

# **CHILDREN'S SERVICES (SCOTLAND) BILL: COLLECTED PROPOSED AMENDMENTS TO LEGISLATION**

## **Introduction**

This paper collects all the amendments to legislation proposed by the Children's Services (Scotland) Bill. It is meant to support the consultation and to be read in conjunction with the draft Bill, which is available at [www.scotland.gov.uk/childrenservicesbill](http://www.scotland.gov.uk/childrenservicesbill).

The paper is meant only as an aide to the consultation, and while every effort has been taken, the Scottish Executive provides no guarantees as to the accuracy of this paper.

The paper is set out as follows:

A: Collected amendments to Children (Scotland) Act 1995 Page 2

*This section collects all the amendments from the draft Bill to show the cumulative effect on the Children (Scotland) Act 1995*

B: Collected amendments to other legislation Page 44

*This section collects all the amendments from the draft Bill to show the cumulative effect on other legislation.*

We hope this paper is helpful in your consideration of the consultation. We look forward to your response. If you have any queries or comments please let us know at [gettingitrightforeverychild@scotland.gsi.gov.uk](mailto:gettingitrightforeverychild@scotland.gsi.gov.uk).

**Children's Services Bill Team**  
February 2007

## **A: Proposed amended text of the Children (Scotland) Act 1995**

*This section collects all the amendments from the draft Bill to show the cumulative effect on the Children (Scotland) Act 1995*

**Section 3**     *Provisions relating both to parental responsibilities and to parental rights*

...

(4) The fact that a person has parental responsibilities or parental rights in relation to a child shall not entitle that person to act in any way which would be incompatible with any court order relating to the child or the child's property, or with any supervision requirement made under section 70 of this Act [or an interim supervision requirement made under section 70A or 70B](#).

...

**Section 39**     *Constitution of Children's Hearings*

(1) For every local government area there shall be a children's panel for the purposes of this Act, and any other enactment conferring powers on a children's hearing (or on such a panel).

(2) Schedule 1 to this Act shall have effect with respect to the recruitment, appointment, training and expenses of members of a children's panel and the establishment of Children's Panel Advisory Committees and joint advisory committees.

~~—(3) Sittings of members of the children's panel (to be known as "children's hearings") shall be constituted from the panel in accordance with subsection (5) below.~~

(3) Sittings of members of children's panels (to be known as "children's hearings") are to be constituted as described in subsections (5) and (5A).

(4) A children's hearing shall be constituted for the performance of the functions given to such a hearing by or by virtue of—

- (a) this Act; or
- (b) any other enactment conferring powers on a children's hearing.

(5) A children's hearing shall consist of three members, one of whom shall act as chairman; and shall not consist solely of male, or solely of female, members.

(5A) At least one member of a children's hearing is to be a member of the panel for the area for which the hearing is constituted.

**Section 41**    *Safeguards for children*

(1) Subject to subsection (2) below, in any proceedings under this Chapter or Chapter 3 of this Part of this Act either at a children's hearing or before the sheriff, the hearing or, as the case may be, the sheriff—

(a) shall consider if it is necessary to appoint a person to safeguard the interests of the child in the proceedings; and

(b) if they, or he, so consider, shall make such an appointment, on such terms and conditions as appear appropriate.

(2) Subsection (1) above shall not apply in relation to proceedings under section 57 of this Act.

(3) Where a children's hearing make an appointment under subsection (1)(b) above, they shall state the reasons for their decision to make that appointment.

(4) The expenses of a person appointed under subsection (1) above shall—

(a) in so far as reasonably incurred by him in safeguarding the interests of the child in the proceedings, and

(b) except in so far as otherwise defrayed in terms of regulations made under section 101 of this Act,

be borne by the local authority—

(i) for whose area the ~~children's panel from which the relevant children's hearing has been constituted is formed;~~ relevant children's hearing was constituted

(ii) where there is no relevant children's hearing, within whose area the child resides.

(5) For the purposes of subsection (4) above, "relevant children's hearing" means, in the case of proceedings—

(a) at before a children's hearing, that hearing;

(b) under section 68 or 68ZA of this Act, the children's hearing who have directed the application;

(c) on an appeal under section 51 of this Act, the children's hearing whose decision is being appealed against.

**Section 41A** *Legal representatives*

(1) Where a children's hearing is to be arranged in pursuance of this Part, the Principal Reporter—

(a) must consider if it is necessary to appoint a person as the child's legal representative to enable the child to participate effectively at the hearing, and

(b) if the Reporter so considers, is to make the appointment for the hearing (and any continuation of it).

(2) However, where—

(a) a children's hearing is to be arranged as described in subsection (1), and

(b) it appears to the Reporter that the hearing are likely—

(i) in making a supervision requirement, to exercise a power mentioned in section 70(9A),

(ii) in making an interim supervision requirement, to exercise the power mentioned in section 70(9A)(b), or

(iii) in granting a warrant, to require that a child be kept in secure accommodation,

the Principal Reporter must appoint a person to act as the child's legal representative at the hearing (and any continuation of it).

(3) Where a children's hearing is arranged in pursuance of this Part, the hearing—

(a) must consider if it is necessary to appoint a person as the child's legal representative to enable the child to participate effectively at the hearing, and

(b) if they so consider, are to make the appointment for the hearing (and any continuation of it).

(4) However, where—

(a) a children's hearing has been arranged as described in subsection (3), and

(b) the hearing consider it is likely that they will—

(i) in making a supervision requirement, exercise a power mentioned in section 70(9A),

(ii) in making an interim supervision requirement, exercise the power mentioned in section 70(9A)(b), or

(iii) in granting a warrant, require that a child be kept in secure accommodation,

the hearing must appoint a person to act as the child's legal representative at the hearing (and any continuation of it).

(5) A legal representative need not be appointed under this section if the child is already legally represented for the purposes of the proceedings.

(6) The expenses of a legal representative appointed under this section (except in so far as otherwise defrayed in terms of regulations made under section 101) are, in so far as reasonably incurred by the person in acting as the child's legal representative, to be borne by the local authority for whose area the children's hearing to which the appointment relates is constituted.

(7) Appointment of a legal representative under this section is not precluded by (and does not preclude) appointment of a person under section 41(1)

**Section 42**     *Conduct of proceedings at and in connection with children's hearing*

(1) Subject to the following provisions of this Act, the Secretary of State may make rules for ~~constituting and arranging children's hearings and other meetings of members of the children's panel and for regulating their procedure~~ the purposes of and in connection with children's hearings.

(2) Without prejudice to the generality of subsection (1) above, rules under that subsection may make provision with respect to—

(za) constituting and arranging children's hearings and other meetings of members of the children's panel,

(zb) the regulation of procedure at such hearings and other meetings,

(a) the conduct of, and matters which shall or may be determined by, a business meeting arranged under section 64 of this Act;

(b) notification of the time and place of a children's hearing to the child and any relevant person in relation to the child and to such other persons as may be prescribed;

(c) how the grounds for referring the case to a children's hearing under section 65(1) of this Act are to be stated, and the right of the child and any such relevant person to dispute those grounds;

(d) the making available by the Principal Reporter, subject to such conditions as may be specified in the rules, of reports or information received by him to—

- (i) members of the children's hearing;
- (ii) the child concerned;
- (iii) any relevant person; and
- (iv) any other person or class of persons so specified;

(e) the procedure in relation to ~~the disposal of matters arising under section 41(1) of this Act~~ appointment of—

- (i) persons under section 41(1)
- (ii) legal representatives under section 41A,

(f) the functions of any person ~~appointed by a children's hearing under section 41(1) of this Act~~ referred to in paragraph (e) and any right of that person to information relating to the proceedings in question;

(g) the recording in writing of any statement given under section 41(3) of this Act;

(h) the right to appeal to the sheriff under section 51(1)(a) of this Act against a decision of the children's hearing and notification to such persons as may be prescribed of the proceedings before him;

(i) the right of the child and of any such relevant person to be represented at a children's hearing;

(j) the entitlement of the child, of any such relevant person and of any person who acts as the representative of the child or of any such relevant person to the refund of such expenses, incurred by the child or as the case may be the person or representative, as may be prescribed in connection with a children's hearing and with any proceedings arising from the hearing;

(k) persons whose presence shall be permitted at a children's hearing.

**Section 46A** *Disclosure of information*

(1) A children's hearing need not, at any time prior to their disposal of the case of a child, disclose to a person any information about the child, or about the child's case, if disclosure of that information to that person would be significantly against the interests of the child.

(2) Subsection (1) applies despite any requirement under an enactment or rule of law for the children's hearing—

(a) to give the person an explanation of what has taken place at proceedings before the hearing, or

(b) to provide the person with—

(i) information about the child or the child's case, or

(ii) reasons for a decision made by the hearing

**Section 51** *Appeal against decision of children's hearing or sheriff*

...

(5) Where the sheriff is satisfied that the decision of the children's hearing is not justified in all the circumstances of the case he shall allow the appeal, and—

(a) where the appeal is against a warrant to find and keep or, as the case may be, to keep a child in a place of safety, he shall recall the warrant;

(aa) where the appeal is against a warrant granted under section 63(5), 66(1) or 69(7)-

(i) without prejudice to paragraph (a), he shall recall the warrant, and

(ii) he may make an interim supervision requirement in its place,

(b) where the child is subject to a supervision requirement containing a movement restriction condition imposed ~~under~~ or by reference to subsection (3)(b) of section 70 of this Act or a condition imposed ~~under~~ or by reference to subsection (9) of that section of this Act, he shall direct that the condition shall cease to have effect; and

(c) in any case, he may, as he thinks fit—

(i) remit the case with reasons for his decision to the children's hearing for reconsideration of their decision; or

(ii) discharge the child from any further hearing or other proceedings in relation to the grounds for the referral of the case; or

(iii) substitute for the disposal by the children's hearing any requirement which could be imposed by them under to section 70, 70A or 70B of this Act.

(6) Where a sheriff imposes a requirement under subsection (5)(c)(iii) above, that requirement shall for the purposes of this Act, except of this section, be treated as a disposal by the children's hearing.

(7) Where the sheriff is satisfied that an appeal under subsection (1) above against the decision of a children's hearing arranged under section 73(8) of this Act is frivolous, he may order that no subsequent appeal against a decision to continue (whether with or without any variation) the supervision requirement in question shall lie until the expiration of twelve months beginning with the date of the order.

(8) An appeal under subsection (1) above in respect of the issue of a warrant by a children's hearing shall be disposed of within three days of the lodging of the appeal; and failing such disposal the warrant shall cease to have effect at the end of that period.

(8A) An appeal under subsection (1) in respect of the making of an interim supervision requirement is to be disposed of within 7 days of its being lodged, and, if the appeal is not so disposed of, the requirement ceases to have effect.

...

**Section 52**—*Children requiring compulsory measures of supervision*

~~—(1) The question of whether compulsory measures of supervision are necessary in respect of a child arises if at least one of the conditions mentioned in subsection (2) below is satisfied with respect to him.~~

~~—(2) The conditions referred to in subsection (1) above are that the child—~~

- ~~-(a) is beyond the control of any relevant person;~~
- ~~-(b) is falling into bad associations or is exposed to moral danger;~~
- ~~-(c) is likely—~~
  - ~~-(i) to suffer unnecessarily; or~~
  - ~~-(ii) be impaired seriously in his health or development, due to a lack of parental care;~~
- ~~-(d) is a child in respect of whom any of the offences mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (offences against children to which special provisions apply) has been committed;~~
- ~~-(e) is, or is likely to become, a member of the same household as a child in respect of whom any of the offences referred to in paragraph (d) above has been committed;~~
- ~~-(f) is, or is likely to become, a member of the same household as a person who has committed any of the offences referred in paragraph (d) above;~~
- ~~-(g) is, or is likely to become, a member of the same household as a person in respect of whom an offence under sections 1 to 3 of the Criminal Law (Consolidation)(Scotland) Act 1995 (incest and intercourse with a child by step parent or person in position of trust) has been committed by a member of that household;~~
- ~~-(h) has failed to attend school regularly without reasonable excuse;~~
- ~~-(i) has committed an offence;~~
- ~~-(j) has misused alcohol or any drug, whether or not a controlled drug within the meaning of the Misuse of Drugs Act 1971;~~
- ~~-(k) has misused a volatile substance by deliberately inhaling its vapour, other than for medicinal purposes;~~
- ~~-(l) is being provided with accommodation by a local authority under section 25, or is the subject of a parental responsibilities order obtained under section 86, of this Act and, in either case, his behaviour is such that special measures are necessary for his adequate supervision in his interest or the interest of others.~~
- ~~-(m) is a child to whom subsection (2A) below applies.~~

~~—(2A) This subsection applies to a child where—~~

- ~~———(a) a requirement is made of the Principal Reporter under section 12(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) (power of sheriff to require Principal Reporter to refer case to children's hearing) in respect of the child's case; and~~
- ~~———(b) the child is not subject to a supervision requirement.~~

~~—(3) In this Part of this Act, "supervision" in relation to compulsory measures of supervision may include measures taken for the protection, guidance, treatment or control of the child.~~

**Section 52A** *Grounds for referral*

- (1) For the purposes of this Part, any question arising in relation to a child as to whether there are grounds for referral is to be determined by reference to subsection (2).
- (2) Grounds for referral are constituted if (and only if) all of the following conditions are met as respects the child—

  - (a) there is a relevant situation (the “situational condition” for referral),
  - (b) the child has unmet needs with respect to well-being (the “needs condition” for referral),
  - (c) compulsory measures of supervision are necessary in relation to those needs (the “supervision condition” for referral).
- (3) In subsection (2)(b), reference to well-being is to be construed with particular regard to the things listed in section 1(4) of the Children’s Services (Scotland) Act 2007 (asp 00).
- (4) In this Part, reference to supervision, in relation to compulsory measures of supervision, includes (so far as appropriate) measures for the protection, guidance, treatment or control of the child.

**Section 52B** *Situational condition*

- (1) For the purposes of section 52A(2)(a), there is a relevant situation as respects a child if at least one of the factors mentioned in subsection (2) applies in the child's case.
- (2) The factors are that—
- (a) the child has committed an offence,
  - (b) the child has without reasonable excuse failed to attend school regularly,
  - (c) the child's behaviour has caused, is causing or is likely to cause—
    - (i) the child to come to harm,
    - (ii) an adverse effect on the child's health or safety, or
    - (iii) an adverse effect on the child's development,
  - (d) the child's behaviour has caused, is causing or is likely to cause—
    - (i) another person to come to harm,
    - (ii) an adverse affect on the health or safety of another person, or
    - (iii) an adverse affect on the development of another person,
  - (e) the way in which the child is cared for (in a domestic context) has caused, is causing or is likely to cause—
    - (i) the child to come to harm,
    - (ii) an adverse affect on the child's health or safety, or
    - (iii) an adverse affect on the child's development,
  - (f) the child has been abused, ill-treated or neglected,
  - (g) the child is, or is likely to become, a member of the same household as a child who has been abused, ill-treated or neglected,
  - (h) the child is a member of the same household as an adult person who is subject (in a domestic context) to abusive behaviour of a third party,
  - (i) the child—
    - (i) is, or is likely to become, a member of the same household as, or
    - (ii) has significant contact with,a person whose character is such that there is reason to believe that the person might abuse or harm the child.
- (3) For the purpose of subsection (2)(e), reference to care for the child includes support and guidance for, and supervision and control of, the child.
- (4) For the purpose of subsection (2)(f) and (g), the commission against a child or other person of an offence mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (c.46) is conclusive as to the fact that the child or (as the case may be) other person has suffered as described in that subsection.
- (5) For the purpose of subsection (2)(i), it is to be presumed from the commission by a person of an offence mentioned in Schedule 1 to the Criminal Procedure (Scotland)

Act 1995, or under sections 1 to 3 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39), that the person is of the character described in that subsection.

**Section 53** *Preliminary and investigatory measures*

(1) Where information is received by a local authority which suggests that ~~compulsory measures of supervision may be necessary~~ subsection (2C) applies in respect of a child, they shall—

- (a) cause inquiries to be made into the case unless they are satisfied that such inquiries are unnecessary; and
- (b) if it appears to them after such inquiries, or after being satisfied that such inquiries are unnecessary, that ~~such measures may be required~~ subsection (2D) applies in respect of the child, give to the Principal Reporter such information about the child as they have been able to discover.

~~(2) A person, other than a local authority, who has reasonable cause to believe that compulsory measures of supervision may be necessary in respect of a child—~~

- ~~(a) shall, if he is a constable, give to the Principal Reporter such information about the child as he has been able to discover;~~
- ~~(b) in any other case, may give the Principal Reporter that information.~~

(2) A person (apart from a local authority) who has reasonable cause to believe that subsection (2C) applies as respects a child may give to the Principal Reporter such information about the child as the person has been able to discover.

(2A) A relevant agency (apart from a local authority) which has reasonable cause to believe that subsection (2D) applies in respect of a child must give to the Principal Reporter such information about the child as the agency has been able to discover.

(2C) This subsection applies where there may be grounds for referral.

(2D) This subsection applies where—

- (a) the needs condition for referral is met, and
- (b) the situational and supervision conditions for referral may be met.

(3) A constable shall make any report required to be made under paragraph (b) of section 17(1) of the Police (Scotland) Act 1967 (duty to make reports in relation to commission of offences) in relation to a child to the Principal Reporter as well as to the appropriate prosecutor.

(4) Where an application has been made to the sheriff—

- (a) by the Principal Reporter in accordance with a direction given by a children's hearing under section 65(7) or (9) of this Act; or
- (b) by any person entitled to make an application under section 85 of this Act,

the Principal Reporter may request any prosecutor to supply him with any evidence lawfully obtained in the course of, and held by the prosecutor in connection with, the investigation of a crime or suspected crime, being evidence which may assist the sheriff in determining the application; and, subject to subsection (5) below, it shall be the duty of the prosecutor to comply with such a request.

(5) A prosecutor may refuse to comply with a request issued under subsection (4) above where he reasonably believes that it is necessary to retain the evidence for the purposes of any proceedings in respect of a crime, whether the proceedings have been commenced or are to be commenced by him.

(6) The Lord Advocate may direct that in any specified case or class of cases any evidence lawfully obtained in the course of an investigation of a crime or suspected crime shall be supplied, without the need for a request under subsection (4) above, to the Principal Reporter.

(7) In subsections (3), (4) and (5) above "crime" and "prosecutor" have the same meanings respectively given by section 307 of the Criminal Procedure (Scotland) Act 1995.

(8) In subsection (2A), reference to a relevant agency is to be construed in accordance with section 7 of the Children's Services (Scotland) Act 2007 (asp 00)

**Section 54** *Reference to the Principal Reporter by court*

(1) Where in any relevant proceedings it appears to the court that ~~any of the conditions in section 52(2)(a) to (h), (j), (k) or (l) of this Act is satisfied~~ subsection (1A) applies with respect to a child, it may refer the matter to the Principal Reporter, specifying the ~~condition~~ situational condition for referral with reference to the particular factors involved.

(1A) This subsection applies where-

(a) the situational condition for referral is met, and

(b) the needs and supervision conditions for referral may be met.

(2) In this section "relevant proceedings" means—

(a) an action for divorce or judicial separation or for declarator of marriage, nullity of marriage, parentage or non-parentage;

(aa) an action for dissolution or declarator of nullity of a civil partnership or separation of civil partners;

(b) proceedings relating to parental responsibilities or parental rights within the meaning of Part I of this Act;

(c) proceedings for an adoption order under the Adoption (Scotland) Act 1978 or for an order under section 18 of that Act declaring a child free for adoption; and

(d) proceedings for an offence against section 35 (failure by parent to secure regular attendance by his child at a public school), 41 (failure to comply with attendance order) or 42(3) (failure to permit examination of child) of the Education (Scotland) Act 1980.

(3) Where the court has referred a matter to the Principal Reporter under subsection (1) above, he shall—

(a) make such investigation as he thinks appropriate; and

(b) if he considers that ~~compulsory measures of supervision are necessary~~ there are grounds for referral,

arrange a children's hearing to consider the case of the child under section 69 of this Act; ~~and subsection (1) of that section shall apply as if the condition specified by the court under subsection (1) above were a ground of referral established in accordance with section 68 of this Act.~~

(4) And, for the purposes of the hearing, section 69(1) applies as if the situational condition for referral (as specified under subsection (1)) were established in accordance with section 68.

**Section 56** *Initial investigation by the Principal Reporter*

...

(6) Where it appears to the Principal Reporter that ~~compulsory measures of supervision are necessary~~ there are grounds for referral in respect of the child, he shall arrange a children's hearing to which he shall refer the case for consideration and determination.

(7) Where the Principal Reporter has arranged a children's hearing in accordance with subsection (6) above, he—

(a) shall, where he has not previously done so, request a report under subsection (2) above;

(b) may request from the local authority such information, supplementary or additional to a report requested under subsection (2) above, as he thinks fit;

and the local authority shall supply that report, or as the case may be information, and any other information which they consider to be relevant.

**Section 63** *Children arrested by the police*

(1) Where the Principal Reporter has been informed by a constable, in accordance with section 43(5) of the Criminal Procedure (Scotland) Act 1995, that charges are not to be proceeded with against a child who has been detained in a place of safety in accordance with that section, the Principal Reporter shall, unless ~~he considers that compulsory measures of supervision are not required in relation to the child~~ the child is released under subsection (3) or (3A), arrange a children's hearing to which he shall refer the case.

(2) A children's hearing arranged under subsection (1) above shall begin not later than the third day after the Principal Reporter received the information mentioned in that subsection.

(3) Where the Principal Reporter considers that a child of whose detention he has been informed does not require compulsory measures of supervision, he shall direct that the child shall no longer be kept in the place of safety.

(3A) Where, in relation to a child of whose detention the Principal Reporter has been informed, the Reporter considers that neither of the conditions mentioned in section 66(2) is met, the Reporter must direct that the child is no longer to be kept in the place of safety.

(4) Subject to subsection (3) and (3A) above, a child who has been detained in a place of safety may continue to be kept at that place until the commencement of a children's hearing arranged under subsection (1) above.

(5) Subject to subsection (6) below, a children's hearing arranged under subsection (1) above may—

- (a) if they are satisfied that the conditions mentioned in subsection (2) of section 66 of this Act are satisfied, grant a warrant to keep the child in a place of safety; and
- (b) direct the Principal Reporter to arrange a children's hearing for the purposes of section 65(1) of this Act,

and subsections (3) to (8) of the said section 66 shall apply to a warrant granted under this subsection as they apply to a warrant granted under subsection (1) of the said section 66.

(6) A child shall not be kept in a place of safety in accordance with a warrant granted under subsection (5) above where the Principal Reporter, having regard to the welfare of the child, considers that, whether as a result of a change in the circumstances of the case or of further information relating to the case having been received by the Principal Reporter—

- (a) the conditions mentioned in section 66(2) of this Act are no longer satisfied in relation to the child; or
- (b) the child is not in need of compulsory measures of supervision,

and where he does so consider he shall give notice to that effect to the person who is keeping the child in that place in accordance with the warrant.

**Section 65** *Referral to, and disposal of case by, children's hearing*

~~(1) The Principal Reporter shall refer to the children's hearing, for consideration and determination on the merits, the case of any child in respect of whom he is satisfied that—~~

~~(a) compulsory measures of supervision are necessary, and~~

~~(b) at least one of the grounds specified in section 52(2) of this Act is established;~~

~~and he shall state such grounds in accordance with rules made under section 42(1) of this Act by virtue of subsection (2)(c) of that section.~~

(1) The Principal Reporter is to refer to a children's hearing the case of any child in respect of whom the Reporter is satisfied that there are grounds for referral.

(1ZA) Subsection (1) is without prejudice to a requirement to refer the child's case to a children's hearing arising by virtue of—

(a) another provision of this Act, or

(b) section 12(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8).

(1ZB) The purpose of referral under subsection (1) is for the case to be considered and determined on its merits.

(1ZC) On referral under subsection (1), the Principal Reporter must—

(a) state the situational condition for referral with reference to—

(i) the particular factors involved, and

(ii) the facts or circumstances giving rise to those factors, and

(b) do so as required by any rules made by virtue of section 42(2)(c).

~~(1A) Where the Principal Reporter is satisfied that the ground specified in section 52(2)(m) of this Act is established in respect of any child, he shall be taken to be satisfied as to the matter mentioned in section 65(1)(a) in respect of the child.~~

(2) Where a referral is made in respect of a child who is subject to a child protection order made under section 57, and that order is continued under section 59(4) or 60(12)(d), of this Act, the Principal Reporter shall arrange for the children's hearing under subsection (1) above to take place on the eighth working day after the order was implemented.

(3) Where a referral is made in respect of a child who is subject to a supervision requirement, the children's hearing shall, before disposing of the referral in accordance with section 69(1)(b) or (c) of this Act, review that requirement in accordance with subsections (9) to (12) of section 73 of this Act.

(4) Subject to subsections (9) and (10) below, it shall be the duty of the chairman of the children's hearing to whom a child's case has been referred under subsection (1) above to explain to the child and the relevant person, at the opening of proceedings on the referral, the ~~grounds stated by the Principal Reporter~~ situational condition for the referral in order to ascertain whether ~~these grounds are~~ that condition is accepted in whole or in part by them.

(5) Where the chairman has given the explanation required by subsection (4) above and the

child and the relevant person accept the ~~grounds~~ situational condition for the referral, the children's hearing shall proceed in accordance with section 69 of this Act.

(6) Where the chairman has given the explanation required by subsection (4) above and the child and the relevant person accept the ~~grounds~~ situational condition in part, the children's hearing may, if they consider it appropriate to do so, proceed in accordance with section 69 of this Act with respect to ~~those grounds which are~~ that condition in so far as accepted.

(7) Where the chairman has given the explanation required under subsection (4) above and either or both of the child and the relevant person—

- (a) do not accept the ~~grounds~~ situational condition for the referral; or
- (b) accept ~~the grounds~~ that condition in part, but the children's hearing do not consider it appropriate to proceed with the case under subsection (6) above,

the hearing shall either direct the Principal Reporter to make an application to the sheriff for a finding as to whether such ~~grounds for the referral as are not accepted by the child and the relevant person are~~ that condition (in so far as not accepted by the child and relevant person) is established or shall discharge the referral.

(8) Subject to subsection (10) below, it shall be the duty of the chairman to explain to the child and to the relevant person the purpose for which the application to the sheriff is being made and to inform the child that he is under an obligation to attend the hearing before the sheriff.

(9) Where a children's hearing are satisfied that the child—

- (a) for any reason will not be capable of understanding the explanation of the ~~grounds~~ situational condition for the referral required under subsection (4) above; or
- (b) has not understood an explanation given under that subsection,

they shall either direct the Principal Reporter to make an application to the sheriff for a finding as to whether ~~any of the grounds of the referral are~~ that condition is established or discharge the referral.

(10) The acceptance by the relevant person of the ~~grounds of~~ situational condition for the referral shall not be a requirement for a children's hearing proceeding under this section to consider a case where that person is not present.

(11) Reference to the situational condition for referral-

- (a) in the section, or
- (b) in section 68 or 68ZA

means that condition as stated in accordance with subsection (1ZC)

**Section 66** *Warrant to keep child where children's hearing unable to dispose of case*

(1) Without prejudice to any other power enjoyed by them under this Part of this Act and subject to subsection (5) below, a children's hearing—

- (a) arranged to consider a child's case under this Part of this Act; and
- (b) unable to dispose of the case,

may, if they are satisfied that one of the conditions mentioned in subsection (2) below is met, grant a warrant under this subsection.

(2) The conditions referred to in subsection (1) above are—

(a) that there is reason to believe that the child may—

- (i) not attend at any hearing of his case; ~~or~~
- ~~(ii) fail to comply with a requirement under section 69(3) of this Act; or~~

(b) that it is necessary that the child should be kept in a place of safety in order to safeguard or promote his welfare.

(3) A warrant under subsection (1) above may require any person named in the warrant—

~~(a) to find and to keep or, as the case may be, to keep the child in a place of safety for a period not exceeding twenty-two days after the warrant is granted;~~

(a) to find the child,

(aa) to remove the child to a place of safety,

(ab) to keep or (as the case may be) continue to keep the child in a place of safety for a period not exceeding 22 days after the warrant is granted,

(b) to bring the child before a children's hearing at such times as may be specified in the warrant.

(4) A warrant under subsection (1) above may contain such conditions as appear to the children's hearing to be necessary or expedient, and without prejudice to that generality may—

- (a) subject to section 90 of this Act, require the child to submit to any medical or other examination or treatment; and
- (b) regulate the contact with the child of any specified person or class of persons.

(5) Subject to subsection (8) below, at any time prior to ~~its expiry, a warrant granted under this section may, on an application to the children's hearing, on cause shown by the Principal Reporter, be continued in force, whether with or without variation of any conditions imposed by virtue of subsection (4) above, by the children's hearing for such further period, not exceeding twenty-two days, as appears to them to be necessary.~~ The expiry of a warrant granted under subsection (1), the children's hearing may grant a fresh warrant under subsection (1) (whether or not with the same conditions as previously imposed under subsection (4)).

(6) Where a children's hearing are satisfied –

- (a) that one of the conditions mentioned in section 70(10) of this Act is met; and
- (b) that it is necessary to do so,

~~they~~ [a warrant under subsection \(1\)](#) may order that, pending the disposal of his case, the child shall be liable to be placed and kept in secure accommodation within a residential establishment at such times as the person in charge of that establishment, with the agreement of the chief social work officer of the relevant local authority, considers necessary.

(7) Where a children's hearing grant a warrant under subsection (1) above ~~or continue such a warrant under subsection (5) above~~, they may order that the place of safety at which the child is to be kept shall not be disclosed to any person or class of persons specified in the order.

(8) A child shall not be kept in a place of safety or secure accommodation by virtue of this section for a period exceeding sixty-six days from the day when he was first taken to a place of safety under a warrant granted under subsection (1) above.

**Section 67** *Warrant for further detention of child*

(A1) Subsection (1) applies where—

(a) a child is being kept in a place of safety by virtue of a warrant granted under section 66(1) or subsection (1), and

(b) either—

(i) the children's hearing are unable to dispose of the child's case pending the making of an application to the sheriff under section 65(7) or (9), or pending the determination of such an application, or

(ii) such an application having been determined, the case is to be considered at a subsequent children's hearing arranged (or to be arranged) by virtue of the remittal of the case to the Principal Reporter under section 68(10).

(1) ~~Where a child is being kept in a place of safety by virtue of a warrant granted under section 66 of this Act or under this subsection~~ Where this subsection applies, the Principal Reporter at any time prior to the expiry of that warrant may apply to the sheriff for a warrant to keep the child in that place after the warrant granted under the said section 66 or, as the case may be, this subsection has expired.

(2) A warrant under subsection (1) above shall only be granted on cause shown and—

(a) shall ~~specify the date on which it will expire~~ expire on the earlier of-

(i) the date specified for the purpose in the warrant,

(ii) the date of the subsequent children's hearing arranged by virtue of the remittal mentioned in subsection (A1)(b)(ii); and

(b) may contain any such requirement or condition as may be contained in a warrant granted under the said section 66.

(3) Where the sheriff grants a warrant under subsection (1) above, he may also make an order under this subsection in such terms as are mentioned in subsection (6) or (7) of the said section 66; and any order under this subsection shall cease to have effect when the warrant expires.

(4) An application under subsection (1) above may be made at the same time as, or ~~during~~ at the diet fixed for the hearing of, an application which the Principal Reporter has been directed by a children's hearing to make under section 65(7) or (9) of this Act.

**Section 68** *Application to sheriff to establish grounds of referral*

(1) This section applies to applications under subsections (7) and (9) of section 65 of this Act and a reference in this section (except in subsection (8)) to "an application" is a reference to an application under either of those subsections.

(2) An application shall be heard by the sheriff within twenty-eight days of its being lodged.

(3) Where ~~one of the grounds for the referral to which an application relates is the condition referred to in section 52(2)(i)~~ in an application the situational condition for the referral concerns the factor mentioned in section 52B(2)(a) —

(a) the application shall be made to the sheriff who would have jurisdiction if the child were being prosecuted for that offence; and

(b) in hearing the application in relation to that ~~ground~~ factor, the standard of proof required in criminal proceedings shall apply.

(4) A child shall—

(a) have the right to attend the hearing of an application; and

(b) subject to subsection (5) below, be under an obligation to attend such hearing;

and without prejudice to the right of each of them to be legally represented, the child and the relevant person may be represented by a person other than a legally qualified person at any diet fixed by the sheriff for the hearing of the application.

(5) Without prejudice to subsection (4)(a) above, the sheriff may dispense with the obligation imposed by subsection (4)(b) above where he is satisfied—

(a) in an application in which the ~~ground of referral to be established is a condition mentioned in section 52(2)(d), (e), (f) or (g) of this Act~~ situational condition for referral concerns the factor mentioned in section 52B(2)(f), (g) or (i), that the obligation to attend of the child is not necessary for the just hearing of that application; and

(b) in any application, that it would be detrimental to the interests of the child for him to be present at the hearing of the application.

(6) Where the child fails to attend the hearing of an application at which his obligation to attend has not been dispensed with under subsection (5) above, the sheriff may grant an order to find and keep the child; and any order under this subsection shall be authority for bringing the child before the sheriff and, subject to subsection (7) below, for keeping him in a place of safety until the sheriff can hear the application.

(7) The child shall not be kept in a place of safety by virtue of subsection (6) above after whichever is the earlier of—

(a) the expiry of fourteen days beginning with the day on which the child is found; or

(b) the disposal of the application by the sheriff.

(8) Where in the course of the hearing of an application—

(a) under section 65(7) of this Act, the child and the relevant person accept any ~~of the grounds~~ particular factor relevant to the situational condition for referral to which the application relates, the sheriff shall; or

(b) under section 65(9) of this Act, the relevant person accepts any ~~of the grounds for referral to which the application relates~~ such factor, the sheriff may, if it appears to him reasonable to do so,

dispense with the hearing of evidence relating to that ~~ground and deem the ground~~ factor and deem that condition (in so far as concerning that factor) to be established for the purposes of the application, unless he is satisfied that, in all the circumstances of the case, the evidence should be heard.

(9) Where a sheriff decides that none of the ~~grounds~~ factors relevant to the situational condition for referral in respect of which an application has been made are established, he shall dismiss the application, discharge the referral to the children's hearing in respect of ~~those grounds~~ that condition (in so far as concerning those factors) and recall, discharge or cancel any order, warrant, or direction under this Chapter of this Act which relates to the child in respect of ~~those grounds~~ that condition (in so far as concerning those factors).

(10) Where the sheriff, after the hearing of any evidence or on acceptance in accordance with subsection (8) above, finds that ~~any of the grounds for the referral~~ the situational condition for the referral (in so far as concerning any particular factor) to which the application relates is, or should be deemed to be, established—

(a) he shall remit the case to the Principal Reporter to make arrangements for a children's hearing to consider and determine the case; and

(b) he may if he is satisfied that—

(i) keeping the child in a place of safety is necessary in the child's best interests; or

(ii) there is reason to believe that the child will run away before the children's hearing sit to consider the case,

issue an order requiring, subject to subsection (12) below, that the child be kept in a place of safety until the children's hearing so sit.

(11) An order issued under subsection (10) above may, if the sheriff is satisfied-

(a) that one of the conditions mentioned in section 70(10) of this Act is met; and

(b) that it is necessary for the order to do so,

provide that the child shall be liable to be placed and kept in secure accommodation within a residential establishment at such times as the person in charge of the establishment, with the agreement of the chief social work officer of the relevant local authority, considers necessary.

(12) A child shall not be kept in a place of safety by virtue of subsection (10)(b) above after whichever is the earlier of the following—

(a) the expiry of three days beginning with the day on which he is first so kept; or

(b) the consideration of his case by the children's hearing arranged under subsection (10)(a) above.

(13) This section is subject to section 68ZA.

Section 68ZA Expedited procedure to establish grounds of referral

- (1) This section applies to an application under subsection (9) of section 65 if, at a children’s hearing, the relevant person (that is, the relevant person referred to in subsection (4) of that section) has accepted the situational condition for referral.
- (2) The sheriff may determine the application (and deem the situational condition for referral to be established) without a hearing being held for the purpose.
- (3) But a hearing on the application is to be held in the circumstances referred to in subsections (4) to (6).
- (4) The circumstances are that, in considering the application, it appears to the sheriff that it is unlikely that he will find or deem the situational condition for referral to be established.
- (5) The circumstances are that—
  - (a) the child, the relevant person or the Principal Reporter requests that a hearing on the application be held, and
  - (b) the sheriff is satisfied that it is necessary or expedient to hold such a hearing.
- (6) The circumstances are that, in any case, the sheriff is of the opinion that it is not appropriate to determine the application without a hearing being held for the purpose.
- (7) Where a hearing on the application is held under subsection (3), the sheriff may—
  - (a) dispense with the hearing of evidence relating to the situational condition, and
  - (b) deem that condition to be established for the purposes of the application, unless the sheriff is satisfied that, in all the circumstances of the case, the evidence should be heard.
- (8) Where this section applies, the application is to be—
  - (a) where there is not to be a hearing, determined by the sheriff within 7 days of its being lodged,
  - (b) where there is to be a hearing, heard by the sheriff within 28 days of its being lodged.
- (9) The provisions of section 68(3) to (7) and (9) to (12) apply in relation to an application to which this section applies as they apply in relation to an application to which section 68 applies.
- (10) For the purpose of application by subsection (9), the words “, after the hearing of any evidence or on acceptance in accordance with subsection (8) above,” where occurring in section 68(10) are to be disregarded.

**Section 69** *Continuation or disposal of referral by children's hearing*

(1) Where the grounds ~~of~~ for referral of the child's case stated by the Principal Reporter are accepted or are established in accordance with section 68 or 68ZA or section 85 of this Act, the children's hearing shall consider those grounds, any report obtained under section 56(7) of this Act and any other relevant information available to them and shall—

(a) continue the case to a subsequent hearing in accordance with subsection (2) below;

(aa) continue the case to a subsequent hearing in accordance with subsection (2A),

(b) discharge the referral of the case in accordance with subsection (12) below; or

(c) make a supervision requirement under section 70 of this Act.

(2) The children's hearing may continue the case to a subsequent hearing under this subsection where they are satisfied that, in order to complete their consideration of the case, it is necessary to have a further investigation of the case.

(2A) The children's hearing may continue the case to a subsequent hearing under the subsection if there is another reason for their being unable to dispose of the case.

(3) Where a children's hearing continue the case under subsection (2) above, they may, for the purposes of the investigation mentioned by that subsection, require the child to attend, or reside at, any clinic, hospital or other establishment during a period not exceeding twenty-two days.

~~(4) Where a child fails to fulfil a requirement made under subsection (3) above, the children's hearing may, either on an application by the Principal Reporter or of their own motion, grant a warrant under this subsection.~~

(4) Where-

(a) there is reason to believe that a child may not comply with a requirement made under subsection (3), or

(b) a child has failed to comply with such a requirement,

a children's hearing may grant a warrant under this subsection.

(5) A warrant under subsection (4) above shall be authority—

(a) to find the child;

(b) to remove the child to a place of safety and keep him there; ~~and~~

(c) where the place of safety is not the clinic, hospital or other establishment referred to in the requirement made under subsection (3) above, to take the child from the place of safety to such clinic, hospital or other establishment for the purposes of the investigation mentioned in subsection (2) above.

(d) to bring the child before a children's hearing at such times as may be specified in the warrant.

(6) A warrant under subsection (4) above shall be granted for such period as appears to the children's hearing to be appropriate, provided that no warrant shall permit the keeping of a child in a place of safety after whichever is the earlier of—

- (a) the expiry of twenty-two days after the warrant is granted; or
- (b) the day on which the subsequent hearing of the child's case by a children's hearing begins.

(7) Where a child's case has been continued under subsection (2) or (2A) above and the children's hearing are satisfied that—

- (a) keeping the child in a place of safety is necessary in the interests of safeguarding or promoting the welfare of the child; or
- (b) there is reason to believe that the child may not attend the subsequent hearing of his case,

they may grant a warrant ~~requiring that the child be taken to and kept in a place of safety under this subsection.~~

(7A) A warrant under subsection (7) is authority-

- (a) to find the child,
- (b) to remove the child to a place of safety and keep the child there,
- (c) to bring the child before a children's hearing at such times as may be specified in the warrant.

(8) A warrant under subsection (7) above shall cease to have effect on whichever is the earlier of—

- (a) the expiry of twenty-two days after the warrant is granted; or
- (b) the day on which the subsequent hearing of the child's case by a children's hearing begins.

(9) A warrant under subsection (4) or (7) above may contain such conditions as appear to the children's hearing to be necessary or expedient, and without prejudice to that generality may—

- (a) subject to section 90 of this Act, require the child to submit to any medical or other examination or treatment;
- (b) regulate the contact with the child of any specified person or class of persons.

(9A) A children's hearing may, at any time prior to the expiry of a warrant granted under subsection (4) or (7), make a fresh warrant under that subsection (whether or not with the same conditions as previously imposed).

(10) Where a child is to be kept at a place of safety under a warrant granted under this section or is to attend, or reside at, any place in accordance with a requirement made under subsection (3) above, the children's hearing may order that such place shall not be disclosed to any person or class of persons specified in the order.

(11) Where a child is to reside in a residential establishment by virtue of a requirement made or warrant granted under this section, the children's hearing may, if satisfied –

(a) that one of the conditions mentioned in section 70(10) of this Act is met; and

(b) that it is necessary to do so,

order that while the requirement or warrant remains in effect he shall be liable to be placed in secure accommodation within that establishment at such times as the person in charge of the establishment, with the agreement of the chief social work officer of the relevant local authority, considers necessary.

(12) Where a children's hearing decide not to make a supervision requirement under section 70 of this Act they shall discharge the referral.

(13) On the discharge of the referral of the child's case any order, direction, or warrant under Chapter 2, or this Chapter, of this Act in respect of the child's case shall cease to have effect.

**Section 70** *Disposal of referral by children's hearing: supervision requirements, including residence in secure accommodation.*

...

(7) A children's hearing who make a supervision requirement may determine that the requirement shall be reviewed at such time during the duration of the requirement as they determine.

(7A) Where, on a review under subsection (7) above, it appears to the children's hearing that the relevant local authority are in breach of a duty imposed on them under section 71 of this Act, the hearing may direct the Principal Reporter to give the authority notice of an intended application under section 71A(2) of this Act.

(7B) The Principal Reporter shall, at the same time as giving the notice of an intended application under section 71A(2) of this Act, send a copy of the notice to-

- (a) the child to whom the duty referred to in subsection (7A) above relates;
- (b) any person who, in relation to the child, is a relevant person;
- (c) any person appointed under section 41 ~~of this Act to safeguard the interests of the child in~~ or any legal representative appointed under section 41A, in relation to any proceedings which are taking place when the notice is given.

(7C) Notice of an intended application under section 71A(2) of this Act is written notice-

- (a) setting out the respects in which the relevant local authority are in breach of the duty imposed on them under section 71 of this Act; and
- (b) stating that if the authority do not comply with that duty within the period of 21 days beginning with the day on which they received the note, the Principal Reporter may make an application 71A(2) of this Act.

(7D) Where a children's hearing have made a direction under subsection (7A) above, they shall determine that a further review under subsection (7) above take place on or as soon as is reasonably practicable after the expiry of the period of 28 days beginning with the day on which notice was given in pursuance of that direction.

(7E) Where on a further review under subsection (7) above which takes place by virtue of subsection (7D) above, it appears to the children's hearing that the relevant local authority continues to be in the breach of the duty referred to in subsection (7A) above, the hearing may authorise the Principal Reporter to make an application under section 71A(2) of this Act.

...

(9) A children's hearing may exercise a power mentioned in subsection (9A) below in relation to a child if they are satisfied-

- (a) that one of the conditions mentioned in subsection (10) below is met; and
- (b) that it is necessary to exercise the power concerned

(9A) The powers are-

(a) that the children's hearing may specify in the supervision requirement that the child shall be liable to be placed and kept in secure accommodation in a residential establishment specified, under subsection (3)(a) above, in the requirement, ~~during such period as the person in charge of that establishment, with the agreement of the chief social work officer of the relevant local authority, considers necessary~~; and

(b) that the children's hearing may impose, under subsection (3)(b) above, a movement restriction condition.

(10) The conditions are—

(a) that the child, having previously absconded, is likely to abscond and, if he absconds, it is likely that his physical, mental or moral welfare will be at risk; and

(b) is likely to injure himself or some other person.

Section 70A Interim supervision requirements

- (1) Subsection (2) applies to a children's hearing arranged to consider a child's case under a provision of this Part except section 59(2).
- (2) Without prejudice to any other power enjoyed by them under this Part, the children's hearing may make an interim supervision requirement in respect of a child if they are satisfied that the conditions mentioned in subsection (3) are met.
- (3) Those conditions are that the children's hearing are—
  - (a) unable to dispose of the case, and
  - (b) satisfied that compulsory measures of supervision are, pending their disposal of the case, necessary in the interests of safeguarding or promoting the child's welfare.
- (4) An interim supervision requirement may not be made at a children's hearing arranged under section 63(1) unless—
  - (a) the Principal Reporter has stated the situational condition for referral, and
  - (b) the chairman of the hearing has explained that condition to—
    - (i) the child, and
    - (ii) in relation to the child, any relevant person present.
- (5) An interim supervision requirement under subsection (2) is to be made for a period not exceeding 22 days.
- (6) A children's hearing may, at any time prior to the expiry of an interim supervision requirement made under subsection (2), make a fresh interim supervision requirement under that subsection (whether or not with the same conditions as previously imposed).
- (7) But, where—
  - (a) the children's hearing are unable to dispose of a child's case pending the making of an application to the sheriff under section 65(7) or (9), or pending the determination of such an application, or
  - (b) such an application having been determined, the case is to be considered at a subsequent children's hearing arranged (or to be arranged) by virtue of the remittal of the case to the Principal Reporter under section 68(10),

the child must not be made subject to interim supervision requirements under subsection (2) for a period exceeding 66 days.
- (8) In computing a 66 day limit applying in relation to—
  - (a) an interim supervision requirement, or
  - (b) a warrant granted under this Part,

a period during which a child was subject to one of those things is also to be counted as if a period during which the child was subject to the other of them.
- (9) The provisions of section 70, except—
  - (a) subsection (1),

(b) subsections (3A) and (3B),

(c) subsections (7) to (7E),

(d) subsection (9A)(a),

apply in relation to an interim supervision requirement as they apply in relation to a supervision requirement.

(10) A requirement included in an interim supervision requirement by reference to section 70(3)(a) may not provide that a child reside otherwise than with a person who is, in relation to the child, a relevant person.

(11) Reference in—

(a) section 3(4),

(b) section 16(4)(a)(i),

(c) section 17(6)(b),

(d) section 51(5)(b),

(e) section 71,

(f) section 73(1) and (3),

(g) sections 74, 75A, and 82,

to a supervision requirement includes reference to an interim supervision requirement.

**Section 70B** *Application to sheriff for further interim supervision requirement*

(1) Subsection (2) applies where either—

(a) the children’s hearing are unable to dispose of a child’s case pending the making of an application to the sheriff under section 65(7) or (9), or pending the determination of such an application, or

(b) such an application having been determined, the case is to be considered at a subsequent children’s hearing arranged (or to be arranged) by virtue of the remittal of the case to the Principal Reporter under section 68(10).

(2) Where this subsection applies, the Principal Reporter may, at any time prior to the expiry of an interim supervision requirement made under section 70A(2) or this subsection, apply to the sheriff for a further interim supervision requirement to be made in respect of the child.

(3) An interim supervision requirement under subsection (2) may only be made on cause shown and—

(a) shall expire on the earlier of—

(i) the date specified for the purpose in the interim supervision requirement, or

(ii) the date of the subsequent children’s hearing arranged by virtue of the remittal mentioned in subsection (1)(b), and

(b) may contain any conditions as may be contained in an interim supervision requirement made under section 70A(2) (whether or not the same conditions as previously imposed).

(4) An application under subsection (2) may be made at the same time as, or at the diet fixed for, the hearing of an application which the Principal Reporter has been directed by a children’s hearing to make under section 65(7) or (9).

**Section 71B** *Duties of other agencies with respect to supervision requirements*

(1) A children's hearing—

(a) may impose on any relevant agency the duty, as respects a child subject to a supervision requirement, of giving effect to the requirement in such regards as the hearing considers appropriate,

(b) for the purpose of enabling a child to comply with a supervision requirement, may impose other duties on any relevant agency.

(2) Duties imposed under subsection (1)—

(a) must be specified in the supervision requirement, and

(b) are restricted to that of securing or facilitating the provision for the child of services of a kind normally provided by the relevant agency.

(3) Where a children's hearing impose duties on a relevant agency under subsection (1), they must review that imposition of duties if the agency so requests.

(4) Where (on information received from the Principal Reporter or otherwise) it appears to a children's hearing that a relevant agency is in breach of a duty imposed on it under subsection (1), the hearing may direct the Reporter to give the agency notice under subsection (5).

(5) Notice under this subsection is written notice which—

(a) sets out the breach of the duty,

(b) states that, if the agency does not comply with the duty within the period of 21 days of beginning with the day on which it received the notice, an application may be made under subsection (7).

(6) Where at the end of that period it appears to the children's hearing that the agency continues to be in breach of the duty, the hearing may authorise the Principal Reporter to make an application under subsection (7).

(7) An application under this subsection is a summary application by the Principal Reporter, with that authority, for an order under subsection (9).

(8) In deciding whether to make an application under subsection (7), the Principal Reporter is to take no account of any factor relating to the adequacy of the means available to the relevant agency to enable it to comply with the duty.

(9) On an application under subsection (7), the sheriff principal may order a relevant agency which is in breach of a duty imposed on it under section (1) to comply with the duty to such extent as the sheriff principal determines.

(10) An order under subsection (9) is final.

(11) In this section, reference to a relevant agency—

(a) excludes a local authority,

(b) otherwise, is to be construed in accordance with section 7 of the Children's Services (Scotland) Act 2007 (asp 00)

**Section 85**    *Application for review of establishment of grounds of referral*

(1) Subject to subsections (3) and (4) below, where subsection (2) below applies an application may be made to the sheriff for a review of a finding ~~such as is mentioned in section 68(10)~~ made by the sheriff under section 68 or 68ZA of this Act.

...

## Section 93 Interpretation of Part II

(1) In this part of this Act, unless the context otherwise requires, --

...

“interim supervision requirement” is such a requirement made under section 70A(2) or 70B(2), and includes any condition contained in the requirement or related to it,

...

"relevant local authority", in relation to a child who is subject to a warrant granted under this Part of this Act or to a supervision requirement, means the local authority for whose area the children's ~~panel from which the children's hearing which granted the warrant or imposed the supervision requirement was formed;~~ hearing which granted the warrant or imposed the supervision requirement was constituted;

...

**Section 101** *Panel for curators ad litem, reporting officers and safeguarders*

(1) The Secretary of State may by regulations make provision for the establishment of a panel of persons from whom—

(a) a panel of persons from which curators *ad litem* may be appointed under section 58 of the Adoption (Scotland) Act 1978 or under section 87(4) of this Act;

(b) a panel of persons from which reporting officers may be appointed under those sections; ~~and~~

(c) a panel of persons from which appointments may be made under section 41(1) of this Act, and

(d) a panel of persons from which legal representatives may be appointed under section 41A.

(2) Regulations under subsection (1) above may provide, without prejudice to generality of that subsection—

(a) for the appointment, qualifications and training of persons who may be appointed to those panels; and

(b) for the management and organisation of persons available for appointment from those panels.

(3) Regulations under subsection (1) above may provide –

(a) for the defrayment by local authorities of expenses incurred by members of any panel established by virtue of that subsection; and

(b) for the payment by local authorities of fees and allowances for such members.

(4) Paragraphs 9 and 10(b) of Schedule 1 to this Act shall apply in relation to any panel established by virtue of subsection (1)(c) or (d) above as they apply in relation to children's panels

## **SCHEDULE 1 Children's Panels**

### *Appointment*

1. The Secretary of State shall, for each local government area, appoint such number of members of children's panels as he considers appropriate and from among that number appoint a chairman and a deputy chairman.

1A. Appointment as a member of the children's panel for an area makes the member eligible to be a member of a children's hearing constituted for any area.

2. A member of a children's panel shall hold office for such period as is specified by the Secretary of State, but may be removed from office by the Secretary of State at any time.

### *Children's Panel Advisory Committees*

3. Subject to paragraph 8 below, each local authority shall form a body (to be known as a "Children's Panel Advisory Committee" ) consisting of two members nominated by the local authority and three members nominated by the Secretary of State.

4. The Secretary of State may at the request of the local authority provide for an increase in the membership of the Children's Panel Advisory Committee appointed under paragraph 3 above by such number, not exceeding five, of additional members as the authority specify in relation to their request, the additional members to be nominated as follows—

- (a) the first, and any second or fourth additional member, by the Secretary of State;
- (b) any third or fifth additional member, by the local authority

5. The chairman of the Children's Panel Advisory Committee shall be appointed by the Secretary of State from among such of the members he has nominated ~~as are resident in the local government area for which the panel is appointed.~~

6. It shall be the duty of the Children's Panel Advisory Committee—

- (a) to submit names of possible panel members to the Secretary of State;
- (b) to advise the Secretary of State, in so far as he requires advice, on the suitability of persons referred to him as potential panel members; and
- (c) to advise the Secretary of State on such matters relating to the general administration of the panels as he may refer to them.

7. The Children's Panel Advisory Committee shall have power—

- (a) to appoint sub-committees;
- (b) to appoint to any such sub-committee a person who is not a member of the Children's Panel Advisory Committee; and
- (c) to refer all or any of the duties set out in paragraph 6 above to any such sub-committee for their advice.

...

### *Publication of list of members of children's panel*

**12. - (1)** Each local authority shall publish a list of names and addresses of members of the children's panel for their area, and that list shall be open for public inspection at the principal offices of the local authority, and at any place where an electors list for the local government area is available for inspection.

(2) That list may include the name and address of any member of any other children's panel who has been a member, or is likely to be a member, of a children's hearing for the area to which that list relates.

## B: COLLECTED AMENDMENTS TO OTHER LEGISLATION

*This section collects all the amendments from the draft Bill to show the cumulative effect on other legislation.*

The Local Government etc. (Scotland) Act 1994 schedule 12 paragraph 3 is proposed to be amended as follows:

### *Membership*

3. - (1) The members of the Administration shall be not fewer than five, nor more than eight, persons ~~one of whom shall be the Principal Reporter; the others~~ who shall be appointed by the Secretary of State under this paragraph.

(2) The persons appointed under this paragraph to be members of the Administration shall be persons appearing to the Secretary of State to have knowledge or experience relevant to the general purpose of the Administration or to the functions of the Principal Reporter.

(3) The Secretary of State may, by order, substitute another number for that specified in sub-paragraph (1) above as the maximum number of members of the Administration.

(4) An order under sub-paragraph (3) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

The Criminal Procedure (Scotland) Act 1995 is proposed to be amended as follows:

### *Power to refer certain children to reporter*

48.—(1) A court by or before which a person is convicted of having committed an offence to which this section applies may refer—

(a) a child in respect of whom an offence mentioned in paragraph (a) or (b) of subsection (2) below has been committed; or

(b) any child who is, or who is likely to become, a member of the same household as the person who has committed an offence mentioned in paragraph (b) or (c) of that subsection or the person in respect of whom the offence so mentioned was committed,

to the Principal Reporter, ~~and certify that the offence shall be a ground established for the purposes of Chapter 3 of Part II of the [1995 c. 36.] Children (Scotland) Act 1995.~~

(1A) Where the court refers a child to the Reporter under subsection (1), it may certify that a situational condition for referral is established (as respects the relevant factor mentioned in section 52B(2) of the Children (Scotland) Act 1995 (c.36) for the purposes of Chapter 3 of Part II of that Act.

(2) This section applies to an offence—

- (a) under section 21 of the [1937 c. 37.] Children and Young Persons (Scotland) Act 1937;
- (b) mentioned in Schedule 1 to this Act; or
- (c) in respect of a person aged 17 years or over which constitutes the crime of incest

The Antisocial Behaviour etc. (Scotland) Act 2004 is proposed to be amended as follows:

## 12 Sheriff's power to refer case to children's hearing

(1) Where the sheriff makes an antisocial behaviour order or an interim order in respect of a child, the sheriff may require the Principal Reporter to refer the child's case to a children's hearing.

(2) The Children (Scotland) Act 1995 (c.36) shall be amended in accordance with subsections (3) to (5).

~~(3) After paragraph (1) of section 52(2) (children requiring compulsory measures of supervision) there shall be inserted-~~

~~"(m) is a child to whom subsection (2A) below applies.~~

~~— (2A) This subsection applies to a child where-~~

~~— (a) a requirement is made of the Principal Reporter under section 12(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) (power of sheriff to require Principal Reporter to refer case to children's hearing) in respect of the child's case; and~~

~~— (b) the child is not subject to a supervision requirement."~~

~~(4) After section 65(1) (referral of case to children's hearing), there shall be inserted-~~

~~— "(1A) Where the Principal Reporter is satisfied that the ground specified in section 52(2)(m) of this Act is established in respect of any child, he shall be taken to be satisfied as to the matter mentioned in section 65(1)(a) in respect of the child."~~

(5) In section 73(8) (arrangements to review supervision requirement)-

(a) in paragraph (a)(v), after "months;" there shall be inserted-

"(aa) where-

(i) a requirement is made of the Principal Reporter under section 12(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) (power of sheriff to require Principal Reporter to refer case to children's hearing) in respect of the child's case; and

ii) the child is subject to a supervision requirement,

arrange for a children's hearing to review the supervision requirement;"

(b) in paragraph (b), for "that" there shall be substituted "any such".