whether an individual is, or should continue to be, a deemed relevant person to a pre-hearing panel when requested to do so by the child, relevant person or an individual who claims to be a relevant person. In all other cases referral to a pre-hearing panel is within the discretion of the Children's Reporter. The same pre-hearing panel can be arranged to consider more than one of the matters listed above.
- 5.3 **It is essential that only matters referred to the pre-hearing panel are discussed.** The substance of the case should form no part of the discussion, since this is a matter for the forthcoming hearing. This should be clearly explained to those present at the start of the pre-hearing panel. The only other matters which can be discussed by the pre-hearing panel are the appointment of a safeguarder and whether a referral should be made to the Scottish Legal Aid Board to facilitate the child or relevant person's contact with a solicitor to enable their effective participation at the forthcoming children's hearing.

b. Attendance

- 5.4 A child, relevant person and any appointed safeguarder have the right to attend a pre-hearing panel. They do not, however, have a duty to attend. The child and relevant persons also have the right to have a representative attend the pre-hearing panel with them. An individual who is the subject of a deemed relevant person determination also has the right, along with a representative, to attend the pre-hearing panel which will consider their status.
- 5.5 As there is not a duty to attend, it is not necessary for the pre-hearing panel to formally consider excusing an absent person. It would, however, be good practice to ascertain, if possible, whether the person knew of the pre-hearing panel and whether they had wanted to attend. If the person had wanted to exercise their right to attend, but had been prevented by an **exceptional** factor beyond their control, the pre-hearing panel may wish to consider whether it is appropriate to proceed on that day.



c. Notification and papers

- 5.6 A child, relevant person, appointed safeguarder and any individual who is to be the subject of a relevant person determination, is entitled to at least five days notice of the pre-hearing panel, wherever practicable. They also have the right to receive the same reports for the pre-hearing panel as the panel members as soon as possible prior to it taking place.
- 5.7 The chairing member should therefore confirm with the child, relevant persons, safeguarder or individual subject of a relevant person determination, if present, whether they have received copies of the papers. It is good practice for the chairing member to ascertain whether the individual has had sufficient opportunity to consider the reports prior to the pre-hearing panel. In the absence of any of these people the Children's Reporter will be able to confirm to the hearing if the notifications and papers have been sent.

d. Procedure

- 5.8 The procedure at a pre-hearing panel is to be determined by the chairing member, except as provided for under the 2011 Act or the 2013 Rules.

Introductions

- 5.9 Generally it will be appropriate for the chairing member to welcome those present at the pre-hearing panel before carrying out the introductions in the same way as they would at a children's hearing.

Before the pre-hearing panel starts, a member of SCRA staff will provide panel members with a note of who is in attendance. This list should be checked as the introductions are being made. Enquiries should also be made as to whether notifications and papers were received and whether any person not present, but entitled to be present, had wanted to attend.

Purpose of the pre-hearing panel

- 5.10 The purpose of the pre-hearing panel should be explained to those present. **It is important to make clear to those present at the outset that the pre-hearing panel is unable to enter into discussion about the substance of the case, as this is a matter for the children's hearing.** Along with the appointment of a safeguarder and/or a referral to the Scottish Legal Aid Board, the only matters the pre-hearing panel can discuss are those matters referred to it:

- the attendance of a child or relevant person at a hearing
- whether a person should be a deemed relevant person
- whether a person should continue to be a deemed relevant person
- whether the hearing is likely to consider making a compulsory supervision order with secure authorisation



Relevant person determination

- 5.11 Where the pre-hearing panel has been arranged to consider a relevant person matter, either on request or on the initiative of the Children's Reporter, this matter must be considered first when there is an additional matter(s) to be considered. Where both a decision about whether an individual is to be deemed a relevant person and whether an individual should continue to be a deemed relevant person are referred to the pre-hearing panel, the decision about whether the individual should continue to be a relevant person must be considered first.

The child, relevant person or an individual who claims to be a relevant person can attend a pre-hearing panel arranged for any reason and request that they or another individual present be considered a deemed relevant person. Where this happens, this claim must be considered by the pre-hearing panel at the outset. In this situation the pre-hearing panel should consider that no notice will have been given of the intention to consider a relevant person determination and therefore if there is a child or relevant person(s) not present, the pre-hearing panel may wish to consider whether it is appropriate to make a decision on that day.

Discussion

- 5.12 When considering the matter before them, the pre-hearing panel must ask the child, relevant persons and any individual subject of the relevant person determination (where the matter is a relevant person determination), to give any views they may have either verbally or in writing and whether they wish to submit any other written information, such as the child's All About Me form. Where views are provided in writing these must be shared with others who are entitled to receive the papers for the pre-hearing panel.

Decision

- 5.13 In the same way as at a children's hearing, each panel member (including the chairing member) must give his or her individual decision, with full reasons, before the decision of the pre-hearing panel is confirmed by the chairing member.
- 5.14 Where the decision is that a person is not, or is no longer, a deemed relevant person and there is another matter for the pre-hearing panel to consider, the pre-hearing panel should consider whether the individual deemed not to be a relevant person should stay within the hearing room for the rest of the pre-hearing panel.
- 5.15 There is no express provision in the 2011 Act for a pre-hearing panel to be deferred. Therefore in the vast majority of cases a decision should be taken at the time. However, there may be some, **exceptional**, circumstances where to take a decision at the pre-hearing panel would be so fundamentally unfair to an individual, it is not appropriate that the decision is made. In these circumstances, the pre-hearing panel can decline to make a decision and the Children's Reporter could make a further referral to a pre-hearing panel or the children's hearing itself depending on timescales.
- 5.16 Examples of where this may apply would be: where sufficient notification of the pre-hearing panel has not been received prior to the pre-hearing panel by those entitled to it, and they do not wish for the pre-hearing panel to go ahead; an important report is missing and cannot be submitted either verbally or following a short adjournment; a person with a right to attend and who wished to attend was prevented from doing so through no fault of their own and their views cannot be obtained in another way.



- 5.17 When faced with such an issue panel members should consider whether any prejudice would result from the pre-hearing panel making a decision or not. For example, where the decision relates to whether or not a person is to be a deemed relevant person, and that person is unable to attend the pre-hearing panel to present their view through no fault of their own, it may be unfair to make a decision not to deem them to be a relevant person in their absence. However, if the issue is to consider whether to remove the duty to attend the hearing from the child, and the relevant person is prevented from attending the pre-hearing panel, it may be appropriate for a decision to be made to avoid any undue distress to the child. The decision on the child's attendance can be revisited by a future children's hearing if the relevant person has a contrary view.

Safeguarder and legal aid

- 5.18 A pre-hearing panel may appoint a safeguarder for the child, unless one has already been appointed. There is, however, no requirement to consider the appointment at every pre-hearing panel in the same way as at a children's hearing. Further details on the appointment of a safeguarder can be found in Part 8.
- 5.19 If a safeguarder appointment is made, then the appointment must be recorded and reasons provided for the decision.
- 5.20 A pre-hearing panel can also consider whether a child, relevant person or individual who is subject of a relevant person determination, may be in need of a solicitor to enable their effective participation in the forthcoming hearing. Further information in relation to this decision is also contained in Part 8.

e. Appeal rights

- 5.21 The only decisions of a pre-hearing panel which can be appealed, are decisions in relation to relevant person status, either to deem, not to deem, or no longer to deem an individual to be a relevant person. If this applies, then the chairing member must ensure that the child, relevant person(s) and any individual not deemed to be a relevant person are aware of their right to appeal, if present at the pre-hearing panel.



- the child, relevant person and individual concerned must make their appeal within seven days to the local Sheriff Clerk, beginning with the date of the pre-hearing panel
- the Sheriff is obliged to decide on the appeal within three days beginning with the day on which the appeal is made



f. Next steps

- 5.22 As a pre-hearing panel is a procedural hearing, it is important to explain to the child, if of an age to understand, and any relevant persons present, what the next steps in the process are. This will largely depend on the matter referred to the pre-hearing panel.

Notification and outcome

- 5.23 In all cases the child, if of an age to understand, relevant persons and an individual deemed not to be a relevant person, will receive a letter from the Children's Reporter setting out the outcome of the pre-hearing panel, together with the decisions and reasons. The decisions and reasons from the pre-hearing panel will also be included in the papers for the children's hearing. The pre-hearing panel may remind the child and relevant person(s) of the date and time of the children's hearing.

Other steps in relation to the purpose of the pre-hearing panel are outlined below.

Attendance of the child/relevant person

- 5.24 Where a decision has been taken to excuse a child or relevant person from attending the forthcoming hearing, they need not attend and they will receive confirmation of this in writing from the Children's Reporter. However, the child and/or relevant person still have the right to attend the hearing and may therefore attend if they want to.

Relevant person determination

- 5.25 Where a person has been deemed to be a relevant person they will receive a copy of all the paperwork for the children's hearing as soon as possible after the pre-hearing panel from the Children's Reporter. The person has both the right and the duty to attend all children's hearings until the deemed relevant person status is removed by a future review hearing or pre-hearing panel.

Where the decision is not to deem an individual to be a relevant person or that a person is no longer a deemed relevant person, they will have no further formal involvement in the process but they have the right to appeal that decision.

Consideration of a compulsory supervision order with secure authorisation

- 5.26 Where a pre-hearing panel has decided that the hearing may consider a compulsory supervision order with secure authorisation, the Children's Reporter will notify the Scottish Legal Aid Board of this, along with the child's name and address. The child would be automatically eligible for legal assistance to fund their own solicitor or to access a duty solicitor through the Scottish Legal Aid Board if they do not wish to instruct their own solicitor.



g. Record of proceedings

- 5.27 A record of the proceedings during the pre-hearing panel will be kept by the Children's Reporter. The child and relevant persons, if present, must be invited to stay in the hearing room at the end of the pre-hearing panel whilst the Children's Reporter completes the record of proceedings. They are not, however, obliged to stay. When the Children's Reporter has completed their paperwork he or she will leave the hearing room.
- 5.28 The chairing member has the responsibility to ensure that written reasons are given for the decision(s) of the pre-hearing panel and that the decision and reasons are signed.
- 5.29 It is important that the written reasons closely reflect those provided verbally. The reasons provided will be the only written reasons available to the child, relevant persons, individual deemed not to be a relevant person and a Sheriff to explain the decision of the pre-hearing panel. The reasons must provide a clear explanation of **why** the pre-hearing panel has reached the decision it has.

Part 6: The start of the hearing





The chairing member's checklist: the start of the hearing*

1. Introductions

- Who is present and why are they present?
- Purpose of the hearing.

2. Relevant person determination

- Have all relevant persons in a child's life been recognised as such?
- Has anyone attended the hearing with a relevant person claim? If this is made at the start of the hearing, this should be determined before any discussion takes place.

3. Attendance

- Who has a duty to attend? Are they present? If not, can they be excused or, if a relevant person, the hearing proceed in their absence?

4. Establish the child's age

5. Notifications and papers

- Have the child, if applicable, and relevant persons received the correct notification of the hearing?
- Have the child, if applicable, and relevant persons received the same papers as the panel members for the hearing? Have the reports been understood?

6. Confirmation of the child's views expressed in the report(s)

- If the child does not confirm the views expressed in the report(s) are their views then the chairing member must attempt to clarify their views.

7. Non-disclosure request referred to the hearing

- Is it necessary to withhold any information from a person who is otherwise entitled to it as it would be likely to cause **significant harm** to the child?

* Although this is called the chairing member's checklist this does not stop another of the panel members from helping with this part of the hearing.

- 6.1 The start of a children's hearing is very important. Managed well, it helps set the scene for the following discussion and enables the participation of everyone to assist the children's hearing to make the best possible decision.
- 6.2 The chairing member has a general duty under the Rules to take reasonable steps to ensure that the child and each relevant person are able to understand and participate in the proceedings, and this applies throughout the children's hearing.



Before the children's hearing starts

6.3 Panel members should arrive at the hearing centre at least 15 minutes prior to the start of the first hearing, preferably 30 minutes beforehand. This will allow time for panel members to settle and to have a very short discussion about the procedure, format and agenda of the hearing before the hearing participants enter the hearing room. Panel members should have this short discussion prior to every hearing. **It is essential that matters of substance are not discussed until the hearing begins.** Questions which panel members may consider discussing at this stage include:

- Who is expected to attend and their status?
- The purpose of the hearing and legal options open to the hearing.
- What papers do panel members have – do panel members all have the same papers? Were papers sent to the child?
- Were the reports received within the correct timescale? What are the legal options if not?
- Set the agenda for the hearing. What broad issues are to be discussed?
- Is there an observer? Where should he or she sit and how should they be introduced to the hearing participants?
- Are there any questions of law and/or procedure the panel members wish to raise within the hearing?

Introductions

6.4 How introductions are carried out at the beginning of the hearing will be largely dependent on the preference of the chairing member. In general terms, hearing participants should be welcomed into the hearing room and allowed to settle before the chairing member introduces him or herself. The chairing member must also introduce the two other panel members. Thereafter everyone else in the room should be asked to introduce themselves and, if necessary, explain why they are at the children's hearing.

6.5 Immediately prior to the start of the children's hearing a member of SCRA staff will give panel members a list of who is present. This list should be checked as the hearing participants introduce themselves at the start of the hearing. The Children's Reporter should introduce themselves and, if they have not already done so outwith the hearing room, explain to the child and relevant persons their role in the hearing. Either the Children's Reporter or the chairing member should explain that the Children's Reporter will take no part in the decision making of the children's hearing.

Observers

6.6 If there is anyone wishing to observe the hearing this should be explained to the child and relevant persons at this stage. The observer should be introduced by name and an explanation provided as to why they wish to observe the hearing. The child and relevant person(s) should be asked whether they have an objection to the observer and if they do the presence of the observer should be discussed by the hearing.

6.7 Some observers have a right to attend the hearing and others will be attending at the discretion of the chairing member. Observers with the right to attend are set out at para 6.29. Observers without the right to attend may include members of staff in training such as social workers, teachers or health staff. Where the observer does not have a right to



attend it is best practice that this person should wait outwith the hearing until a decision is made on their attendance.

Where the attendance of the observer is at the discretion of the chairing member the observer is not allowed to stay where the child and/or relevant persons have an objection.

The purpose of the children's hearing

6.8 The chairing member must explain the purpose of the children's hearing to those present.

Procedures at the beginning of the hearing

6.9 After the initial introductions and the explanation of the purpose of the children's hearing there are certain legal formalities which are required. Neither the 2011 Act nor the 2013 Rules provide a set procedure that must be followed. The 2013 Rules specify that the procedure at a hearing is at the discretion of the chairing member unless otherwise specified in the Rules or the 2011 Act.

6.10 Meeting legal requirements at the start of the hearing can sometimes appear formal and intimidating to children and families. Panel members may wish to refer to training materials for information on how to carry out legal formalities in an accessible way, if necessary.

6.11 This part of the practice and procedure manual sets out the formalities that must be undertaken at the start of every children's hearing. It is not necessary that the order presented here is rigidly followed, so long as the formalities are completed and the process is understood, as far as possible, by those present at the children's hearing. Much of the responsibility to complete the formalities rests on the chairing member. However, this does not mean that the other panel members cannot assist, by active listening and/or providing clarification.

6.11a In some circumstances there will be insufficient time for the children's reporter to arrange a pre-hearing panel to consider a matter in advance of the children's hearing. Therefore they may refer the matter or matters to be considered at the start of the children's hearing.

a. Relevant person determination

6.12 At the start of every children's hearing, the hearing should consider if all the people in a child's life, who may be considered as relevant persons, have been recognised as such. In the normal course of events, a pre-hearing panel will have been arranged in advance to consider whether a person is, or should continue to be, a deemed relevant person and the Children's Reporter would have notified those persons who are automatically relevant persons. However where:

- there has been insufficient time to arrange a pre-hearing panel prior to the children's hearing, or exceptional circumstances apply where the pre-hearing panel has been unable to make a decision
- the relevant person claim only becomes clear shortly before the children's hearing
- a person attends the children's hearing and asks to be deemed a relevant person at the start of the hearing
- the child or a relevant person requests that an individual present at the hearing be deemed a relevant person at the start of the children's hearing



The hearing **must** consider whether the individual is, or should continue to be, a deemed relevant person before having a full discussion about the child's circumstances.

Procedure

- 6.13 It is advisable that any relevant person decision, is made at the very start before any other matters. This approach ensures fairness, in that a person who is a relevant person is able to participate at all stages and a person who is not a relevant person does not obtain any information other than at the discretion of the chairing member. It will also allow any matters which may prevent the hearing from proceeding any further, such as a need to provide a 'new' relevant person with papers or the need for further information or views in order to make the relevant person determination, from being identified at as early a stage as possible. A decision in relation to whether an individual should continue to be a relevant person should be considered before a decision about whether an individual is a relevant person.
- 6.14 When making a relevant person decision the hearing must hear views from all those present about whether the criteria for deemed relevant person status is met. In particular the 2013 Rules require that the child, relevant person(s) and the individual who is seeking to be considered to be a relevant person, are given the opportunity to provide their views to the hearing.

Person deemed a relevant person

- 6.15 Where a person is deemed to be a relevant person the hearing must consider whether it is appropriate to proceed with the hearing, given that the relevant person may not have received the papers they are now entitled to.

It is not appropriate for a hearing to proceed to make a substantive decision without a relevant person having received, or otherwise had access to, the papers as this would amount to a procedural irregularity in the conduct of the hearing.

Person not deemed a relevant person

- 6.16 If the hearing decides that the person is not, or should no longer be, a deemed relevant person, the children's hearing should consider whether it is appropriate for the person to remain in the hearing, at the discretion of the chairing member, or whether they should be asked to leave the hearing.

Appeal rights

- 6.17 The child, relevant persons and any individual deemed not, or no longer, to be a relevant person should be informed of their right to appeal the decision of the hearing in relation to the relevant person status.



- the child, a relevant person or an individual deemed not, or no longer, to be a relevant person can appeal against the decision of the hearing to deem, or not to deem, or no longer to deem, an individual to be a relevant person
- the appeal must be made within seven days beginning on the date of the hearing which makes the decision
- the Sheriff must then hear and dispose of the appeal within three days beginning on the day the appeal is made



b. Attendance

- 6.18 One of the fundamental principles of the Children's Hearings System is that decisions are taken in the best interests of the child, with the participation of the child and the key people in a child's life. The attendance of the child and key people is therefore an important issue to be addressed at the start of the children's hearing.
- 6.19 There are certain people who have both a right and a duty to be present at the children's hearing. Where a person has a duty to attend the children's hearing, and has not attended, the hearing must consider whether it is appropriate to excuse the person from attending the hearing. This is a very important decision which should not be taken lightly. Where a pre-hearing panel has taken place in advance of the hearing it is not a legal requirement for the hearing also to excuse the person. However, it is good practice for the chairing member to acknowledge that the individual is not present, has been excused in advance and to remind all present that the hearing may be deferred at any point if it is decided that the person should be present.

Child (s73)

- 6.20 A child has both the right and duty to attend a children's hearing about them. The only exception is a contact direction review hearing where the child has a right to attend but no duty.

A child can be excused from attending the hearing, however their right to attend cannot be removed. Therefore even if a hearing, or pre-hearing panel, decides that a child need not attend the hearing, the child may still attend if they want to. A child has the right to attend all stages of their hearing and cannot be excluded against their wishes. There is one exception to this; the hearing may exclude the child to consider whether or not to disclose information to them when a non-disclosure request is made.



A child can be excused from attending the hearing, or part of the hearing, if:

- (a) the hearing relates to a schedule one or sexual offence ground and the attendance of the child at the hearing, or part of the hearing, is not necessary for a fair hearing
- (b) the attendance of the child at the hearing, or part of the hearing, would place the child's physical, mental, or moral welfare at risk
- (c) taking account of the age and maturity of the child, the child would not be capable of understanding what happens at the hearing, or part of the hearing

This does not apply where the hearing making the decision is a grounds hearing.



Where the hearing making the decision is a grounds hearing the child can only be excused from the explanation of grounds of referral if:

- (a) taking account of the age and maturity of the child, the child would not be capable of understanding the explanation of the grounds of referral

**Relevant person (ss74, 75, 76, 78)**

6.21 A relevant person also has a right and duty (where they have received notification of the hearing) to attend a hearing in relation to their child. A relevant person who fails to attend a children's hearing has committed an offence and may be fined if prosecuted.



A relevant person can be excused from attending the hearing, or part of a hearing, if:

- (a) it would be unreasonable to require the relevant person's attendance at the hearing or part of the hearing
- (b) the attendance of the relevant person at the hearing, or part of the hearing, is unnecessary for the proper consideration of the matter before the hearing

6.22 A children's hearing does not have to excuse an absent relevant person's attendance in order to proceed to consider the case. The children's hearing also has the power to proceed with their consideration of the case in the absence of the relevant person. This is a particularly important distinction given that a decision to excuse a relevant person's attendance will apply to any deferred hearings until a substantive decision is made.

6.23 Therefore, where a relevant person has not attended the hearing, panel members should consider two issues:

1. Does the criteria to excuse the relevant person apply and, if so, does the hearing wish to excuse the relevant person?
2. Alternatively should the hearing proceed in the relevant person's absence?

6.24 Where the criteria to excuse the relevant person does not apply or the hearing does not wish to excuse the relevant person, the children's hearing may consider it appropriate to proceed with the hearing, for example where a relevant person has failed to attend several previous hearings and there is no reasonable prospect of them attending if the hearing was deferred or there is a need to make a substantive decision for the child.

6.25 A relevant person (and their representative, including a solicitor) can be excluded from the hearing.



A relevant person can be excluded from part of a children's hearing if:

- (a) the hearing is satisfied that the presence of the relevant person is preventing the hearing from obtaining the views of the child
- (b) the presence of the person is causing, or is likely to cause, significant distress to the child
- (c) the hearing is considering a non-disclosure request in respect of that person



- 6.26 The relevant person can be excluded from the children's hearing for as long as the hearing decides necessary, however the chairing member **must** explain to the relevant person the substance of what has occurred during their absence on their return to the hearing room, subject to a hearing decision to withhold information from that person. Although an exact narrative of what was said outwith the presence of the relevant person is not required, it is very important that the substance of the discussion is provided to the relevant person. This is particularly important where the child expresses views directly relevant to the decisions to be made by the hearing, for example about who they wish to live with and/or where or how often they wish to have contact with a particular person.
- 6.27 Where a review hearing defers a decision, it does not have to excuse the child or relevant person from attending the subsequent hearing where they have already been excused either by the hearing or a pre-hearing panel.
- 6.28 Although the decisions to excuse the attendance of a child or relevant person or proceed in the absence of a relevant person are not in themselves appealable decisions, they can form the basis of an appeal against a substantive decision. For example it may be argued that the making of a compulsory supervision order was not justified without the participation of the person who was not present at the hearing.

Others with a right to attend the hearing (s78)

- 6.29 In addition to the child and the relevant person, the following persons have a right to attend a children's hearing:
- a representative of the child
 - a representative of the relevant person, unless excluded by applying the same criteria as above for a relevant person – where excluded the substance of the discussion which took place in their absence must be explained to the person on their return
 - the Principal Reporter – in practice the Principal Reporter will delegate this right to a Children's Reporter, Trainee Reporter or Assistant Reporter
 - a safeguarder appointed in relation to the child
 - a member of the Administrative Justice and Tribunals Council or the Scottish Committee of that Council (acting in that person's capacity as such)
 - a member of an Area Support Team (acting in that person's capacity as such) for example a Panel Practice Advisor
 - a representative of a newspaper or news agency, unless excluded under the same criteria as above in relation to a relevant person – where excluded the substance of the discussion which took place in their absence **may** be explained to the person on their return – further information on what to do if such a person does attend a children's hearing can be found in the CHS Media Briefing Sheet for panel and Area Support Team members.
- 6.30 In addition to those with a right to attend, a constable, prison officer, or other person (for example a prisoner escort) who has a person who is to attend a hearing in their custody, is authorised under the Rules to attend the children's hearing.



Other persons

6.31 The attendance of any other person at the hearing is at the discretion of the chairing member, for example a social worker, school teacher or health visitor. The criteria for exercise of the chairing member's discretion are:

- the attendance of the person is necessary for the proper consideration of the matter before the hearing
or
- is otherwise granted permission by the chairing member, an observer for example – the chairing member may not grant permission to a person under this second reason if the child or relevant person objects

The chairing member must take all reasonable steps to ensure that the number of persons present at the hearing is kept to a minimum.

c. Establishing the child's age

6.32 The chairing member must ask the child how old they are, unless satisfied that the child would not be capable of understanding the question. The chairing member does not need to ask the child their date of birth which some children can find difficult or intimidating.

Where the child is deemed as being incapable of understanding the question (or is not present) the chairing member must still determine the child's age. Therefore it would be good practice to ask a relevant person, if present, or another person in the room to confirm the child's age.

d. Notifications and reports received

Notification

6.33 The hearing should confirm with the child, if applicable and the relevant person(s) whether they have received notification of the hearing. With the exception of hearings arranged at short notice, a child and relevant person(s) are entitled to **at least seven days notice of a hearing** from the Children's Reporter.

6.34 There is an exception in relation to notification of a child, the Children's Reporter does not have to notify a child of a hearing if they are satisfied that the child would not be capable of understanding the notification. It is therefore advisable to check the hearing papers in advance to see if the child has been notified, or to ask the Children's Reporter at the start of the hearing if clarification is needed.



Papers

- 6.35 The child, if deemed capable of understanding the information, and the relevant persons are also entitled to receive the same reports as the panel members **at least three days prior to the hearing**. Panel members must therefore also check with the child and relevant persons what papers they have received (e.g. social work report, school report, safeguarder report etc), and whether they have had sufficient opportunity to look at them.
- 6.36 If a child and/or relevant person informs the hearing they have not had sufficient opportunity to review the papers, the hearing should consider whether it is appropriate to proceed with the hearing. When making this decision, panel members should consider the overall fairness of the hearing. Although not an exhaustive list, factors panel members may consider include:
- the length of the report(s)
 - the time the person has had the report(s) prior to the hearing and
 - difficulties the person may have reading and understanding information – this may be due to a learning difficulty or as a result of a temporary period of ill health
- 6.37 If the child and/or relevant person say they have not understood the papers, the hearing must consider how they can be helped to understand:
- the professional who prepared the report may be present at the hearing and able to explain the contents of their report either during the hearing or during a short adjournment
 - the chairing member's explanation of the substance of the report may assist
 - a solicitor or other representative could help with effective participation
 - the hearing may need to be deferred to another day to provide the child and/or relevant person more time to consider the report

Notification and/or report(s) not received

- 6.38 If the child and/or relevant persons have not received either the notification, or one or more reports within the required timescales, then it should be established by the hearing whether the child and relevant person(s) are willing to proceed with the hearing if they are present. Caution is strongly advised in making a decision to proceed with the hearing where the notification and/or papers have not been received, or not received in good time for the person to read and understand them. This is because a substantive decision of a hearing could be successfully appealed on the basis that proper notification or papers were not received by those entitled to them.

Substance of the reports

- 6.39 Where the notifications and reports have been received by those entitled to them, the chairing member must inform those present at the hearing of the substance of any relevant report or document provided within the hearing papers. **This does not require a lengthy description of the content of each individual report.** It should be a brief and succinct description of the key issues, and recommendations if appropriate, from the reports, either collectively or individually if there are discrepancies. These are the key issues which should form the basis of the agenda for the hearing.



Hearings arranged at short notice

- 6.40 Where the hearing is arranged at short notice (for example a custody hearing or a hearing after the making of a child protection order), the timescale for notification and provision of papers is “as soon as practicable” prior to the hearing. The exception to this is a contact direction review hearing, where there is a requirement that the Children’s Reporter must notify the hearing no later than three days after the hearing whose contact decision is to be reviewed, and provide papers at least three days prior to the hearing.
- 6.41 It remains however, good practice to ask the child and relevant persons whether they have received notification and papers prior to the hearing. In practice, papers may only have been received immediately prior to the hearing. Therefore panel members may wish to consider a short adjournment of the hearing, where a decision requires to be made that day (as in the case of a child protection order hearing), or deferring the hearing to another day if the child and/or relevant person indicate they have not had sufficient time to look at the papers provided.

e. Confirmation of child’s expressed views

- 6.42 Where papers are provided to the child, the chairing member must ask the child whether the documents accurately reflect any views expressed by the child, unless the chairing member considers that it would not be appropriate to do so.
- 6.43 If the child says that the views presented in the report are not his or her views, the chairing member must clarify what the child’s views are before the hearing moves on.

The way in which this is done will depend on the individual child. In general terms, during a hearing panel members should be careful not to ask children leading questions where possible (e.g. “*your social worker says you want to see you mum more, is this right?*”) and meeting this requirement is no exception. Therefore questions may be phrased such as “*what do you think about the section of the report on your views?*” If necessary panel members can consult the training materials for further general guidance on how to phrase questions.

f. Non-disclosure requests

- 6.44 Any person may make a request to a children’s hearing to withhold specified information from a specified person. This is called “a non-disclosure request”. A non-disclosure request may be made, for example, by a social worker who recommends that the place where the child is to reside under a compulsory supervision order should not be disclosed to the child’s parents or by a relevant person who does not wish the child to know a piece of sensitive information. The Children’s Reporter **must** refer a non-disclosure request made to them in advance of the hearing to the hearing, or may refer a request on their own initiative.



6.45 The test for withholding information is that, if known, the information **would be likely to cause significant harm to the child**. This is a high test and should not be applied lightly. The spirit of a children's hearing is of openness and participation and therefore withholding information from someone entitled to it should be an exception as opposed to the norm. Finding certain information upsetting, or a preference of a person (such as a foster carer who does not wish their address to be disclosed) will not be sufficient to meet the test of significant harm. The harm must also be linked to the child, so the likelihood of significant harm to a relevant person is not included in the test. Examples of where the significant harm test would be met include where a direct threat of physical or emotional harm has been made to the child and/or there is a history of physical or emotional harm to the child by the person to whom the non-disclosure request relates.

6.46 A non-disclosure request:

- can be made prior to the hearing or during the hearing itself
- must specify the information the hearing is asked to withhold, with reasons and
- the person who it is proposed to withhold the information from, with reasons

Where a non-disclosure request is made prior to the hearing it must be considered at the start of the hearing.

6.47 The children's hearing may exclude the person who it is proposed to withhold the information from, whilst the hearing discusses the non-disclosure request. Where the hearing take this option it would be best practice, where possible, to ascertain the excluded person's view on the non-disclosure request prior to making a decision on the request. Although there will be situations where the nature of the information it is proposed not to disclose will mean this is not possible. The non-disclosure request should then be discussed in the absence of the person, and a decision taken, before the person is invited back into the hearing and advised of the decision in relation to the non-disclosure request. **No discussion beyond the subject matter of the non-disclosure request must take place whilst the excluded person is outwith the hearing room.**

6.48 Where the decision of the children's hearing is not to withhold the information from the person, the person must be given the information before the hearing proceeds to consider other matters. Panel members should consider the most appropriate way to do this, for example where the information is such that the person may find it upsetting, or there is a lot of information to digest, the hearing could consider deferring to another day. In other circumstances a short adjournment may be sufficient.

6.49 The following documents may **not** be the subject of a non-disclosure request:


- the statement of grounds
- a copy of any remit by a court where the child has pleaded guilty to, or been found guilty of, an offence
- a copy of a requirement or statement from a Sheriff under the Antisocial Behaviour etc. (Scotland) Act 2004
- any order or warrant to which the child is subject

Part 7: Hearings and options



Panel members understand the rights of children and young people, families, and others within the hearing and the responsibilities and authority they have as panel members in making decisions

National standard 8.3



Panel members know how to follow the correct procedure when there are concerns about the potential non implementation of a compulsory supervision order

National standard 5.2.3



Part 7: Summary

This part of the manual gives further information on the different types of children's hearings and the legal options available to each type of hearing. For quick reference the legal options open to each type of hearing are contained in blue boxes.

- 7.1 When the introductions and legal formalities at the start of the hearing have been completed, the hearing should consider the reason why the child is attending that particular children's hearing and the options open to the hearing. How this is done, and the options open to the hearing, will depend on the purpose of the children's hearing.

a. Grounds hearing

- 7.2 The first children's hearing a child and relevant person(s) attend is likely to be a grounds hearing. Panel members should consider this when preparing for the hearing and during the hearing itself. A child and relevant person coming to their first hearing are likely to require more in the way of explanation of roles and procedures than those who have attended multiple hearings in the past.
- 7.3 It is possible for a grounds hearing to be arranged for a child who is already the subject of a compulsory supervision order, for example where additional issues have arisen to those within the other grounds of referral or where there has been an escalation of issues in previous grounds. When considering options, therefore, it is necessary first to ascertain if the child has a current compulsory supervision order.

Where there is already a compulsory supervision order in place for the child and new grounds of referral are accepted or established, a review of the compulsory supervision order should be carried out by the children's hearing.

Referral to a grounds hearing

- 7.4 A Children's Reporter will refer a child to a grounds hearing if, following investigation, they are satisfied that one of the grounds in s67(2) of the 2011 Act exists (these are called 's67 grounds') and that it is necessary for a compulsory supervision order be made for the child or an existing order be reviewed.

Offence grounds

- 7.5 Where a children's hearing is arranged to consider offence grounds, it is important that the child is aware of how an accepted or established offence ground, or any associated evidence, will be recorded and shared in the future. SCRA will provide information to the child and relevant persons about this when they are informed of the children's hearing.

**The s67 grounds are:**

- (a) the child is likely to suffer unnecessarily, or the health or development of the child is likely to be seriously impaired, due to a lack of parental care
- (b) a schedule 1 offence has been committed in respect of the child
- (c) the child has, or is likely to have, a close connection with a person who has committed a schedule 1 offence
- (d) the child is, or is likely to become, a member of the same household as a child in respect of whom a schedule 1 offence has been committed
- (e) the child is being, or is likely to be, exposed to persons whose conduct is (or has been) such that it is likely that –
 - (i) the child will be abused or harmed, or
 - (ii) the child's health, safety or development will be seriously adversely affected
- (f) the child has, or is likely to have, a close connection with a person who has carried out domestic abuse
- (g) the child has, or is likely to have, a close connection with a person who has committed an offence under Part 1, 4 or 5 of the Sexual Offences (Scotland) Act 2009
- (h) the child is being provided with accommodation by a local authority under section 25 of the Children (Scotland) Act 1995 and special measures are needed to support the child
- (i) a permanence order is in force in respect of the child and special measures are needed to support the child
- (j) the child has committed an offence
- (k) the child has misused alcohol
- (l) the child has misused a drug (whether or not a controlled drug)
- (m) 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
- (n) the child is beyond the control of a relevant person
- (o) the child has failed without reasonable excuse to attend regularly at school
- (p) the child –
 - (i) has been, is being, or is likely to be, subjected to physical, emotional or other pressure to enter into a civil partnership, or
 - (ii) is, or is likely to become, a member of the same household as such a child
- (q) the child –
 - (i) has been, is being, or is likely to be forced into a marriage, or
 - (ii) is, or is likely to become a member of the same household as such a child



- 7.6 Before reading out the statement of grounds, the chairing member should check with the child and relevant persons present whether they have received information from SCRA and had the opportunity to consider it. If they have not, panel members should not enter into any discussion about this complex area. Instead there should be a short adjournment of the hearing for information to be provided, read and discussed by the child and/or relevant person(s).

Explanation of statement of grounds

- 7.7 When a Children's Reporter arranges a grounds hearing they will prepare a statement of grounds. There are two parts to a statement of grounds – the s67 ground or grounds on which the child has been referred to the hearing and the facts which, in the opinion of the Children's Reporter, mean the s67 ground is met.
- 7.8 The chairing member must explain the s67 ground or grounds and the facts on which the s67 ground or grounds is based to the child, if of an age to understand, and each of the relevant persons present. The chairing member must ascertain if the child and relevant person(s) accept the statement of grounds or not. Whether the statement of grounds is understood and accepted, or not, by the child and each relevant person present will determine the legal options open to the hearing.
- 7.9 There is no one method for reading the statement of grounds and how this is done will be largely dependent on the preference of the chairing member and the characteristics of the individual child and relevant person. Chairing members should be very careful about the words chosen during this phase of the hearing given the likely sensitivity of the issues for the child and relevant persons.
- 7.10 The wording in the facts supporting the s67 ground is very carefully chosen by the Children's Reporter, striking a balance between what is legally required and what will be understood by the child and relevant persons. It is best practice for each statement supporting the ground to be read as written, before some explanation is provided if required. The child and each relevant person must then be asked individually if they accept what the chairing member has read out is true. No discussion should be entered into between panel members and the child and/or relevant persons at this stage. Panel members should not, under any circumstances, provide any advice to the child or relevant persons about whether to accept or deny the statement of grounds. Finally the chairing member should read the s67 ground, providing explanation if required, before asking the child and relevant person(s) if they accept the s67 ground under which the referral is made.
- 7.11 The statement of grounds is a legal document and it is necessary that the hearing is clear about **exactly** what words the child and relevant person(s) accept or do not accept. Others present at the hearing, in particular the Children's Reporter, may intervene during the explanation of the grounds if, in their opinion, the explanation does not match the statement of grounds as written. This is because an inaccurate explanation would amount to a procedural irregularity in the conduct of the hearing.
- 7.11a If the s67 ground is accepted amendments to the statements of fact can be made by the hearing, if acceptable to the child and relevant persons present, provided that the amendments do not call into question the establishment of the s67 ground.



7.12 The following are the options to the hearing, depending on scenarios the hearing may face when reading the statement of grounds and the responses given.

Child not present at the grounds hearing and child not excused in advance



Where a child is not present at the grounds hearing and has not been excused prior to the hearing there are two options open to the hearing members:

1. **Discharge the referral.** This would mean the end of the hearing unless there was a second purpose to the hearing (e.g. a review at the request of the implementation authority). If the hearing proceeds to consider another purpose there must be **no discussion** about the discharged referral.
2. **Require the Principal Reporter to arrange another grounds hearing.** This allows the child to attend a further grounds hearing. If the hearing decide to require the Principal Reporter to arrange another grounds hearing the hearing can consider whether to issue an ICSO if necessary as a matter of urgency for the child. The hearing may also consider issuing a warrant to secure attendance following an application by the Children's Reporter.

7.13 Where a child has been excused by a pre-hearing panel in advance, panel members can put the grounds to the relevant person(s) present before making a decision about the child's level of understanding.

Relevant person not present for the explanation of statement of grounds



Where a relevant person is not present at the grounds hearing there are two options open to hearing members:

1. **Excuse the relevant person from attending the hearing.** The criteria for this decision are:
 - it would be unreasonable to require the relevant person's attendance at the hearing or
 - their attendance is unnecessary for the proper consideration of the matter before the hearing.
2. **Proceed with the hearing in the absence of the relevant person.** The hearing may proceed if they consider it appropriate to do so. Full reasons must be provided for this decision.



- 7.14 There is no express power in the 2011 Act for a grounds hearing to be deferred. However, in the situation where a relevant person has been prevented from attending the hearing through no fault of their own, and the hearing is satisfied that it would be so fundamentally unfair to that person to proceed with the hearing on that day, they may defer to another day for the attendance of the relevant person. Examples of where this may be appropriate are where a notification was not received or there was a problem with transport to the hearing outwith the person's control. This decision should be made only in **exceptional** circumstances.
- 7.15 It is not an absolute requirement for all (or any) relevant persons to be present in order to accept, or deny, the statement of grounds.

Child and/or relevant person(s) unable to understand the explanation of the statement of grounds

- 7.16 The hearing must be satisfied that the child and each relevant person present understand the statement of grounds with explanation from the chairing member. A decision about level of understanding can be taken before the explanation, for example where the child is very young, or where it is clear from the responses or questions asked that there is a lack of understanding.



Where the hearing is satisfied that the child and/or relevant person(s) are unable to understand the grounds of referral, there are two options open to the hearing:

1. **Discharge the referral.** This would mean the end of the hearing unless there is a second purpose to the hearing (for example a review of an existing CSO at the request of the implementation authority). If the hearing proceeds to consider a further purpose there must be **no discussion** about the discharged statement of grounds.
2. **Direct the Principal Reporter to make an application to the Sheriff to determine whether the ground is established.** This is known as 'making an application for proof'. The hearing cannot make a substantive decision. If this direction is given the chairing member must:
 - explain, as far as is possible, the purpose of the application to the child and/or relevant persons present and
 - inform the child (and, depending on the age of the child, his or her parent or carer) that he or she is obliged to attend the hearing before the Sheriff unless excused by the Sheriff

Where a direction to the Principal Reporter is given the children's hearing can consider whether any interim measures are required for the child pending the application for proof.



Grounds not accepted



Where the statement of grounds has been understood by the child and/or relevant person(s) but has not been accepted by one or more of those persons, there are two options available to the hearing:

1. **Discharge the referral.** This would mean the end of the hearing unless there is a second purpose to the hearing (for example a review at the request of the implementation authority). If the hearing proceeds to consider a further purpose there must be **no discussion** about the discharged statement of grounds.
2. **Direct the Principal Reporter to make an application to the Sheriff to determine whether the ground is established.** This is known as ‘making an application for proof’. The hearing cannot make a substantive decision. If this direction is given the chairing member must:
 - explain, as far as is possible, the purpose of the application to the child and/or relevant persons present and
 - inform the child (and, depending on the age of the child, his or her parent(s) or carer(s)) that he or she is obliged to attend the hearing before the Sheriff unless excused by the Sheriff

Where a direction to the Principal Reporter is given the children’s hearing can consider whether any interim measures are required for the child pending the application for proof.

- 7.17 Where the decision is to direct the Principal Reporter to make a proof application, it is essential that panel members are clear whether the direction is being given on the basis of non-acceptance or the grounds not being understood. The basis of the application can be different for different people, for example a child who does not understand and a relevant person who has not accepted, so long as this is clear.



Ground accepted but facts accepted in part

7.18 In some cases the child and/or relevant person will accept the s67 ground and some of the facts but not other parts.



Where the s67 ground is accepted but some of the facts on which the statement is based are not the hearing has three options:

1. **Delete or vary the facts not accepted and proceed on the basis of those parts of the statement of grounds which are accepted.** The deleted parts of the statement will thereafter form no part of the statement of grounds. Panel members must be satisfied that deleting the part of the statement of grounds does not call into question the legal basis of the s67 ground. For example in relation to a s67(2)(o) ground (that the child has, without reasonable excuse, failed to attend school regularly) it would not be appropriate to discharge a fact that 'the child has no reasonable excuse for the majority of the absences' since that is the basis of the ground of referral. **The deleted statements must form no further part of the discussion.**
2. **Direct the Principal Reporter to make an application to the Sheriff to determine whether the ground is established.** This would relate to the whole of the statement of grounds. This is known as 'making an application for proof'. The hearing cannot make a substantive decision. If this direction is given the chairing member must:
 - explain, as far as is possible, the purpose of the application to the child and/or relevant persons present and
 - inform the child (and, depending on the age of the child, his or her parent(s) or carer(s)) that he or she is obliged to attend the hearing before the Sheriff unless excused by the Sheriff
3. **Discharge the referral.** This would mean the end of the hearing unless there is a second purpose to the hearing (for example a review at the request of the implementation authority). If the hearing proceeds to consider a further purpose, there must be **no discussion** about the discharged statement of grounds.

7.19 Where the s67 ground is not accepted regardless of whether any, or all of the supporting facts are accepted the hearing must treat this as non-accepted grounds.



Grounds accepted

7.20 If the statement of grounds is accepted in full by the child and relevant person(s) present, or following the deletion or variation of a non-accepted fact, the hearing may proceed to a full discussion of the child's circumstances.



The following options are open to the hearing following this discussion:

1. **Discharge the referral.** Where, following discussion, the hearing is satisfied that a compulsory supervision order is not required for the child, they should discharge the referral. This means that the child will not attend any further hearings unless referred to a further grounds hearing by the Children's Reporter.
2. **Make a compulsory supervision order.** If the child is already subject to a CSO the option is to continue, vary, or continue and vary the existing order.
3. **Defer the hearing to another day.** The hearing may then issue an ICSO or an IVCSO if the hearing considers it necessary as a matter of urgency.

7.20a Where the hearing is considering including a measure naming a place of residence other than with a relevant person the hearing must have a report from the implementation authority which provides recommendations on the needs of the child, the suitability of the placement to meet the needs of the child and the suitability of the person who is to have charge or control over the child to meet the child's needs. The implementation authority must also confirm to the hearing that they have carried out the procedures and gathered information to satisfy Regulations 3 and 4 of the Looked After Children (Scotland) Regulations 2009.

7.21 Where the child already has a compulsory supervision order the section relating to a review hearing should be consulted, since the accepted grounds will prompt a review of the existing compulsory supervision order.



b. Hearing to consider further ICSO or IVCSO pending the outcome of the proof application (s96)

7.22 An interim compulsory supervision order or interim variation of a compulsory supervision order both last for a maximum of 22 days. The Children's Reporter **may** arrange another hearing to consider whether a further interim order or interim variation should be made for the child where the proof application is unlikely to be decided prior to the expiry of the order or variation.



The options available to this hearing are:

- 1. To make a further ICSO or IVCSO**, with or without a variation to the measures attached or a new measure added. Before grounds of referral are established the hearing may only issue a maximum of three orders. There is no limit on the number of interim variations to a compulsory supervision order a hearing can make.
- 2. To not issue a further ICSO or IVCSO.** Where the hearing is satisfied that the order or variation is no longer required for the child's protection, treatment, guidance or control a further order should not be issued, or variation made. Where the decision relates to an ICSO there will be no order in place after the hearing. Where the hearing has not made a further IVCSO the terms of the original CSO will remain in force.



c. Established grounds hearing where the Sheriff has made an ICSO or IVCSO which requires the child to reside at a place of safety (s109(7))

- 7.23 Where a hearing has directed the Children's Reporter to make an application to the Sheriff for proof and the Sheriff has found the ground, or grounds, to be established, the Sheriff must direct the Principal Reporter to arrange a hearing to decide whether a compulsory supervision order should be made, or reviewed, in relation to the child. This is known as an 'established grounds hearing'.
- 7.24 An interim compulsory supervision order or interim variation of a compulsory supervision order made by a hearing (or a Sheriff) will expire when the Sheriff makes a decision on the proof application. The Sheriff must therefore consider whether it is necessary that the court makes a further interim order or interim variation. The Sheriff may also make an interim compulsory supervision order or interim variation of a compulsory supervision order for the first time.
- 7.25 Where the Sheriff makes an order or variation which requires the child to reside at "a place of safety" a children's hearing must be held **within three days** of the child beginning to reside at the place of safety.
- 7.26 This hearing will be arranged by the Children's Reporter at very short notice and papers are unlikely to be received by panel members, the child or relevant persons much in advance of the hearing. It is not appropriate to have a full discussion or make a substantive decision at this hearing given the lack of notification and papers in advance of the hearing.



The options open to this hearing are:

- 1. To defer the hearing and issue a further ICSO or IVCSO.** Where the hearing is satisfied that it is necessary for the child's protection, treatment, guidance or control. If issuing an ICSO the hearing must consider what measures to attach, in particular a measure relating to contact.
- 2. To defer the hearing and not issue a further ICSO or IVCSO.** Where the hearing is satisfied that a further ICSO or IVCSO is not necessary for the child's protection, treatment, guidance or control the hearing should not issue a further order or variation.



d. Accepted or established grounds hearing

- 7.27 The Principal Reporter will arrange a children's hearing to consider the case deferred by a hearing after grounds were accepted, or where they have been directed by the Sheriff to do so following the establishment of grounds referred for proof.
- 7.28 The purpose of this hearing is to consider the child's whole circumstances and decide if a compulsory supervision order is necessary for the child and, if so, what measures are required as part of the order.
- 7.29 The options below relate to where the child is not currently subject to a compulsory supervision order. Where the child is subject to a compulsory supervision order, the section relating to a review hearing should be consulted, since the new s67 grounds prompt a review of the compulsory supervision order if accepted or established.



The options open to this hearing are:

1. **Discharge the referral.** Where, following discussion, the hearing is satisfied that a CSO is not required for the child, they should discharge the referral. This will mean that the child will not attend any further hearings unless referred to a further grounds hearing by the Children's Reporter.
2. **Make a compulsory supervision order.**
3. **Defer the hearing to another day.** The hearing may then issue an interim compulsory supervision order or a medical examination order if the hearing considers either necessary.

- 7.29a Where the hearing are considering including a measure naming a place of residence other than with a relevant person the hearing must have a report from the implementation authority which provides recommendations on the needs of the child, the suitability of the placement to meet the needs of the child and the suitability of the person who is to have charge or control over the child to meet the child's needs. The implementation authority must also confirm to the hearing that they have carried out the procedures and gathered information to satisfy Regulations 3 and 4 of the Looked After Children (Scotland) Regulations 2009.

Hearing requested reviews (s125)

- 7.30 Where appropriate a children's hearing can decide that a compulsory supervision order should be reviewed before the end of the relevant period. A children's hearing should provide clear reasons for this decision. For example, the hearing may want to review the outcome from a particular plan or piece of work the child is to undertake, or give the child and/or relevant person a timescale for change. This power should not be used to monitor whether services are provided to the child by the implementation authority.

When considering whether to ask for an early review, panel members should consider the impact on the child and relevant persons of attending successive hearings within a short space of time.

Where the hearing considers a review necessary, a specific time period for the review to take place should be specified, for example three months, six months etc.



e. Review hearing

7.31 Where a compulsory supervision order is in place for a child, the Principal Reporter will arrange a children's hearing to review that order in the following circumstances:

- within three months prior to the end of the “relevant period”
- where a decision to have an early review was made by the previous hearing
- within three months of a secure authorisation being made
- when requested to do so by a child or relevant person and three months has passed since the last hearing, or where the relevant person proposes to take the child to live outwith Scotland contrary to the terms of the compulsory supervision order
- when requested to do so by the implementation authority because:
 - the compulsory supervision order should be varied or terminated
 - the compulsory supervision order is not being complied with
 - the authority intends to make an application to court in relation to permanence, or is aware that an adoption order application is being or has been made by someone else
 - a child who has a specified residence on their compulsory supervision order is transferred to another place on an emergency basis
- when required to do so by a Sheriff, when an application for an antisocial behaviour order has been made or where the child has pled guilty to, or been found guilty of, an offence
- where the Children's Reporter has referred a new s67 ground or grounds to the hearing and these grounds are accepted or established

Application for permanence order before the Sheriff Court at the time of review

7.32 Where a hearing is reviewing a compulsory supervision order and a permanence order application has been lodged with the court, **the hearing is not able to vary the terms of the compulsory supervision order without the express permission of the court considering the permanence order application.** This only applies where a variation is being considered by the hearing. The compulsory supervision order can be continued without variation.

7.33 Where the hearing wishes to make a variation to the order, they must defer the hearing and produce a report for the Sheriff (called a “a s95 report”), detailing the variations they want to make to the order and why. The Children's Reporter will send this report to the Sheriff for consideration.

7.34 It is important that the chairing member ensures that the child and relevant persons are aware that no changes have been made to the existing compulsory supervision order and it therefore remains in place as it was prior to the hearing. Any proposed variations to the order can only be made by a further hearing, on receipt of permission from the Sheriff.



Following a full consideration of the child's circumstances, and the reason for the review hearing being arranged, there are five options open to the hearing:

1. Continue the compulsory supervision order.

- where the hearing is satisfied that the CSO is still required for the child's protection, treatment, guidance or control and that no variation is required to any of the measures attached to the CSO
- the relevant period specified by the hearing will normally be a year, unless it is not in the child's best interests – if the hearing is satisfied that the child should attend a further hearing within a year, it should make a decision to ask for a review within a particular time frame

2. Continue and vary the compulsory supervision order.

- where the hearing is satisfied that the CSO is still required for the child's protection, treatment, guidance or control but that a variation is required the hearing should continue and vary the CSO
- a variation to the CSO includes both a variation to one of the existing measures and also the insertion of a new measure – a variation includes a change to the implementation authority
- the relevant period specified by the hearing will normally be one year, unless it is not in the child's best interests – if the hearing is satisfied that the child should attend a further hearing within a year, it should make a decision to ask for a review within a particular time frame

3. Vary the compulsory supervision order.

- where the hearing is satisfied that the CSO is still required for the child's protection, treatment, guidance or control, that a variation is required, **but the relevant period should remain unaltered**, the hearing should vary the CSO
- a variation can be a change to one of the existing measures attached to the CSO, an insertion of a new measure or both – a variation includes a change to the implementation authority

4. Terminate the CSO.

- where the hearing is satisfied that the CSO is no longer required for the child's protection, treatment, guidance or control it should terminate the CSO – reasons for terminating a CSO may be that there are no longer the same levels of concern for the child or that there are issues of concern but that these can be resolved on a voluntary basis, i.e. there is no longer a need for statutory intervention
- the hearing must consider whether supervision or guidance is needed by the child and if so, make a statement within the record of proceedings to this effect – it is thereafter the duty of the relevant local authority to provide such supervision or guidance as the child will accept

5. Defer the hearing to another day.

- the hearing may make an interim variation to the compulsory supervision order, if the hearing considers it necessary as a matter of urgency
- the hearing may continue the compulsory supervision order until the subsequent children's hearing – this would be required where, for example, the CSO would expire prior to the next children's hearing
- the hearing may make both an interim continuation of and an interim variation to the CSO



7.34a Where the hearing are considering including a measure naming a place of residence other than with a relevant person the hearing must have a report from the implementation authority which provides recommendations on the needs of the child, the suitability of the placement to meet the needs of the child and the suitability of the person who is to have charge or control over the child to meet the child's needs. The implementation authority must also confirm to the hearing that they have carried out the procedures and gathered information to satisfy Regulations 3 and 4 of the Looked After Children (Scotland) Regulations 2009

Breach of duty placed on an implementation authority (ss 144 – 148)

7.35 The implementation authority has a general duty to give effect to a compulsory supervision order. Also a children's hearing can include a measure within the order requiring the implementation authority to carry out specified duties in relation to the child. For example, the child is to receive a particular service or intervention or is to attend a particular school.

7.36 There may be a small number of **exceptional** situations where, at a review hearing, the implementation authority appears to be in breach of either the general or a specific duty placed upon them by a children's hearing. In these circumstances, the 2011 Act provides a procedure to allow the National Convener, on the direction of a children's hearing, to make an application to the Sheriff Principal for an order to enforce the authority's duty.

The procedure

7.37 **Stage 1:** The first step is that the hearing **may** direct the National Convener to give notice to the implementation authority of an intended application to enforce the duty. The notice states that if the authority does not perform the duty within 21 days, the National Convener will, on the direction of a further children's hearing, make an application to the Sheriff Principal for an order to enforce the implementation authority's duty.

The hearing must also:

- make a substantive decision in relation to the compulsory supervision order
- require a review hearing take place 28 days after the notice has been given, or as soon as reasonably practicable after that

7.38 Where a direction to the National Convener is given, the chairing member must complete a form which the Children's Reporter will send to the National Convener. This form must be completed as fully as possible. In particular it must state clearly what duty the hearing considers the implementation authority to be in breach of and why. For example, the hearing considers that the implementation authority is in breach of a requirement placed upon it that a child should attend a particular school, because suitable arrangements have not been made, and are not likely to be made in the future, for the child to attend that school.

7.39 **Stage 2:** If at the further review hearing, it appears to panel members that the implementation authority continues to be in breach of the duty imposed upon them, the hearing may give the National Convener a direction to make the application to the Sheriff Principal. This is a decision which is made alongside a substantive decision in relation to the compulsory supervision order.



- 7.40 If the hearing decides to give such a direction, the chairing member must complete a form advising the National Convener of the direction. This form must include details of the duty the hearing considers the authority to be in breach of and why. On receiving a direction from a children's hearing, the National Convener must make the application to the Sheriff Principal – there is limited discretion.
- 7.41 The 2011 Act is specific that in making a decision about whether the implementation authority is in breach of a duty placed upon them, panel members must not take into account the adequacy of the resources available to the authority.
- 7.42 When considering whether to use this power, panel members should first consider whether there are any alternative ways of ensuring the duty is complied with. In the first instance it may be appropriate to defer the decision of the hearing to enable the implementation authority further time to comply with the duty, or for further work to take place within the implementation authority. Only where there is no likelihood of the duty being complied with in any other way should panel members consider making a direction to the National Convener.

f. Adoption or permanence order advice hearing (ss131(2)(c); (d); (e))

- 7.43 The implementation authority must ask for a review of a compulsory supervision order where the authority:
- intends to make an application for a permanence or adoption order
 - intends to place the child for adoption
 - knows that another person is making, or has made, an application for an adoption order
- 7.44 The purpose of this children's hearing is to provide advice to the Sheriff in relation to the proposed application. The key question is whether the hearing would support this course of action for the child.
- 7.45 As well as providing advice to the Sheriff, the hearing must also review the compulsory supervision order, and the options open to the hearing in this respect are as detailed in Part e on review hearings.
- 7.46 It is essential that the discussion around proposed permanence plans, which will be necessary to inform the provision of the hearing's advice to the Sheriff, does not impact, or be seen to impact, on the review of the compulsory supervision order. For example contact with the child's biological parent should not be reduced in order to further the permanence plans. Therefore it is suggested that the hearing is treated as consisting of two separate parts:
1. review the compulsory supervision order
 2. discuss and provide the advice to the Sheriff (once a decision has been reached about the compulsory supervision order)



Permanence orders and adoption orders

7.47 When permanence away from home is being considered for a child there are different legal orders which can be made.

7.48 A permanence order is an order made by a Sheriff giving the right to regulate the child's residence, and the responsibility to provide guidance, to the applicant local authority (these are called "the mandatory provisions"). Permanence orders are designed to be flexible to meet the needs of the individual child and therefore in addition to the two mandatory provisions, a permanence order can contain further "ancillary provisions" as the court considers appropriate. For example:

- provisions regulating the child's contact with an individual
- extinguishing all, or some, parental rights and responsibilities held by another individual
- a provision granting authority for the child to be placed for adoption (this would be called "a permanence order with authority to adopt")

Only a local authority can apply for a permanence order. Where a child is aged 12 years or over, a permanence order can only be made with the child's consent.

7.49 An adoption order is an order removing parental rights and responsibilities from one or more persons and giving them to another person. An adoption order is sometimes referred to as the creation of a parent-child relationship by a court. Conditions can be attached to the order by the court, which can include conditions in relation to contact with the child's birth family.

For further information in relation to permanence please see the website of the British Association for Adoption and Fostering www.baaf.org.uk.

Advice

7.50 When providing advice to the Sheriff on the proposed application, the hearing should consider the following two questions in particular:

- Does the hearing support permanence plans for the child? Why is the child unable to live with one or both parents for the rest of their childhood?
- Does the hearing support the way in which permanence for the child is being proposed, e.g. through a permanence order, with or without the authority to adopt, or an adoption order? Why?

7.50a In general terms, more detail should be provided to the Sheriff in advice from the hearing than would ordinarily be included in reasons for decision. In answering the two key questions, panel members should structure their advice to include the following information:

- The child's history within the children's hearings system
- The parents ability (or inability) to meet the child's needs, including examples
- The long term plan to meet the child's need for safety, stability and consistency, for example how the proposed order would benefit the child, or not, and whether the court should consider terminating the CSO if it grants the order applied for
- Any views on the inclusion of ancillary measures as part of a Permanence Order, for example in relation to contact, or contact post an Adoption Order being granted.



- 7.51 At the end of the hearing, as well as completing the record of proceedings, the chairing member will need to complete a form detailing the advice which the hearing wishes to give to the Sheriff. It is this form which will then be sent by the Children's Reporter to the Sheriff Court for consideration by the Sheriff and to the local authority.
- 7.52 It is important that panel members make the child, if of an age to understand, and relevant persons present aware that the information provided to the Sheriff is only advice. The Sheriff is not bound by it and may disregard it if he or she wishes.
- 7.53 The decision in relation to the review of the compulsory supervision order can be appealed, but the advice provided to the Sheriff cannot, since the application for the permanence or adoption order to which the advice relates can be challenged before the Sheriff.

g. Contact direction review hearing (s126)

- 7.54 Where the following applies, the Principal Reporter must arrange a further children's hearing **within five working days** after the date of a hearing:
- the hearing makes, a decision in relation to a compulsory supervision order or makes an interim compulsory supervision order, interim variation of a compulsory supervision order or medical examination order which will have effect for more than five working days
and
 - that order contains a contact direction
and
 - either a contact or permanence order is in force regulating contact between the child and another person (who is not a relevant person), or a request is made by a person, who is not a relevant person, who has, or who has recently had, a significant involvement in the upbringing of the child
- 7.55 It is not necessary that there be a link between the person the contact direction relates to and the person who has a contact or permanence order or claims to have, or recently have had, a significant involvement in the upbringing of the child. It is also not relevant whether the person was present at the original hearing or not.
- 7.56 The purpose of the hearing is to review the contact direction and consider whether it should be varied in light of the existence of the contact or permanence order or the views of the person who has, or recently had, a significant involvement in the life of the child. **A contact direction review hearing cannot review the order, or any measures attached other than the contact direction or directions.**



Rights of attendance

7.57 The following individuals have the right to attend the hearing, but no duty:

- the child
- relevant persons
- the person who holds the contact or permanence order
- any person who appears to the Children's Reporter to have, or recently had, a significant involvement in the upbringing of the child
- the person who claims to have, or recently have had, a significant involvement in the upbringing of the child where he or she has requested the hearing
- an appointed safeguarder

As there is no duty on these persons to attend the hearing, the hearing does not need to consider excusing the duty of a person who is not at the hearing. However it would be good practice to ask whether the person had received notification of the hearing.

The same individuals also have the right to receive papers for the hearing.

Request for the hearing

7.58 Where the hearing has been arranged at the request of a person who claims to have, or recently have had, a significant involvement in the upbringing of the child, the first decision the hearing will have to make is whether the person has had, or recently had, a significant involvement in the upbringing of the child. The criteria for deemed relevant person status in Part 4 of the manual should be consulted to help with this decision.

7.59 If the hearing is satisfied that the individual does not have, or has not recently had, a significant involvement in the upbringing of the child then the hearing **must** take no further action. If, however, the hearing is satisfied that the person meets this test the hearing must review the contact direction.



When reviewing the contact direction the following options are open to the hearing:

1. **To continue the contact direction without variation.**
2. **To vary the contact direction.**
3. **To delete the contact direction.**
4. **To defer the hearing to another day.** Wherever possible a substantive decision should be made at a contact direction review hearing. However, there may be some **exceptional** circumstances where it would be fundamentally unfair to proceed with the hearing. For example where the person who requested the hearing is prevented, through no fault of their own from attending, or a material report is not available to one or all of those entitled to it. In rare cases it may also be appropriate for the hearing to appoint a safeguarder.



h. Further hearing following an appeal (s156(3)(a))

- 7.60 Certain decisions of a children's hearing can be appealed by a child, relevant person or an appointed safeguarder. When considering the appeal, the Sheriff must consider whether the decision of the hearing was justified. This is not the same as asking the Sheriff if he or she agrees with the decision.
- 7.61 Where the Sheriff is satisfied that the decision of the hearing was justified, he or she must confirm the decision.
- 7.62 Where the Sheriff is satisfied that there has been a change in the child's circumstances since the date of the hearing or that the decision of the hearing is not justified, the Sheriff **may** do one or more of the following:
- require the Principal Reporter to arrange a children's hearing for any purpose under the 2011 Act
 - continue, vary or terminate any order, interim variation or warrant which is in effect
 - discharge the child from any further hearing or other proceedings
 - make an interim compulsory supervision order, interim variation of a compulsory supervision order or issue a warrant to secure attendance
- 7.63 Where a further children's hearing is arranged following an appeal, within the hearing papers there will be either a note from the Sheriff indicating the outcome of the appeal, and the reasons for it, or a note from the Children's Reporter. It should be clearly indicated in either of these notes why the Sheriff has asked for the hearing and panel members should approach the hearing accordingly. The options open to the hearing will depend on the purpose and therefore the other sections of this part of the manual should be consulted as appropriate.
- 7.64 Unless indicated otherwise the order made by the hearing, which was the subject of the appeal, will remain in force until a substantive decision is made by the further hearing. If the Sheriff has decided to continue, vary, or continue and vary an existing compulsory supervision order or make an interim compulsory supervision order, interim variation of a compulsory supervision order or warrant to secure attendance there will be a copy of this order, and the measures attached within the hearing papers. The Children's Reporter, or another of the persons present at the hearing, will be able to clarify the status of any orders at the start of the hearing if there is any uncertainty.



i. Suspension hearing (s158)

- 7.65 Where an appeal is made against a hearing decision to make, vary, continue or terminate a compulsory supervision order, the person making the appeal can ask the Principal Reporter to arrange a children's hearing to consider whether the decision of the hearing should be suspended pending the outcome of the appeal. The Children's Reporter must arrange this hearing as soon as practicable after the request is made, which will mean that the hearing will be arranged at very short notice. The only notification requirement in the 2013 Rules is that the Children's Reporter notify the hearing "as soon as practicable" in advance of the hearing.
- 7.66 The purpose of this hearing is to consider whether the decision of the previous hearing in relation to the compulsory supervision order should remain in place pending the outcome of the appeal. 'The decision' is the decision of the hearing to make, vary, continue or terminate a compulsory supervision order, and not a particular measure attached to the order in isolation.
- 7.67 Where the person who has requested the suspension hearing fails to attend the hearing, the hearing may (although is not required to) take no further action.



Following discussion with the child, relevant persons and any appointed safeguarder present there are two options open to this hearing:

- 1. To suspend the decision of the hearing now appealed, pending the outcome of the Sheriff's decision.** If the hearing considers that the decision should be suspended, the child will become subject to the decision of the hearing prior to the hearing now appealed. Panel members should be alert to the expiry dates of any previous orders when considering whether to suspend a decision.
- 2. To not suspend the decision of the hearing now appealed.** Pending the outcome of the appeal, the child will remain subject to the decision of the hearing now appealed.



j. Custody hearing

7.68 Where the police have charged a child with an offence they have three options:

- release the child pending a report to the Children's Reporter and/or the Procurator Fiscal
- release the child with an undertaking to appear in court at a later date
- keep the child in custody

7.69 Where the child is kept in custody by the police, the police must inform the Principal Reporter. When the Children's Reporter has received the information (and the child is to be considered within the Children's Hearings System) there are three decisions the Children's Reporter has to make:

- Should the child continue to be detained in a place of safety pending the Children's Reporter's investigation?
- Following the investigation, should a grounds hearing be arranged for the child?
- If a hearing is to be arranged, should the child be liberated pending the grounds hearing?

7.70 If a grounds hearing is to be arranged, and the child is still detained in custody, the hearing must be held **within three days** of the Principal Reporter receiving the information. In practice, the Children's Reporter will try wherever possible to arrange a children's hearing as soon as possible after the child is first kept in police custody. This hearing will therefore be arranged at very short notice. It is unlikely that full papers will be available for the hearing.

7.71 The hearing is a grounds hearing and therefore Part a of this section in relation to grounds hearings should be consulted.

7.72 If grounds are accepted by the child and relevant persons present, it is not appropriate to proceed to a substantive decision given that the hearing will have been arranged at short notice and the likely lack of papers available to the hearing.

Legal assistance

7.73 A custody hearing is one of the hearings where the child is automatically entitled to legal aid for the assistance of a solicitor. Where the child is not accompanied by a solicitor at the hearing, panel members should ask the child whether they have been given the opportunity to be represented by a solicitor. If they have not, panel members should consider a short adjournment of the hearing to allow arrangements to be made. If the child has been given the opportunity, but has chosen not to be represented, panel members may proceed with the hearing.



k. Emergency secure transfer

7.74 A child who is:

- subject to a compulsory supervision order, interim compulsory supervision order, medical examination order or warrant to secure attendance which does not contain a secure authorisation
- being provided with accommodation by the local authority on a voluntary basis
- the subject of a permanence order

can be placed in secure accommodation, without the authority of a children's hearing. To make this decision, the Chief Social Work Officer and head of unit must be satisfied that the conditions for placing a child in secure accommodation are met and that placement in secure accommodation is in the child's best interests. The Chief Social Work Officer must also be satisfied that the particular residential establishment providing the secure accommodation is appropriate to the child's needs.

7.75 The Chief Social Work Officer must inform the Principal Reporter within 24 hours of the child being placed in secure accommodation. The Principal Reporter is required to arrange a hearing **within 72 hours** of the child being placed in secure accommodation.

7.76 The purpose of this hearing is to consider the circumstances which led to the child being placed in secure accommodation and consider what, if any, interim measures are required prior to a full determination of the child's case. Given the short notice for arrangement of this hearing, and the likely lack of reports or other information available to it, it is not appropriate that the hearing proceeds to make a substantive decision at this stage.

7.76a The hearing must consider whether the criteria for placing the child in secure accommodation are met and whether it is necessary for the child to be placed in secure accommodation. Further information about the test for secure accommodation can be found in Part 8c.

7.77 Where the child is *not* subject to a compulsory supervision order, interim compulsory supervision order, medical examination order or warrant to secure attendance the emergency hearing will be a grounds hearing and therefore Part a of the manual on grounds hearings should be consulted. Where the Children's Reporter is satisfied that it is not reasonably practicable to arrange the grounds hearing within 72 hours, there is an additional period of 24 hours in which to arrange the hearing.

7.78 It is not appropriate for a hearing to proceed to make a substantive decision given the emergency nature of the hearing and the short notice at which it will be arranged.

Legal assistance

7.79 Where a secure accommodation authorisation is likely to be considered by the hearing, the child will be automatically entitled to legal aid for the assistance of a solicitor at the hearing.

7.80 At the start of the hearing a decision should be made whether the hearing is likely to consider secure accommodation as an option and if so, direct the Children's Reporter to



provide the child's name and contact details to the Scottish Legal Aid Board, if this has not already been done. Every effort will be made prior to the hearing to help the child speak with a solicitor. If necessary, panel members can help this process by having a short adjournment at the start of the hearing.

- 7.81 The fact that a child has not spoken with a solicitor does not prevent the hearing from making an interim decision about secure authorisation. However a substantive decision **should not be made** where the child has not had the opportunity of representation at the hearing.



The options open to the hearing are:

1. **To defer the hearing and issue an ICSO or make an IVCSO with secure authorisation.** Where the hearing is satisfied that:
 - as a matter of urgency an ICSO or IVCSO is necessary for the child's protection, treatment, guidance or control
and
 - one or more of the conditions in s83(6) are met
and
 - having considered the other options available, it is necessary to include a secure authorisation in the order

The hearing may make an ICSO or IVCSO including a secure authorisation.

2. **To defer the hearing and issue an ICSO or make an IVCSO without secure authorisation.** Where the hearing is satisfied that as a matter of urgency an ICSO or IVCSO is necessary for the child's protection treatment, guidance or control, the hearing may make an ICSO or IVCSO.
3. **To defer the hearing.** Where this is the decision of the hearing, the child will remain subject to any legal order, for example a CSO, they were subject to prior to the hearing.



I. Second working day CPO hearing (ss 45, 46)

7.82 Where:

- a Sheriff has made a child protection order (CPO)
and
- the Children's Reporter is satisfied that the criteria for the making of the child protection order are met

a children's hearing must take place on the second working day after the child is removed to a place of safety, where the order authorises removal of the child to a place of safety. Where the order prevents the removal of a child from a place, the hearing must take place on the second working day after the order is made.

7.83 The purpose of this hearing is to consider:

- the circumstances which led to the making of the child protection order
- whether the conditions for the making of the child protection order are met
- whether it is necessary that the order remain in place
- whether any variations are required to the directions attached to the order

Conditions for a child protection order to be made

7.84 There are two sets of criteria under which a child protection order can be granted, depending on who the applicant for the order is. It will be necessary for panel members to know which set of criteria applied to the making of the order, to enable them consider whether the conditions for making it are met. This information will be on the child protection order itself, or the hearing participants can be asked at the start of the hearing if there is any uncertainty.

7.85 In practice, child protection orders are usually sought by a local authority. However anyone can apply for a child protection order under the first set of criteria, which are:



(a) there are reasonable grounds to believe that:

- (i) the child has been, or is being, treated in such a way that the child is suffering or is likely to suffer significant harm
- (ii) 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
- (iii) the child is likely to suffer significant harm if the child is not removed to and kept in a place of safety
- (iv) the child is likely to 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) the order is necessary to protect the child from that harm or from further harm



7.86 The second set of criteria can only apply where the applicant for the child protection order is the local authority and these criteria are:



- (a) there are reasonable grounds to suspect that –
 - (i) the child has been, or is being, treated in such a way that the child is suffering or is likely to suffer significant harm
 - (ii) 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
 - (iii) the child will be treated or neglected in such a way that is likely to cause significant harm to the child
- (b) the local authority is making enquires to allow it to decide whether to take action to safeguard the welfare of the child, or is causing those enquiries to be made, and
- (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

Directions

7.87 A child protection order can have one or more of the following directions attached:

1. An information non-disclosure direction. This is a direction specifying that information in relation to the child, for example the place of safety where the child is being kept, must not be disclosed to a named person or class of persons.
2. A contact direction. This is a direction regulating contact between the child and a named person or class of persons.
3. A parental responsibilities and rights direction. This is a direction regulating parental responsibilities or rights in relation to the child, medical examination and/or treatment as an example.

Legal assistance

7.88 A second working day hearing is one of the hearings where the child is automatically entitled to legal aid to be assisted by a solicitor. This is subject to the child having the capacity to give instructions to a solicitor. There is a general presumption in law that a child aged 12 years or over is able to instruct a solicitor but this is not to say that some younger children will not also be able to instruct.

Therefore panel members should ask a child present at the hearing, subject to their age, whether they have had the opportunity to speak with a solicitor. If they have not, panel members should consider a short adjournment for the necessary arrangements to be made.



The options open to a second working day hearing are:

1. **To continue the child protection order without variation.** Where the hearing is satisfied that the criteria for making the child protection order are satisfied and that any directions attached to it remain necessary.
2. **To continue the child protection order with variation to one of the directions attached.** Where the hearing is satisfied that the criteria for making the child protection order is satisfied, but that there should be a variation to the directions attached. A variation includes terminating or varying the existing directions or including a new direction.
3. **To terminate the child protection order.** Where hearing members are satisfied that the conditions for the making of a child protection order do not exist or the order is no longer necessary.

7.89 A decision must be made by a hearing on the second working day and therefore it is not possible to defer the decision. If there is a need for further information to enable the hearing to make a decision, panel members can consider an adjournment for the information to be obtained. The hearing must, however, reconvene on the same day.

Application for variation or termination of the order

7.90 Where the decision of the hearing is to continue the child protection order, with or without variation, the chairing member must inform the following people, if present, of their right to apply to the Sheriff for a variation or termination of the order **within two working days**:

- the child
- a relevant person
- any person who has, or has recently had, a significant involvement in the upbringing of the child
- the person who applied for the child protection order
- the person who is required under the order to produce the child to the applicant

The Principal Reporter may also apply to the Sheriff Court for a variation to the directions attached to the child protection order. An application for termination is not required since the Principal Reporter has the power to terminate the order within the 2011 Act.



m. Eighth working day CPO hearing (s69)

- 7.91 A child protection order ends a maximum of eight working days after it was first granted. If the Children's Reporter is satisfied that one or more of the s67 grounds of referral exists and that it is necessary that a compulsory supervision order be made for the child or an existing order reviewed, a children's hearing will be arranged for the child on the eighth working day.

This children's hearing is a grounds hearing and therefore Part a of the manual in relation to grounds hearings should be consulted for the legal options open to the children's hearing.



n. Advice to the Sheriff on an application to vary or terminate a CPO (s50)

- 7.92 An application to the Sheriff for a variation or termination of a child protection order can be made either prior to the second working day hearing, or within two working days thereafter. The application must be heard by the Sheriff within three working days after the day on which the application is made.
- 7.93 When an application has been made, the Principal Reporter **may** arrange for a hearing to provide advice to the Sheriff. The purpose of the hearing is to provide any advice to the Sheriff they consider appropriate to the Sheriff's decision on the application.
- 7.94 In particular, the hearing may wish to consider the following:
- The nature of the application to the Sheriff – is it for a variation to one of the directions attached to the order, or for termination of the order as a whole?
 - If the application relates to variation, would the hearing support the variation, and why or why not?
 - If the application relates to termination of the order, what were the circumstances which existed at the time the order was granted? In the opinion of the hearing do the criteria for the granting of the child protection order continue to exist?
- 7.95 The purpose of this hearing is to provide advice to the Sheriff only. The hearing is not able to make any changes to the child protection order.
- 7.96 There are no rights of appeal against this advice, since the person will be able to challenge the contents of the advice when the Sheriff hears the application for variation or termination of the order.



o. Advice to Court where the child has been found guilty of, or pleaded guilty to, a criminal offence (s49 Criminal Procedure (Scotland) Act 1995)

7.97 Where a child has been prosecuted in a criminal court and been found guilty of, or pleaded guilty to, the offence, a children's hearing may be asked to provide advice to the court about what the court should do as a result of the offence. Where a child is subject to a compulsory supervision order a Sheriff **must** ask for the advice of a hearing. Where the person is aged 17 years or under and not subject to a compulsory supervision order, asking for advice is within the discretion of the Sheriff. Where the child appears in the High Court of Justiciary (where the offence is particularly serious) it is always within the discretion of the court whether to ask a children's hearing for advice, regardless of whether the child is subject to a compulsory supervision order or not.

7.98 The purpose of the advice hearing is to provide advice to the court about how the offence should be disposed of. The key decision for the hearing is whether they consider it appropriate for the court to remit (or send) the offence to a children's hearing for a decision to be made or whether it is more appropriate that the child is sentenced by the court.

7.99 When considering this advice, the hearing may wish to consider the following factors:

- Is the child currently subject to a compulsory supervision order, or have they recently been? How is the child cooperating with their child's plan? How have they cooperated in the past?
- What more can be put in place by the children's hearing and/or the implementation authority to support the child? Are there any further plans in place the court should be aware of?
- The nature of the offence the child has been found guilty of. Does the child have any remorse for the offence? Have any contributing factors to the offence (for example substance misuse, peer group pressure) been addressed, or are they in the process of being addressed?

7.100 When considering the advice, panel members should consider the Whole Systems Approach to children and young people who have committed offences. Amongst other aspects, this approach means that the fact that a child is aged 16 years or over should have no bearing on what support is available, or not available, to the child. The individual child's circumstances should be considered and a tailored package of multi agency support provided accordingly. The age of the child should not, therefore, be a factor in the advice provided to the court.

For further information on the Whole Systems Approach please see www.scotland.gov.uk/Topics/Justice/crimes/youth-justice/reoffending/wholesystemintroduction.

7.101 The advice the hearing provides to the court is not appealable, since the child and their representative will be able to make representations to the court when the advice and disposal is considered. The chairing member should also make clear to the child, and relevant persons, if present, that the hearing advice is not binding on the court.

7.102 Where the child is subject to a compulsory supervision order, the hearing arranged to provide advice to the court cannot review the compulsory supervision order, unless this has been requested in advance by one of the hearing participants entitled to do so. The only option therefore open to the hearing is to provide advice to the Sheriff.



p. Advice to Court where an antisocial behaviour order has been applied for in respect of the child (s4 Antisocial Behaviour etc. (Scotland) Act 2004)

7.103 When an application is made to the sheriff court for an antisocial behaviour order (ASBO), before making the order the Sheriff must first ask for advice from a children's hearing. This applies whether or not the child is subject to a compulsory supervision order.

7.104 The purpose of the hearing is to advise the Sheriff whether the ASBO is necessary for the purpose of protecting persons from further antisocial behaviour by the child.

7.105 'Antisocial Behaviour' has a legal definition and is where a person: (a) acts in a manner that causes or is likely to cause alarm or distress; or (b) pursues a course of conduct that causes or is likely to cause alarm or distress, to at least one person who is not of the same household as them.

7.106 The advice the hearing provides to the court is not appealable, since the child and their representative will be able to make representations to the court when the advice and disposal is considered. The chairing member should also make clear to the child, and relevant persons, if present, that the hearing advice is not binding on the court.

7.107 Where the child is subject to a compulsory supervision order, the hearing arranged to provide advice to the court cannot review the compulsory supervision order, unless this has been requested in advance by one of the hearing participants entitled to do so. The only option therefore open to the hearing is to provide advice to the Sheriff.



Part 8: Further decisions

Panel members satisfy themselves that children, young people and adults are aware of, and feel able to exercise, their rights to representation within the hearing

National standard 4.1

Panel members know the legal framework and procedures for hearings and apply that knowledge

National standard 5.2



Part 8: Summary

- Every children's hearing must consider the appointment of a safeguarder unless there is one already appointed. A pre-hearing panel **may** also consider the appointment of a safeguarder but is not required to.
- A hearing may not disclose information to a person about the child if it would put the child at risk of **significant** harm. The test of significant harm is a high one and information should only be withheld in **exceptional** circumstances.
- There are two decision making stages before a child can be placed in secure accommodation, the first by the hearing and the second by the Chief Social Work Officer and head of the secure unit.
- To authorise secure accommodation the hearing must be satisfied that:
 - the criteria in s83(6) are met
 - and**
 - having considered the other options available (including a movement restriction condition), secure accommodation is necessary for the child
- A hearing can make a movement restriction condition if satisfied that:
 - the criteria in s83(6) are met
 - and**
 - the movement restriction condition is necessary for the child
- Legal aid is available automatically for a child to have the assistance of a solicitor for a hearing in some situations. In other situations a child, relevant person and some others can apply for legal aid from the Scottish Legal Aid Board.
- A hearing may be deferred for the written advice from the National Convener in exceptional circumstances and where all other ways of getting the information have been explored.

a. Appointment of a safeguarder (ss 30- 34, 82)

- 8.1 Every children's hearing **must** consider whether a safeguarder should be appointed for the child, unless there is already one appointed. A pre-hearing panel may also consider the appointment of a safeguarder, but is not required to do so.
- 8.2 A Sheriff is also required to consider the appointment of a safeguarder. If a safeguarder is appointed by a Sheriff, he or she is to be treated at any future hearings as a safeguarder appointed by a hearing until the appointment ends, with the exception of the legal requirement to prepare a report for the hearing. In general terms, the appointment of a safeguarder will end when a substantive decision is made by a children's hearing which



is not then appealed, or a decision is made by a Sheriff and no further appeal is made, or children's hearing arranged, as a result of the Sheriff's decision.

- 8.3 There are no specific criteria for the appointment of a safeguarder by a hearing. The role of a safeguarder, as defined in the 2011 Act, is *"to safeguard the interests of the child to whom the children's hearing relates"*. The specific role of a safeguarder may involve ensuring that:

- the child's rights are protected
- the views of the child are established and communicated to the hearing
- any proposals being made are in the child's best interests

The hearing, or pre-hearing panel, only requires to be satisfied that the appointment of a safeguarder is required for the child. There will be a variety of reasons, specific to the individual child, which will lead to the appointment of a safeguarder. There is no need for there to be a conflict between parties or for there to be a gap in information. Reasons for appointment should be explained to the child and relevant persons present at the hearing and clearly recorded in writing in the reasons for decision.

- 8.4 There are two specific requirements of an appointed safeguarder:

1. Where a safeguarder is appointed by the hearing, the safeguarder must prepare a report for the hearing including one or more of the following:
 - anything the safeguarder thinks is relevant to the consideration of the hearing
 - the child's views so far as practicable in light of the age and maturity of the child
 - any issue which the safeguarder has been asked to consider by the hearing

The duty to produce a hearing report does not apply when the safeguarder is appointed by the Sheriff, where the hearing is arranged at short notice or is a hearing to consider the need for a further interim order while grounds are at proof. The safeguarder has to submit a report within 35 days of appointment. If they are unable to meet this deadline they may submit an interim report with an explanation of why they have been unable to complete a full report, the work outstanding and an estimate of how long they require to complete the full report. The hearing, may, however make a decision when in receipt of the interim report if they do not consider it necessary to await the full report.

2. There is an expectation that, so far as reasonably practicable, the safeguarder (appointed by either the hearing or the Sheriff) will attend the children's hearing. This is not a legal requirement and therefore a hearing does not need to be deferred only because a safeguarder is not present. However the absence of the safeguarder may mean the hearing does not have sufficient information to make a decision and deferral of the hearing in these circumstances may be appropriate.

- 8.5 The 2011 Act created a national Safeguarders Panel. When appointed by a hearing, pre-hearing panel or Sheriff, a safeguarder will be allocated to the child from the National Safeguarders Panel by CHILDREN 1st, the organisation contracted by the Scottish Government to assist Ministers with the operation and management of the Safeguarders Panel.



- 8.6 The allocation process for appointments is fair, transparent and, as far as possible, matches the needs of the child. Panel members, or any of the hearing participants, may make a specific request via the reasons for decision, for example, that a safeguarder is allocated who is of a preferred gender, or who has expertise in a particular area. It is not possible to request a particular safeguarder by name. CHILDREN 1st will receive notification from the Children's Reporter and will allocate a safeguarder to the child, taking account of any particular requests where possible. Safeguarders will usually be allocated from within a particular local authority area. However, as the Safeguarders Panel is a national panel there will be flexibility where, for example, there is no available safeguarder from a particular area, or because of a particular request highlighted in the reasons for decision.

b. Disclosure of information given to the hearing (s178)

- 8.7 The 2011 Act gives a children's hearing the power not to disclose information about the child to a person, if that disclosure would be likely to cause significant harm to the child. This provision exists in addition to the process whereby a hearing participant can ask the children's hearing to consider a non-disclosure request.
- 8.8 The test of significant harm is a high one and the decision to withhold information from a person otherwise entitled to it should not be taken lightly. The spirit of a children's hearing is of openness and participation and therefore withholding information from a party otherwise entitled to it should be **exceptional**.

Finding information upsetting or the preference of a person will **not** be sufficient to meet the test of significant harm. An example of where this provision may be used would be where the child makes a significant disclosure whilst speaking to the panel members without the relevant persons present.

- 8.9 Before considering the use of this power, panel members should consider whether it is first appropriate to defer the hearing to another day. If panel members are satisfied that a substantive decision could and should be made, then full reasons for the decision, including the withheld information, must be given to those entitled to it. Reasons, minus the withheld information, must also be provided to the person to whom the non-disclosure relates. The Children's Reporter will redact the information in the reasons and decisions before it is sent to the person who is not to receive it.



c. Secure accommodation (ss 85, 151 – 153)

Two decision making stages

8.10 A children's hearing has the power to authorise the placing of a child in secure accommodation as part of a compulsory supervision order, interim compulsory supervision order, medical examination order or warrant to secure attendance. Once this decision has been made by the hearing the Chief Social Work Officer, in consultation with the head of the secure unit where the child is to reside, must make a formal decision either to implement the authorisation, or not implement it. Therefore just because a hearing has made a decision to authorise a secure placement, does not mean that the child will be placed there. It is important that the chairing member ensures the child and relevant person(s) understand that there are two decision making stages, the hearing decision and the Chief Social Work Officer/head of unit decision.

The hearing decision



When a hearing is considering a secure authorisation, hearing members must be satisfied that:

1. One or more of the criteria in s83(6) are met ("the s83(6) conditions"). These are:
 - (a) 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) the child is likely to engage in self harming conduct
 - (c) the child is likely to cause injury to another person

AND

2. Having considered the other options available (including a movement restriction condition) a secure accommodation authorisation within the order is necessary

It is essential that the hearing considers both these steps during the discussion at the hearing, and explains why both steps are satisfied in both their verbal and written reasons.



The s83(6) conditions

8.11 (a) 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

A child can only be considered to have “absconded” from a place where they are required to stay. This will generally not be the child's home address unless named as a specific measure on the child's order. To satisfy this condition, the hearing needs to demonstrate three elements:

1. a history of absconding
2. a likelihood of further absconding
3. how the child's physical, mental or moral welfare would be at risk during periods of absconding – for example through drug or alcohol misuse, prostitution or associating with people with a history of offending

These elements would normally be demonstrated through a history of previous similar behaviour.

8.12 (b) The child is likely to engage in self harming conduct

“Self harming conduct” should be interpreted widely. It includes a person causing physical harm to themselves as well as, for example, serious drug and/or alcohol misuse. This is not an exhaustive list. Whether a child is engaging in self harming conduct is a question of fact, which must be considered by the hearing according to the individual child's circumstances.

In common with the other s83(6) conditions, there must be evidence to support a conclusion that the child is likely to engage in self harming conduct, in the majority of cases this will be a history of similar behaviour.

8.13 (c) The child is likely to cause injury to another person

This can be physical or mental injury to another person, but would not include any financial or property loss. For example offences of theft would not be sufficient to meet this test.

Again there must be evidence to support a conclusion that the child is likely to cause injury to another person, which may include a history of such behaviour.



Review

- 8.14 If a child is placed in secure accommodation by the Chief Social Work Officer, the Rules require that the placement be kept under constant review. If the Chief Social Work Officer, in consultation with the head of the secure unit, considers that it is unnecessary for the child to remain in the secure accommodation, the child must be removed from the secure accommodation without the need for a further hearing.
- 8.15 The secure accommodation authorisation made by the hearing no longer has effect if the child is removed from secure accommodation. Therefore the child cannot be placed back in secure accommodation without a further authorisation from a hearing.
- 8.16 The Children's Reporter has to arrange a review hearing within three months of the compulsory supervision order being made, varied, or continued, to include the secure accommodation authorisation. However, in the same way as for any other hearing, the hearing may specify that a review be held earlier than this three month period if required.

Emergency placement

- 8.17 A child can be transferred to secure accommodation on an emergency basis by the Chief Social Work Officer, without the authority of a children's hearing. The maximum period a child can spend in secure accommodation without the authority of a hearing (or a Sheriff) is a total of 72 hours in a 28 day period.
- 8.18 Where the child is already the subject of a compulsory supervision order, a review hearing must be arranged by the Children's Reporter within 72 hours of the child being placed in secure accommodation.
- 8.19 Where the child is not currently the subject of a compulsory supervision order, the Children's Reporter must arrange a grounds hearing to take place within 72 hours, unless they are satisfied that a hearing for the child is not required, in which case the local authority must release the child from secure accommodation. The only exception to this timescale is where it is not reasonably practicable to arrange the grounds hearing within 72 hours, in which case a further 24 hour period is permitted.



d. Movement restriction conditions (ss 84, 125)

- 8.20 A movement restriction condition is a measure a hearing can include in a compulsory supervision order or interim compulsory supervision order to restrict the movement of a child to a specified place. For example, the child is to remain at their home address between 9pm and 7am. Compliance with the condition is monitored by an electronic tag. A movement restriction condition forms part of the system of intensive support and monitoring which involves the child having their movements restricted, whilst at the same time receiving intensive support. The details of the intensive support the child is to receive must be contained in a movement restriction care plan.
- 8.21 Movement restriction conditions are intended to be a direct alternative to secure accommodation for a child and must be discussed as an alternative by every hearing considering making a secure authorisation.

The legal requirements



Similar to a secure authorisation, there are two steps the hearing must consider in order to make a movement restriction condition:

1. Whether one or more of the s83(6) conditions are met (as explained in relation to secure accommodation).

AND

2. Whether the inclusion of the movement restriction condition is necessary for the child.

- 8.22 When a hearing has decided to make, or continue a movement restriction condition there are some conditions which **must** be included in the order and there are some conditions which **may** be included.

- 8.23 Measures that **must** be included in the order are:

- a. The full name, if applicable, and address of the place where the child is to reside, including whether this includes any garden ground or other outside space belonging to the place of residence.
- b. The days of the week, and specific hours (not exceeding 12 hours) the child is required to remain at that place.
- c. The name of the persons who will be responsible for monitoring and reviewing the child's compliance with all of the measures included in the order, including the movement restriction care plan. This will typically be a named officer from the implementation authority but it may also be a person contracted to provide a service on behalf of the implementation authority and the company providing the monitoring equipment, currently G4S.
- d. The period for which the condition is to have effect, up to a maximum of six months.



8.24 Further measures that **may** be included in the order are:

- a. any address, location or place where the child is not to enter
- b. any requirements to allow the responsible person to monitor the child's compliance with the order
- c. any requirements in relation to the child's participation in, or cooperation with, the movement restriction care plan
- d. any contingency arrangements necessary
- e. any planned respite arrangements necessary
- f. the method by which compliance with the movement restriction condition will be monitored – this will usually be radio and electronic monitoring located at the address the child is required to remain, but if this is not reasonably practicable it may be by mobile receiver
- g. any further measures which may usually be included in a compulsory supervision order or interim compulsory supervision order

8.25 The hearing **must** specify an early review when making, or continuing, a movement restriction condition, up to a maximum of six months. This will normally be for the same period as the movement restriction condition is to have effect.

The movement restriction care plan

8.26 Where a child is subject to a movement restriction condition, the implementation authority must prepare, in writing, a child's plan. This plan must, so far as practicable, address the immediate and longer term needs of the child with a view to safeguarding and promoting the child's welfare ("a movement restriction care plan"). The plan must also set out the services the implementation authority will provide to meet the care, education and health needs of the child and it must specifically include:

- a. details of alternative accommodation which can be accessed by the child if necessary
- b. the provision of a 24/7 crisis response service, which must include a telephone service
- c. the arrangements for evaluating the child's participation, progress and cooperation with the plan
- d. the arrangements for review of the child's plan, which must be no later than three months after the decision to include a movement restriction condition has been made by a children's hearing or Sheriff

8.27 It is not a legal requirement that the children's hearing has a copy of this plan prior to making a decision to include a movement restriction condition. The only legal requirement is that a copy of this plan be provided to the Principal Reporter when completed and as and when reviewed. However, it is good practice for the hearing to have a copy of the plan as the hearing will need to discuss the intensive support package the child will receive alongside the movement restriction condition, when considering if this is the best decision for the child. Failure to consider the plan may amount to a failure to consider a material issue and the decision may therefore be vulnerable to a successful appeal.



Legal assistance

8.28 Legal representation is not automatically available for a child where a movement restriction condition is being considered by a children's hearing. A movement restriction condition involves complex legal provisions and represents a significant interference with the liberty and family life of the child. Therefore, a hearing should consider whether the child is able to effectively participate in the hearing without the assistance of a representative, whether a solicitor or other advocate.

e. Legal representation (ss 191, 192)

8.29 Unlike the Rules made under the Children (Scotland) Act 1995 a children's hearing, or pre-hearing panel, does not have the power to appoint a legal representative for a child or relevant person. Instead the 2011 Act sets out situations where:

- the child is automatically eligible for legal aid
- where a child and relevant person may be eligible for legal assistance

This means that the child and relevant person are able to choose their own solicitor to represent them at the children's hearing, rather than one being chosen for them. This solicitor would then receive payment from the Scottish Legal Aid Fund if the criteria are met.

Children

8.30 A child is **automatically** entitled to legal aid in the following circumstances:

- a. an application is made to the Sheriff for variation or recall of a child protection order
- b. a children's hearing is to be held on the second working day after a child protection order has been granted
- c. a children's hearing, or pre-hearing panel, considers that it may be necessary to make a compulsory supervision order including a secure accommodation authorisation
- d. a hearing is arranged after the child is detained in custody by the police

Legal aid will be also available for the child for any subsequent deferred hearings.

8.31 In all other circumstances related to assistance at a children's hearing or associated court proceedings, an application must be made to the Scottish Legal Aid Board by the child before they will be eligible for legal assistance. Where the application relates to legal representation at a children's hearing, legal assistance will only be available where it is necessary to ensure the effective participation of the child.

Relevant persons

8.32 A relevant person is only eligible for legal assistance for representation at a children's hearing or associated court proceedings following a successful application to the Scottish Legal Aid Board. A relevant person will only receive legal aid for the attendance of a solicitor at the children's hearing if the assistance of a solicitor is considered necessary to ensure the relevant person's effective participation.



Access to legal assistance

8.33 There will be some situations where the child or relevant person is unable to arrange their own solicitor. Where a children's hearing or pre-hearing panel consider that a child or relevant person may need a solicitor to ensure their effective participation, but that the person is unlikely to make the necessary arrangements themselves, they may ask the Children's Reporter to provide the child and/or relevant person's contact details to the Scottish Legal Aid Board. The Scottish Legal Aid Board will then facilitate contact with a solicitor. If this decision is made by a children's hearing, the hearing must then be deferred to another day.

Effective participation

8.34 Except where legal aid is automatically available to a child, before giving a direction to the Children's Reporter to contact the Scottish Legal Aid Board, the children's hearing must be satisfied that a solicitor is necessary to enable the child or relevant person's effective participation in the hearing. This is a high test and will be relevant where the issues are legally complex or the assistance needed is only available from a solicitor.

8.35 When making decisions about effective participation, the 2011 Act and legal aid Regulations provide that the following matters must be considered:

- the complexity of the case, including the existence and difficulty of any points of law in issue
- the nature of the legal issues involved
- the ability of the person to consider and challenge any document or information in the hearing without the assistance of a solicitor
- the ability of the person to present his or her views in an effective manner without the assistance of a solicitor

f. Failure of an education authority to comply with duties in relation to an excluded or withdrawn pupil (s127)

8.36 An education authority has a duty to continue to provide education for a pupil where they have been excluded from a school or have withdrawn from that school prior to being excluded. If a children's hearing is satisfied that an education authority is failing to comply with this duty, they may require the National Convener to refer the matter to Scottish Ministers. This is a decision that can be taken by a children's hearing arranged for any purpose and alongside any decision, substantive or interim, of that hearing.

8.37 Following the hearing the chairing member will need to complete a form, which the Children's Reporter will send to the National Convener, setting out the reasons why the hearing considers the education authority to be in breach of its duty to provide education to an excluded or withdrawn pupil. On receipt of the form the National Convener must make the referral to Scottish Ministers, there is no discretion.



g. Direction to the Principal Reporter to consider applying for a parenting order

8.38 A parenting order is an order granted by a Sheriff, which requires the parent of a child to attend counselling or guidance sessions, and to comply with any other conditions in the order, under the supervision of the local authority. An application can be made by either a local authority or the Principal Reporter.

8.39 Where a children's hearing, arranged for any purpose, is satisfied that it may be appropriate for a parenting order to be made, the hearing may ask the Principal Reporter to consider whether to apply for an order. Thereafter it is within the discretion of the Principal Reporter whether to make the application.

8.40 If a hearing wishes to ask the Principal Reporter to consider making the application, the hearing must set out the details of the parent and which of the following reasons means the application should be made:

- the child has engaged in antisocial behaviour and the making of the order is desirable to prevent the child engaging in further such behaviour
- the child has engaged in criminal conduct and the making of the order is desirable to prevent the child engaging in further such conduct
- the order is desirable in the interests of improving the welfare of the child

This decision can be taken alongside any other decision of the children's hearing.

h. Advice from the National Convener (s8)

8.41 The 2011 Act gives the National Convener the power to provide advice to children's hearings. Advice may be provided in relation to any matter in connection with the functions of a children's hearing. Typically this will be in response to questions of law and/or procedure but it may also include issues of practice. The National Convener must not, however, direct or guide a children's hearing.

8.42 There is a staged approach to the provision of advice and support by the National Convener:

- 1. Pre-hearing preparation.** General support can be provided by the National Convener to individual panel members prior to their attendance at the hearing centre. The National Convener will make available a range of information to assist with preparation and a member of staff from Children's Hearings Scotland (CHS) is available for panel members to telephone or email. The National Convener is not able to provide advice in relation to specific hearings at this stage. It is anticipated that most questions, which would require the advice of the National Convener, can be answered at this stage either with reference to the written materials or by making contact with CHS.



2. **Discuss with fellow panel members during the hearing.** It is important that this discussion only takes place during the hearing as the substance of the case should not be discussed between panel members outwith the hearing.
3. **Seek the views of those present at the hearing.** This may be the Children's Reporter, a representative, other professional or the child/family. The provision of advice by the National Convener is intended to complement other roles within a children's hearing and therefore any person who attends a children's hearing can still offer views on legal or procedural matters. Any advice provided by the National Convener holds the same weight as an opinion offered by anyone else and panel members may choose to disregard the advice if they wish.


8.43 In the vast majority of situations, a combination of good pre-hearing preparation and the views of those present during the hearing will be able to resolve any matters requiring advice. However, there will be a small number of situations where stages four and five are required. Although not an exhaustive list, these will likely be highly complex situations and/or situations where panel members have received no, or conflicting, views on law and procedure from those present at the hearing.

4. **Adjourn the hearing to refer to the written materials available within the hearing centre.** Where possible a copy of the Practice and Procedure Manual will be available in every hearing centre for panel members, or any of the hearing participants, to refer to during a short adjournment of the hearing if required.
5. **Defer the decision of the children's hearing to another day and formally request written advice from the National Convener.** This should be a decision of last resort. In the small number of situations where the written advice of the National Convener is required by a children's hearing, a form should be completed at the end of the hearing setting out what advice is required. The Children's Reporter will then send the completed form to the National Convener and the National Convener must respond to the request for advice within 14 days of receipt. The National Convener's written advice will be made available to all those entitled to receive papers for the next hearing by the Children's Reporter and must be outlined verbally by the chairing member to those present at the next hearing.


8.44 Sometimes individual panel members will have general questions when reflecting on their experiences of being a panel member. The materials provided by the National Convener may answer the question, or a member of the AST or CHS can be contacted directly.



Part 9: The end of the hearing



Panel members treat each child,
young person and all others
present in the hearing fairly
National standard 4.5



Every children's hearing makes decisions
based on sound reasons in the best
interests of the child or young person
National standard 5



The chairing member's checklist – the end of the hearing *

1. Verbal reasons and decisions

- has each panel member (including the chairing member) provided their decision and reasons for all parts of the decision clearly?

2. Confirming the decision of the hearing

- what is the decision of the hearing?
- do the child and relevant persons present understand the decision?

3. Appeal rights

- a child, relevant person, safeguarder or, in some cases, the affected individual can appeal the decision of a hearing within 21 days **except** an appeal against relevant person status which must be made within seven days
- where the appeal is against a CSO with a secure authorisation or movement restriction condition, an ICSO, IVCSO, MEO, warrant to secure attendance, a relevant person determination, or a decision affecting a contact or permanence order, the Sheriff must decide the appeal within three days
- if the appeal is in relation to a CSO the person who appeals can ask the Children's Reporter to arrange a hearing to consider suspending the decision pending the outcome of the appeal

4. Review rights

- a child or relevant person can require a review of the CSO after three months

5. Review of deemed relevant person status (where the hearing is a review hearing and has made a substantive decision only)

- consider the status of any deemed relevant persons who appear no longer to meet the criteria of having, or having recently had, a significant involvement in the child's life

6. Decision and reasons for decision

- completion of written reasons for decision
- check and sign any statutory orders
- signature of the record and any associated forms by the chairing member

* Although this is called the chairing member's checklist, this does not stop another of the panel members from helping with this part of the hearing.



a. Verbal decisions and reasons

- 9.1 After a full discussion at the children's hearing, involving all of the hearing participants and covering all items on the agenda set at the start of the hearing, panel members should individually make their own decision. No further discussion should be entered into with hearing participants, or between panel members, whilst individual decisions are being made.
- 9.2 Clear reasons **must** be provided by each panel member for every decision made and this includes each measure included on an order. For example, where the decision is to make the child the subject of a compulsory supervision order with measures that the child is to live with Mr and Mrs Smith at 123 Any Street, Anytown and that the child is to have supervised contact with their mother for one hour twice per week at the Anytown family centre, reasons should be provided as follows:
- Why is a compulsory supervision order required for the child?
 - Why is a measure of residence required, i.e. why can't the child live at home?
 - Why is the measure of residence with Mr and Mrs Smith specifically?
 - Why is a measure of contact with the child's mother necessary for the child?
 - Why does the contact need to be supervised?
 - Why has the maximum duration been set at one hour?
 - Why twice per week?
 - Why at the Anytown family centre?
- 9.3 It is important that the child, if present and of an age to understand, and relevant persons, if present, are clear what decision the individual panel member has made and why. Panel members should be aware of the verbal and non verbal communication methods that are used when giving their decision, as this may be a particularly sensitive and anxious time for the child and relevant persons present.
- 9.4 It is essential that the reasons in the record of proceedings, written after the hearing has concluded, closely reflect the verbal reasons provided to hearing participants during the hearing. It is therefore good practice that panel members take brief notes of each others' verbal decisions whilst listening to the decision.
- 9.5 Any measures included as part of the order must be clear to all parties and unambiguous in interpretation. A measure should only be included as part of any order if it is necessary for the child. Where, for example, all parties are in agreement about the level of contact a child should have with an individual there may be no need to include a measure on the order. However, where there is any disagreement amongst the hearing participants the children's hearing should include a measure on the order stating what the hearing has decided must happen. Or where the child has not been attending school a specific measure stating that the child must attend school as part of a hearing order is unlikely to be necessary as attendance at school is required by law.



- 9.6 A measure can only be included if it relates to the child or requires the implementation authority to carry out a specific duty for the child. For example, a measure cannot be included that compels a parent to do something. A measure should not be included which says something is to happen at individual, or agency discretion, for example contact to take place at the discretion of the social work department. This is not a clear measure and could be successfully appealed. If a children's hearing decides it necessary that a contact direction be included it must specify clear arrangements for that contact to take place.
- 9.7 In the same way as at the start of the hearing, there is no rigid procedure that must be followed once panel members have made a decision. However, there are certain legal requirements that must be met. The procedure set out below does not therefore have to be rigidly followed but all the requirements must be met. The chairing member's general duty to ensure the child and relevant person(s) understand the hearing process continues to apply to the end of the hearing.

b. Confirming the decision of the hearing

- 9.8 Once all three panel members (including the chairing member) have given their individual decisions, the chairing member must confirm to those present at the hearing what the decision of the hearing is. This will be particularly important where there is a majority decision or the decision is complex or lengthy. It is good practice to ask the child and relevant person(s) if they have understood the decision and whether they want to ask any questions about the decision. Further discussion about the merits of the decision should not, however, be entered into at this point as the decision in law has been made.
- 9.9 The child, if of an age to understand, relevant persons and any appointed safeguarder should be told that they will receive notification of the decision of the hearing, along with copies of the reasons for the decision and any order made, from the Children's Reporter within five days of the children's hearing.

c. Appeal rights (ss154 – 162)

- 9.10 Once the decision of the hearing has been given, the chairing member must inform those present, who are eligible, of their right to appeal.
- 9.11 The following decisions of a children's hearing can be appealed by a child, relevant person(s), any appointed safeguarder or a combination of these groups:
- make, vary and/or continue a compulsory supervision order
 - discharge a referral
 - terminate a compulsory supervision order
 - make an interim compulsory supervision order



- make an interim variation to the compulsory supervision order
- make a medical examination order
- make a warrant to secure attendance

9.12 There are two other types of appeal against decisions of a children's hearing:

- an appeal against the decision of a hearing or pre-hearing panel in relation to deemed relevant person status by a child, relevant person(s) or person deemed not to be a relevant person
- an appeal against the decision of a contact direction review hearing by a person who is not a relevant person but who either holds a contact order, a permanence order or has, or has recently had, a significant involvement in the upbringing of the child



- an appeal must be made within 21 days beginning on the day the decision is made – **except** where the appeal is against a relevant person determination which must be made within seven days
- where the appeal is against a compulsory supervision order with a secure authorisation or movement restriction condition, an interim compulsory supervision order, interim variation to a compulsory supervision order, medical examination order or warrant to secure attendance, the Sheriff must decide the appeal within three days beginning on the day after the appeal is made
- where the appeal is against a relevant person determination or a decision affecting a contact or permanence order, the Sheriff must decide the appeal within three days beginning on the day the appeal is made
- in all other cases the Sheriff must first hear the appeal within 28 days of it being made, but there is no maximum period within which a decision on the appeal must be taken by the Sheriff
- if a person does appeal against a decision to make, vary, continue, or terminate a compulsory supervision order, they may request the Children's Reporter to arrange a further hearing to consider whether the decision should be suspended pending the appeal

9.13 In addition the child and/or a relevant person may appeal a decision of the Chief Social Work Officer to implement a secure accommodation authorisation, to not implement it or to subsequently remove the child from secure accommodation. This appeal must be made within 21 days of the date of the decision of the Chief Social Work Officer and the Sheriff is required to decide on the appeal within three days. The chairing member should therefore also inform the child and relevant person of this right to appeal, in addition to their right to appeal the decision of the children's hearing to make the secure authorisation.



d. Review rights (s131, 132, 135)

9.14 The chairing member should inform the child and relevant persons of their right to require a review of the compulsory supervision order, if the decision of the hearing has been in relation to a compulsory supervision order.



- a child or relevant person may ask for a review of a CSO after three months of it being last made, continued and/or varied
- they can do this by contacting the Children's Reporter, either in writing or by telephone
- the implementation authority can ask for a review of the CSO at any time
- the Children's Reporter can refer any new grounds to a children's hearing at any time
- where the decision is to include a secure authorisation the Children's Reporter must arrange a review within three months
- in all other cases the Children's Reporter will arrange a review prior to the end of the 'relevant period' (normally a year)

e. Review of deemed relevant person status (s142)

9.15 Where the decision of the hearing is to continue, vary, or continue and vary a compulsory supervision order and it appears to the hearing that a person currently deemed a relevant person, may no longer have (or recently have had) a significant involvement in the upbringing of the child, the hearing **must** review the individual's relevant person status at the end of the hearing.

Procedure

- 9.16 The chairing member must explain the purpose of the review to the child and relevant persons present. For the review panel members must consider the criteria described in Part four in relation to deemed relevant person status. Panel members should start from the date of the decision to deem the person to be a relevant person and consider if anything has changed since this date which would mean that the person no longer has, or has recently had, a significant involvement in the child's upbringing.
- 9.17 The child, if appropriate, all relevant persons present and any appointed safeguarder must be asked by the chairing member if they have any views about whether the individual should be deemed a relevant person. The hearing may also hear any views from others present. Each individual panel member must make their own independent decision before the decision of the hearing is confirmed by the chairing member.



9.18 The decision can be deferred to a subsequent children's hearing if the hearing is unable to reach a decision. In particular, the hearing may consider deferring to another day if the person whose status is being considered is not present, would ordinarily be present at hearings and their views on the matter are not known. The decision in relation to the compulsory supervision order will, however, continue to have force and will not be reviewed at the deferred children's hearing.

9.19 Where a decision is made, the chairing member must ensure that the child, relevant person(s) and any individuals whose relevant person status is removed, are aware of their right to appeal the decision in relation to the relevant person determination.

Change of circumstances

9.20 Where the child's circumstances have changed as a result of the hearing, for example a change to the condition of residence, this does not automatically mean that a person is no longer a deemed relevant person, since they will continue to have recently had a significant involvement in the upbringing of the child. In the normal course of events, the deemed relevant person status would be removed either prior to or following the next review hearing, where they can no longer be said to have recently had a significant involvement in the child's upbringing. However, where the person would still have a significant involvement in the child's upbringing 'but for' the decision of the hearing this should not, in itself, mean that the person's relevant person status is removed.

f. Record of proceedings

9.21 When all of the above requirements have been carried out that is the end of the hearing. How the hearing is brought to a close will be largely dependent on the preference of the chairing member. In general terms, hearing participants should be thanked for their contributions and the child and any relevant persons invited to stay until the Children's Reporter has completed any paperwork. The child and relevant persons are not required to stay with the Children's Reporter. They may leave at any time after the hearing is brought to a close. When their part of the paperwork is completed the Children's Reporter will leave the room along with the child and any relevant persons who have stayed within the hearing room and the chairing member has the responsibility to complete the reasons for the decision.

9.22 Completing the reasons for the decision is a responsibility in law for the chairing member, but this does not mean that it is the sole responsibility of the chairing member. The other panel members can assist by contributing notes they have taken of the verbal reasons and decisions or by offering practical assistance, such as typing. The chairing member must sign and date each page of the decision and reasons and any orders issued by the children's hearing.



Reasons

9.23 The reasons contained within the record of proceedings will be the only reasons available to the child, relevant persons and a Sheriff to explain why the hearing has reached the decisions it has. It is therefore essential that the reasons reflect the discussion that has taken place and, crucially, **fully justify each decision** that has been taken by the hearing. It is important that the reasons do not simply re state what the decision of the hearing was, rather they must explain **why** the decision was made. It is best practice to include details of any minority decisions and reasons, although there is no legal requirement to do so.



Reasons for decisions

- reasons must be provided for each individual decision taken by the hearing, this includes any measures included on an order, whether the measure is made for the first time or continued
- reasons should be structured following the numbered decisions recorded by the Children's Reporter
- written reasons should closely reflect those given verbally during the hearing
- reasons should be based on issues discussed at the hearing
- reasons must be clear, unambiguous and leave the reader in little doubt as to **why** a particular decision was made
- reasons must be capable of being read and understood by a child, if of an age to do so, and relevant persons
- reasons should be as concise as possible – in particular long, complex sentences should be avoided

9.24 Where a decision has been made to withhold information in relation to the child's whereabouts, such as the address of the place they are required to reside, extreme care should be taken not to include that information within the reasons for decision. The Children's Reporter will have recorded the named place of residence within the decision section of the record of proceedings, and will redact the record before it is sent to the named individuals. There is no need for panel members to repeat this information within the reasons and doing so increases the risk of the information being inadvertently disclosed to the person or persons who the hearing has decided should not receive it.



Appendix 1: Glossary of terms

Term	Meaning	Relevant part of the manual (if applicable)
2011 Act	The Children's Hearings (Scotland) Act 2011	
2013 Rules	The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013	
Adjournment	A short break in the hearing. The hearing must start again on the same day.	
Adoption order	An order made by a Sheriff which permanently removes parental rights and responsibilities from one or more persons and gives them to another person.	Part 7.f.
Area Support Team	A committee established by the National Convener for a particular local authority area or areas to carry out functions designated by the National Convener.	
Child	Defined in s199 of the 2011 Act	Part 4.a.
Child protection order	An order issued by a Sheriff in emergency circumstances which removes the child to a place of safety.	Part 7.l. Part 7.m. Part 7.n.
Children's Hearings Scotland (CHS)	The public body established by the 2011 Act to support the National Convener in the delivery of her functions related to the recruitment, selection, training, retention and support of panel members.	Part 1.a.
Compulsory supervision order (CSO)	A substantive legal order issued by a hearing after grounds of referral have been accepted or established. Defined in s83 of the 2011 Act.	Part 4.c.l.



Term	Meaning	Relevant part of the manual (if applicable)
Deferral	Where the hearing decides to delay making a substantive decision to another day. Known as 'continuing' the hearing under the Children (Scotland) Act 1995.	Part 7.
ECHR	The European Convention on Human Rights.	Part 1.b.
Head of Unit	The person in charge of the residential accommodation containing the secure accommodation where it is proposed the child should stay.	Part 8.c.
Implementation authority	The local authority who implements an order issued by the hearing.	Part 4.c.I Part 4.c.II
Interim compulsory supervision order (ICSO)	An interim decision of the children's hearing where the hearing has been deferred to another day. Can only be issued where the child is not subject to a CSO.	Part 4.c.II
Interim extension of a compulsory supervision order	An interim decision to extend an existing CSO to the next children's hearing where the hearing has been deferred to another day.	Part 4.c.I
Interim variation of a compulsory supervision order (IVCSO)	An interim decision to vary an existing CSO where the hearing has been deferred to another day.	Part 4.c.I
Legal aid	Payment covering some, or all, of a person's legal expenses. Administered by the Scottish Legal Aid Board on behalf of the Scottish Government.	Part 8.e.
Medical examination order (MEO)	An interim order made by the hearing necessary for the purposes of obtaining further information or carrying out further investigation. Can only be made where a s67 ground has been accepted or established and there is no CSO already in place.	Part 4.c.III



Term	Meaning	Relevant part of the manual (if applicable)
Movement restriction condition	A condition as part of a CSO or ICSO which restricts the movements of the child to a specified place. Compliance with the condition is by an electronic tag.	Part 8.d.
National Convener	An officer created by the 2011 Act to act as a figurehead for Scotland's volunteer panel members and ensure they are consistently supported to a high standard.	Part 1.a.
Non-disclosure request	A request made by any person that specified information be withheld from a specified person.	Part .6.f.
Notification	The term for informing those with a duty and/or right to attend a hearing or pre-hearing panel of the children's hearing. This will usually be by way of a letter from the Children's Reporter.	Part 6.d. Part 5.c.
Permanence	The term used where plans are being made for the child to live away from their birth parents for the rest of their childhood.	Part 7.e. Part 7.f.
Permanence order	An order made by the Sheriff giving the right to regulate the child's residence, to provide guidance to the child, along with any other ancillary provisions to the local authority.	Part 7.e. Part 7.f.
Pre-hearing panel	A meeting of three panel members to discuss a matter in advance of the children's hearing.	Part 5.
Principal Reporter	An officer established by the Local Government (Scotland) Act 1994 who has delegated functions under the 2011 Act.	
Procurator Fiscal	The public prosecutor in Scotland.	
Relevant period	The length of time an order issued by the hearing will last.	Part 4.c.



Term	Meaning	Relevant part of the manual (if applicable)
Relevant person	Defined in sections 200 ('automatic' relevant persons) and 81(3) ('deemed' relevant persons) of the 2011 Act.	Part 4.b.
Safeguarder	A person appointed by a children's hearing, pre-hearing panel or Sheriff to safeguard the interests of the child in the proceedings.	Part 8.a. Part 2.c.
Scottish Children's Reporter Administration (SCRA)	A national body created by the Local Government (Scotland) Act 1994 to facilitate the work of Children's Reporters and provide suitable accommodation for children's hearings.	
Section 67 ground	The legal reason why a child is referred to a children's hearing.	Part 7.a.
Section 83(6) conditions	The conditions which must be met in order for a child to be placed in secure accommodation or be subject to a movement restriction condition.	Part 8.c. Part 8.d.
Secure authorisation	The decision of a hearing which allows a child to be placed in secure accommodation.	Part 7.k. Part 8.c.
UNCRC	The United Nations Convention on the Rights of the Child.	Part 1.b.
Warrant to secure attendance	An order issued by a hearing on deferral to enable the police to search for, detain and bring the child to the next children's hearing.	Part 4.c.IV.



Appendix 2: The UNCRC rights

The following are the rights **all children have** under the United Nations Convention on the Rights of the Child.

Article 1	The rights apply to everyone under the age of 18 years
Article 2	Right to protection from discrimination
Article 3	The welfare of the child is a primary consideration in all decisions affecting them
Article 4	Governments should take all appropriate measures to implement the rights
Article 5	Right to appropriate direction and guidance from parents or those legally responsible for the child
Article 6	Right to life
Article 7	Right to a name and nationality
Article 8	Right to an identity
Article 9	Right to live with their parents, unless this is not in the child's interests
Article 10	Right to live, or maintain contact, with parents who live in different countries
Article 11	Right not to be kidnapped or trafficked abroad
Article 12	The child who is able to form a view has a right to express that view freely in all matters affecting them, the views being given weight in accordance with the child's age and maturity
Article 13	Right to freedom of expression
Article 14	Right to freedom of thought, conscience and religion
Article 15	Right to freedom of association
Article 16	Right to a private life



Article 17	Right to information from the media
Article 18	Right to be brought up by the child's parents, unless this is not in the child's interests
Article 19	Right to protection from all forms of abuse
Article 20	Right to special protection if the child is unable to live with their parents
Article 21	The best interests of the child shall be the paramount consideration in adoption decisions
Article 22	Right to special protection if a refugee
Article 23	Right to special care and education if disabled
Article 24	Right to a high standard of health and access to healthcare facilities
Article 25	Right to a periodic review of his circumstances if placed away from home
Article 26	Right to social security
Article 27	Right to a reasonable standard of living
Article 28	Right to education
Article 29	Right to education which develops personality, respect for others and their environment
Article 30	Right to enjoy own culture, language and practice their own religion, if the child is from a minority
Article 31	Right to play
Article 32	Right to protection from economic exploitation
Article 33	Right to protection from drugs
Article 34	Right to protection from sexual abuse
Article 35	Governments should take all appropriate measures to prevent the abduction and sale of children



Article 36	Right to protection from exploitation
Article 37	Right not to be tortured or subject to inhuman, cruel or degrading treatment
Article 38	Right to protection from armed conflict and not to be in the army if under 15 years
Article 39	Right to support and reintegration for children who have suffered from abuse, neglect, torture, conflict or other inhuman or degrading treatment
Article 40	Right to special protection and procedural safeguards if accused of committing an offence
Article 41	Right to the protection of laws within a country if they are better than those in the convention
Article 42	The rights within the convention are to be widely publicised
Articles 43 – 54	Set out how the convention is to be implemented and monitored



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