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SCOTTISH EXECUTIVE

Making it work together

Children (Scotland) Act 1995

1995 c. 36

An Act to reform the law of Scotland relating to children, to the adoption of children and to young persons who as children have been looked after by a local authority; to make new provision as respects the relationship between parent and child and guardian and child in the law of Scotland; to make provision as respects residential establishments for children and certain other residential establishments; and for connected purposes.

[19th July 1995]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Part I

Parents, Children and Guardians

Parental responsibilities and parental rights

1.—(1) Subject to section 3(1)(b) and (3) of this Act, a parent has in relation to his child the responsibility—

(a) to safeguard and promote the child's health, development and welfare;

(b) to provide, in a manner appropriate to the stage of development of the child—

(i) direction;

(ii) guidance,

to the child;

(c) if the child is not living with the parent, to maintain personal relations and direct contact with the child on a regular basis; and

(d) to act as the child's legal representative,

Parental responsibilities.

but only in so far as compliance with this section is practicable and in the interests of the child.

(2) "Child" means for the purposes of—

(a) paragraphs (a), (b)(i), (c) and (d) of subsection (1) above, a person under the age of sixteen years;

(b) paragraph (b)(ii) of that subsection, a person under the age of eighteen years.

(3) The responsibilities mentioned in paragraphs (a) to (d) of subsection (1) above are in this Act referred to as "parental responsibilities" ; and the child, or any person acting on his behalf, shall have title to sue, or to defend, in any proceedings as respects those responsibilities.

(4) The parental responsibilities supersede any analogous duties imposed on a parent at common law; but this section is without prejudice to any other duty so imposed on him or to any duty imposed on him by, under or by virtue of any other provision of this Act or of any other enactment.

2.—(1) Subject to section 3(1)(b) and (3) of this Act, a parent, in order to enable him to fulfil his parental responsibilities in relation to his child, has the right—

(a) to have the child living with him or otherwise to regulate the child's residence;

(b) to control, direct or guide, in a manner appropriate to the stage of development of the child, the child's upbringing;

(c) if the child is not living with him, to maintain personal relations and direct contact with the child on a regular basis; and

(d) to act as the child's legal representative.

(2) Subject to subsection (3) below, where two or more persons have a parental right as respects a child, each of them may exercise that right without the consent of the other or, as the case may be, of any of the others, unless any decree or deed conferring the right, or regulating its exercise, otherwise provides.

(3) Without prejudice to any court order, no person shall be entitled to remove a child habitually resident in Scotland from, or to retain any such child outwith, the United Kingdom without the consent of a person described in subsection (6) below.

Parental rights.

(4) The rights mentioned in paragraphs (a) to (d) of subsection (1) above are in this Act referred to as "parental rights"; and a parent, or any person acting on his behalf, shall have title to sue, or to defend, in any proceedings as respects those rights.

(5) The parental rights supersede any analogous rights enjoyed by a parent at common law; but this section is without prejudice to any other right so enjoyed by him or to any right enjoyed by him by, under or by virtue of any other provision of this Act or of any other enactment.

(6) The description of a person referred to in subsection (3) above is a person (whether or not a parent of the child) who for the time being has and is exercising in relation to him a right mentioned in paragraph (a) or (c) of subsection (1) above; except that, where both the child's parents are persons so described, the consent required for his removal or retention shall be that of them both.

(7) In this section, "child" means a person under the age of sixteen years.

Provisions relating both to parental responsibilities and to parental rights.

3.—(1) Notwithstanding section 1(1) of the [1986 c. 9.] Law Reform (Parent and Child) (Scotland) Act 1986 (provision for disregarding whether a person's parents are not, or have not been, married to one another in establishing the legal relationship between him and any other person)—

(a) a child's mother has parental responsibilities and parental rights in relation to him whether or not she is or has been married to his father; and

(b) without prejudice to any arrangements which may be made under subsection (5) below and subject to any agreement which may be made under section 4 of this Act, his father has such responsibilities and rights in relation to him only if married to the mother at the time of the child's conception or subsequently.

(2) For the purposes of subsection (1)(b) above, the father shall be regarded as having been married to the mother at any time when he was a party to a purported marriage with her which was—

(a) voidable; or

(b) void but believed by them (whether by error of fact or of law) in good faith at that time to be valid.

(3) Subsection (1) above is without prejudice to any order made under section 11 of this Act or section 3(1) of the said Act of 1986 (provision analogous to the said section 11 but repealed by this Act) or to any other order, disposal or resolution affecting parental responsibilities or parental rights; and nothing in subsection (1) above or in this Part of this Act shall affect any other—

(a) enactment (including any other provision of this Act or of that Act); or

(b) rule of law,

by, under or by virtue of which a person may have imposed on him (or be relieved of) parental responsibilities or may be granted (or be deprived of) 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.

(5) Without prejudice to section 4(1) of this Act, a person who has parental responsibilities or parental rights in relation to a child shall not abdicate those responsibilities or rights to anyone else but may arrange for some or all of them to be fulfilled or exercised on his behalf; and without prejudice to that generality any such arrangement may be made with a person who already has parental responsibilities or parental rights in relation to the child concerned.

(6) The making of an arrangement under subsection (5) above shall not affect any liability arising from a failure to fulfil parental responsibilities; and where any arrangements so made are such that the child is a foster child for the purposes of the [1984 c. 56.] Foster

Children (Scotland) Act 1984, those arrangements are subject to the provisions of that Act.

4.—(1) Where a child's mother has not been deprived of some or all of the parental responsibilities and parental rights in relation to him and, by virtue of subsection (1)(b) of section 3 of this Act, his father has no parental responsibilities or parental rights in relation to him, the father and mother, whatever age they may be, may by agreement provide that, as from the appropriate date, the father shall have the parental responsibilities and parental rights which (in the absence of any order under section 11 of this Act affecting those responsibilities and rights) he would have if married to the mother.

Acquisition of parental rights and responsibilities by natural father.

(2) No agreement under subsection (1) above shall have effect unless—

- (a) in a form prescribed by the Secretary of State; and
- (b) registered in the Books of Council and Session while the mother still has the parental responsibilities and parental rights which she had when the agreement was made.

(3) The date on which such registration as is mentioned in subsection (2)(b) above takes place shall be the "appropriate date" for the purposes of subsection (1) above.

(4) An agreement which has effect by virtue of subsection (2) above shall, subject only to section 11(11) of this Act, be irrevocable.

5.—(1) Subject to subsection (2) below, it shall be the responsibility of a person who has attained the age of sixteen years and who has care or control of a child under that age, but in relation to him either has no parental responsibilities or parental rights or does not have the parental responsibility mentioned in section 1(1)(a) of this Act, to do what is reasonable in all the circumstances to safeguard the child's health, development and welfare; and in fulfilling his responsibility under this section the person may in particular, even though he does not have the parental right mentioned in section 2(1)(d) of this Act, give consent to any surgical, medical or dental treatment or procedure where—

Care or control of child by person without parental responsibilities or parental rights.

- (a) the child is not able to give such consent on his own behalf; and
- (b) it is not within the knowledge of the person that a parent of the child would refuse to give the consent in question.

(2) Nothing in this section shall apply to a person in so far as he has care or control of a child in a school ("school" having the meaning given by section 135(1) of the [1980 c. 44.] Education (Scotland) Act 1980).

6.—(1) A person shall, in reaching any major decision which involves—

Views of children.

- (a) his fulfilling a parental responsibility or the responsibility mentioned in section 5(1) of this Act; or

(b) his exercising a parental right or giving consent by virtue of that section,

have regard so far as practicable to the views (if he wishes to express them) of the child concerned, taking account of the child's age and maturity, and to those of any other person who has parental responsibilities or parental rights in relation to the child (and wishes to express those views); and without prejudice to the generality of this subsection a child twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view.

(2) A transaction entered into in good faith by a third party and a person acting as legal representative of a child shall not be challengeable on the ground only that the child, or a person with parental responsibilities or parental rights in relation to the child, was not consulted or that due regard was not given to his views before the transaction was entered into.

Guardianship

7.—(1) A child's parent may appoint a person to be guardian of the child in the event of the parent's death; but—

(a) such appointment shall be of no effect unless—

(i) in writing and signed by the parent; and

(ii) the parent, at the time of death, was entitled to act as legal representative of the child (or would have been so entitled if he had survived until after the birth of the child); and

(b) any parental responsibilities or parental rights (or the right to appoint a further guardian under this section) which a surviving parent has in relation to the child shall subsist with those which, by, under or by virtue of this Part of this Act, the appointee so has.

(2) A guardian of a child may appoint a person to take his place as guardian in the event of the guardian's death; but such appointment shall be of no effect unless in writing and signed by the person making it.

(3) An appointment as guardian shall not take effect until accepted, either expressly or impliedly by acts which are not consistent with any other intention.

(4) If two or more persons are appointed as guardians, any one or more of them shall, unless the appointment expressly provides otherwise, be entitled to accept office even if both or all of them do not accept office.

(5) Subject to any order under section 11 or 86 of this Act, a person appointed as a child's guardian under this section shall have, in respect of the child, the responsibilities imposed, and the rights conferred, on a parent by sections 1 and 2 of this Act respectively; and sections 1 and 2 of this Act shall apply in relation to a guardian

Appointment of guardians.

as they apply in relation to a parent.

(6) Without prejudice to the generality of subsection (1) of section 6 of this Act, a decision as to the appointment of a guardian under subsection (1) or (2) above shall be regarded for the purposes of that section (or of that section as applied by subsection (5) above) as a major decision which involves exercising a parental right.

8.—(1) An appointment made under section 7(1) or (2) of this Act revokes an earlier such appointment (including one made in an unrevoked will or codicil) made by the same person in respect of the same child, unless it is clear (whether as a result of an express provision in the later appointment or by any necessary implication) that the purpose of the later appointment is to appoint an additional guardian.

(2) Subject to subsections (3) and (4) below, the revocation of an appointment made under section 7(1) or (2) of this Act (including one made in an unrevoked will or codicil) shall not take effect unless the revocation is in writing and is signed by the person making the revocation.

Revocation and other termination of appointment.

(3) An appointment under section 7(1) or (2) of this Act (other than one made in a will or codicil) is revoked if, with the intention of revoking the appointment, the person who made it—

- (a) destroys the document by which it was made; or
- (b) has some other person destroy that document in his presence.

(4) For the avoidance of doubt, an appointment made under section 7(1) or (2) of this Act in a will or codicil is revoked if the will or codicil is revoked.

(5) Once an appointment of a guardian has taken effect under section 7 of this Act, then, unless the terms of the appointment provide for earlier termination, it shall terminate only by virtue of—

- (a) the child concerned attaining the age of eighteen years;
- (b) the death of the child or the guardian; or
- (c) the termination of the appointment by a court order under section 11 of this Act.

Administration of child's property

9.—(1) Subject to section 13 of this Act, this section applies where—

Safeguarding of child's property.

- (a) property is owned by or due to a child;
- (b) the property is held by a person other than a parent or guardian of the child; and
- (c) but for this section, the property would be required to be transferred to a parent having parental responsibilities in relation to the child or to a guardian for administration by that parent or guardian on behalf of the child.

(2) Subject to subsection (4) below, where this section applies and

the person holding the property is an executor or trustee, then—

- (a) if the value of the property exceeds £20,000, he shall; or
- (b) if that value is not less than £5,000 and does not exceed £20,000, he may,

apply to the Accountant of Court for a direction as to the administration of the property.

(3) Subject to subsection (4) below, where this section applies and the person holding the property is a person other than an executor or trustee, then, if the value of the property is not less than £5,000, that person may apply to the Accountant of Court for a direction as to the administration of the property.

(4) Where the parent or guardian mentioned in subsection (1)(c) above has been appointed a trustee under a trust deed to administer the property concerned, subsections (2) and (3) above shall not apply, and the person holding the property shall transfer it to the parent or guardian.

(5) On receipt of an application under subsection (2) or (3) above, the Accountant of Court may do one, or (in so far as the context admits) more than one, of the following—

- (a) apply to the court for the appointment of a judicial factor (whether or not the parent or guardian mentioned in subsection (1)(c) above) to administer all or part of the property concerned and in the event of the court making such an appointment shall direct that the property, or as the case may be part, concerned be transferred to the factor;
- (b) direct that all or part of the property concerned be transferred to himself;
- (c) direct that all or, in a case where the parent or guardian so mentioned has not been appointed by virtue of paragraph (a) above, part of the property concerned be transferred to the parent or guardian,

to be administered on behalf of the child.

(6) A direction under subsection (5)(c) above may include such conditions as the Accountant of Court considers appropriate, including in particular a condition—

- (a) that in relation to the property concerned no capital expenditure shall be incurred without his approval; or
- (b) that there shall be exhibited annually to him the securities and bank books which represent the capital of the estate.

(7) A person who has applied under subsection (2) or (3) above for a direction shall not thereafter transfer the property concerned except in accordance with a direction under subsection (5) above.

(8) The Secretary of State may from time to time prescribe a variation in any sum referred to in subsections (2) and (3) above.

(9) In this section "child" means a person under the age of sixteen years who is habitually resident in Scotland.

10.—(1) A person acting as a child's legal representative in relation to the administration of the child's property—

(a) shall be required to act as a reasonable and prudent person would act on his own behalf; and

(b) subject to any order made under section 11 of this Act, shall be entitled to do anything which the child, if of full age and capacity, could do in relation to that property;

Obligations and rights of person administering child's property.

and subject to subsection (2) below, on ceasing to act as legal representative, shall be liable to account to the child for his intromissions with the child's property.

(2) No liability shall be incurred by virtue of subsection (1) above in respect of funds which have been used in the proper discharge of the person's responsibility to safeguard and promote the child's health, development and welfare.

Court Orders

11.—(1) In the relevant circumstances in proceedings in the Court of Session or sheriff court, whether those proceedings are or are not independent of any other action, an order may be made under this subsection in relation to—

(a) parental responsibilities;

(b) parental rights;

(c) guardianship; or

(d) subject to section 14(1) and (2) of this Act, the administration of a child's property.

(2) The court may make such order under subsection (1) above as it thinks fit; and without prejudice to the generality of that subsection may in particular so make any of the following orders—

Court orders relating to parental responsibilities etc.

(a) an order depriving a person of some or all of his parental responsibilities or parental rights in relation to a child;

(b) an order—

(i) imposing upon a person (provided he is at least sixteen years of age or is a parent of the child) such responsibilities; and

(ii) giving that person such rights;

(c) an order regulating the arrangements as to—

(i) with whom; or

(ii) if with different persons alternately or periodically, with whom during what periods,

a child under the age of sixteen years is to live (any such order being known as a "residence order");

(d) an order regulating the arrangements for maintaining personal relations and direct contact between a child under that age and a person with whom the child is not, or will not be, living (any such order being known as a "contact order");

(e) an order regulating any specific question which has arisen, or

may arise, in connection with any of the matters mentioned in paragraphs (a) to (d) of subsection (1) of this section (any such order being known as a "specific issue order");

(f) an interdict prohibiting the taking of any step of a kind specified in the interdict in the fulfillment of parental responsibilities or the exercise of parental rights relating to a child or in the administration of a child's property;

(g) an order appointing a judicial factor to manage a child's property or remitting the matter to the Accountant of Court to report on suitable arrangements for the future management of the property; or

(h) an order appointing or removing a person as guardian of the child.

(3) The relevant circumstances mentioned in subsection (1) above are—

(a) that application for an order under that subsection is made by a person who—

(i) not having, and never having had, parental responsibilities or parental rights in relation to the child, claims an interest;

(ii) has parental responsibilities or parental rights in relation to the child;

(iii) has had, but for a reason other than is mentioned in subsection (4) below no longer has, parental responsibilities or parental rights in relation to the child;

or

(b) that although no such application has been made, the court (even if it declines to make any other order) considers it should make such an order.

(4) The reasons referred to in subsection (3)(a)(iii) above are that the parental responsibilities or parental rights have been—

(a) extinguished on the making of an adoption order;

(b) transferred to an adoption agency on the making of an order declaring the child free for adoption;

(c) extinguished by virtue of subsection (9) of section 30 of the [\[1990 c. 37.\]](#) Human Fertilisation and Embryology Act 1990 (provision for enactments about adoption to have effect with modifications) on the making of a parental order under subsection (1) of that section; or

(d) transferred to a local authority by a parental responsibilities order.

(5) In subsection (3)(a) above "person" includes (without prejudice to the generality of that subsection) the child concerned; but it does not include a local authority.

(6) In subsection (4) above—

"adoption agency" and "adoption order" have the same meanings as they are given, in section 18 of the [\[1978 c. 28.\]](#) Adoption (Scotland) Act 1978, by section 65(1) of that Act; and "parental responsibilities order" has the meaning given by

section 86(1) of this Act.

(7) Subject to subsection (8) below, in considering whether or not to make an order under subsection (1) above and what order to make, the court—

(a) shall regard the welfare of the child concerned as its paramount consideration and shall not make any such order unless it considers that it would be better for the child that the order be made than that none should be made at all; and

(b) taking account of the child's age and maturity, shall so far as practicable—

(i) give him an opportunity to indicate whether he wishes to express his views;

(ii) if he does so wish, give him an opportunity to express them; and

(iii) have regard to such views as he may express.

(8) The court shall, notwithstanding subsection (7) above, endeavour to ensure that any order which it makes, or any determination by it not to make an order, does not adversely affect the position of a person who has, in good faith and for value, acquired any property of the child concerned, or any right or interest in such property.

(9) Nothing in paragraph (b) of subsection (7) above requires a child to be legally represented, if he does not wish to be, in proceedings in the course of which the court implements that paragraph.

(10) Without prejudice to the generality of paragraph (b) of subsection (7) above, a child twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view for the purposes both of that paragraph and of subsection (9) above.

(11) An order under subsection (1) above shall have the effect of depriving a person of a parental responsibility or parental right only in so far as the order expressly so provides and only to the extent necessary to give effect to the order; but in making any such order as is mentioned in paragraph (a) or (b) of subsection (2) above the court may revoke any agreement which, in relation to the child concerned, has effect by virtue of section 4(2) of this Act.

(12) Where the court makes a residence order which requires that a child live with a person who, immediately before the order is made does not have in relation to the child all the parental responsibilities mentioned in paragraphs (a), (b) and (d) of section 1(1), and the parental rights mentioned in paragraphs (b) and (d) of section 2(1), of this Act (those which he does not so have being in this subsection referred to as the "relevant responsibilities and rights") that person shall, subject to the provisions of the order or of any other order made under subsection (1) above, have the relevant responsibilities and rights while the residence order remains in force.

(13) Any reference in this section to an order includes a reference to

an interim order or to an order varying or discharging an order.

12.—(1) In any action for divorce, judicial separation or declarator of nullity of marriage, the court shall, where this section applies, consider (in the light of such information as is before the court as to the arrangements which have been, or are proposed to be, made for the upbringing of each child by virtue of which it applies) whether to exercise with respect to him the powers conferred by section 11 or 54 of this Act.

(2) Where, in any case to which this section applies, the court is of the opinion that—

(a) the circumstances of the case require, or are likely to require, it to exercise any power under section 11 or 54 of this Act with respect to the child concerned;

(b) it is not in a position to exercise that power without giving further consideration to the case; and

(c) there are exceptional circumstances which make it desirable in the interests of that child that it should not grant decree in the action until it is in a position to exercise such a power,

it shall postpone its decision on the granting of decree in the action until it is in such a position.

Restrictions on decrees for divorce, separation or annulment affecting children.

(3) This section applies where a child of the family has not reached the age of sixteen years at the date when the question first arises as to whether the court should give such consideration as is mentioned in subsection (1) above.

(4) In this section "child of the family" , in relation to the parties to a marriage, means—

(a) a child of both of them; or

(b) any other child, not being a child who is placed with them as foster parents by a local authority or voluntary organisation, who has been treated by both of them as a child of their family.

13.—(1) Where in any court proceedings a sum of money becomes payable to, or for the benefit of, a child under the age of sixteen years, the court may make such order relating to the payment and management of the sum for the benefit of the child as it thinks fit.

(2) Without prejudice to the generality of subsection (1) above, the court may in an order under this section—

(a) appoint a judicial factor to invest, apply or otherwise deal with the money for the benefit of the child concerned;

(b) order the money to be paid—

(i) to the sheriff clerk or the Accountant of Court; or

(ii) to a parent or guardian of that child,

to be invested, applied or otherwise dealt with, under the directions of the court, for the benefit of that child; or

(c) order the money to be paid directly to that child.

Awards of damages to children.

(3) Where payment is made to a person in accordance with an order under this section, a receipt given by him shall be a sufficient discharge of the obligation to make the payment.

Jurisdiction and choice of law

14.—(1) The Court of Session shall have jurisdiction to entertain an application for an order relating to the administration of a child's property if the child is habitually resident in, or the property is situated in, Scotland.

(2) A sheriff shall have jurisdiction to entertain such an application if the child is habitually resident in, or the property is situated in, the sheriffdom.

(3) Subject to subsection (4) below, any question arising under this Part of this Act—

(a) concerning—

(i) parental responsibilities or parental rights; or

(ii) the responsibilities or rights of a guardian,

Jurisdiction and choice of law in relation to certain matters.

in relation to a child shall, in so far as it is not also a question such as is mentioned in paragraph (b) below, be determined by the law of the place of the child's habitual residence at the time when the question arises;

(b) concerning the immediate protection of a child shall be determined by the law of the place where the child is when the question arises; and

(c) as to whether a person is validly appointed or constituted guardian of a child shall be determined by the law of the place of the child's habitual residence on the date when the appointment was made (the date of death of the testator being taken to be the date of appointment where an appointment was made by will), or the event constituting the guardianship occurred.

(4) Nothing in any provision of law in accordance with which, under subsection (3) above, a question which arises in relation to an application for, or the making of, an order under subsection (1) of section 11 of this Act falls to be determined, shall affect the application of subsection (7) of that section.

Interpretation

15.—(1) In this Part of this Act—

"child" means, where the expression is not otherwise defined, a person under the age of eighteen years;

"contact order" has the meaning given by section 11(2)(d) of this Act;

Interpretation of Part I.

"parent", in relation to any person, means, subject to Part IV of the [1978 c. 28.] Adoption (Scotland) Act 1978 and sections 27 to 30 of the [1990 c. 37.] Human Fertilisation and Embryology Act 1990 and any regulations made under subsection (9) of the said section 30, someone, of whatever age, who is that person's genetic father or mother;

"parental responsibilities" has the meaning given by section 1(3) of this Act;

"parental rights" has the meaning given by section 2(4) of this Act;

"residence order" has the meaning given by section 11(2)(c) of this Act;

"specific issue order" has the meaning given by section 11(2)(e) of this Act; and

"transaction" has the meaning given by section 9 of the [[1991 c. 50.](#)] Age of Legal Capacity (Scotland) Act 1991 (except that, for the purposes of subsection (5)(b) below, paragraph (d) of the definition in question shall be disregarded).

(2) No provision in this Part of this Act shall affect any legal proceedings commenced, or any application made to a court, before that provision comes into effect; except that where, before section 11 of this Act comes into force, there has been final decree in a cause in which, as respects a child, an order for custody or access, or an order which is analogous to any such order as is mentioned in subsection (2) of that section, has been made, any application on or after the date on which the section does come into force for variation or recall of the order shall proceed as if the order had been made under that section.

(3) In subsection (2) above, the reference to final decree is to a decree or interlocutor which, taken by itself or along with previous interlocutors, disposes of the whole subject matter of the cause.

(4) Any reference in this Part of this Act to a person—

- (a) having parental rights or responsibilities;
- (b) acting as a legal representative; or
- (c) being appointed a guardian,

is to a natural person only.

(5) Any reference in this Part of this Act to a person acting as the legal representative of a child is a reference to that person, in the interests of the child—

- (a) administering any property belonging to the child; and
- (b) acting in, or giving consent to, any transaction where the child is incapable of so acting or consenting on his own behalf.

(6) Where a child has legal capacity to sue, or to defend, in any civil proceedings, he may nevertheless consent to be represented in those proceedings by any person who, had the child lacked that capacity, would have had the responsibility to act as his legal representative.

Part II

Promotion of Children's Welfare by Local Authorities and by Children's Hearings etc.

Chapter 1

Support for Children and Their Families

Introductory

16.—(1) Where under or by virtue of this Part of this Act, a children's hearing decide, or a court determines, any matter with respect to a child the welfare of that child throughout his childhood shall be their or its paramount consideration.

(2) In the circumstances mentioned in subsection (4) below, a children's hearing or as the case may be the sheriff, taking account of the age and maturity of the child concerned, shall so far as practicable—

(a) give him an opportunity to indicate whether he wishes to express his views;

(b) if he does so wish, give him an opportunity to express them; and

(c) have regard to such views as he may express;

and without prejudice to the generality of this subsection a child twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view.

Welfare of child and
consideration of his views.

(3) In the circumstances mentioned in subsection (4)(a)(i) or (ii) or (b) of this section, no requirement or order so mentioned shall be made with respect to the child concerned unless the children's hearing consider, or as the case may be the sheriff considers, that it would be better for the child that the requirement or order be made than that none should be made at all.

(4) The circumstances to which subsection (2) above refers are that—

(a) the children's hearing—

(i) are considering whether to make, or are reviewing, a supervision requirement;

(ii) are considering whether to grant a warrant under subsection (1) of section 66, or subsection (4) or (7) of section 69, of this Act or to provide under subsection (4) of the said section 66 for the continuation of a warrant;

(iii) are engaged in providing advice under section 60(10) of this Act; or

(iv) are drawing up a report under section 73(13) of this Act;

(b) the sheriff is considering—

(i) whether to make, vary or discharge a parental

- responsibilities order, a child assessment order or an exclusion order;
 - (ii) whether to vary or discharge a child protection order;
 - (iia) whether to grant a warrant under section 66 of this Act; or
 - (iii) on appeal, whether to make such substitution as is mentioned in section 51(5)(c)(iii) of this Act; or
 - (c) the sheriff is otherwise disposing of an appeal against a decision of a children's hearing.
- (5) If, for the purpose of protecting members of the public from serious harm (whether or not physical harm)—
- (a) a children's hearing consider it necessary to make a decision under or by virtue of this Part of this Act which (but for this paragraph) would not be consistent with their affording paramountcy to the consideration mentioned in subsection (1) above, they may make that decision; or
 - (b) a court considers it necessary to make a determination under or by virtue of Chapters 1 to 3 of this Part of this Act which (but for this paragraph) would not be consistent with its affording such paramountcy, it may make that determination.

- 17.—**(1) Where a child is looked after by a local authority they shall, in such manner as the Secretary of State may prescribe—
- (a) safeguard and promote his welfare (which shall, in the exercise of their duty to him be their paramount concern);
 - (b) make such use of services available for children cared for by their own parents as appear to the authority reasonable in his case; and
 - (c) take such steps to promote, on a regular basis, personal relations and direct contact between the child and any person with parental responsibilities in relation to him as appear to them to be, having regard to their duty to him under paragraph (a) above, both practicable and appropriate.

Duty of local authority to child looked after by them.

- (2) The duty under paragraph (a) of subsection (1) above includes, without prejudice to that paragraph's generality, the duty of providing advice and assistance with a view to preparing the child for when he is no longer looked after by a local authority.

- (3) Before making any decision with respect to a child whom they are looking after, or proposing to look after, a local authority shall, so far as is reasonably practicable, ascertain the views of—
- (a) the child;
 - (b) his parents;
 - (c) any person who is not a parent of his but who has parental rights in relation to him; and
 - (d) any other person whose views the authority consider to be relevant,
- regarding the matter to be decided.

- (4) In making any such decision a local authority shall have regard

so far as practicable—

- (a) to the views (if he wishes to express them) of the child concerned, taking account of his age and maturity;
- (b) to such views of any person mentioned in subsection (3)(b) to (d) above as they have been able to ascertain; and
- (c) to the child's religious persuasion, racial origin and cultural and linguistic background.

(5) If, for the purpose of protecting members of the public from serious harm (whether or not physical harm) a local authority consider it necessary to exercise, in a manner which (but for this paragraph) would not be consistent with their duties under this section, their powers with respect to a child whom they are looking after, they may do so.

(6) Any reference in this Chapter of this Part to a child who is "looked after" by a local authority, is to a child—

- (a) for whom they are providing accommodation under section 24 of this Act;
- (b) who is subject to a supervision requirement and in respect of whom they are the relevant local authority;
- (c) who is subject to an order made, or authorisation or warrant granted, by virtue of Chapter 2, 3 or 4 of this Part of this Act, being an order, authorisation or warrant in accordance with which they have responsibilities as respects the child; or
- (d) who is subject to an order in accordance with which, by virtue of regulations made under section 33(1) of this Act, they have such responsibilities.

(7) Regulations made by the Secretary of State under subsection (1) above may, without prejudice to the generality of that subsection, include—

- (a) provision as to the circumstances in which the child may be cared for by the child's own parents; and
- (b) procedures which shall be followed in the event of the child's death.

18.—(1) Where a child is being looked after by a local authority, each natural person who has parental responsibilities in relation to the child shall, without unreasonable delay, inform that authority whenever the person changes his address.

Duty of persons with parental responsibilities to notify change of address to local authority looking after child.

(2) A person who knowingly fails to comply with the requirement imposed by subsection (1) above shall be liable on summary conviction to a fine of level 1 on the standard scale; but in any proceedings under this section it shall be a defence that—

- (a) the change was to the same address as that to which another person who at that time had parental responsibilities in relation to the child was changing; and
- (b) the accused had reasonable cause to believe that the other person had informed the authority of the change of address of them both.

Provision of services

19.—(1) Within such period after the coming into force of this section as the Secretary of State may direct, each local authority shall prepare and publish a plan for the provision of relevant services for or in respect of children in their area.

(2) References to "relevant services" in this section are to services provided by a local authority under or by virtue of—

- (a) this Part of this Act; or
- (b) any of the enactments mentioned in section 5(1B)(a) to (o) of the [1968 c. 49.] Social Work (Scotland) Act 1968 (enactments in respect of which Secretary of State may issue directions to local authorities as to the exercise of their functions).

(3) A local authority shall from time to time review the plan prepared by them under subsection (1) above (as modified, or last substituted, under this subsection) and may, having regard to that review, prepare and publish—

- (a) modifications (or as the case may be further modifications) to the plan reviewed; or
- (b) a plan in substitution for that plan.

Local authority plans for services for children.

(4) The Secretary of State may, subject to subsection (5) below, issue directions as to the carrying out by a local authority of their functions under subsection (3) above.

(5) In preparing any plan, or carrying out any review, under this section a local authority shall consult—

- (a) every Health Board and National Health Service trust providing services under the [1978 c. 29.] National Health Service (Scotland) Act 1978 in the area of the authority;
- (b) such voluntary organisations as appear to the authority—
 - (i) to represent the interests of persons who use or are likely to use relevant services in that area; or
 - (ii) to provide services in that area which, were they to be provided by the authority, might be categorised as relevant services;
- (c) the Principal Reporter appointed under section 127 of the [1994 c. 39.] Local Government etc. (Scotland) Act 1994;
- (d) the chairman of the children's panel for that area;
- (e) such housing associations, voluntary housing agencies and other bodies as appear to the authority to provide housing in that area; and
- (f) such other persons as the Secretary of State may direct.

Publication of information about services for children.

20.—(1) A local authority shall, within such period after the coming into force of this section as the Secretary of State may direct, and thereafter from time to time, prepare and publish information—

- (a) about relevant services which are provided by them for or in respect of children (including, without prejudice to that

generality, services for or in respect of disabled children or children otherwise affected by disability) in their area or by any other local authority for those children; and

(b) where they consider it appropriate, about services which are provided by voluntary organisations and by other persons for those children, being services which the authority have power to provide and which, were they to do so, they would provide as relevant services.

(2) In subsection (1) above, "relevant services" has the same meaning as in section 19 of this Act.

21.—(1) Where it appears to a local authority that an appropriate person could, by doing certain things, help in the exercise of any of their functions under this Part of this Act, they may, specifying what those things are, request the help of that person.

(2) For the purposes of subsection (1) above, persons who are appropriate are—

Co-operation between
authorities.

(a) any other local authority;

(b) a health board constituted under section 2 of the [1978 c. 29.] National Health Service (Scotland) Act 1978;

(c) a national health service trust established under section 12A of that Act; and

(d) any person authorised by the Secretary of State for the purposes of this section;

and an appropriate person receiving such a request shall comply with it provided that it is compatible with their own statutory or other duties and obligations and (in the case of a person not a natural person) does not unduly prejudice the discharge of any of their functions.

22.—(1) A local authority shall—

(a) safeguard and promote the welfare of children in their area who are in need; and

(b) so far as is consistent with that duty, promote the upbringing of such children by their families,

by providing a range and level of services appropriate to the children's needs.

Promotion of welfare of
children in need.

(2) In providing services under subsection (1) above, a local authority shall have regard so far as practicable to each child's religious persuasion, racial origin and cultural and linguistic background.

(3) Without prejudice to the generality of subsection (1) above—

(a) a service may be provided under that subsection—

(i) for a particular child;

(ii) if provided with a view to safeguarding or promoting his welfare, for his family; or

(iii) if provided with such a view, for any other member

of his family; and

(b) the services mentioned in that subsection may include giving assistance in kind or, in exceptional circumstances, in cash.

(4) Assistance such as is mentioned in subsection (3)(b) above may be given unconditionally or subject to conditions as to the repayment, in whole or in part, of it or of its value; but before giving it, or imposing such conditions, the local authority shall have regard to the means of the child concerned and of his parents and no condition shall require repayment by a person at any time when in receipt of—

(a) income support or family credit payable under the [\[1992 c. 4.\]](#) Social Security Contributions and Benefits Act 1992; or

(b) an income-based jobseeker's allowance payable under the [\[1995 c. 18.\]](#) Jobseekers Act 1995.

23.—(1) Without prejudice to the generality of subsection (1) of section 22 of this Act, services provided by a local authority under that subsection shall be designed—

(a) to minimise the effect on any—

(i) disabled child who is within the authority's area, of his disability; and

(ii) child who is within that area and is affected adversely by the disability of any other person in his family, of that other person's disability; and

(b) to give those children the opportunity to lead lives which are as normal as possible.

(2) For the purposes of this Chapter of this Part a person is disabled if he is chronically sick or disabled or suffers from mental disorder (within the meaning of the [\[1984 c. 36.\]](#) Mental Health (Scotland) Act 1984).

(3) Where requested to do so by a child's parent or guardian a local authority shall, for the purpose of facilitating the discharge of such duties as the authority may have under section 22(1) of this Act (whether or not by virtue of subsection (1) above) as respects the child, carry out an assessment of the child, or of any other person in the child's family, to determine the needs of the child in so far as attributable to his disability or to that of the other person.

24.—(1) Subject to subsection (2) below, in any case where—

(a) a local authority carry out under section 23(3) of this Act an assessment to determine the needs of a disabled child, and

(b) a person (in this section referred to as the "carer") provides or intends to provide a substantial amount of care on a regular basis for that child,

the carer may request the local authority, before they make a decision as to the discharge of any duty they may have under section 2(1) of the [\[1970 c. 44.\]](#) Chronically Sick and Disabled Persons Act 1970 or under section 22(1) of this Act as respects the child, to carry out an assessment of the carer's ability to continue to

Children affected by disability.

Assessment of ability of carers to provide care for disabled children.

provide, or as the case may be to provide, care for that child; and if the carer makes such a request, the local authority shall carry out such an assessment and shall have regard to the results of it in making any such decision.

(2) No request may be made under subsection (1) above by a person who provides or will provide the care in question—

(a) under or by virtue of a contract of employment or other contract; or

(b) as a volunteer for a voluntary organisation.

(3) Where an assessment of a carer's ability to continue to provide, or as the case may be to provide, care for a child is carried out under subsection (1) above, there shall, as respects the child, be no requirement under section 8 of the [1986 c. 33.] Disabled Persons (Services, Consultation and Representation) Act 1986 (carer's ability to continue to provide care to be considered in any decision as respects provision of certain services for disabled persons) to have regard to that ability.

(4) In this section "person" means a natural person.

25.—(1) A local authority shall provide accommodation for any child who, residing or having been found within their area, appears to them to require such provision because—

(a) no-one has parental responsibility for him;

(b) he is lost or abandoned; or

(c) the person who has been caring for him is prevented, whether or not permanently and for whatever reason, from providing him with suitable accommodation or care.

(2) Without prejudice to subsection (1) above, a local authority may provide accommodation for any child within their area if they consider that to do so would safeguard or promote his welfare.

(3) A local authority may provide accommodation for any person within their area who is at least eighteen years of age but not yet twenty-one, if they consider that to do so would safeguard or promote his welfare.

(4) A local authority providing accommodation under subsection (1) above for a child who is ordinarily resident in the area of another local authority shall notify the other authority, in writing, that such provision is being made; and the other authority may at any time take over the provision of accommodation for the child.

(5) Before providing a child with accommodation under this section, a local authority shall have regard, so far as practicable, to his views (if he wishes to express them), taking account of his age and maturity; and without prejudice to the generality of this subsection a child twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view.

Provision of
accommodation for
children, etc.

- (6) Subject to subsection (7) below—
- (a) a local authority shall not provide accommodation under this section for a child if any person who—
 - (i) has parental responsibilities in relation to him and the parental rights mentioned in section 2(1)(a) and (b) of this Act; and
 - (ii) is willing and able either to provide, or to arrange to have provided, accommodation for him, objects; and
 - (b) any such person may at any time remove the child from accommodation which has been provided by the local authority under this section.
- (7) Paragraph (a) of subsection (6) above does not apply—
- (a) as respects any child who, being at least sixteen years of age, agrees to be provided with accommodation under this section; or
 - (b) where a residence order has been made in favour of one or more persons and that person has, or as the case may be those persons have, agreed that the child should be looked after in accommodation provided by, or on behalf of, the local authority;
- and paragraph (b) of that subsection does not apply where accommodation has been provided for a continuous period of at least six months (whether by a single local authority or, by virtue of subsection (4) above, by more than one local authority), unless the person removing the child has given the local authority for the time being making such provision at least fourteen days' notice in writing of his intention to remove the child.
- (8) In this Part of this Act, accommodation means, except where the context otherwise requires, accommodation provided for a continuous period of more than twenty-four hours.

- 26.**—(1) A local authority may provide accommodation for a child looked after by them by—
- (a) placing him with—
 - (i) a family (other than such family as is mentioned in paragraph (a) or (b) of the definition of that expression in section 93(1) of this Act);
 - (ii) a relative of his; or
 - (iii) any other suitable person,on such terms as to payment, by the authority or otherwise, as the authority may determine;
 - (b) maintaining him in a residential establishment; or
 - (c) making such other arrangements as appear to them to be appropriate, including (without prejudice to the generality of this paragraph) making use of such services as are referred to in section 17(1)(b) of this Act.
- (2) A local authority may arrange for a child whom they are looking after—
- (a) to be placed, under subsection (1)(a) above, with a person in

Manner of provision of accommodation to child looked after by local authority.

England and Wales or in Northern Ireland; or

- (b) to be maintained in any accommodation in which—
- (i) a local authority in England and Wales could maintain him by virtue of section 23(2)(b) to (e) of the [\[1989 c. 41.\]](#) Children Act 1989; or
 - (ii) an authority within the meaning of the [S.I. [1995/755](#) (N.I.2)] Children (Northern Ireland) Order 1995 could maintain him by virtue of Article 27(2)(b) to (e) of that Order.

27.—(1) Each local authority shall provide such day care for children in need within their area who—

- (a) are aged five or under; and
- (b) have not yet commenced attendance at a school,

as is appropriate; and they may provide such day care for children within their area who satisfy the conditions mentioned in paragraphs (a) and (b) but are not in need.

(2) A local authority may provide facilities (including training, advice, guidance and counselling) for those—

- (a) caring for children in day care; or
- (b) who at any time accompany such children while they are in day care.

Day care for pre-school and other children.

(3) Each local authority shall provide for children in need within their area who are in attendance at a school such care—

- (a) outside school hours; or
- (b) during school holidays,

as is appropriate; and they may provide such care for children within their area who are in such attendance but are not in need.

(4) In this section—

"day care" means any form of care provided for children during the day, whether or not it is provided on a regular basis; and

"school" has the meaning given by section 135(1) of the [\[1980 c. 44.\]](#) Education (Scotland) Act 1980.

Removal of power to arrange for emigration of children.

28. Section 23 of the [\[1968 c. 49.\]](#) Social Work (Scotland) Act 1968 (which provides a power for local authorities and voluntary associations, with the consent of the Secretary of State, to make arrangements for the emigration of children in their care) shall cease to have effect.

Advice and assistance for young persons formerly looked after by local authorities

After-care.

29.—(1) A local authority shall, unless they are satisfied that his welfare does not require it, advise, guide and assist any person in their area over school age but not yet nineteen years of age who, at the time when he ceased to be of school age or at any subsequent time was, but who is no longer, looked after by a local authority.

(2) If a person within the area of a local authority is at least nineteen, but is less than twenty-one, years of age and is otherwise a person such as is described in subsection (1) above, he may by application to the authority request that they provide him with advice, guidance and assistance; and they may, unless they are satisfied that his welfare does not require it, grant that application.

(3) Assistance given under subsection (1) or (2) above may include assistance in kind or in cash.

(4) Where a person—
(a) over school age ceases to be looked after by a local authority; or
(b) described in subsection (1) above is being provided with advice, guidance or assistance by a local authority,
they shall, if he proposes to reside in the area of another local authority, inform that other local authority accordingly provided that he consents to their doing so.

30.—(1) Without prejudice to section 12 of the [1968 c. 49.] Social Work (Scotland) Act 1968 (general social welfare services of local authorities), a local authority may make—

(a) grants to any relevant person in their area to enable him to meet expenses connected with his receiving education or training; and

(b) contributions to the accommodation and maintenance of any such person in any place near where he may be—

(i) employed, or seeking employment; or

(ii) receiving education or training.

(2) Subject to subsection (3) below, a person is a relevant person for the purposes of subsection (1) above if—

(a) he is over school age but not yet twenty-one years of age; and

(b) at the time when he ceased to be of school age or at any subsequent time he was, but he is no longer, looked after by a local authority.

(3) A local authority making grants under paragraph (a), or contributions under paragraph (b)(ii), of subsection (1) above to a person may continue to make them, though he has in the meantime attained the age of twenty-one years, until he completes the course of education or training in question; but if, after he has attained that age, the course is interrupted by any circumstances they may only so continue if he resumes the course as soon as is practicable.

(4) Section 25 of the Social Work (Scotland) Act 1968 (which empowers a local authority to undertake obligations by way of guarantee under any indentures or other deed of apprenticeship or articles of clerkship entered into by a person in their care or under supplemental deeds or articles) shall cease to have effect.

Miscellaneous and General

Financial assistance towards expenses of education or training and removal of power to guarantee indentures etc.

31.—(1) Without prejudice to their duty under section 17(1)(a) of this Act, it shall be the duty of a local authority who are looking after a child to review his case at such intervals as may be prescribed by the Secretary of State.

Review of case of child looked after by local authority.

(2) The Secretary of State may prescribe—
(a) different intervals in respect of the first such review and in respect of subsequent reviews;
(b) the manner in which cases are to be reviewed under this section;
(c) the considerations to which the local authority are to have regard in reviewing cases under this section.

Removal of child from residential establishment.

32. A local authority, notwithstanding any agreement made in connection with the placing of a child in a residential establishment under this Chapter, or Chapter 4, of this Part of this Act by them—
(a) may, at any time; and
(b) shall, if requested to do so by the person responsible for the establishment,
remove a child so placed.

33.—(1) The Secretary of State may make regulations providing for a prescribed order which is made by a court in England and Wales or in Northern Ireland, if that order appears to him to correspond generally to an order of a kind which may be made under this Part of this Act or to a supervision requirement, to have effect in prescribed circumstances and for prescribed purposes of the law of Scotland as if it were an order of that kind or, as the case may be, as if it were a supervision requirement.

Effect of orders etc. made in different parts of the United Kingdom.

(2) The Secretary of State may make regulations providing—
(a) for a prescribed order made under this Part of this Act by a court in Scotland; or
(b) for a supervision requirement,
if that order or requirement appears to him to correspond generally to an order of a kind which may be made under any provision of law in force in England and Wales or in Northern Ireland, to have effect in prescribed circumstances and for prescribed purposes of the law of England and Wales, or as the case may be of Northern Ireland, as if it were an order of that kind.

(3) Regulations under subsection (1) or (2)(a) above may provide for the order given effect for prescribed purposes to cease to have effect for those purposes, or for the purposes of the law of the place where the order was made, if prescribed conditions are satisfied.

(4) Where a child who is subject to a supervision requirement is lawfully taken to live in England and Wales or in Northern Ireland, the requirement shall cease to have effect if prescribed conditions

are satisfied.

- (5) Regulations under this section may modify any provision of—
- (a) the [1968 c. 49.] Social Work (Scotland) Act 1968 or this Act in any application which the Acts may respectively have, by virtue of the regulations, in relation to an order made otherwise than in Scotland;
 - (b) the [1989 c. 41.] Children Act 1989 or the [1969 c. 54] Children and Young Persons Act 1969 in any application which those Acts may respectively have, by virtue of the regulations, in relation to an order prescribed under subsection (2)(a) above or to a supervision requirement; or
 - (c) the [S.I. 1995/755 (N.I.2)] Children (Northern Ireland) Order 1995 or the [1968 c. 34 (N.I.)] Children and Young Persons Act (Northern Ireland) 1968 in any application which they may respectively have, by virtue of the regulations, in relation to an order so prescribed or to a supervision requirement.

Registration and inspection of certain residential grant-aided and independent schools etc.

34.—(1) Part IV of the Social Work (Scotland) Act 1968 (which makes provision as regards residential and other establishments) shall be amended in accordance with this section.

- (2) In section 61 (restriction on carrying on of establishments)—
- (a) for subsection (1) there shall be substituted—

"(1) In so far as the context admits, the following provisions of this Part of this Act apply—

 - (a) except in the case mentioned in paragraph (b) below, to any residential or other establishment the whole or a substantial part of whose functions is to provide persons with such personal care or support, whether or not combined with board and whether for reward or not, as may be required for the purposes of this Act or of the Children (Scotland) Act 1995;
 - (b) in the case of a residential establishment which is a grant-aided or independent school (as respectively defined in section 135(1) of the [1980 c. 44.] Education (Scotland) Act 1980), to that establishment if any part of its functions are as described in paragraph (a) above.

"

;

(b) in subsection (1A)—

(i) in paragraph (a) of the definition of "establishment", for the words "sections 61A and" there shall be substituted "section" and

(ii) at the end of that definition there shall be added "but an establishment is not excluded for those purposes by paragraph (a) above by reason only of its being registrable by the Registrar of Independent Schools in Scotland;" and

(c) in subsection (2), for the words "section 62(8) and (8A) below" there shall be substituted "sections 61A(1) and 62(8) and (8A) of this Act".

(3) For section 61A there shall be substituted—

61A. — (1) A grant-aided or independent school, provided it is not a residential establishment the whole or a substantial part of whose functions is as described in subsection (1)(a) of section 61 of this Act, may be carried on by a person without his being registered in respect of it as mentioned in subsection (2) of that section; but he may if he wishes apply in accordance with section 62, or as the case may be 63, of this Act for such registration.

(2) Sections 62(8) and (8A) and 65 of this Act shall not apply in relation to establishments as respects which registration has been by virtue of subsection (1) above.

"

(4) After section 62 there shall be inserted—

"Certificat

e of

registration

as respects

grant-aided

or

independen

t school.

62A. A certificate of registration granted under section 62 of this Act as respects an establishment which is a grant-aided, or independent, school shall relate to the whole of the establishment except so much as is used exclusively for educational purposes."

(5) In section 65(1) (removal of persons from establishment), after the word "ought"—

(a) where it first occurs, there shall be inserted "(by virtue of subsections (2) and (3)) of section 61 of this Act)" and

(b) where it occurs for the second time, there shall be inserted "(by virtue of the said subsections (2) and (3))".

(6) For section 67 there shall be substituted—

67. — (1) A person duly authorised by a local authority may in the area of that authority, at all reasonable times, enter, for a relevant purpose—

- (a) any establishment as regards which a person is registered, or ought (by virtue of subsections (2) and (3) of section 61 of this Act) to be registered, under section 62 of this Act; or
- (b) any place which the person so authorised has reasonable cause to believe is being used as such an establishment,

and subsections (2A) to (2D), (4) and (5) of section 6 of this Act shall apply in respect of a person so authorised as they apply in respect of a person duly authorised under subsection (1) of that section.

"Entry to examine state and management of establishments etc.

- (2) "Relevant purpose" in subsection (1) above means—
- (a) the purpose of making such examinations into the state and management of the establishment or place, and the condition and treatment of the persons in it, as the person so authorised thinks necessary; or
 - (b) the purpose of inspecting any records, or registers (in whatever form they are held) relating to the place, or to any person for whom, under or by virtue of this Act, section 7 (functions of local authorities) or 8 (provision of after-care services) of the [1984 c. 36.] Mental Health (Scotland) Act 1984, or Part II of the [1995 c. 36.] Children (Scotland) Act 1995, services are being or have been provided in the place.

"

Welfare of children in accommodation provided for purposes of school attendance.

35. After section 125 of the [1980 c. 44.] Education (Scotland) Act 1980 there shall be inserted—

Children and young persons in accommodation

Welfare of children and young persons in accommodation provided for purposes of school attendance.

125A. Where, for the purposes of his being in attendance at a school, a child or young person is provided with residential accommodation, in a place in or outwith that school, by—

(a) an education authority, the board of management of a self-governing school or the managers of a grant-aided or independent school; or

(b) by any other person in pursuance of arrangements made by any such authority, board of management or managers,

the authority, board of management or managers in question shall have the duty to safeguard and promote the welfare of the child or young person while he is so accommodated; and the powers of inspection exercisable by virtue of section 66(1) of this Act shall include the power to inspect the place to determine whether his welfare is adequately safeguarded and promoted there."

36.—(1) Where a child is provided with residential accommodation by a person mentioned in subsection (3) below and it appears to the person that the child either—

(a) has had no parental contact for a continuous period of three months or more; or

(b) is likely to have no parental contact for a period which, taken with any immediately preceding period in which the child has had no such contact, will constitute a continuous period of three months or more,

the person shall (whether or not the child has been, or will be, so accommodated throughout the continuous period) so notify the local authority in whose area the accommodation is provided.

Welfare of certain children in hospitals and nursing homes etc.

(2) A local authority receiving notification under subsection (1) above shall—

(a) take such steps as are reasonably practicable to enable them to determine whether the child's welfare is adequately safeguarded and promoted while he is so accommodated; and

(b) consider the extent to which (if at all) they should exercise any of their functions under this Act with respect to the child.

(3) The persons are—

(a) any health board constituted under section 2 of the [1978 c. 29.] National Health Service (Scotland) Act 1978;

(b) any national health service trust established under section 12A of that Act;

(c) any person carrying on—

(i) a private hospital registered under Part IV of the [1984 c. 36.] Mental Health (Scotland) Act 1984; or

(ii) a nursing home in respect of which either he is registered under section 1(3) of the [1938 c. 73.] Nursing Homes Registration (Scotland) Act 1938 or exemption has been granted under section 6 or 7 of that Act.

(4) For the purposes of subsection (1) above, a child has parental contact only when in the presence of a person having parental responsibilities in relation to him.

(5) A person duly authorised by a local authority may in the area of that authority, at all reasonable times, enter for the purposes of subsection (2) above or of determining whether there has been compliance with subsection (1) above any such place as is mentioned in sub-paragraph (i) or (ii) of subsection (3)(c) above and may for those purposes inspect any records or registers relating to that place; and subsections (2A) to (2D) and (4) of section 6 of the [1968 c. 49.] Social Work (Scotland) Act 1968 (exercise of powers of entry and inspection) shall apply in respect of a person so authorised as they apply in respect of a person duly authorised under subsection (1) of that section.

Modification of provisions of Children Act 1989 regarding disqualification from registration as child minder etc.

37. In paragraph 2 of Schedule 9 to the [1989 c. 41.] Children Act 1989 (which provides for regulations disqualifying certain persons from registration as a child minder or as a provider of day care for young children), at the end of sub-paragraph (1) there shall be added "unless he has—
(a) disclosed the fact to the appropriate local authority; and
(b) obtained their written consent."

Short-term refuges for children at risk of harm.

38.—(1) Where a child appears—
(a) to a local authority to be at risk of harm, they may at the child's request—
(i) provide him with refuge in a residential establishment both controlled or managed by them and designated by them for the purposes of this paragraph; or
(ii) arrange for a person whose household is approved by virtue of section 5(3)(b) of the [1968 c. 49.] Social Work (Scotland) Act 1968 (provision for securing that persons are not placed in any household unless the household has prescribed approval) and is designated by them for the purposes of this paragraph, to provide him with refuge in that household,
for a period which does not exceed the relevant period;
(b) to a person who carries on a residential establishment in respect of which the person is for the time being registered (as mentioned in section 61(2) of that Act), or to any person for the time being employed in the management of that establishment, to be at risk of harm, the person to whom the child so appears may at the child's request provide him with refuge, for a period which does not exceed the relevant period, in the establishment

but shall do so only if and to the extent that the local authority within whose area the establishment is situated have given their approval to the use of the establishment (or a part of the establishment) for the purposes of this paragraph.

(2) The Secretary of State may by regulations make provision as to—

- (a) designation, for the purposes of paragraph (a) of subsection (1) above, of establishments and households;
- (b) application for, the giving of and the withdrawal of, approval under paragraph (b) of subsection (1) above;
- (c) requirements (if any) which must be complied with while any such approval remains in force;
- (d) the performance by a person mentioned in the said paragraph (b) of anything to be done by him under that paragraph;
- (e) the performance by a local authority of their functions under this section; and
- (f) the giving, to such persons or classes of person as may be specified in the regulations, of notice as to the whereabouts of a child provided with refuge under this section,

and regulations made under this subsection may include such incidental and supplementary provisions as he thinks fit.

(3) While a child is being provided with refuge under, and in accordance with regulations made under, this section, none of the enactments mentioned in subsection (4) below shall apply in relation to him unless the commencement of the period of refuge has followed within two days of the termination of a prior period of refuge so provided to him by any person.

(4) The enactments are—

- (a) section 89 of this Act and, so far as it applies in relation to anything done in Scotland, section 83 of this Act; and
- (b) section 32(3) of the [1969 c. 54.] Children and Young Persons Act 1969 (compelling, persuading, inciting or assisting any person to be absent from detention etc.), so far as it applies in relation to anything done in Scotland.

(5) References in this section to the relevant period shall be construed as references either to a period which does not exceed seven days or, in such exceptional circumstances as the Secretary of State may prescribe, to a period which does not exceed fourteen days.

(6) A child who is provided with refuge for a period by virtue of such arrangements as are mentioned in subsection (1)(a) above shall not be regarded as a foster child for the purposes of the [1984 c. 56.] Foster Children (Scotland) Act 1984 by reason only of such provision.

Chapter 2

Children's Hearings

Constitution of children's hearings

39.—(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.

Formation of children's panel and children's hearings.

(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.

(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.

Qualifications, employment and duties of reporters

40.—(1) The qualifications of a reporter shall be such as the Secretary of State may prescribe.

(2) A reporter shall not, without the consent of the Scottish Children's Reporter Administration, be employed by a local authority.

Qualification and employment of reporters.

(3) The Secretary of State may make regulations in relation to the functions of any reporter under this Act and the [1975 c. 21.] Criminal Procedure (Scotland) Act 1975.

(4) The Secretary of State and the Lord Advocate may—
(a) by regulations empower a reporter, whether or not he is an advocate or solicitor, to conduct before a sheriff any proceedings which under this Chapter or Chapter 3 of this Part of this Act are heard by the

sheriff;

(b) prescribe such requirements as they think fit as to qualifications, training or experience necessary for a reporter to be so empowered.

(5) In this section, "reporter" means—

(a) the Principal Reporter; or

(b) any officer of the Scottish Children's Reporter Administration to whom there is delegated, under section 131(1) of the [1994 c. 39.] Local Government etc. (Scotland) Act 1994, any of the functions which the Principal Reporter has under this or any other enactment.

Safeguards for children

41.—(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.

Safeguarding child's interests in proceedings.

(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;

(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 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.

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

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

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

- (a) the conduct of, and matters which shall or may be determined by, a business meeting arranged under section 64 of this Act;
- (b) notification of the time and place of a children's hearing to the child and any relevant person in relation to the child and to such other persons as may be prescribed;
- (c) how the grounds for referring the case to a children's hearing under section 65(1) of this Act are to be stated, and the right of the child and any such relevant person to dispute those grounds;
- (d) the making available by the Principal Reporter, subject to such conditions as may be specified in the rules, of reports or information received by him to—
 - (i) members of the children's hearing;
 - (ii) the child concerned;
 - (iii) any relevant person; and
 - (iv) any other person or class of persons so specified;
- (e) the procedure in relation to the disposal of matters arising under section 41(1) of this Act;
- (f) the functions of any person appointed by a children's hearing under section 41(1) of this Act and any right of that person to information relating to the proceedings in question;
- (g) the recording in writing of any statement given under section 41(3) of this Act;
- (h) the right to appeal to the sheriff under section 51(1)(a) of this Act against a decision of the children's hearing and notification to such persons as may be prescribed of the proceedings before him;
- (i) the right of the child and of any such relevant person to be represented at a children's hearing;
- (j) the entitlement of the child, of any such relevant person and of any person who acts as the representative of the child or of any such relevant

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

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.

43.—(1) Subject to subsection (3) below, a children's hearing shall be conducted in private, and, subject to any rules made under section 42 of this Act, no person other than a person whose presence is necessary for the proper consideration of the case which is being heard, or whose presence is permitted by the chairman, shall be present.

(2) The chairman shall take all reasonable steps to ensure that the number of persons present at a children's hearing at any one time is kept to a minimum.

(3) The following persons have the right to attend a children's hearing—

(a) a member of the Council on Tribunals, or of the Scottish Committee of that Council, in his capacity as such; and

(b) subject to subsection (4) below, a *bona fide* representative of a newspaper or news agency.

(4) A children's hearing may exclude a person described in subsection (3)(b) above from any part or parts of the hearing where, and for so long as, they are satisfied that—

(a) it is necessary to do so, in the interests of the child, in order to obtain the child's views in relation to the case before the hearing; or

(b) the presence of that person is causing, or is likely to cause, significant distress to the child.

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

44.—(1) No person shall publish any matter in respect of proceedings at a children's hearing, or before a sheriff on an application under section 57, section 60(7), section 65(6) or (8), section 76(1) or section 85(1) of this Act, or on any appeal under this Part of this Act, which is intended to, or is likely to, identify—

(a) any child concerned in the proceedings or appeal; or

(b) an address or school as being that of any such child.

Privacy of proceedings at and right to attend children's hearing.

Prohibition of publication of proceedings at children's hearing.

(2) Any person who contravenes subsection (1) above shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale in respect of each such contravention.

(3) It shall be a defence in proceedings for an offence under this section for the accused to prove that he did not know, and had no reason to suspect, that the published matter was intended, or was likely, to identify the child or, as the case may be, the address or school.

(4) In this section "to publish" includes, without prejudice to the generality of that expression,—

(a) to publish matter in a programme service, as defined by section 201 of the [1990 c. 42.] Broadcasting Act 1990 (definition of programme service); and

(b) to cause matter to be published.

(5) The requirements of subsection (1) above may, in the interests of justice, be dispensed with by—

(a) the sheriff in any proceedings before him;

(b) the Court of Session in any appeal under section 51(11) of this Act; or

(c) the Secretary of State in relation to any proceedings at a children's hearing,

to such extent as the sheriff, the Court or the Secretary of State as the case may be considers appropriate.

45.—(1) Where a child has been notified in accordance with rules made under subsection (1) of section 42 of this Act by virtue of subsection (2)(b) of that section that his case has been referred to a children's hearing, he shall—

(a) have the right to attend at all stages of the hearing; and

(b) subject to subsection (2) below, be under an obligation to attend those stages in accordance with the notice.

(2) Without prejudice to subsection (1)(a) above and section 65(4) of this Act, where a children's hearing are satisfied—

(a) in a case concerned with an offence mentioned in Schedule 1 to the [1975 c. 21.] Criminal Procedure (Scotland) Act 1975, that the attendance of the child is not necessary for the just hearing of that case; or

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

they may release the child from the obligation imposed by subsection (1)(b) above.

Attendance of child and relevant person at children's hearing.

(3) Subject to subsection (2) above, the Principal Reporter shall be responsible for securing the attendance of the child at the hearing of his case by a children's hearing (and at any subsequent hearing to which the case is continued under section 69(1)(a) of this Act).

(4) On the application of the Principal Reporter, a children's hearing, if satisfied on cause shown that it is necessary for them to do so, may issue, for the purposes of subsection (3) above, a warrant under this subsection to find the child, to keep him in a place of safety and to bring him before a children's hearing.

(5) Where a child has failed to attend a children's hearing in accordance with such notice as is mentioned in subsection (1) above, they may, either on the application of the Principal Reporter or of their own motion, issue a warrant under this subsection, which shall have the same effect as a warrant under subsection (4) above.

(6) A child who has been taken to a place of safety under a warrant granted under this section shall not be kept there after whichever is the earlier of—

(a) the expiry of seven days beginning on the day he was first so taken there; or

(b) the day on which a children's hearing first sit to consider his case in accordance with subsection (7) below.

(7) Where a child has been found in pursuance of a warrant under this section and he cannot immediately be brought before a children's hearing, the Principal Reporter shall, wherever practicable, arrange a children's hearing to sit on the first working day after the child was so found.

(8) Subject to section 46 of this Act, a person who is a relevant person as respects a child shall, where a children's hearing are considering the case of the child—

(a) have the right to attend at all stages of the hearing; and

(b) be obliged to attend at all stages of the hearing unless the hearing are satisfied that it would be unreasonable to require his attendance or that his attendance is unnecessary for the proper consideration of the case.

(9) Any person who fails to attend a hearing which, under subsection (8)(b) above, he is obliged to attend shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Power to exclude relevant person from children's hearing.

46.—(1) Where a children's hearing are considering the case of a child in respect of whom a person is a relevant person, they may exclude that person, or that person and any representative of his, or any such representative, from any part or parts of the hearing for so long as is necessary in the interests of the child, where they are satisfied that—

- (a) they must do so in order to obtain the views of the child in relation to the case before the hearing; or
- (b) the presence of the person or persons in question is causing, or is likely to cause, significant distress to the child.

(2) Where a children's hearing exercise the power conferred by subsection (1) above, the chairman of the hearing shall, after that exclusion has ended, explain to any person who was so excluded the substance of what has taken place in his absence.

47.—(1) Where a children's hearing has been arranged in respect of any person, the hearing—

- (a) shall, at the commencement of the proceedings, make inquiry as to his age and shall proceed with the hearing only if he declares that he is a child or they so determine; and
- (b) may, at any time before the conclusion of the proceedings, accept a declaration by the child, or make a fresh determination, as to his age.

Presumption and determination of age.

(2) The age declared to, or determined by, a children's hearing to be the age of a person brought before them shall, for the purposes of this Part of this Act, be deemed to be the true age of that person.

(3) No decision reached, order continued, warrant granted or requirement imposed by a children's hearing shall be invalidated by any subsequent proof that the age of a person brought before them had not been correctly declared to the hearing or determined by them.

Transfer etc. of cases

Transfer of case to another children's hearing.

48.—(1) Where a children's hearing are satisfied, in relation to a case which they are hearing, that it could be better considered by a children's hearing constituted from a children's panel for a different local government area, they may at any time during the course of the hearing request the Principal Reporter to arrange for such other children's hearing to dispose of the case.

(2) Where a case has been transferred in pursuance of subsection (1) above, the grounds of referral accepted or established for the case shall not require to be further accepted or established for the purposes of the children's

hearing to which the case has been transferred.

Referral or remission to children's hearing where child guilty of an offence.

49.—(1) In section 173 of the [1975 c. 21.] Criminal Procedure (Scotland) Act 1975 (reference or remission to children's hearing where child guilty of an offence: solemn proceedings), for subsections (1) to (3) there shall be substituted—

"(1) Where a person who is charged with an offence and pleads guilty to, or is found guilty of, that offence is a child who is not subject to a supervision requirement, the court on that plea or finding may—

(a) instead of making an order, remit the case to the Principal Reporter to arrange a children's hearing to dispose of the case; or

(b) request the Principal Reporter to arrange a children's hearing for the purpose of obtaining their advice as to the treatment of the child.

(2) Where a person, who is charged with an offence and pleads guilty to, or is found guilty of, that offence, is aged sixteen years or over and is subject to a supervision requirement, the court if it is—

(a) the High Court, may; and

(b) the sheriff court shall,

proceed in accordance with either paragraph (a) or (b) of subsection (1) above.

(3) Where a child who is charged with an offence and pleads guilty to, or is found guilty of, that offence—

(a) is aged under sixteen years; and

(b) is subject to a supervision requirement, the court dealing with the case if it is— (i) the High Court, may; and (ii) the sheriff court, shall, request the Principal Reporter to arrange a children's hearing for the purpose of obtaining their advice as to the treatment of the child.

(3A) Where a court has obtained the advice of a children's hearing in pursuance—

(a) of paragraph (b) of subsection (1) above; or

(b) of subsection (3) above,

the court, after consideration of the advice received from the children's hearing may, as it thinks proper, itself dispose of the case or remit the case as mentioned in paragraph (a) of the said subsection (1)."

(2) In section 372 of that Act (reference or remission to children's hearing where child guilty of an offence: summary proceedings), for subsections (1) to (3) there shall be substituted—

"(1) Where a person who is charged with an offence and pleads guilty to, or is found guilty of, that offence is a child who is not subject to a supervision requirement the court on that plea or finding may—

(a) instead of making an order, remit the case to the Principal Reporter to arrange a children's hearing to dispose of the case; or

(b) request the Principal Reporter to arrange a children's hearing for the purpose of obtaining their advice as to the treatment of the child.

(2) Where a person, who is charged with an offence and pleads guilty to, or is found guilty of, that offence, is aged sixteen years or over and is subject to a supervision requirement, the court shall proceed in accordance with either paragraph (a) or (b) of subsection (1) above.

(3) Where a child who is charged with an offence and pleads guilty to, or is found guilty of, that offence and—

(a) is aged under sixteen years; and

(b) is subject to a supervision requirement,

the court dealing with the case shall request the Principal Reporter to arrange a children's hearing for the purpose of obtaining their advice as to the treatment of the child.

(3A) Where a court has obtained the advice of a children's hearing in pursuance—

(a) of paragraph (b) of subsection (1) above; or

(b) of subsection (3) above,

the court, after consideration of the advice received from the children's hearing may, as it thinks proper, itself dispose of the case or remit the case as mentioned in paragraph (a) of the said subsection (1)."

Treatment of child's case on remission
by court.

50.—(1) Where a court has, under section 173, 372 or 373 of the [1975 c. 21.] Criminal Procedure (Scotland) Act 1975, remitted a case to a children's hearing for disposal, a certificate signed by the clerk of the court stating that the child or person concerned has pled guilty to, or has been found guilty of, the offence to which the remit relates shall be conclusive evidence for the purposes of the remit that the offence has been committed by the child or person.

(2) Where a court has under the said section 373 remitted a case to a children's hearing for disposal, the provisions of this Act shall apply to the person concerned as if he were a child.

Appeals

51.—(1) Subject to subsection (15) below, a child or a relevant person (or relevant persons) or both (or all)—

- (a) may, within a period of three weeks beginning with the date of any decision of a children's hearing, appeal to the sheriff against that decision; and
- (b) where such an appeal is made, shall be heard by the sheriff.

(2) The Principal Reporter shall, in respect of any appeal under subsection (1) above, ensure that all reports and statements available to the hearing, along with the reports of their proceedings and the reasons for the decision, are lodged with the sheriff clerk.

(3) The sheriff may, on appeal under subsection (1) above, hear evidence from, or on behalf of, the parties in relation to the decision; and, without prejudice to that generality the sheriff may—

- (a) examine the Principal Reporter;
- (b) examine the authors or compilers of any reports or statements; and
- (c) call for any further report which he considers may assist him in deciding the appeal.

(4) Where the sheriff decides that an appeal under this section has failed, he shall confirm the decision of the children's hearing.

(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;
- (b) where the child is subject to a supervision requirement containing a condition imposed under section 70(9) 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 section 70 of this Act.

(6) Where a sheriff imposes a requirement under subsection (5)(c)(iii) above, that requirement shall for the

Appeal against decision of children's hearing or sheriff.

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.

(9) Where a child or a relevant person appeals under subsection (1) above against a decision of a children's hearing in relation to a supervision requirement, the child or the relevant person may make application to a children's hearing for the suspension of the requirement appealed against.

(10) It shall be the duty of the Principal Reporter forthwith to arrange a children's hearing to consider the application under subsection (9) above, and that hearing may grant or refuse the application.

(11) Subject to subsections (13) and (15) below, an appeal shall lie by way of stated case either on a point of law or in respect of any irregularity in the conduct of the case—

(a) to the sheriff principal from any decision of the sheriff—

(i) on an appeal under subsection (1) of this section;

(ii) on an application made under section 65(7) or (9) of this Act; or

(iii) on an application made under section 85(1) of this Act; and

(b) to the Court of Session from any decision of the sheriff such as is mentioned in sub-paragraphs (i) to (iii) of paragraph (a) above and, with leave of the sheriff principal, from any decision of the sheriff principal on an appeal under that paragraph; and the decision of the Court of Session in the matter shall be final.

(12) An appeal under subsection (11) above may be made at the instance of—

- (a) the child or any relevant person, either alone or together; or
- (b) the Principal Reporter on behalf of the children's hearing.

(13) An application to the sheriff, or as the case may be the sheriff principal, to state a case for the purposes of an appeal under subsection (11)(a) or (b) above shall be made within a period of twenty-eight days beginning with the date of the decision appealed against.

(14) On deciding an appeal under subsection (11) above the sheriff principal or as the case may be the Court of Session shall remit the case to the sheriff for disposal in accordance with such directions as the court may give.

(15) No appeal shall lie under this section in respect of—
(a) a decision of the sheriff on an application under section 57 of this Act; or
(b) a decision of a children's hearing continuing a child protection order under section 59(4) of this Act.

Chapter 3

Protection and supervision of Children

Children requiring compulsory measures of supervision

52.—(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 [1975 c. 21.] Criminal Procedure (Scotland) Act 1975 (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 2A to 2C of the [1976 c. 67.] Sexual Offences (Scotland) Act 1976 (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 [1971 c. 38.] Misuse of Drugs Act 1971;
- (k) has misused a volatile substance by deliberately

Children requiring compulsory measures of supervision.

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.

(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.

Preliminary and investigatory measures

53.—(1) Where information is received by a local authority which suggests that compulsory measures of supervision may be necessary 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 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.

(3) A constable shall make any report required to be made under paragraph (b) of section 17(1) of the [1967 c. 77.] 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 84 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

Provision of information to the
Principal Reporter.

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 462 of the [1975 c. 21.] Criminal Procedure (Scotland) Act 1975.

54.—(1) Where in any relevant proceedings it appears to the court that any of the conditions in section 52(2)(a) to (l) of this Act is satisfied with respect to a child, it may refer the matter to the Principal Reporter, specifying the condition.

(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;
- (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 [1978 c. 28.] 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 [1980 c. 44.] 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

Reference to the Principal Reporter by court.

supervision are necessary,
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.

55.—(1) A sheriff may grant an order under this section for an assessment of the state of a child's health or development, or of the way in which he has been treated (to be known as a "child assessment order"), on the application of a local authority if he is satisfied that—

- (a) the local authority have reasonable cause to suspect that the child in respect of whom the order is sought is being so treated (or neglected) that he is suffering, or is likely to suffer, significant harm;
- (b) such assessment of the child is required in order to establish whether or not there is reasonable cause to believe that the child is so treated (or neglected); and
- (c) such assessment is unlikely to be carried out, or be carried out satisfactorily, unless the order is granted.

(2) Where—

- (a) an application has been made under subsection (1) above; and
- (b) the sheriff considers that the conditions for making a child protection order under section 57 of this Act are satisfied,

he shall make such an order under that section as if the application had been duly made by the local authority under that section rather than this section.

Child assessment orders.

(3) A child assessment order shall—

- (a) specify the date on which the assessment is to begin;
- (b) have effect for such period as is specified in the order, not exceeding seven days beginning with the date specified by virtue of paragraph (a) above;
- (c) require any person in a position to produce the child to—
 - (i) produce him to any authorised person;
 - (ii) permit that person or any other authorised person to carry out an assessment in accordance with the order; and
 - (iii) comply with any other conditions of the order; and

(d) be carried out by an authorised person in accordance with the terms of the order.

(4) A child assessment order may—

- (a) where necessary, permit the taking of the child concerned to any place for the purposes of the

assessment; and

(b) authorise the child to be kept at that place, or any other place, for such period of time as may be specified in the order.

(5) Where a child assessment order makes provision under subsection (4) above, it shall contain such directions as the sheriff considers appropriate as to the contact which the child shall be allowed to have with any other person while the child is in any place to which he has been taken or in which he is being kept under a child assessment order.

(6) In this section "authorised person" means any officer of the local authority, and any person authorised by the local authority to perform the assessment, or perform any part of it.

56.—(1) Where the Principal Reporter receives information from any source about a case which may require a children's hearing to be arranged he shall, after making such initial investigation as he thinks necessary, proceed with the case in accordance with subsection (4) or (6) below.

(2) For the purposes of making any initial investigation under subsection (1) above, the Principal Reporter may request from the local authority a report on the child and on such circumstances concerning the child as appear to him to be relevant; and the local authority shall supply the report which may contain such information, from any person whomsoever, as the Principal Reporter thinks, or the local authority think, fit.

Initial investigation by the Principal Reporter.

(3) A report requested under subsection (2) above may contain information additional to that given by the local authority under section 53 of this Act.

(4) The Principal Reporter may decide, after an initial investigation under subsection (1) above, that a children's hearing does not require to be arranged; and where he so decides—

(a) he shall inform the child, any relevant person and the person who brought the case to his notice, or any of those persons, that he has so decided; and

(b) he may, if he considers it appropriate, refer the case to a local authority with a view to their making arrangements for the advice, guidance and assistance of the child and his family in accordance with Chapter 1 of this Part of this Act.

(5) Where the Principal Reporter has decided under subsection (4) above that a children's hearing does not

require to be arranged, he shall not at any other time, on the basis solely of the information obtained during the initial investigation referred to in that subsection, arrange a children's hearing under subsection (6) below.

(6) Where it appears to the Principal Reporter that compulsory measures of supervision are necessary 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.

Measures for the emergency protection of children

57.—(1) Where the sheriff, on an application by any person, is satisfied that—

- (a) there are reasonable grounds to believe that a child—
 - (i) is being so treated (or neglected) that he is suffering significant harm; or
 - (ii) will suffer such harm if he is not removed to and kept in a place of safety, or if he does not remain in the place where he is then being accommodated (whether or not he is resident there); and
 - (b) an order under this section is necessary to protect that child from such harm (or such further harm),
- he may make an order under this section (to be known as a "child protection order").

Child protection orders.

(2) Without prejudice to subsection (1) above, where the sheriff on an application by a local authority is satisfied—

- (a) that they have reasonable grounds to suspect that a child is being or will be so treated (or neglected) that he is suffering or will suffer significant harm;
- (b) that they are making or causing to be made enquiries to allow them to decide whether they should take any action to safeguard the welfare of the child; and
- (c) that those enquiries are being frustrated by access to the child being unreasonably denied, the authority

having reasonable cause to believe that such access is required as a matter of urgency,
he may make a child protection order.

(3) Without prejudice to any additional requirement imposed by rules made by virtue of section 91 of this Act, an application for a child protection order shall—

(a) identify—

(i) the applicant; and

(ii) in so far as practicable, the child in respect of whom the order is sought;

(b) state the grounds on which the application is made; and

(c) be accompanied by such supporting evidence, whether in documentary form or otherwise, as will enable the sheriff to determine the application.

(4) A child protection order may, subject to such terms and conditions as the sheriff considers appropriate, do any one or more of the following—

(a) require any person in a position to do so to produce the child to the applicant;

(b) authorise the removal of the child by the applicant to a place of safety, and the keeping of the child at that place;

(c) authorise the prevention of the removal of the child from any place where he is being accommodated;

(d) provide that the location of any place of safety in which the child is being kept should not be disclosed to any person or class of person specified in the order.

(5) Notice of the making of a child protection order shall be given forthwith by the applicant to the local authority in whose area the child resides (where that authority is not the applicant) and to the Principal Reporter.

(6) In taking any action required or permitted by a child protection order or by a direction under section 58 of this Act the applicant shall only act where he reasonably believes that to do so is necessary to safeguard or promote the welfare of the child.

(7) Where by virtue of a child protection order a child is removed to a place of safety provided by a local authority, they shall, subject to the terms and conditions of that order and of any direction given under section 58 of this Act, have the like duties in respect of the child as they have under section 17 of this Act in respect of a child looked after by them.

and parental rights.

give a direction to the applicant for the order as to contact with the child for—

- (a) any parent of the child;
- (b) any person with parental responsibilities in relation to the child; and
- (c) any other specified person or class of persons;

and if he determines that there is such a necessity he may give such a direction.

(2) Without prejudice to the generality of subsection (1) above, a direction under that subsection may—

- (a) prohibit contact with the child for any person mentioned in paragraphs (a) to (c) of that subsection;
- (b) make contact with the child for any person subject to such conditions as the sheriff considers appropriate to safeguard and promote the welfare of the child.

(3) A direction under subsection (1) above may make different provision in relation to different persons or classes of person.

(4) A person applying for a child protection order under section 57(1) or (2) of this Act may at the same time apply to the sheriff for a direction in relation to the exercise or fulfilment of any parental responsibilities or parental rights in respect of the child concerned, if the person considers such a direction necessary to safeguard or promote the welfare of the child.

(5) Without prejudice to the generality of subsection (4) above, a direction under that subsection may be sought in relation to—

- (a) any examination as to the physical or mental state of the child;
- (b) any other assessment or interview of the child; or
- (c) any treatment of the child arising out of such an examination or assessment,

which is to be carried out by any person.

(6) The sheriff may give a direction sought under subsection (4) above where he considers there is a necessity such as is mentioned in that subsection; and such a direction may be granted subject to such conditions, if any, as the sheriff (having regard in particular to the duration of the child protection order to which it relates) considers appropriate.

(7) A direction under this section shall cease to have effect when—

- (a) the sheriff, on an application under section 60(7) of this Act, directs that it is cancelled; or

(b) the child protection order to which it is related ceases to have effect.

59.—(1) This section applies where—

(a) a child in respect of whom a child protection order has been made—

(i) has been taken to a place of safety by virtue of section 57(4)(b) of this Act; or

(ii) is prevented from being removed from any place by virtue of section 57(4)(c) of this Act;

(b) the Principal Reporter has not exercised his powers under section 60(3) of this Act to discharge the child from the place of safety; and

(c) the Principal Reporter has not received notice, in accordance with section 60(9) of this Act, of an application under subsection (7) of that section.

(2) Where this section applies, the Principal Reporter shall arrange a children's hearing to conduct an initial hearing of the child's case in order to determine whether they should, in the interests of the child, continue the child protection order under subsection (4) below.

(3) A children's hearing arranged under subsection (2) above shall take place on the second working day after that order is implemented.

Initial hearing of case of child subject to child protection order.

(4) Where a children's hearing arranged under subsection (2) above are satisfied that the conditions for the making of a child protection order under section 57 of this Act are established, they may continue the child protection order and any direction given under section 58 of this Act (whether with or without variation of the order or, as the case may be, the direction) until the commencement of a children's hearing in relation to the child arranged in accordance with section 65(2) of this Act.

(5) In subsection (3) above, section 60 and section 65(2) of this Act any reference, in relation to the calculation of any period, to the time at which a child protection order is implemented shall be construed as a reference—

(a) in relation to such an order made under paragraph

(b) of subsection (4) of section 57 of this Act, to the day on which the child was removed to a place of safety in accordance with the order; and

(b) in relation to such an order made under paragraph (c) of that subsection, to the day on which the order was made,

and "implement" shall be construed accordingly.

Duration, recall or variation of child

60.—(1) Where, by the end of twenty-four hours of a

protection order.

child protection order being made (other than by virtue of section 57(4)(c) of this Act), the applicant has made no attempt to implement the order it shall cease to have effect.

(2) Where an application made under subsection (7) below has not been determined timeously in accordance with subsection (8) below, the order to which the application relates shall cease to have effect.

(3) A child shall not be—

(a) kept in a place of safety under a child protection order;

(b) prevented from being removed from any place by such an order; or

(c) subject to any term or condition contained in such an order or a direction given under section 58 of this Act,

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, the conditions for the making of a child protection order in respect of the child are no longer satisfied or that the term, condition or direction is no longer appropriate and notifies the person who implemented the order that he so considers.

(4) The Principal Reporter shall not give notice under subsection (3) above where—

(a) proceedings before a children's hearing arranged under section 59(2) of this Act in relation to the child who is subject to the child protection order have commenced; or

(b) the hearing of an application made under subsection (7) of this section has begun.

(5) Where the Principal Reporter has given notice under subsection (3) above, he shall also, in such manner as may be prescribed, notify the sheriff who made the order.

(6) A child protection order shall cease to have effect—

(a) where an initial hearing arranged under section 59(2) of this Act does not continue the order under subsection (4) of that section;

(b) where an application is made to the sheriff under subsection (7) below, on the sheriff recalling such order under subsection (13) below;

(c) on the person who implemented the order receiving notice from the Principal Reporter that he has decided not to refer the case of a child who is subject to the

order to a children's hearing arranged in accordance with section 65(2) of this Act;

(d) on the Principal Reporter giving notice in accordance with subsection (3) above in relation to the order that he considers that the conditions for the making of it are no longer satisfied; or

(e) where such order is continued under section 59(4) of this Act or subsection (12)(d) below, on the commencement of a children's hearing arranged under section 65(2) of this Act.

(7) An application to the sheriff to set aside or vary a child protection order made under section 57 of this Act or a direction given under section 58 of this Act or such an order or direction continued (whether with or without variation) under section 58(4) of this Act, may be made by or on behalf of—

(a) the child to whom the order or direction relates;

(b) a person having parental rights over the child;

(c) a relevant person;

(d) any person to whom notice of the application for the order was given by virtue of rules; or

(e) the applicant for the order made under section 57 of this Act.

(8) An application under subsection (7) above shall be made—

(a) in relation to a child protection order made under section 56, or a direction given under section 58, of this Act, before the commencement of a children's hearing arranged in accordance with section 59(2) of this Act; and

(b) in relation to such an order or direction continued (whether with or without variation) by virtue of subsection (4) of the said section 59, within two working days of such continuation,

and any such application shall be determined within three working days of being made.

(9) Where an application has been made under subsection (7) above, the applicant shall forthwith give notice, in a manner and form prescribed by rules, to the Principal Reporter.

(10) At any time which is—

(a) after the giving of the notice required by subsection (9) above; but

(b) before the sheriff has determined the application in accordance with subsection (11) below,

the Principal Reporter may arrange a children's hearing the purpose of which shall be to provide any advice they consider appropriate to assist the sheriff in his

determination of the application.

(11) The sheriff shall, after hearing the parties to the application and, if he wishes to make representations, the Principal Reporter, determine whether—

- (a) the conditions for the making of a child protection order under section 57 of this Act are satisfied; or
- (b) where the application relates only to a direction under section 58 of this Act, the direction should be varied or cancelled.

(12) Where the sheriff determines that the conditions referred to in subsection (11)(a) above are satisfied, he may—

- (a) confirm or vary the order, or any term or condition on which it was granted;
- (b) confirm or vary any direction given, in relation to the order, under section 58 of this Act;
- (c) give a new direction under that section; or
- (d) continue in force the order and any such direction until the commencement of a children's hearing arranged in accordance with section 65(2) of this Act.

(13) Where the sheriff determines that the conditions referred to in subsection (11)(a) above are not satisfied he shall recall the order and cancel any direction given under section 58 of this Act.

61.—(1) Where, on the application of any person, a justice of the peace is satisfied—

- (a) both that the conditions laid down for the making of a child protection order in section 57(1) of this Act are satisfied and that it is probable that any such order, if made, would contain an authorisation in terms of paragraph (b) or (c) of subsection (4) of that section; but

(b) that it is not practicable in the circumstances for an application for such an order to be made to the sheriff or for the sheriff to consider such an application, he may grant to the applicant an authorisation under this section.

Emergency protection of children where child protection order not available.

(2) Where on the application for a local authority a justice of the peace is satisfied—

- (a) both that the conditions laid down for the making of a child protection order in section 57(2) of this Act are satisfied and that it is probable that any such order, if made, would contain an authorisation in terms of paragraph (b) or (c) of subsection (4) of that section; but

(b) that it is not practicable in the circumstances for an application for such an order to be made to the sheriff

or for the sheriff to consider such an application, he may grant an authorisation under this section.

- (3) An authorisation under this section may—
- (a) require any person in a position to do so to produce the child to the applicant;
 - (b) prevent any person from removing a child from a place where he is then being accommodated;
 - (c) authorise the applicant to remove the child to a place of safety and to keep him there until the expiration of the authorisation.

(4) An authorisation under this section shall cease to have effect—

(a) twelve hours after being made, if within that time—

(i) arrangements have not been made to prevent the child's removal from any place specified in the authorisation; or

(ii) he has not been, or is not being, taken to a place of safety; or

(b) where such arrangements have been made or he has been so taken when—

(i) twenty-four hours have expired since it was so given; or

(ii) an application for a child protection order in respect of the child is disposed of,

whichever is the earlier.

(5) Where a constable has reasonable cause to believe that—

(a) the conditions for the making of a child protection order laid down in section 57(1) are satisfied;

(b) that it is not practicable in the circumstances for him to make an application for such an order to the sheriff or for the sheriff to consider such an application; and

(c) that, in order to protect the child from significant harm (or further such harm), it is necessary for him to remove the child to a place of safety,

he may remove the child to such a place and keep him there.

(6) The power conferred by subsection (5) above shall not authorise the keeping of a child in a place of safety for more than twenty four hours from the time when the child is so removed.

(7) The authority to keep a child in a place of safety conferred by subsection (5) above shall cease on the disposal of an application in relation to the child for a child protection order.

(8) A child shall not be—
(a) kept in a place of safety; or
(b) prevented from being removed from any place, under this section where the Principal Reporter considers that the conditions for the grant of an authorisation under subsection (1) or (2) above or the exercise of the power conferred by subsection (5) above are not satisfied, or that it is no longer in the best interests of the child that he should be so kept.

62.—(1) The Secretary of State may make regulations concerning the duties in respect of a child of any person removing him to, and keeping him in, a place of safety under section 61 above.

Regulations in respect of emergency child protection measures.

(2) Regulations under this section may make provision requiring—
(a) notification of the removal of a child to be given to a person specified in the regulations;
(b) intimation to be given to any person of the place of safety at which a child is being kept;
(c) notification to be given to any person of the ceasing to have effect, under section 61(4)(a) of this Act, of an authorisation.

Children arrested by the police

63.—(1) Where the Principal Reporter has been informed by a constable, in accordance with section 296(3) of the [1975 c. 21.] Criminal Procedure (Scotland) Act 1975, 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, arrange a children's hearing to which he shall refer the case.

Review of case of child arrested by police.

(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.

(4) Subject to subsection (3) 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.

Business meeting preparatory to children's hearing

64.—(1) At any time prior to the commencement of proceedings at the children's hearing, the Principal Reporter may arrange a meeting with members of the children's panel from which the children's hearing is to be constituted under section 39(4) of this Act for those proceedings (any such meeting being, in this Part of this Act referred to as a "business meeting").

Business meeting preparatory to children's hearing.

(2) Where a business meeting is arranged under subsection (1) above, the Principal Reporter shall give notice to the child in respect of whom the proceedings are to be commenced and any relevant person in relation to the child—

(a) of the arrangement of the meeting and of the matters which may be considered and determined by the meeting;

(b) of their right to make their views on those matters known to the Principal Reporter; and

(c) of the duty of the Principal Reporter to present

those views to the meeting.

- (3) A business meeting, subject to subsection (4) below—
- (a) shall determine such procedural and other matters as may be prescribed by rules under subsection (1) of section 42 of this Act by virtue of subsection (2)(a) of that section; and
 - (b) may give such direction or guidance to the Principal Reporter in relation to the performance of his functions in relation to the proceedings as they think appropriate.
- (4) Before a business meeting makes such a determination or gives such direction or guidance to the Principal Reporter, the Principal Reporter shall present, and they shall consider, any views expressed to him by virtue of subsection (2)(b) above.

(5) Subject to any rules made under section 42(1) of this Act by virtue of subsection (2)(a) of that section and with the exception of sections 44 and, as regards any determination made by the business meeting under subsection (3)(a) above, 51, the provisions of this Act which relate to a children's hearing shall not apply to a business meeting.

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

65.—(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 41(1) of this Act by virtue of subsection (2)(c) of that section.

Referral to, and proceedings at, children's hearing.

(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 for the referral in order to ascertain whether these grounds are accepted in whole or in part by them.

(5) Where the chairman has given the explanation required by subsection (3) above and the child and the relevant person accept the grounds 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 (3) above and the child and the relevant person accept the grounds 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 accepted.

(7) Where the chairman has given the explanation required under subsection (3) above and either or both of the child and the relevant person—

- (a) do not accept the grounds for the referral; or
- (b) accept the grounds 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 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 for the referral required under subsection (3) 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 established or discharge the referral.

(10) The acceptance by the relevant person of the grounds of 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.

66.—(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.

Warrant to keep child where children's hearing unable to dispose of case.

(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;
- (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.

(6) Where a children's hearing are satisfied that either of the criteria specified in section 70(10) of this Act are satisfied, they 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.

67.—(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, 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—

Warrant for further detention of child.

- (a) shall specify the date on which it will expire; 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 the hearing of, an application which the Principal Reporter has been directed by a children's hearing to make under section 65(6) or (8)

of this Act.

68.—(1) This section applies to applications under subsections (6) and (8) 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)—

(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, 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;

Application to sheriff to establish grounds of referral.

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, 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 for referral to which the application relates, the sheriff shall; or

(b) under section 65(8) of this Act, the relevant person accepts any of the grounds for referral to which the application relates, 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 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 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 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.

(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 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 that either of the criteria mentioned in section 70(10) of this Act is fulfilled, 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.

69.—(1) Where the grounds of referral of the child's case stated by the Principal Reporter are accepted or are established in accordance with section 67 or section 84 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;
- (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.

Continuation or disposal of referral by children's hearing.

(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.

(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.

(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) 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.

(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.

(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 that either of the criteria mentioned in section 70(10) of this Act is fulfilled, 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.

70.—(1) Where the children's hearing to whom a child's case has been referred under section 65(1) of this Act are satisfied that compulsory measures of supervision are necessary in respect of the child they may make a requirement under this section (to be known as a "supervision requirement").

(2) A children's hearing, where they decide to make such a requirement, shall consider whether to impose any condition such as is described in subsection (5)(b) below.

(3) A supervision requirement may require the child—
(a) to reside at any place or places specified in the requirement; and
(b) to comply with any condition contained in the requirement.

(4) The place or, as the case may be, places specified in a requirement under subsection (3)(a) above may, without prejudice to the generality of that subsection, be a place or places in England or Wales; and a supervision requirement shall be authority for the person in charge of such a place to restrict the child's liberty to such extent as that person may consider appropriate, having regard to the terms of the requirement.

(5) A condition imposed under subsection (3)(b) above may, without prejudice to the generality of that subsection—

- (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.

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

(6) A children's hearing may require, when making a supervision requirement, that any place where the child is to reside in accordance with the supervision requirement shall not be disclosed to any person specified in the requirement under this subsection or class of persons so specified.

(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.

(8) A supervision requirement shall be in such form as the Secretary of State may prescribe by rules.

(9) Where a children's hearing are satisfied—
(a) that it is necessary to make a supervision requirement which includes a requirement under subsection (3)(a) above that the child reside in a named residential establishment; and
(b) that any of the criteria specified in subsection (10) below are satisfied,

they may specify in the requirement that the child shall be liable to be placed and kept in secure accommodation in that establishment 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.

(10) The criteria referred to in subsection (9) above are that the child—

- (a) having previously absconded, is likely to abscond unless kept in secure accommodation, and, if he absconds, it is likely that his physical, mental or moral welfare will be at risk; or
- (b) is likely to injure himself or some other person unless he is kept in such accommodation.

71.—(1) The relevant local authority shall, as respects a child subject to a supervision requirement, give effect to the requirement.

Duties of local authority with respect to supervision requirements.

(2) Where a supervision requirement provides that the child shall reside—

- (a) in relevant accommodation; or
- (b) in any other accommodation not provided by a local authority,

the relevant local authority shall from time to time investigate whether, while the child is so resident, any conditions imposed by the supervision requirement are

being fulfilled; and may take such steps as they consider reasonable if they find that such conditions are not being fulfilled.

(3) In this section, "relevant accommodation" means accommodation provided by the parents or relatives of the child or by any person associated with them or with the child.

72.—(1) In any case of urgent necessity, where it is in the interests of—

- (a) a child who is required by a supervision requirement imposed under section 70(3)(a) of this Act to reside in a specific residential establishment or specific other accommodation; or
- (b) other children in that establishment or accommodation,

Transfer of child subject to supervision requirement in case of necessity.

the chief social work officer of the relevant local authority may direct that, notwithstanding that requirement, the child be transferred to another place.

(2) Any child transferred under subsection (1) above shall have his case reviewed, in accordance with section 73(8) of this Act, by a children's hearing within seven days of his transfer.

73.—(1) No child shall continue to be subject to a supervision requirement for any period longer than is necessary in the interests of promoting or safeguarding his welfare.

(2) Subject to any variation or continuation of a supervision requirement under subsection (9) below, no supervision requirement shall remain in force for a period longer than one year.

Duration and review of supervision requirement.

(3) A supervision requirement shall cease to have effect in respect of a child not later than on his attaining the age of eighteen years.

(4) A relevant local authority shall refer the case of a child who is subject to a supervision requirement to the Principal Reporter where they are satisfied that—

- (a) the requirement in respect of the child ought to cease to have effect or be varied;
- (b) a condition contained in the requirement is not being complied with; or
- (c) the best interests of the child would be served by their—

- (i) applying under section 86 of this Act for a

parental responsibilities order;

(ii) applying under section 18 of the [1978 c. 28.] Adoption (Scotland) Act 1978 for an order freeing the child for adoption; or

(iii) placing the child for adoption,

and they intend to apply for such an order or so place the child.

(5) Where the relevant local authority are aware that an application has been made and is pending, or is about to be made, under section 12 of the said Act of 1978 for an adoption order in respect of a child who is subject to a supervision requirement, they shall forthwith refer his case to the Principal Reporter.

(6) A child or any relevant person may require a review of a supervision requirement in respect of the child at any time at least three months after—

(a) the date on which the requirement is made; or

(b) the date of the most recent continuation, or variation, by virtue of this section of the requirement.

(7) Where a child is subject to a supervision requirement and, otherwise than in accordance with that requirement or with an order under section 11 of this Act, a relevant person proposes to take the child to live outwith Scotland, the person shall, not later than twenty-eight days before so taking the child, give notice of that proposal in writing to the Principal Reporter and to the relevant authority.

(8) The Principal Reporter shall—

(a) arrange for a children's hearing to review any supervision requirement in respect of a child where—

(i) the case has been referred to him under subsection (4) or (5) above;

(ii) the review has been required under subsection (6) above;

(iii) the review is required by virtue of section 70(7) or section 72(2) of this Act;

(iv) he has received in respect of the child such notice as is mentioned in subsection (7) above;

or

(v) in any other case, the supervision requirement will expire within three months; and

(b) make any arrangements incidental to that review.

(9) Where a supervision requirement is reviewed by a children's hearing arranged under subsection (8) above, they may—

(a) where they are satisfied that in order to complete the review of the supervision requirement it is necessary to have a further investigation of the child's

- case, continue the review to a subsequent hearing;
- (b) terminate the requirement;
- (c) vary the requirement;
- (d) insert in the requirement any requirement which could have been imposed by them under section 70(3) of this Act; or
- (e) continue the requirement, with or without such variation or insertion.

(10) Subsections (3) to (10) of section 69 of this Act shall apply to a continuation under paragraph (a) of subsection (9) above of a review of a supervision requirement as they apply to the continuation of a case under subsection (1)(a) of that section.

(11) Where a children's hearing vary or impose a requirement under subsection (9) above which requires the child to reside in any specified place or places, they may order that such place or places shall not be disclosed to any person or class of persons specified in the requirement.

(12) Where a children's hearing is arranged under subsection (8)(a)(v) above, they shall consider whether, if the supervision requirement is not continued, the child still requires supervision or guidance; and where a children's hearing consider such supervision or guidance is necessary, it shall be the duty of the local authority to provide such supervision or guidance as the child is willing to accept.

(13) Where a children's hearing is arranged by virtue of subsection (4)(c) or (5) above, then irrespective of what the hearing do under subsection (9) above they shall draw up a report which shall provide advice in respect of, as the case may be, the proposed application under section 86 of this Act or under section 18 of the said Act of 1978, or the proposed placing for adoption or the application, or prospective application, under section 12 of that Act, for any court which may subsequently require to come to a decision, in relation to the child concerned, such as is mentioned in subsection (14) below.

(14) A court which is considering whether, in relation to a child, to grant an application under section 86 of this Act or under section 18 or 12 of the said Act of 1978 and which, by virtue of subsection (13) above, receives a report as respects that child, shall consider the report before coming to a decision in the matter.

subject to supervision requirements.

- (a) for the transmission of information regarding a child who is subject to a supervision requirement to any person who, by virtue of that requirement, has, or is to have, control over the child;
- (b) for the temporary accommodation, where necessary, of a child so subject; and
- (c) for the conveyance of a child so subject—
 - (i) to any place in which, under the supervision requirement, he is to reside;
 - (ii) to any place to which he falls to be taken under subsection (1) or (5) of section 82 of this Act; or
 - (iii) to any person to whom he falls to be returned under subsection (3) of that section.

75.—(1) The Secretary of State may by regulations make provision with respect to the placing in secure accommodation of any child—

- (a) who is subject to a requirement imposed under section 70(3)(a) of this Act but not subject to a requirement under subsection (9) of that section; or
- (b) who is not subject to a supervision requirement but who is being looked after by a local authority in pursuance of such enactments as may be specified in the regulations.

(2) Regulations under subsection (1) above may—

- (a) specify the circumstances in which a child may be so placed under the regulations;
- (b) make provision to enable a child who has been so placed or any relevant person to require that the child's case be brought before a children's hearing within a shorter period than would apply under regulations made under subsection (3) below; and
- (c) specify different circumstances for different cases or classes of case.

Powers of Secretary of State with respect to secure accommodation.

(3) Subject to subsection (4) below and without prejudice to subsection (2)(b) above, the Secretary of State may prescribe—

- (a) the maximum period during which a child may be kept under this Act in secure accommodation without the authority of a children's hearing or of the sheriff;
- (b) the period within which a children's hearing shall be arranged to consider the case of a child placed in secure accommodation by virtue of regulations made under this section (and different periods may be so prescribed in respect of different cases or classes of case).

(4) Subsection (8) of section 66 of this Act shall apply in respect of a child placed in secure accommodation under regulations made under this section as if such placing took

place by virtue of that section.

(5) The Secretary of State may by regulations vary the period within which a review of a condition imposed under section 70(9) of this Act shall be reviewed under section 73 of this Act.

(6) The Secretary of State may by regulations make provision for the procedures to be applied in placing children in secure accommodation; and without prejudice to the generality of this subsection, such regulations may—

(a) specify the duties of the Principal Reporter in relation to the placing of children in secure accommodation;

(b) make provision for the referral of cases to a children's hearing for review; and

(c) make provision for any person with parental responsibilities in relation to the child to be informed of the placing of the child in secure accommodation.

Exclusion orders

76.—(1) Subject to subsections (3) to (9) below, where on the application of a local authority the sheriff is satisfied, in relation to a child, that the conditions mentioned in subsection (2) below are met, he may grant an order under this section (to be known as "an exclusion order") excluding from the child's family home any person named in the order (in this Part of this Act referred to as the "named person").

(2) The conditions are—

(a) that the child has suffered, is suffering, or is likely to suffer, significant harm as a result of any conduct, or any threatened or reasonably apprehended conduct, of the named person;

(b) that the making of an exclusion order against the named person—

(i) is necessary for the protection of the child, irrespective of whether the child is for the time being residing in the family home; and

(ii) would better safeguard the child's welfare than the removal of the child from the family home; and

(c) that, if an order is made, there will be a person specified in the application who is capable of taking responsibility for the provision of appropriate care for the child and any other member of the family who requires such care and who is, or will be, residing in the family home (in this section, sections 77 to 78 and

Exclusion orders.

section 91(3)(f) of this Act referred to as an "appropriate person").

(3) No application under subsection (1) above for an exclusion order shall be finally determined under this section unless—

(a) the named person has been afforded an opportunity of being heard by, or represented before, the sheriff; and

(b) the sheriff has considered any views expressed by any person on whom notice of the application has been served in accordance with rules making such provision as is mentioned in section 91(3)(d) of this Act.

(4) Where, on an application under subsection (1) above, the sheriff—

(a) is satisfied as mentioned in that subsection; but

(b) the conditions mentioned in paragraphs (a) and (b) of subsection (3) above for the final determination of the application are not fulfilled,

he may grant an interim order, which shall have effect as an exclusion order pending a hearing by the sheriff under subsection (5) below held within such period as may be specified in rules made by virtue of section 91(3)(e) of this Act.

(5) The sheriff shall conduct a hearing under this subsection within such period as may be specified in rules made by virtue of section 91(3)(e) of this Act, and, if satisfied at that hearing as mentioned in subsection (1) above, he may, before finally determining the application, confirm or vary the interim order, or any term or condition on which it was granted, or may recall such order.

(6) Where the conditions mentioned in paragraphs (a) and (b) of subsection (3) above have been fulfilled, the sheriff may, at any point prior to the final determination of the application, grant an interim order.

(7) An order under subsection (5) or (6) above shall have effect as an exclusion order pending the final determination of the application.

(8) Where—

(a) an application is made under subsection (1) above; and

(b) the sheriff considers that the conditions for making a child protection order under section 57 of this Act are satisfied,

he may make an order under that section as if the application had been duly made by the local authority under that rather than under this section.

- (9) The sheriff shall not make an exclusion order if it appears to him that to do so would be unjustifiable or unreasonable, having regard to—
- (a) all the circumstances of the case, including without prejudice to the generality of this subsection the matters specified in subsection (10) below; and
 - (b) any requirement such as is specified in subsection (11) below and the likely consequences in the light of that requirement of the exclusion of the named person from the family home.
- (10) The matters referred to in subsection (9)(a) above are—
- (a) the conduct of the members of the child's family (whether in relation to each other or otherwise);
 - (b) the respective needs and financial resources of the members of that family;
 - (c) the extent (if any) to which—
 - (i) the family home; and
 - (ii) any relevant item in that home, is used in connection with a trade, business or profession by any member of the family.
- (11) The requirement referred to in subsection (9)(b) above is a requirement that the named person (whether alone or with any other person) must reside in the family home, where that home—
- (a) is or is part of an agricultural holding within the meaning of the [[1991 c. 55.](#)] Agricultural Holdings (Scotland) Act 1991; or
 - (b) is let, or is a home in respect of which possession is given, to the named person (whether alone or with any other person) by an employer as an incident of employment.
- (12) In this Part of this Act—
- "caravan" has the meaning given to it by section 29(1) of the [[1960 c. 62.](#)] Caravan Sites and Control of Development Act 1960;
 - "exclusion order", includes an interim order granted under subsection (4) above and such an order confirmed or varied under subsection (5) above and an interim order granted under subsection (6) above; except that in subsection (3) above and in section 78 of this Act, it does not include an interim order granted under subsection (4) above;
 - "family" has the meaning given in section 93(1) of this Act;
 - "family home" means any house, caravan, houseboat or other structure which is used as a family residence and in which the child ordinarily resides with any person described in subsection (13) below and the

expression includes any garden or other ground or building attached to and usually occupied with, or otherwise required for the amenity or convenience of, the house, caravan, houseboat or other structure.

(13) The description of person referred to in the definition of "family home" in subsection (12) above, is a person who has parental responsibilities in relation to the child, or who ordinarily (and other than by reason only of his employment) has charge of, or control over him.

77.—(1) An exclusion order shall, in respect of the home to which it relates, have the effect of suspending the named person's rights of occupancy (if any) and shall prevent him from entering the home, except with the express permission of the local authority which applied for the order.

(2) The sheriff, on the application of the local authority, may, if and in so far as he thinks fit, when making an exclusion order do any of the things mentioned in subsection (3) below.

(3) The things referred to in subsection (2) above are—

- (a) grant a warrant for the summary ejection of the named person from the home;
- (b) grant an interdict prohibiting the named person from entering the home without the express permission of the local authority;
- (c) grant an interdict prohibiting the removal by the named person of any relevant item specified in the interdict from the home, except either—
 - (i) with the written consent of the local authority, or of an appropriate person; or
 - (ii) by virtue of a subsequent order of the sheriff;
- (d) grant an interdict prohibiting the named person from entering or remaining in a specified area in the vicinity of the home;
- (e) grant an interdict prohibiting the taking by the named person of any step of a kind specified in the interdict in relation to the child;
- (f) make an order regulating the contact between the child and the named person,

and the sheriff may make any other order which he considers is necessary for the proper enforcement of a remedy granted by virtue of paragraph (a), (b) or (c) of this subsection.

Effect of, and orders etc. ancillary to, exclusion order.

(4) No warrant, interdict or order (except an interdict granted by virtue of paragraph (b) of subsection (3) above)

shall be granted or made under subsection (2) above if the named person satisfies the sheriff that it is unnecessary to do so.

(5) Where the sheriff grants a warrant of summary ejection under subsection (2) above in the absence of the named person, he may give directions as to the preservation of any of that person's goods and effects which remain in the family home.

(6) The sheriff may make an order of the kind specified in subsection (3)(f) above irrespective of whether there has been an application for such an order.

(7) On the application of either the named person or the local authority, the sheriff may make the exclusion order, or any remedy granted under subsection (2) above, subject to such terms and conditions as he considers appropriate.

(8) In this Part of this Act references to a "relevant item" are references to any item within the home which both—
(a) is owned or hired by any member of the family concerned or an appropriate person or is being acquired by any such member or person under a hire purchase agreement or conditional sale agreement; and
(b) is reasonably necessary to enable the home to be used as a family residence,
but does not include any such vehicle, caravan or houseboat or such other structure so used as is mentioned in the definition of "family home" in section 76(12) of this Act.

78.—(1) The sheriff may, whether or not on an application such as is mentioned in subsection (2) below, attach a power of arrest to any interdict granted under section 77(2) of this Act by virtue of subsection (3) of that section.

(2) A local authority may at any time while an exclusion order has effect apply for such attachment of a power of arrest as is mentioned in subsection (1) above.

(3) A power of arrest attached to an interdict by virtue of subsection (1) above shall not have effect until such interdict, together with the attached power of arrest, is served on the named person.

(4) If, by virtue of subsection (1) above, a power of arrest is attached to an interdict, the local authority shall, as soon as possible after the interdict, together with the attached

Powers of arrest etc. in relation to exclusion order.

power of arrest, is served on the named person, ensure that there is delivered—

- (a) to the chief constable of the police area in which the family home is situated; and
- (b) where the interdict was granted by virtue of section 77(3)(e) of this Act, to the chief constable of the area in which the step or conduct which is prevented by the interdict may take place,

a copy of the application for the interdict and of the interlocutor granting the interdict together with a certificate of service of the interdict and, where the application to attach the power of arrest was made after the interdict was granted, a copy of that application and of the interlocutor above granting it and a certificate of service of the interdict together with the attached power of arrest.

(5) Where any interdict to which a power of arrest is attached by virtue of subsection (1) above is varied or recalled, the person who applied for the variation or recall shall ensure that there is delivered to each chief constable specified in subsection (4) above a copy of the application for such variation or recall and of the interlocutor granting the variation or recall.

(6) A constable may arrest without warrant the named person if he has reasonable cause for suspecting that person to be in breach of an interdict to which a power of arrest has been attached by virtue of subsection (1) above.

(7) Where a person has been arrested under subsection (6) above, the constable in charge of a police station may—

- (a) if satisfied there is no likelihood of that person further breaching the interdict to which the power of arrest was attached under subsection (1) above, liberate him unconditionally; or
- (b) refuse to liberate that person.

(8) Such a refusal to liberate an arrested person as is mentioned in subsection (7)(b) above, and the detention of that person until his appearance in court by virtue of either subsection (11) below, or any provision of the [1975 c. 21.] Criminal Procedure (Scotland) Act 1975, shall not subject that constable to any claim whatsoever.

(9) Where a person has been liberated under subsection (7)(a) above, the facts and circumstances which gave rise to the arrest shall be reported to the procurator fiscal forthwith.

(10) Subsections (11) to (13) below apply only where—

- (a) the arrested person has not been released under subsection (7)(a) above; and
- (b) the procurator fiscal decides that no criminal proceedings are to be taken in respect of the facts and circumstances which gave rise to the arrest.

(11) A person arrested under subsection (6) above shall wherever practicable be brought before the sheriff sitting as a court of summary criminal jurisdiction for the district in which he was arrested not later than in the course of the first day after the arrest, such day not being a Saturday, a Sunday or a court holiday prescribed for that court under section 10 of the [1980 c. 4.] Bail etc. (Scotland) Act 1980, on which the sheriff is not sitting for the disposal of criminal business.

(12) Subsections (1) and (3) of section 3 of the [1980 c. 62.] Criminal Justice (Scotland) Act 1980 (intimation to a person named by the person arrested) shall apply to a person arrested under subsection (6) above as they apply to a person who has been arrested in respect of an offence.

(13) Where a person is brought before the sheriff under subsection (11) above—

- (a) the procurator fiscal shall present to the court a petition containing—
 - (i) a statement of the particulars of the person arrested under subsection (6) above;
 - (ii) a statement of the facts and circumstances which gave rise to that arrest; and
 - (iii) a request that the person be detained for a further period not exceeding two days;
- (b) the sheriff, if it appears to him that—
 - (i) the statement referred to in paragraph (a)(ii) above discloses a *prima facie* breach of interdict by the arrested person;
 - (ii) proceedings for breach of interdict will be taken; and
 - (iii) there is a substantial risk of violence by the arrested person against any member of the family, or an appropriate person, resident in the family home,may order the arrested person to be detained for a period not exceeding two days; and
- (c) the sheriff shall, in any case in which paragraph (b) above does not apply, order the release of the arrested person from custody (unless that person is in custody in respect of some other matter);

and in computing the period of two days referred to in paragraphs (a) and (b) above, no account shall be taken of a Saturday, a Sunday or any holiday in the court in which

proceedings for breach of interdict will require to be raised.

(14) Where a person—

- (a) is liberated under subsection (7)(a) above; or
- (b) is to be brought before the sheriff under subsection (11) above,

the procurator fiscal shall at the earliest opportunity, and, in the case of a person to whom paragraph (b) above applies, before that person is brought before the sheriff, take all reasonable steps to intimate to—

- (i) the local authority which made the application for the interdict;
- (ii) an appropriate person who will reside in, or who remains in residence in, the family home mentioned in the order; and
- (iii) any solicitor who acted for the appropriate person when the interdict was granted or to any other solicitor who the procurator fiscal has reason to believe acts for the time being for that person,

that he has decided that no criminal proceedings should be taken in respect of the facts and circumstances which gave rise to the arrest of the named person.

79.—(1) Subject to subsection (2) below, an exclusion order shall cease to have effect on a date six months after being made.

(2) An exclusion order shall cease to have effect on a date prior to the date mentioned in subsection (1) above where—

- (a) the order contains a direction by the sheriff that it shall cease to have effect on that prior date;
- (b) the sheriff, on an application under subsection (3) below, recalls the order before the date so mentioned; or
- (c) any permission given by a third party to the spouse or partner of the named person, or to an appropriate person, to occupy the home to which the order relates is withdrawn.

(3) The sheriff may, on the application of the local authority, the named person, an appropriate person or the spouse or partner of the named person, if that spouse or partner is not excluded from the family home and is not an appropriate person, vary or recall an exclusion order and any warrant, interdict, order or direction granted or made under section 77 of this Act.

(4) For the purposes of this section, partners are persons who live together in a family home as if they were

Duration, variation and recall of exclusion order.

husband and wife.

80.—(1) The Secretary of State may make regulations with respect to the powers, duties and functions of local authorities in relation to exclusion orders.

Exclusion orders: supplementary provisions.

(2) An application for an exclusion order, or under section 78(3) of this Act for the variation or recall of such an order or of any thing done under section 76(2) of this Act, shall be made to the sheriff for the sheriffdom within which the family home is situated.

Offences in connection with orders etc. for protection of children

81. A person who intentionally obstructs—

(a) any person acting under a child protection order;

(b) any person acting under an authorisation granted under section 61(1) or (2) of this Act; or

(c) a constable acting under section 61(5) of this Act, shall, subject to section 38(3) and (4) of this Act, be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Offences in connection with orders etc. for protection of children.

Fugitive children and harbouring

82.—(1) A child who absconds—

(a) from a place of safety in which he is being kept under or by virtue of this Part of this Act;

(b) from a place (in this section referred to as a "relevant place") which, though not a place of safety such as is mentioned in paragraph (a) above, is a residential establishment in which he is required to reside by virtue of section 70(3)(a) of this Act or a hospital or other institution in which he is temporarily residing while subject to such a requirement; or

(c) from a person who, by virtue of a supervision requirement or of section 74 of this Act, has control over him while he is being taken to, is awaiting being taken to, or (whether or not by reason of being on leave) is temporarily away from, such place of safety or relevant place,

Recovery of certain fugitive children.

may be arrested without warrant in any part of the United Kingdom and taken to the place of safety or as the case may be the relevant place; and a court which is satisfied that there are reasonable grounds for believing that the child is within any premises may, where there is such power of arrest, grant a warrant authorising a constable to enter those premises and search for the child using reasonable force if necessary.

(2) Without prejudice to the generality of subsection (1)

above, a child who at the end of a period of leave from a place of safety or relevant place fails to return there shall, for the purposes of this section, be taken to have absconded.

(3) A child who absconds from a person who, not being a person mentioned in paragraph (c) of subsection (1) above, is a person who has control over him by virtue of a supervision requirement may, subject to the same provisions as those to which an arrest under that subsection is subject, be arrested as is mentioned in that subsection and returned to that person; and the provision in that subsection for a warrant to be granted shall apply as respects such a child as it applies as respects a child mentioned in that subsection.

(4) If a child—

(a) is taken under subsection (1) above to a place of safety or relevant place; or

(b) is returned under subsection (3) above to a person, but the occupier of that place of safety or of that relevant place, or as the case may be that person, is unwilling or unable to receive him, that circumstance shall be intimated forthwith to the Principal Reporter.

(5) Where intimation is required by subsection (4) above as respects a child, he shall be kept in a place of safety until—

(a) in a case where he is subject to a supervision requirement, he can be brought before a children's hearing for that requirement to be reviewed; or

(b) in any other case, the Principal Reporter has, in accordance with section 56(6) of this Act, considered whether compulsory measures of supervision are required in respect of him.

83. A person who—

(a) knowingly assists or induces a child to abscond in circumstances which render the child liable to arrest under subsection (1) or (3) of section 82 of this Act;

(b) knowingly and persistently attempts to induce a child so to abscond;

(c) knowingly harbours or conceals a child who has so absconded; or

(d) knowingly prevents a child from returning—

(i) to a place mentioned in paragraph (a) or (b) of the said subsection (1);

(ii) to a person mentioned in paragraph (c) of that subsection, or in the said subsection (3),

shall, subject to section 38(3) and (4) of this Act,

Harbouring.

to section 52(5) and (6) of the [1989 c. 41.] Children Act 1989 and to Article 70(5) and (6) of the [S.I. 1995/755 (N.I.2)] Children (Northern Ireland) Order 1995 (analogous provision for England and Wales and for Northern Ireland), be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

Implementation of authorisations etc.

Implementation of authorisations etc.

84. Where an order, authorisation or warrant under this Chapter or Chapter 2 of this Part of this Act grants power to find a child and to keep him in a place of safety, such order, authorisation or warrant may be implemented as if it were a warrant for the apprehension of an accused person issued by a court of summary jurisdiction; and any enactment or rule of law applying to such a warrant shall, subject to the provisions of this Act, apply in like manner to the order, authorisation or warrant.

New evidence: review of establishment of grounds of referral

85.—(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) of this Act.

(2) This subsection applies where the sheriff, on an application made by virtue of subsection (6) or (8) of section 65 of this Act (in this section referred to as the "original application"), finds that any of the grounds of referral is established.

Application for review of establishment of grounds of referral.

(3) An application under subsection (1) above may only be made where the applicant claims—

(a) to have evidence which was not considered by the sheriff on the original application, being evidence the existence or significance of which might materially have affected the determination of the original application;

(b) that such evidence—

(i) is likely to be credible and reliable; and
(ii) would have been admissible in relation to the ground of referral which was found to be established on the original application; and

(c) that there is a reasonable explanation for the failure to lead such evidence on the original application.

(4) An application under subsection (1) above may only

be made by—

(a) the child in respect of whom the ground of referral was found to be established; or

(b) any person who is a relevant person in relation to that child.

(5) Where the sheriff on an application under subsection (1) above is not satisfied that any of the claims made in the application are established he shall dismiss the application.

(6) Where the sheriff is satisfied on an application under subsection (1) above that the claims made in the application are established, he shall consider the evidence and if, having considered it, he is satisfied that—

(a) none of the grounds of referral in the original application to which the application relates is established, he shall allow the application, discharge the referral to the children's hearing in respect of those grounds and proceed in accordance with subsection (7) below in relation to any supervision requirement made in respect of the child (whether or not varied under section 73 of this Act) in so far as it relates to any such ground; or

(b) any ground of referral in the original application to which the application relates is established, he may proceed in accordance with section 68(10) of this Act.

(7) Where the sheriff is satisfied as is mentioned in subsection (6)(a) above, he may—

(a) order that any supervision requirement so mentioned shall terminate—

(i) immediately; or

(ii) on such date as he may specify; or

(b) if he is satisfied that there is evidence sufficient to establish any ground of referral, being a ground which was not stated in the original application, find such ground established and proceed in accordance with section 68(10) of this Act in relation to that ground.

(8) Where the sheriff specifies a date for the termination of a supervision requirement in accordance with subsection (7)(a)(ii) above, he may, before such termination, order a variation of that requirement, of any requirement imposed under subsection (6) of section 70 of this Act, or of any determination made under subsection (7) of that section; and such variation may take effect—

(a) immediately; or

(b) on such date as he may specify.

(9) Where the sheriff orders the termination of a supervision requirement in accordance with subsection (7)(a) above, he shall consider whether, after such termination, the child concerned will still require

supervision or guidance; and where he considers that such supervision or guidance will be necessary he shall direct a local authority to provide it in accordance with subsection (10) below.

(10) Where a sheriff has given a direction under subsection (9) above, it shall be the duty of the local authority to comply with that direction; but that duty shall be regarded as discharged where they offer such supervision or guidance to the child and he, being a child of sufficient age and maturity to understand what is being offered, is unwilling to accept it.

Chapter 4

Parental Responsibilities Orders, etc.

Parental responsibilities orders

86.—(1) On the application of a local authority the sheriff may make an order transferring (but only during such period as the order remains in force) the appropriate parental rights and responsibilities relating to a child to them; and any such order shall be known as a "parental responsibilities order" .

(2) A parental responsibilities order shall not be made unless the sheriff is satisfied that each relevant person either—

(a) freely, and with full understanding of what is involved, agrees unconditionally that the order be made; or

(b) is a person who—

(i) is not known, cannot be found or is incapable of giving agreement;

(ii) is withholding such agreement unreasonably;

(iii) has persistently failed, without reasonable cause, to fulfil one or other of the following parental responsibilities in relation to the child, that is to say the responsibility to safeguard and promote the child's health, development and welfare or, if the child is not living with him, the responsibility to maintain personal relations and direct contact with the child on a regular basis; or

(iv) has seriously ill-treated the child, whose reintegration into the same household as that person is, because of the serious ill-treatment or for other reasons, unlikely.

(3) The reference in subsection (1) above to the appropriate parental rights and responsibilities relating to the child is to all parental rights and responsibilities except any right to agree, or decline to agree—

(a) to the making of an application in relation to the child under section 18 (freeing for adoption) or 55 (adoption abroad) of the [1976 c. 36.] Adoption Act 1976, under section 18 or 49 of the [1978 c. 28.]

Adoption (Scotland) Act 1978 or under Article 17, 18

Parental responsibilities order: general.

or 57 of the [S.I. [1987/2203](#) (N.I.22)] Adoption (Northern Ireland) Order 1987 (corresponding provision for Scotland and Northern Ireland); or
(b) to the making of an adoption order.

(4) A person is a relevant person for the purposes of this section if he is a parent of the child or a person who for the time being has parental rights in relation to the child.

(5) The sheriff may, in an order under this section impose such conditions as he considers appropriate; and he may vary or discharge such an order on the application of the local authority, of the child, of any person who immediately before the making of the order is a relevant person or of any other person claiming an interest.

(6) An order under this section shall, if not first discharged by the sheriff, terminate on the occurrence of any of the following—

- (a) the child attains the age of eighteen years;
- (b) he becomes the subject—
 - (i) of an adoption order within the meaning of the Adoption (Scotland) Act 1978; or
 - (ii) of an order under section 18 (freeing for adoption) or 55 (adoption abroad) of the Adoption Act 1976 under section 18 or 49 of the said Act of 1978 or under Article 17, 18 or 57 of the Adoption (Northern Ireland) Order 1987 (corresponding provision for Scotland and Northern Ireland);
- (c) an order is made for his return under Part I of the [1985 c. 60.] Child Abduction and Custody Act 1985; or
- (d) a decision, other than a decision mentioned in section 25(2) of the said Act of 1985 (decisions relating to rights of access), is registered with respect to him under section 16 of that Act.

87.—(1) Subject to subsections (2) and (3) below, where a parental responsibilities order is made as respects a child it shall be the duty of the local authority which applied for it (in this section and in section 88 of this Act referred to as the "appropriate authority") to fulfil the transferred responsibilities while the order remains in force.

Further provision as respects parental responsibilities orders.

(2) Notwithstanding that a parental responsibilities order has been made as respects a child, the appropriate authority may allow, either for a fixed period or until the authority otherwise determine, the child to reside with a parent, guardian, relative or friend of his in any case where it appears to the authority that so to allow would be

for the benefit of the child.

(3) Without prejudice to any other provision of this Part of this Act, where by virtue of subsection (2) above a child is residing with a person, the appropriate authority may by notice in writing to the person require him to return the child to them by a time specified in the notice; and service of such notice shall be effected either by the authority leaving it in the person's hands or by their sending it to him, at his and the child's most recent known address, by recorded delivery service.

(4) For the purposes of any application for a parental responsibilities order, rules shall provide for the appointment, in such cases as are prescribed by such rules—

(a) of a person to act as curator *ad litem* to the child in question at the hearing of the application, safeguarding the interests of the child in such manner as may be so prescribed; and

(b) of a person (to be known as a "reporting officer") to witness agreements to parental responsibilities orders and to perform such other duties as may be so prescribed,

but one person may, as respects the child, be appointed both under paragraph (a) and under paragraph (b) above; so however that, where the applicant is a local authority, no employee of theirs shall be appointed under either or both of those paragraphs.

(5) Rules may provide for a person to be appointed reporting officer before the application in question is made.

88.—(1) This section applies where a parental responsibilities order is being made, or as the case may be is in force, as respects a child.

(2) The child shall, subject to subsection (3) below, be allowed reasonable contact by the appropriate authority with—

Parental contact.

(a) each person who, immediately before the making of the parental responsibilities order, is a relevant person for the purposes of section 86 of this Act as respects the child; and

(b) where, immediately before that order was made—

(i) a residence order or contact order was in force with respect to the child, the person in whose favour the residence order or contact order was made;

(ii) a person was entitled to have the child residing with him under an order by a court of competent jurisdiction, that person.

(3) Without prejudice to subsection (4) below, on an application made to him by the child, by the appropriate authority or by any person with an interest, the sheriff may make such order as he considers appropriate as to the contact, if any, which is to be allowed between the child and any person specified in the order (whether or not a person described in paragraphs (a) and (b) of subsection (2) above).

(4) A sheriff, on making a parental responsibilities order, or at any time while such an order remains in force as respects a child, may make an order under subsection (3) above as respects the child even where no application has been made to him in that regard.

(5) An order under this section may impose such conditions as the sheriff considers appropriate; and he may vary or discharge such an order on the application of the child, the appropriate authority or any person with an interest.

(6) An order under this section shall, if not first discharged by the sheriff, terminate when the parental responsibilities order to which it is referable does.

89. Any person who, knowingly and without lawful authority or reasonable excuse—

(a) fails to comply with a notice under section 87(3) of this Act;

(b) harbours or conceals a child—

(i) as respects whom a parental responsibilities order has been made; and

(ii) who has run away, or been taken away or whose return is required by such a notice; or

(c) induces, assists or incites a child as respects whom any such order has been made to run away, or stay away, from a place where he is looked after or who takes away such a child from that place,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

Miscellaneous

Offences in relation to parental responsibilities orders.

Consent of child to certain procedures.

90. Nothing in this Part of this Act shall prejudice any capacity of a child enjoyed by virtue of section 2(4) of the [\[1991 c. 50.\]](#) Age of Legal Capacity (Scotland) Act 1991

(capacity of child with sufficient understanding to consent to surgical, medical or dental procedure or treatment; and without prejudice to that generality where a condition contained, by virtue of—

(a) section 66(4)(a), section 67(2) or section 69(9)(a) of this Act, in a warrant; or

(b) section 70(5)(a) of this Act, in a supervision requirement,

requires a child to submit to any examination or treatment but the child has the capacity mentioned in the said section 2(4), the examination or treatment shall only be carried out if the child consents.

91.—(1) All proceedings to which this section applies are civil proceedings for the purposes of section 32 of the [1971 c. 58.] Sheriff Courts (Scotland) Act 1971 (power of Court of Session to regulate civil procedure in the sheriff court).

(2) Any reference in this Part of this Act to regulation or prescription by rules in relation to any proceedings to which this section applies shall be construed, unless the context otherwise requires, as a reference to regulation or prescription by rules made under the said section 32.

(3) Without prejudice to the generality of the said section 32, rules may make provision as to—

(a) the functions of a person appointed by the sheriff under section 41(1) of this Act and any right of that person to information relating to the proceedings;

(b) the circumstances in which any person who has been given notice in accordance with such rules of an application for a child assessment order, or any other person specified in the rules, may apply to the court to have that order varied or discharged;

(c) the persons to whom notice of the making of a child protection order shall be given by the applicant for that order, and without prejudice to that generality may in making such provision require such notice to be given to either or both of the child and any relevant person in relation to that child;

(d) the persons to whom notice of an application for an exclusion order or, under section 79(3) of this Act, for the recall or variation of such an order or of anything done under section 77(2) of this Act shall be given;

(e) the period within which a hearing shall be held under subsection (5) of section 76 of this Act after the granting of an order under subsection (4) of that section;

Procedural rules in relation to certain applications etc.

(f) the service of any exclusion order on the named person and the appropriate person within such period as may be specified in the rules.

(4) In relation to any proceedings to which this section applies, rules may permit a party to such proceedings, in such circumstances as may be specified in the rules, to be represented by a person who is neither an advocate nor a solicitor.

(5) This section applies to any application made to the sheriff, and any other proceeding before the sheriff (whether on appeal or otherwise), under any provision of this Part of this Act.

Legal aid in respect of certain proceedings.

92. For section 29 of the [1986 c. 47.] Legal Aid (Scotland) Act 1986 substitute the following section—

29. — (1) This section applies to legal aid in connection with—

- (a) proceedings before the sheriff (including, without prejudice to that generality, proceedings on an appeal to the sheriff principal from a decision of the sheriff) in respect of any matter arising under Chapter 2 or 3 of Part II of the Children (Scotland) Act 1995 (in this section referred to as "the 1995 Act"); or
- (b) an appeal to the Court of Session in connection with such proceedings.

(2) Subject to subsections (3) to (5) below, legal aid to which this section applies shall be available to a child and any relevant person in relation to him in connection with—

- (a) proceedings before the sheriff on an application for a child protection order or child assessment order, or for the variation or recall of such an order;
- (b) an appeal to the sheriff under section 51 of the 1995 Act against— (i) a decision of a children's hearing to grant a warrant such as is mentioned in subsection (5)(a) of that subsection; or (ii) any other decision of a children's hearing;
- (c) an application— (i) by virtue of section 65(7) or (9) of the 1995 Act for a finding as to whether the grounds for a referral are established; or (ii) under section 85 of the 1995 Act for a review of such a finding;
- (d) an appeal to the sheriff principal or to Court of Session under section 51 of the 1995 Act.

(3) Legal aid shall be available under subsection (2)(b)(i) above on an application made to the sheriff without inquiry into the resources of the child or the relevant person.

(4) Legal aid shall be available under subsection (2)(a),(b)(ii) or (c) above on an application made to the sheriff if the sheriff is satisfied—

- (a) that it is in the interests of the child that legal aid be made available; and
- (b) after consideration of the financial circumstances of the child and any relevant person in relation to him that the expenses of the case cannot be met without undue hardship to the child or to any relevant person

Interpretation of Part II

93.—(1) In this Part of this Act, unless the context otherwise requires,—

"accommodation" shall be construed in accordance with section 24(8) of this Act;

"chief social work officer" means an officer appointed under section 3 of the [1968 c. 49.] Social Work (Scotland) Act 1968;

"child assessment order" has the meaning given by section 55(1) of this Act;

"child protection order" has the meaning given by section 57(1) of this Act;

"children's hearing" shall be construed in accordance with section 39(3), but does not include a business meeting arranged under section 64, of this Act;

"compulsory measures of supervision" means, in respect of a child, such measures of supervision as may be imposed upon him by a children's hearing;

"constable" means a constable of a police force within the meaning of the [1967 c. 77.] Police (Scotland) Act 1967;

"contact order" has the meaning given by section 11(2)(d) of this Act;

"disabled" has the meaning given by section 23(2) of this Act;

"exclusion order" has the meaning given by section 76(12) of this Act;

"family", in relation to a child, includes—

(a) any person who has parental responsibility for the child; and

(b) any other person with whom the child has been living;

"local authority" means a council constituted under section 2 of the [1994 c. 39.] Local Government etc. (Scotland) Act 1994;

"local government area" shall be construed in accordance with section 1 of the said Act of 1994;

"parental responsibilities" has the meaning given by section 1(3) of this Act;

"parental responsibilities order" has the meaning given by section 86(1) of this Act;

"parental rights" has the meaning given by section 2(4) of this Act;

"place of safety", in relation to a child, means—

(a) a residential or other establishment provided by a local authority;

(b) a community home within the meaning of section 53 of the [1989 c. 41.] Children Act

Interpretation of Part II.

1989;

(c) a police station; or

(d) a hospital, surgery or other suitable place, the occupier of which is willing temporarily to receive the child;

"the Principal Reporter" means the Principal Reporter appointed under section 127 of the said Act of 1994 or any officer of the Scottish Children's Reporter Administration to whom there is delegated, under section 131(1) of that Act, any function of the Principal Reporter under this Act;

"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;

"residence order" has the meaning given by section 11(2)(c) of this Act;

"residential establishment"—

(a) in relation to a place in Scotland, means an establishment (whether managed by a local authority, by a voluntary organisation or by any other person) which provides residential accommodation for children for the purposes of this Act or the [1968 c. 49.] Social Work (Scotland) Act 1968;

(b) in relation to a place in England and Wales, means a community home, voluntary home or registered children's home (within the meaning of the Children Act 1989); and

(c) in relation to a place in Northern Ireland, means a home provided under Part VIII of the [S.I. [1995/755](#) (N.I.2)] Children (Northern Ireland) Order 1995, or a voluntary home, or a registered children's home (which have respectively the meanings given by that Order);

"school age" shall be construed in accordance with section 31 of the [1980 c. 44.] Education (Scotland) Act 1980;

"secure accommodation" means accommodation provided in a residential establishment, approved by the Secretary of State in accordance with regulations made under section 60(1)(bb) of the Social Work (Scotland) Act 1968 or under paragraph 4(2)(i) of Schedule 4 to the Children Act 1989, for the purpose of restricting the liberty of children;

"supervision requirement" has the meaning given by

69(1) of this Act, and includes any condition contained in such a requirement or related to it;
"voluntary organisation" means a body (other than a public or local authority) whose activities are not carried on for profit; and

"working day" means every day except—

- (a) Saturday and Sunday;
- (b) December 25th and 26th; and
- (c) January 1st and 2nd.

(2) For the purposes of—

(a) Chapter 1 and this Chapter (except this section) of this Part, "child" means a person under the age of eighteen years; and

(b) Chapters 2 and 3 of this Part—

"child" means—

- (i) a child who has not attained the age of sixteen years;
- (ii) a child over the age of sixteen years who has not attained the age of eighteen years and in respect of whom a supervision requirement is in force; or
- (iii) a child whose case has been referred to a children's hearing by virtue of section 33 of this Act;

and for the purposes of the application of those Chapters to a person who has failed to attend school regularly without reasonable excuse includes a person who is over sixteen years of age but is not over school age; and

"relevant person" in relation to a child means—

- (a) any parent enjoying parental responsibilities or parental rights under Part I of this Act;
- (b) any person in whom parental responsibilities or rights are vested by, under or by virtue of this Act; and
- (c) any person who appears to be a person who ordinarily (and other than by reason only of his employment) has charge of, or control over, the child.

(3) Where, in the course of any proceedings under Chapter 2 or 3 of this Part, a child ceases to be a child within the meaning of subsection (2) above the provisions of those Chapters of this Part and of any statutory instrument made under those provisions, shall continue to apply to him as if he had not so ceased to be a child.

(4) Any reference in this Part of this Act to a child—

- (a) being "in need" , is to his being in need of care and attention because—

(i) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development unless there are provided for him, under or by virtue of this Part, services by a local authority;

(ii) his health or development is likely significantly to be impaired, or further impaired, unless such services are so provided;

(iii) he is disabled; or

(iv) he is affected adversely by the disability of any other person in his family;

(b) who is "looked after" by a local authority, shall be construed in accordance with section 17(6) of this Act.

(5) Any reference to any proceedings under this Part of this Act, whether on an application or on appeal, being heard by the sheriff, shall be construed as a reference to such proceedings being heard by the sheriff in chambers.

Statutory Instrument 1996 No. 3261 (S.251) Children's Hearings (Scotland) Rules 1996 -

The Secretary of State, in exercise of the powers conferred on him by section 42(1) of the Children (Scotland) Act 1995^[1], and of all other powers enabling him in that behalf, hereby makes the following Rules:

PART I INTERPRETATION, ETC

Citation and commencement

1. These Rules may be cited as the Children's Hearings (Scotland) Rules 1996 and shall come into force on 1st April 1997.

Interpretation

2.—(1) In these Rules, unless the context otherwise requires-

- "the Act" means the Children (Scotland) Act 1995;
- "the 1978 Act" means the Adoption (Scotland) Act 1978^[2];
- "the 1994 Act" means the Local Government etc. (Scotland) Act 1994^[3];
- "the 1995 Act" means the Criminal Procedure (Scotland) Act 1995^[4];
- "the 1996 Regulations" means the Secure Accommodation (Scotland) Regulations 1996^[5];
- "chairman" means the chairman of a children's hearing;
- "child" has the meaning given to that term by section 93(2)(b) of the Act;
- "child protection order" has the meaning given to that term by section 57 of the Act;
- "children's hearing" means a children's hearing as defined in section 39(3) of the Act;
- "day" means a period of twenty-four hours commencing at midnight;
- "enactment" includes any order, regulation or other instrument made under the Act;
- "local authority" means the local authority for the area of the children's hearing;
- "relevant person" has the meaning given to that term by section 93(2)(b) of the Act;
- "Principal Reporter" has the meaning given to that term by section 93(1) of the Act;
- "representative" has the meaning given to that term by rule 11(3) below;
- "safeguarder" means a person appointed by a children's hearing under section 41(1) of the Act for the purpose of safeguarding the interests of the child in the proceedings;
- "Scottish Children's Reporter Administration" has the meaning given to that term by section 128 of the 1994 Act;
- "secure accommodation" means accommodation provided in a

residential establishment in accordance with the 1996 regulations for the purpose of restricting the liberty of children.

(2) Unless the context otherwise requires, any reference in these Rules to:

- (a) a numbered rule or Form shall be construed as a reference to the rule or Form bearing that number in these Rules; and any reference to a specified paragraph or sub-paragraph shall be construed as a reference to that paragraph or sub-paragraph in the rule in which that reference occurs; and
- (b) a Form includes a Form substantially to the same effect as that set out in these Rules with such variation as circumstances may require.

Notes:

[1] [1995 c. 36](#).

[2] 1978 c. 28.

[3] [1994 c. 39](#).

[4] [1995 c. 46](#).

[5] 1996 S.I. 3255.

Statutory Instrument 1996 No. 3261 (S.251) Children's Hearings (Scotland) Rules 1996

PART II CONSTITUTION AND ARRANGEMENTS OF CHILDREN'S HEARINGS

Recording and transmission of information at beginning of case

3.—(1) Where the Principal Reporter receives information from any source of a case which may require a children's hearing to be arranged, he shall keep a record of the name and address where available of the person from whom the information was received.

(2) Where the Principal Reporter decides that no further action on the case is required as mentioned in subsection (4) of section 56 of the Act, or refers the case to the local authority under subsection (4)(b) of that section, or arranges a children's hearing under subsection (6) of that section, he shall—

- (a) keep a record of that decision or, as the case may be, that course of action; and
- (b) if the information was received from a local authority or an officer of a police force, give notice of that decision, or as the case may be, that course of action to that local authority or, the chief constable of that police force.

Business meeting preparatory to constitution of children's hearing

4.—(1) Where the Principal Reporter arranges a children's hearing, he may, for the purpose of—

- (a) determining any procedural matter specified in paragraph (2), and
- (b) obtaining any direction or guidance in relation to the performance of his functions in relation to the proceedings, arrange a meeting (in this rule referred to as a "business meeting") with members of the children's panel from which the children's hearing is to be constituted and with the provisions the same as in section 39(5) of the Act applying to the business meeting.

(2) A business meeting shall determine any of the following procedural matters as may be referred to the meeting by the Principal Reporter—

- (a) whether notice of the children's hearing is to be given by the Principal Reporter under rule 7 to a person as a "relevant person" in terms of paragraph (c) of the definition of that term in section 93(2)(b) of the Act (person who appears to be a person who ordinarily (and other than by reason only of his employment) has charge of, or control over, the child);
- (b) where notice of the children's hearing has been or is to be given by the Principal Reporter to the child under rule 6, whether notice is also to be given that the child is released under section 45(2)^[6] of the Act from the obligation to attend the hearing under

subsection (1)(b) of that section; and

(c) where notice has been or is to be given by the Principal Reporter to a relevant person under rule 7, whether notice is also to be given that the hearing are satisfied under section 45(8)(b) of the Act that it would be unreasonable to require his attendance or that his attendance is unnecessary for the proper consideration of the case.

(3) Where the Principal Reporter arranges a business meeting under paragraph (1), he shall, not later than 4 working days before the date of the meeting-

(a) give notice in writing to the members of the panel who will attend the meeting of the date, time and place of the meeting;

(b) give notice in writing to the child, any relevant person and any safeguarder that the meeting has been arranged and of the date on which it is to be held;

(c) give to the members of the panel and to the child, any relevant person and any safeguarder-

(i) notice of the matters referred to the business meeting for determination or for direction and guidance;

(ii) a copy of any documents or information relevant to these matters; and

(iii) a copy of the grounds of referral of the case of the child prepared in terms of section 65 of the Act.

(4) The Principal Reporter shall, when giving notice under paragraph (3), advise the child, any relevant person and any safeguarder-

(a) of their entitlement to make their views on the matters to be considered by the business meeting known to the Principal Reporter, and

(b) that any such views shall be presented by him to the meeting.

(5) The Principal Reporter shall record in writing any views given to him other than in writing under paragraph (4), for the purpose of presenting these views to the business meeting for consideration.

(6) The Principal Reporter shall as soon as reasonably practicable after receiving any views give a copy of these views in writing to the members of the children's panel who will attend the business meeting and to the other persons who received notice of the meeting under paragraph (3).

(7) Before making a determination, or giving guidance or directions to the Principal Reporter, the business meeting shall consider any views given to them under paragraph (6).

(8) Where the business meeting has made a determination, or given guidance or directions to the Principal Reporter as to the exercise of his functions, the Principal Reporter shall as soon as reasonably practicable give notice in writing of the determination or, as the case

may be, the guidance or direction, to the child, any relevant person and any safeguarder.

Notification of children's hearings and provision of documents to chairman and members, relevant persons etc.

5.—(1) Subject to the 1996 Regulations, where the Principal Reporter arranges any children's hearing, he shall wherever practicable at least seven days before the date of the hearing notify the chairman and members of the time and place of the hearing and, subject as aforesaid, as soon as reasonably practicable but not later than three days before the date of the hearing, he shall give to each of them a copy of any of the following documents as are relevant to the case of a child to be considered at the hearing:-

- (a) a report of a local authority on the child and his social background;
- (b) the statement of the grounds for the referral of the case to the children's hearing prepared under rule 18;
- (c) any judicial remit or reference or any reference by a local authority;
- (d) any supervision requirement to which the child is subject;
- (e) any report prepared by any safeguarder appointed in the case;
- (f) any views of the child given in writing to the Principal Reporter by virtue of rule 15(4).

(2) If the Principal Reporter has obtained any information (including any views of the child given orally to the Principal Reporter by virtue of rule 15) or any document, other than a document mentioned in paragraph (1) which is material to the consideration of the case of a child at any children's hearing, he shall make that information or copies of that document available to the chairman and members of the children's hearing before the hearing.

(3) Where the Principal Reporter gives a copy of any document to the chairman and members of the children's hearing under paragraph (1), or makes available to them information or any document or copy thereof under paragraph (2), he shall at the same time give a copy of the document or, as the case may be, make available the information or a copy of the document, to-

- (a) each relevant person in relation to the child, whose case is to be considered at the children's hearing; and
- (b) any father of the child whose case is to be considered at the children's hearing who is living with the mother of the child where both the father and the mother are parents of the child as defined in section 15(1) of the Act,

except that where a children's hearing is arranged to continue consideration of the case of the child by virtue of section 69(2) of the Act, this obligation of the Principal Reporter shall apply only in respect of any information or document which has not already been made available to the person concerned.

(4) The chairman and members of children's hearings shall keep securely in their custody any documents made available to them under this rule and, except as otherwise provided in rules 20(4) and 22(4), they shall not cause or permit any information contained in the documents or otherwise disclosed during the hearing to be made known to any person.

(5) Immediately after the conclusion of a children's hearing the chairman and members shall return to the Principal Reporter any documents which have been made available to them under this rule.

(6) Any information or document which the Principal Reporter makes available under this rule to the chairman and members of any children's hearing shall also be made available, if requested, to any member of the Scottish Committee of the Council on Tribunals who is attending that hearing and the Council on Tribunals shall be required to return all papers to the Principal Reporter at the end of the hearing.

(7) Any information or document which the Principal Reporter makes available under this rule to the chairman and members of any children's hearing shall also be made available, if requested, to any member of the Children's Panel Advisory Committee or to any member of a sub-committee of the Advisory Committee who has given notice of his intention to attend that hearing as an observer. Any person provided with papers under this rule shall not cause or permit any information contained in the said documents or otherwise disclosed during the hearing to be made known to any person and shall return to the Principal Reporter at the end of the hearing any document which has been made available to him.

Notification of children's hearings to children

6.—(1) Subject to paragraphs (2) and (3), where the Principal Reporter arranges a children's hearing he shall not less than 7 days before the hearing give notice in writing to the child whose case has been referred to the hearing of his right and obligation to attend the hearing and of the date, time and place of the hearing.

- (2) Where the Principal Reporter arranges a children's hearing-
- (a) to consider under section 45(7), 59(2), 68(10) or by virtue of section 82(5) of the Act the case of a child kept in a place of safety;
 - (b) to consider under Chapters 2 or 3 of Part II of the Act the case of a child placed in secure accommodation under regulation 7 of the 1996 Regulations;
 - (c) to review an application under section 51(9) of the Act for the suspension of a supervision requirement; or
 - (d) to review the case of a child transferred under section 72 of the Act to a place of residence other than that named in the supervision requirement;

he shall as soon as reasonably practicable before the hearing give the notice required under paragraph (1) above in writing; provided that if such notice cannot be given in writing, the Principal Reporter may give notice to the child orally.

(3) Where under section 45(2) of the Act a children's hearing are satisfied either in a case as specified in 45(2) of the Act that the attendance of the child is not necessary or in any case that it would be detrimental to the interests of the child for him to be present at the hearing of his case, the Principal Reporter shall give him notice in writing of his right under section 45(1) of the Act to attend the hearing and of the date, time and place of the hearing.

(4) When giving to a child under this rule notice of a children's hearing to which rule 15 applies, the Principal Reporter shall inform the child-

- (a) of the entitlement by virtue of section 16(2) of the Act and these rules to indicate whether he wishes to express his views;
- (b) that if he does so wish, he will be given an opportunity to express them; and
- (c) that any such views as may be given by the child to the Principal Reporter before the time at which the children's hearing is to be held will be conveyed by the Principal Reporter to the members of the children's hearing, to any relevant person and to any safeguarder, for the purpose of the hearing.

Notification of children's hearings to relevant persons and certain parents with right to attend

7.—(1) Where a relevant person in relation to a child whose case is to be considered at a children's hearing, has a right to and is obliged under section 45(8) of the Act to attend at all stages of the hearing, the Principal Reporter shall give him notice in writing, if his whereabouts are known, of the right to and obligation to attend at all stages of the hearing and of the date, time and place of the hearing.

(2) Where under section 45(8) of the Act a children's hearing are satisfied either that it would be unreasonable to require the attendance of a relevant person at a children's hearing or that the attendance of that person would be unnecessary for the proper consideration of the case, the Principal Reporter shall give him notice in writing, if his whereabouts are known, of his right under section 45(8) of the Act to attend at all stages of the hearing and of the date, time and place of the hearing but that for the above reason or reasons he is not obliged to attend.

(3) Where a person has a right by virtue of rule 12(1) to attend at all stages of the children's hearing, the Principal Reporter shall give such notice in writing of his right, if his whereabouts are known.

(4) Any notice under this rule, except a notification to a relevant person of a children's hearing mentioned under rule 6(2), shall be given not later

than seven days before the date of the children's hearing to which it relates.

(5) In the case of such a children's hearing mentioned in rule 6(2), the notice to the relevant person under paragraph (1) shall be given as soon as reasonably practicable in writing before the hearing, and if such notice cannot be given in writing the Principal Reporter may give notice to a relevant person orally.

Notification of children's hearing to chief social work officer

8. Where the Principal Reporter arranges any children's hearings he shall notify the chief social work officer of the local authority for the area in which the children's hearing is to sit of the date, time and place of the hearing, and of the name, date of birth and address, so far as is known of the child whose case is to be considered.

Withholding of address where disclosure may result in serious harm

9. Where in fulfilling his obligations under rules 5, 7 or 8 the Principal Reporter considers that the disclosure of the whereabouts of the child or any relevant person may place that person at risk of serious harm (whether or not physical harm) he may withhold such information as is necessary to prevent such disclosure and indicate the address of the person as that of the Principal Reporter.

Constitution of children's hearing and functions of chairman of children's hearing

10.—(1) The selection of the chairman and the members of any children's hearing from among the members of the children's panel for a local authority area shall be made either directly by the chairman of the children's panel, or in his absence by the deputy chairman, or by the operation of standing arrangements in that behalf made by the chairman of the children's panel after such consulting the Principal Reporter and such members of the panel as he may think fit. Such standing arrangements may provide for the selection of the chairman and members of any hearing to be made by members of the panel appointed for that purpose by the chairman of the panel.

(2) The chairman of the children's panel shall keep under review any standing arrangements which he has made under paragraph (1) and shall from time to time consult the Principal Reporter and such members of the panel as he thinks fit as to the operation of those arrangements.

(3) Except as otherwise provided by these Rules and any other enactment, the procedure at any children's hearing shall be such as the chairman shall in his discretion determine.

(4) Without prejudice to the generality of paragraph (3) and to the power of a children's hearing under the Act to continue a hearing for the further investigation of a case, the chairman of a children's hearing may at any time during the hearing adjourn the hearing provided that any

adjournment under this rule shall be such as to enable the children's hearing to sit again on the same day as the adjournment was made.

- (5) As soon as reasonably practicable after a children's hearing make-
- (a) a decision disposing of the case of a child on a referral or at a review of a supervision requirement or a condition imposed under section 70(9) of the Act with respect to residence in secure accommodation;
 - (b) a decision to issue a warrant to find a child or for the keeping of a child in a place of safety or to continue a warrant for the keeping of such a child;
 - (c) a requirement or warrant, or continuation of a warrant, under section 69 of the Act,
- the chairman shall make or cause to be made a report of the decision and a statement in writing of the reasons for the decision, and shall sign the report and statement.

Notes:

[6] [1995 c. 36](#); section 45(2) was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act [1995 \(c. 40\)](#), Schedule 4, paragraph 97.

Statutory Instrument 1996 No. 3261 (S.251) Children's Hearings (Scotland) Rules 1996

PART III GENERAL PROVISIONS AS TO CHILDREN'S HEARINGS

Representation for the purposes of assisting children and relevant persons at children's hearing

11.—(1) Any child whose case comes before a children's hearing and any relevant person who attends that children's hearing may each be accompanied by one person for the purpose of assisting the child, or as the case may be, the relevant person at the hearing.

(2) Any representative attending any children's hearing may assist the person whom he represents in the discussion of the case of the child with the children's hearing.

(3) In these Rules any reference to a representative is a reference to a person who under this rule assists a child or a relevant person or both, and includes, unless the context otherwise requires, a reference both to any representative of a child and any representative of a relevant person.

General attendance at hearings of certain parents of the child (not relevant persons) and specific limited right of duly authorised officials etc.

12.—(1) A father of the child as described in rule 5(3)(b) shall be entitled to attend at all stages of the children's hearing while the hearing are considering the case of the child but shall be subject to the same provisions as those contained in section 46 of the Act as if those provisions apply to him.

(2) A constable, prison officer or other person duly authorised who has in his lawful custody a person who has to attend a children's hearing shall be entitled to be present at the hearing for the purposes of escorting that person.

Persons who may attend children's hearings at chairman's discretion

13. Without prejudice to the right of a child and of a relevant person under rule 11 above to be accompanied at a children's hearing by a representative, and subject to subsections (1) to (3) of section 43 of the Act (provisions as to privacy of children's hearings), the persons whose presence at the children's hearing may be permitted by the chairman under the said subsection (1) shall be—

- (a) the chairman and members of the Children's Panel Advisory Committee for the local authority area of the children's hearing and the clerk to the Children's Panel Advisory Committee of the local authority;
- (b) any members or possible members of children's panels whose attendance is required at children's hearings for the purpose of

their training as members of children's hearings, and their instructors;

(c) any student engaged in formal education or training in social work or any person engaged in research relating to children who may be in need of compulsory measures of supervision; and

(d) any other person whose presence at the hearing may in the opinion of the chairman be justified by special circumstances.

Safeguarders

14.—(1) Where a children's hearing appoint a safeguarder under section 41(1) of the Act, the chairman shall state in writing the reasons for their decision to make that appointment.

(2) The Principal Reporter shall give the safeguarder a copy of such statement and also give notice of the date, time and place of the hearing at the same time and in the same manner as giving notice to a relevant person under rule 7.

(3) Any safeguarder appointed by a children's hearing shall be entitled to be present throughout the duration of any hearing of the case until the disposal of that case.

(4) Where a safeguarder is appointed by a children's hearing, he shall—
(a) prepare a report in writing on the case of the child; and
(b) prepare any further report in writing on the case as the hearing may require,
and give the report or, as the case may be, the further report to the Principal Reporter.

(5) Any information or document which the Principal Reporter makes available in compliance with rule 5 (under exception of rule (5)(1)(e)) or otherwise to the chairman and members of any children's hearing shall also be made available to any safeguarder regardless of the date of his appointment in the proceedings.

(6) A safeguarder—
(a) shall keep securely in his custody any documents made available to him under paragraph (4);
(b) shall not cause or permit any information contained in the documents or otherwise disclosed during the hearing to be made known to any person, other than may be necessary for the performance of his own duties; and
(c) shall return to the Principal Reporter any document which has been made available to him under paragraph (4) above when he has completed the performance of all duties associated with his appointment.

Views of the Child

15.—(1) The children's hearing, taking account of the age and maturity of the child whose case has been referred to the hearing for a purpose

mentioned in paragraph (2) shall so far as practicable give the child an opportunity to indicate whether he wishes to express his views.

- (2) This rule shall apply where the children's hearing-
- (a) are considering whether to make, or are reviewing a supervision requirement;
 - (b) are considering whether to grant a warrant under subsections (4) or (5) of section 45, subsection (5) of section 63, subsection (1) of section 66, or subsection (4) or (7) of section 69, of the Act or to provide under subsection (5) of the said section 66 for the continuation of a warrant;
 - (c) are considering whether to continue a child protection order under section 59(4) of the Act;
 - (d) are engaged in providing advice under section 60(10) of the Act; or
 - (e) are considering whether to make a requirement under section 69(3) of the Act;
 - (f) are drawing up a report under section 73(13) of the Act; and
 - (g) are considering whether to issue a warrant under the 1996 Regulations.
- (3) Where he has indicated his wish to express his views-
- (a) the children's hearing and the chairman of the hearing may exercise any of their powers under the Act or these Rules as they or, as the case may be, he considers appropriate in order to ascertain the views of the child; and
 - (b) the children's hearing shall not make any decision or take any action mentioned in paragraph (2) unless an opportunity has been given for the views of the child to be obtained or heard and in terms of section 16(2)(c) of the Act they have had regard to such views as he may have expressed.
- (4) Without prejudice to the generality of the powers mentioned in paragraph (3)(a), the views of the child may be conveyed to the children's hearing-
- (a) by the child, or by his representative, individually or together in person;
 - (b) by the child in writing, on audio or video tape or through an interpreter; or
 - (c) by any safeguarder appointed by the hearing.
- (5) For the purposes of this rule, a child of twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view.

Statutory Instrument 1996 No. 3261 (S.251)
Children's Hearings (Scotland) Rules 1996 - continued

PART IV

**CHILDREN'S HEARINGS ON REFERRAL AND AT REVIEW OF
SUPERVISION REQUIREMENTS, ETC**

Application of Part IV

16. This Part shall, subject to the provisions thereof, apply to (a) any children's hearing arranged under Part II of the Act or under the 1996 Regulations either for the purposes of considering and determining on referral the case of any child or for the review of a supervision requirement or a condition imposed by section 70(9) of the Act with respect to residence in secure accommodation; and (b) any children's hearing to which a case is stood referred under section 49(4) of the 1995 Act.

Statement of grounds of referral

17.—(1) The statement of the grounds for the referral of a case to a children's hearing shall be signed by the Principal Reporter and shall specify which one or more of the conditions mentioned in section 52(2) of the Act is or are considered by the Principal Reporter to be satisfied with respect to the child, and the statement shall state the facts on the basis of which it is sought to show that any condition is satisfied.

(2) In the case of a condition mentioned in section 52(2)(i) of the Act, the statement of the facts constituting the offence shall have the same degree of specification as is required by section 138(4) of the 1995 Act in a charge in a complaint and the statement shall also specify the nature of the offence in question.

Notification of statement of grounds for referral

18.—(1) Subject to paragraphs (2) and (3), where the Principal Reporter arranges a children's hearing under section 65(1) of the Act, he shall-

- (a) prepare a statement of the grounds for the referral of the case to the children's hearing; and
- (b) not less than seven days before the date of the hearing give a copy of the statement to the child and to each relevant person whose whereabouts are known.

(2) Notwithstanding paragraph (1), where before the children's hearing the child is kept in a safe place under the Act, or so kept by virtue of the 1996 Regulations, the provisions of paragraphs (1)(a) and (b) shall apply except that in paragraph (1) (b) the words "as soon as reasonably practicable" shall be substituted for the words "not less than seven days".

(3) Notwithstanding paragraph (1), where the Principal Reporter arranges a children's hearing under section 65(2) of the Act, the

provisions of paragraphs (1)(a) and (b) shall apply except that in paragraph (1)(b) the words "not less than three days" shall be substituted for the words "not less than seven days".

(4) Notwithstanding that a children's hearing proceeds in accordance with section 65 of the Act to more than one hearing, nothing in this rule shall require a copy of the statement to be given to any person more than once.

Notification of application to sheriff for finding as to grounds if they consider it appropriate to do so for referral

19. Where a children's hearing have given a direction to the Principal Reporter under section 65 of the Act to apply to the sheriff for a finding as to whether or not any grounds for the referral of any case to them are satisfied, the Principal Reporter shall give notice of this in writing to the child and to any relevant person.

Conduct of children's hearing considering case on referral or at review of supervision requirement

20.—(1) This rule applies to a children's hearing considering under section 65 of the Act a case on referral or at a review under section 73(8) of the Act of a supervision requirement.

(2) Unless a children's hearing consider the case of a child in the absence of the child, any relevant person and any representative, the chairman shall, before the children's hearing proceeds to consider the case, explain the purpose of the hearing to such persons as are present.

(3) In proceeding with the case the children's hearing shall-

- (a) consider a report of a local authority on the child and his social background, and any judicial remit or other relevant document and any relevant information available to them;
- (b) consider any report submitted by the manager of any residential establishment in which the child is required to reside;
- (c) discuss the case with the child, any relevant person, any safeguarder and representative if attending the hearing;
- (d) take steps under rule 15 to obtain the views of the child, and endeavour to obtain the views of any relevant person and of any safeguarder, if attending the hearing, on what arrangements would be in the best interests of the child.

(4) The chairman shall inform the child and any relevant person of the substance of any reports, documents and information mentioned in paragraph (3)(a) and (b) if it appears to him that this is material to the manner in which the case of the child should be disposed of and that its disclosure would not be detrimental to the interests of the child.

(5) After the children's hearing have considered the case of the child and made a decision disposing of the case, but before the conclusion of the hearing at which the decision is made, the chairman shall

inform the child, any relevant person, any safeguarder, and any representative, if attending the hearing, of-

- (a) the decision of the hearing;
- (b) the reasons for the decision;
- (c) the right of the child and of the relevant person under section 51(1) of the Act to appeal to the sheriff against the decision and, where the appeal is against a decision relating to a supervision requirement, to apply to the children's hearing for suspension of the requirement appealed against.

(6) The children's hearing shall not dispose of the case by making a supervision requirement under section 70(1) of the Act requiring the child to reside at any place or places specified in the requirement (which for the purposes of this rule is a place or places where he is to be under the charge or control of a person who is not a relevant person) unless-

- (a) they have received and considered a report from the local authority for the purposes of paragraph (3)(a), together with recommendations from that authority on-
 - (i) the needs of a child;
 - (ii) the suitability to meet those needs of the place or places in which the child is to reside by virtue of the supervision requirement, and of the person or persons who is or are to have charge of or control over the child, and
- (b) the local authority have confirmed to the hearing that in compiling the report they have carried out the procedures and gathered the information described in regulation 15 of the Fostering of Children (Scotland) Regulations 1996^[7].

Notification of decisions, etc on referral or at review of supervision requirement

21.—(1) Subject to sections 70(6) and 73(11) of the Act, as soon as reasonably practicable after a children's hearing have made a decision disposing of the case of a child under this Part of the Rules, the Principal Reporter shall send to the child, any relevant person, any safeguarder and the local authority-

- (a) notice of the decision and a copy of any supervision requirement or, as the case may be, any continuation of a supervision requirement;
- (b) a copy of the statement of reasons for the decision; and
- (c) except in the case of a review which continues a supervision requirement, being a review in relation to which an order under section 51(7) of the Act is in force, notice of the right of the child or, as the case may be, a relevant person under section 51 of the Act to appeal to the sheriff against the decision, and such notice shall be given in writing.

(2) Where a children's hearing have made a decision disposing of the case of a child, the Principal Reporter shall as soon as reasonably practicable give notice of the decision-

- (a) to any person with whom the child is residing; and
- (b) where the information leading to the investigation of the case of the child was given by an officer of a police force, to the chief constable of the police area.

(3) Where the decision was-

(a) to make a supervision requirement in relation to a child who has attained the age of 16 years; or

(b) to terminate a supervision requirement relating to such a child, the Principal Reporter shall as soon as reasonably practicable give notice of the decision to the chief constable of the police area and if the child resides outwith the police area, to the chief constable of the police area in which the child resides.

Notes:

[7] S.I. [1996/3263](#).

Statutory Instrument 1996 No. 3261 (S.251) Children's Hearings (Scotland) Rules 1996 - *continued*

PART V REFERENCES FOR ADVICE AND SUSPENSION OF SUPERVISION REQUIREMENTS

Conduct of children's hearing on reference for advice by court, the local authority or approved adoption society

22.—(1) This rule shall apply to any children's hearing arranged in order to consider the case of a child for the purpose of giving advice to the court, the local authority or the approved adoption society under any of the following provisions:-

- section 73(13) of the Act (advice in relation to placing for adoption, application for adoption order, freeing for adoption order or parental responsibilities order);
- subsection (1)(b) or (6) of section 49 of the 1995 Act (reference by court for advice in case of child not subject to supervision requirement);
- section 49(3) of the 1995 Act (reference by court for advice in case of child subject to supervision requirement);
- section 22A(2) of the 1978 Act (advice in relation to placing a child for adoption).

(2) Unless the children's hearing consider the case of a child in the absence of the child, a relevant person and any representative, the chairman shall, before the children's hearing proceed to consider the case, explain the purpose of the hearing to such persons as are present.

(3) The children's hearing shall proceed to consider the case of the child and during such consideration shall-

- (a) consider the reference by the court, the local authority or the approved adoption society, any supervision requirement to which the child is subject, a report of a local authority on the child and his social background, and any other relevant document or any relevant information available to them;
- (b) discuss the case of the child and afford to the child, any relevant person, any safeguarder and any representative, if attending the hearing, an opportunity of participating in the discussion and of being heard on the case;
- (c) take steps on rule 15 to obtain the views of the child, and endeavour to obtain the views of any relevant person, and of any safeguarder if attending the hearing, on what arrangements with respect to the child would be in the best interests of the child; and the children's hearing shall thereafter determine what advice they will give to the court, the local authority or, as the case may be, the approved adoption society.

(4) The chairman shall inform the child and each relevant person whose whereabouts are known of the substance of any reports, documents and information mentioned in paragraph (3)(a) if it appears to him that this is material to the advice that will be given and that its disclosure would not be detrimental to the interests of the child.

(5) After the children's hearing have considered the case of the child and determined the advice they shall provide, the hearing shall inform the child, any relevant person, any safeguarder and any representative, if attending the hearing of that advice.

(6) As soon as reasonably practicable after the children's hearing determine the advice they shall provide, the chairman shall make or cause to be made a report in writing providing that advice, including a statement of the reasons for that advice, and the chairman of the hearing shall sign the report and statement.

(7) Within 7 days following a determination by the children's hearing, the Principal Reporter shall send a copy of the report prepared under paragraph (6) to the court, the local authority or the approved adoption society, as the case may be, and the child, any relevant person and any safeguarder appointed in the proceedings.

(8) Where the Principal Reporter is obliged under section 73(8)(a)(iv) of the Act to arrange a children's hearing and he is advised by the adoption agency that it has determined that agreement to an application under section 16 or 18 of the 1978 Act is unlikely to be forthcoming, he shall be under an obligation to arrange a hearing to sit within 21 days of that notification from the local authority under section 73(4)(c) of the Act.

Application for suspension of supervision requirements pending hearing of appeals

23.—(1) An application to a children's hearing by a child or relevant person under section 51(9) of the Act for the suspension of a supervision requirement pending an appeal under section 51(1) of the Act shall be made in writing to the Principal Reporter.

(2) The Principal Reporter shall give notice in writing separately to the child and relevant person of the date, time and place of the children's hearing at which the application will be considered.

(3) The children's hearing shall afford the applicant, and his representative, and any safeguarder if attending the hearing, an opportunity of being heard.

(4) The chairman of the children's hearing shall inform the applicant at the conclusion of the hearing of the decision of the hearing and the reasons for it.

(5) If the applicant fails to attend the hearing, the application shall be treated as abandoned.

(6) An application under this rule shall not be valid unless an appeal under section 51(1) of the Act has already been lodged.

Statutory Instrument 1996 No. 3261 (S.251)
Children's Hearings (Scotland) Rules 1996 - continued

PART VI
MISCELLANEOUS AND SUPPLEMENTAL

Social background report where child in a place of safety

24. Subject to the 1996 Regulations, where a children's hearing is arranged under section 65(2) of the Act, the children's hearing shall not proceed in relation to the case of the child in accordance with section 70(1) of the Act unless the Principal Reporter has made available to them a report of local authority on the child and his social background.

Form of supervision requirement

25.—(1) Subject to paragraph (2) below, a supervision requirement under section 70(1) of the Act shall be in the form of Form 1.

(2) A supervision requirement under section 70(1) of the Act with a specification under section 70(9) of the Act (residence in secure accommodation) shall be in the form of Form 2.

(3) Subject to paragraph (4) below, a continuation under section 73(9)(e) of the Act of a supervision requirement (with any variation of the requirement or insertion in the requirement mentioned in paragraph (9)(c) and (d) of that subsection) shall be in the form of Form 3.

(4) A continuation under section 73(9)(e) of the Act of a supervision requirement (with a variation of the requirement or insertion in the requirement as mentioned in relation to a specification as to secure accommodation as described in section 70(9) of the Act) shall be in the form of Form 4.

Procedure relating to warrants, orders, and to requirements under section 69(3) of the Act

26.—(1) Where a children's hearing consider in relation to a child the question whether they should-

(a) issue or continue a warrant or order under any of the following provisions of the Act:-

section 45(4) and (5) (warrants to find child, keep in a place of safety and bring before a hearing);

section 59(4) (continuation of child protection order);

section 63(5) (warrant to keep child in place of safety following arrest);

section 66(1) and (5) (warrants where children's hearing unable to dispose of case);

section 69(4) (warrant for fulfilment of requirement to attend or reside at clinic, hospital, etc); and

section 69(7) (warrant to take child to and keep in place of safety while case continued under section 59(4) of the Act).

(b) continue under section 59(4) of the Act any direction given under section 58 (direction as to parental responsibilities or parental rights when child protection order made); or

- (c) issue a warrant under the 1996 Regulations;
- (d) make a requirement under section 69(3) of the Act (requirement to reside at clinic, etc.),

the children's hearing shall, before they make a decision to issue that warrant or as the case may be that requirement, take steps under rule 15 to obtain the views of the child, and endeavour to obtain the views of any relevant person and of any safeguarder, if attending the hearing, on what arrangements would be in the best interests of the child.

(2) Where a children's hearing have issued or, as the case may be, continued such a warrant, order, discretion or requirement as is mentioned in paragraph (1), the Principal Reporter shall send as soon as reasonably practicable to the child, any relevant person and any safeguarder appointed in the proceedings-

- (a) a copy of the warrant, continuation of the warrant, continuation of the order, or requirement and a copy of the statement of the reasons for the decision; and
- (b) notice of the right of the child, or, as the case may be, the relevant person under section 51 of the Act to appeal to the sheriff against the decision.

Forms of warrants and orders for finding and keeping a child in a place of safety

27. The orders or warrants listed and described in the left hand column of the chart below shall be in the form of the Forms (as defined in rule 2(2)(b)) opposite in the right hand column which are in the Schedule to these Rules and references to sections shall be to sections in the Act. The description in the left hand column is for ease of reference and does not reproduce the provisions of the Act in full.

S45(4) & (5)	Warrant under section 45(4) or 45(5) to find a child, keep him in a place of safety and bring him before a children's hearing	Form 5
S59(4)	Continuation under section 59(4) of a child protection order	Form 6
	Continuation under section 59(4) of a child protection order with first authorisation to remove child and to keep child in place of safety with/without order of non-disclosure of place of safety	Form 7
S63(5)	Warrant under section 63(5) to keep a child in place of safety with/without order of non- disclosure of place of safety	Form 8
	Warrant under section 63(5) with order that child liable to be kept in secure accommodation with/without order of non-disclosure of place of safety	Form 9
	Continuation under section 63(5) of warrant to keep a child in place of safety	Form 10
	Continuation under section 63(5) of warrant to keep a child in a place of safety with first authorisation that child liable to be kept in secure accommodation with/without order of non-disclosure of place of safety	Form 11
S66(1)	Warrant under section 66(1) to keep a child in a place of safety when hearing unable to dispose of case	Form 12
	Warrant under 66(1) to keep a child in a place of safety when hearing unable to dispose of case with order that child liable to be kept in secure accommodation with/without order of non-disclosure of place of safety	Form 13
S66(5)	Continuation under section 66(5) of warrant granted under section 66(1) to keep a child in a place of safety	Form 14
	Continuation under section 66(5) of warrant granted under section 66(1) to	Form 15

	keep a child in a place of safety with first order that child liable to be kept in secure accommodation with/without order of non-disclosure of place of safety	
S69(4)	Warrant under section 69(4) to find a child and remove to a place of safety when requirement under section 69(3) not fulfilled (where continuation of case)	Form 16
	Warrant under section 69(4) to find child and remove to place of safety when requirement under section 69(3) not fulfilled with first order that child liable to be kept in secure accommodation with/without order of non- disclosure of place of safety (where continuation of case)	Form 17
S69(7)	Warrant under section 69(7) to keep a child in a place of safety (where continuation of case)	Form 18
	Warrant under section 69(7) to keep a child in a place of safety when there is a continuation of the case by the children's hearing with order to keep child in secure accommodation with/without order of non-disclosure of place of safety (where continuation of case)	Form 19

Miscellaneous Forms

28.—(1) A requirement under section 69(3) of the Act shall be in the form of Form 20.

(2) A notification by a Principal Reporter under section 60(3) of the Act shall be in the form of Form 21.

(3) A notification by a Principal Reporter under section 60(5) of the Act shall be in the form of Form 22.

(4) A report of a children's hearing of advice under section 60(10) of the Act shall be in the form of Form 23.

(5) A report of a children's hearing order section 73(13) of the Act shall be in the form of Form 24.

Authentication of documents

29.—(1) A report of any decision, a statement of reasons for a decision or of advice, a warrant or continuation of warrants for finding and keeping a child in a place of safety, or any other writing, authorised or required by Chapter 2 or 3 of the Act or these Rules to be made, given, issued or granted by a children's hearing or by the chairman of a children's hearing shall be sufficiently authenticated if it is signed by the chairman, or, if he is unavailable, by a member of that hearing.

(2) Any document authorised or required by these Rules to be made or executed by the Principal Reporter shall be sufficiently authenticated if it is signed by the Principal Reporter or by a person duly authorised by him.

(3) Any copy of any document authorised or required by these Rules to be given or issued by the Principal Reporter may be certified as a true copy by the Principal Reporter or by a person duly authorised by him.

Service of notification and other documents

30.—(1) Any notice in writing or other document and any oral notification authorised or required under these Rules to be given or issued by the Principal Reporter may be given or issued by the Principal Reporter or by a person duly authorised by him or by any constable.

(2) Any notice in writing or other document authorised or required by these Rules to be given or issued to a child or to a relevant person may be-

- (a) delivered to him in person; or
- (b) left for him at his dwellinghouse or place of business or where he has no known dwellinghouse or place of business, at any other place in which he may at the time be resident; or
- (c) where he is the master of, or a seaman or other person employed in, a vessel, left with a person on board thereof and connected therewith; or
- (d) sent by post in a registered or first class service recorded delivery letter to his dwellinghouse or place of business.

(3) Where the Principal Reporter or a person duly authorised by him gives to any relevant person a notification in writing under paragraph (1) of rule 7 above, or an oral notification under that paragraph as read with paragraph (4) of that rule, he shall execute a certificate of notification in the form of Form 25.

(4) Where a notice under rule 6 or 7 or a copy of such a statement as is mentioned in rule 18 is sent by post in accordance with paragraph (2)(d) of this rule, the notification or copy shall be deemed, for the purpose of rule 6, 7 or 18, as the case may be, to have been given the day following the date of posting.

Reports of proceedings of children's hearing

31.—(1) In relation to the case of any child which comes before a children's hearing, it shall be the duty of the Principal Reporter to keep a report of the proceedings of that hearing and the report-

- (a) shall include the information specified in paragraph (2) below; and
- (b) may include such other information about the proceedings as the Principal Reporter thinks appropriate.

(2) The information referred to in paragraph (1)(a) above is as follows-

- (a) particulars of the place and date of the hearing;
- (b) the full name and address of the child and his sex and date of birth;
- (c) the full name and address (so far as these can be obtained) of the father, the mother and any other relevant person in relation to the child;
- (d) a record as to which (if any) of the persons mentioned in sub-paragraphs (b) and (c) above was present;
- (e) the full name and address of any representative attending the hearing;
- (f) the full name and address of any safeguarder;
- (g) the terms of any decision disposing the case of the child, or of any decision to issue a warrant, made by the children's hearing or any other course of action taken by them with respect to the child; and

(h) in any case where the children's hearing proceed in accordance with section 65 of the Act-

- (i) particulars of the grounds of referral which are accepted or, as the case may be, not accepted, and by whom;
- (ii) a record of any direction under subsection (7) or (9) of section 65 to make application to the sheriff for a finding under that section; and
- (iii) a record of whether the children's hearing proceeded to consider that the case at a hearing.

Travelling and subsistence expenses

32.—(1) Subject to paragraph (2), the local authority for the area of a children's hearing shall, if a claim is made to them, pay to or in respect of any child, or to any relevant person, or to any one representative of either attending any children's hearing, a sum equal to such travelling expenses and such expenses or subsistence as have, in the opinion of the local authority, been reasonably incurred by or in respect of the child or, as the case may be, by the relevant person or by any representative of either for the purpose of enabling the said child, relevant person or representative to attend that hearing.

(2) A claim under this rule shall be in writing and shall be made before the expiry of the period of one month commencing with the date of the children's hearing to which the claim relates.

Notification of 16th birthday of child subject to supervision requirement

33. When a child subject to a supervision requirement attains the age of 16 years, the Principal Reporter shall as soon as reasonably practicable give notice of that fact to the chief constable of the police area.

James Douglas-Hamilton

Minister of State, Scottish Office
St Andrew's House, Edinburgh

18th December 1996

Schedule

Rule25(1)

FORM 1

SUPERVISION REQUIREMENT

(Place and Date)

A children's hearing for (local authority area), having considered the case of (name and address of child) and in exercise of the powers conferred by section 70 of the Children (Scotland) Act 1995, being satisfied that he/she is in need of compulsory measures of supervision require him/her* [to be under the supervision of the chief social work officer of (name of local authority)]* [to reside in (name of place or places) [to comply with the conditions stated below.]

[The children's hearing order that the place/places* where (name the child) is to reside in accordance with the requirement shall not be disclosed to (person or class of persons)]*

CONDITIONS REFERRED TO IN THE FOREGOING SUPERVISION REQUIREMENT

1. []

.....

Chairman of the Children's Hearing

*Delete as appropriate

Rule 2
FORM 25(2)

**SUPERVISION REQUIREMENT UNDER SECTION 70(1) OF THE ACT AUTHORISING
PLACEMENT IN SECURE ACCOMMODATION**

(Place and Date)

A children's hearing for (local authority area) having considered the case of (name and address of child) and in exercise of the powers conferred by sections 70(1), 70(3) and 70(9) of the Children (Scotland) Act 1995 being satisfied (firstly) that the child is in need of compulsory measures of supervision, and (secondly)

[that he/she* has previously absconded and is likely to abscond unless he/she* is kept in secure accommodation, and, that if he/she* absconds, it is likely that his/her* physical, mental or moral welfare will be at risk]*

[that he/she* is likely to injure himself/herself* or some other person unless he/she* is kept in secure accommodation]*,

require him/her* to be under the supervision of the chief social work officer for (name of local authority) and to reside in (name of residential establishment providing secure accommodation subject to the conditions noted below.

[name of the place or places]* (see Note below)

[The children's hearing order that the place where (name of child) is to reside shall not be disclosed to (person or class of person)]*

CONDITIONS REFERRED TO IN THE FOREGOING SUPERVISION REQUIREMENT

1. The child is liable to be placed and kept in secure accommodation in (name of residential establishment) at such times as the person in charge of the residential establishment, with the agreement of the chief social work officer of (name of local authority) considers it necessary that the child do so.

.....

Chairman of the Children's Hearing

*Delete as appropriate

Note: If the residential establishment providing secure accommodation does not have an open residential facility there will also need to be a reference to some such place.

FORM 3
Rule 25(3)

CONTINUATION UNDER SECTION 73(9)(e) OF THE ACT OF SUPERVISION
REQUIREMENT

(Place and date)

A children's hearing for (local authority area), considering the case of (name and address of child) and the supervision requirement (a copy of which is attached), and in exercise of its powers under section 73(9)(e) of the Act, continues the said requirement [in force]* [subject to the variations of that requirement noted below]* [with the insertions in the requirement noted below]*

[The children's hearing in [varying]* [imposing]* a requirement order that the place where (name of child) is to reside shall not be disclosed to (person or class of persons)]*

[VARIATION[S] REFERRED TO]*

[INSERTION[S] REFERRED TO]*

.....

Chairman of the Children's Hearing

*Delete as appropriate

FORM 4
Rule 25(4)

CONTINUATION UNDER SECTION 73(9)(e) OF THE ACT OF SUPERVISION
REQUIREMENT WITH VARIATION AUTHORISING PLACEMENT IN SECURE
ACCOMMODATION

(Place and Date)

A children's hearing for (local authority area) having considered the case of (name and address of child) and in exercise of the powers conferred by sections 73(9)(e) of the Children (Scotland) Act 1995 being satisfied (firstly) that the child is in need of compulsory measures of supervision, and (secondly)

[that he/she* has previously absconded and is likely to abscond unless he/she* is kept in secure accommodation, and, that if he/she* absconds, it is likely that his/her* physical, mental or moral welfare will be at risk]*

[that he/she* is likely to injure himself/herself* or some other person unless he/she* is kept in secure accommodation]*,

grant continuation of the supervision requirement dated (ie sent date) a copy of which is attached, subject to the insertion of a requirement on him/her* to be under the supervision of the chief social work officer for (name of local authority) and to reside in (name of residential establishment providing secure accommodation. Subject to the conditions noted below and any other insertions in or variations of the supervision requirement noted below.

[name of place or places]* (see Note below)

[The children's hearing order that the place where (name of child) is to reside shall not be disclosed to (person or class of person)]*

CONDITIONS VARIATIONS AND INSERTIONS REFERRED TO IN THE
SUPERVISION REQUIREMENT

1. The child is liable to be placed and kept in secure accommodation in (name of residential establishment) at such times as the person in charge of the residential establishment, with the agreement of the chief social work officer of (name of local authority) considers it necessary that the child do so.

.....

Chairman of the Children's Hearing

*Delete as appropriate

Note: If the residential establishment providing secure accommodation does not have an open residential facility there will also need to be a reference to some such place.

FORM 5
Rule 27

WARRANT TO FIND A CHILD ETC, UNDER SECTION [45(4)]* [45(5)]* OF THE ACT

(Place and date)

A children's hearing for (local authority area) in respect of the case of (name and address of child)* and exercise of the powers conferred on them by section [45(4)]* [45(5)]* of the Children (Scotland) Act 1995, being satisfied that it is necessary for them to do so, grant warrant to find the child, and keep him/her in a place of safety and to bring him/her before a children's hearing.

.....

Chairman of the Children's Hearing

*Delete as appropriate

CONTINUATION UNDER SECTION 59(4) OF THE ACT OF A CHILD PROTECTION
ORDER

(Place and date)

A children's hearing for (local authority area), in respect of the case of (name and address of child)* and exercise of the powers conferred on them by section 59(4) of the Children (Scotland) Act 1995, being satisfied that the conditions for the making of a child protection order under section 57 of the Act are established, continue the child protection order dated (insert date of CPO by sheriff, a copy of which is attached) [and the directions made under section 58 of the Act]* until (date) (insert date being date of hearing on eighth working day).

[For the duration of the Order the variation[s] of the [Order]* [and] [direction[s]]* as set out below shall have effect]*

[VARIATIONS OF [ORDER]* [AND]* [DIRECTIONS]*

1. (insert variations)]*

.....

Chairman of the Children's Hearing

*Delete as appropriate

FORM 7
Rule 27

CONTINUATION UNDER SECTION 59(4) OF THE ACT OF A CHILD PROTECTION
ORDER WITH FIRST AUTHORISATION OF REMOVAL OF CHILD TO
PLACE OF SAFETY

(Place and date)

A children's hearing for (local authority area), in respect of the case of (name and address of child)* and in exercise of the powers conferred on them by section 59(4) of the Children (Scotland) Act 1995, being satisfied that the conditions for the making of a child protection order under section 57 of the Act are established, continue the child protection order dated (insert date of CPO by sheriff, a copy of which is attached) [and the directions made under section 58 of the Act]* until (date) (insert date being date of hearing on eighth working day).

[For the duration of the Order the variation[s] of the [Order]* [and] [direction[s]]* as set out below shall have effect]*

[VARIATIONS OF [ORDER]* [AND]* [DIRECTIONS]*

1. The applicant shall be authorised to remove the child to and keep it (name of place or places of safety) subject to the following conditions:
2. [The place or plans of safety shall not be disclosed to (person or class of persons)]*
- 3.

Chairman of the Children's Hearing

*Delete as appropriate

WARRANT UNDER SECTION 63(5) OF THE ACT FOR KEEPING A CHILD IN A PLACE OF SAFETY

(Place and date)

A children's hearing for (local authority area) in respect of the case of (name and address of child) and in exercise of the powers conferred on them by section 63(5) of the Act, being satisfied [that it is necessary that the child should be kept in a place of safety in order to safeguard or promote his/her welfare]* [there is reason to believe that the child may fail to comply with a requirement that under section 69(3) of the Act]* [there is reason to believe that the child may not attend at any hearing of his/here case]* grant warrant to (insert name and address and where appropriate full designation of applicant) to keep that child in (name of place or places) for a period from (date) to (date) both days inclusive (insert period not exceeding 22 days) [and for the bringing of that child, before a children's hearing at (insert time and/or date)].

[For the duration of this warrant the child should be subject to the conditions noted below]*

[The children's hearing in granting this warrant order that the place or places where the child is to reside in accordance with the warrant shall not be disclosed to (person or class of persons)]*

[CONDITIONS REFERRED TO IN THE FOREGOING WARRANT

1. (insert conditions)]*

.....

Chairman of the Children's Hearing

*Delete as appropriate

WARRANT UNDER SECTION 63(5) OF THE ACT FOR PLACING AND KEEPING A
CHILD IN PLACE OF SAFETY WITH AUTHORISATION TO KEEP IN
SECURE ACCOMMODATION

(Place and date)

A children's hearing for (local authority area), in respect of the case of (name and address of child) and in exercise of the powers conferred on them by section 63(5) of the Children (Scotland) Act 1995,

(firstly) being satisfied that [it is necessary that the child should be kept in a place of safety in order to safeguard or promote his/her* welfare]* [there is reason to believe that the child may not attend any hearing of his/her* case]* [there is reason to believe that the child may not comply with a requirement under section 69(3) of the Act]*

(secondly) being satisfied [that, having previously absconded, he/she* is likely to abscond unless kept in secure accommodation, and that if he/she* absconds it is likely that his/her* physical, mental or moral welfare will be at risk]* [that he/she* is likely to injure himself/herself* or some other person unless he/she* is kept in such accommodation]*, grant warrant to (insert name and address and where appropriate full designation of applicant) to keep the child in (name of residential establishment providing the secure accommodation) for the period from (date) to (date) (insert period not exceeding 22 days) both days inclusive and order that during the duration of the warrant, pending the disposal of his/her case, the child shall be liable to be placed and kept in secure accommodation within the said residential establishment at such times as the person in charge of the residential establishment, with the agreement of the chief social work officer of (name of local authority), considers necessary.

[name of place or places]* (see Note below)

[For the duration of this warrant the child should be subject to the conditions noted below]* [The children's hearing in granting this warrant order that the place where the child is to reside in accordance with the warrant shall not be disclosed to (person or class of persons)]*

[CONDITIONS REFERRED TO IN THE FOREGOING WARRANT

1. (insert conditions)]*

.....

Chairman of the Children's Hearing

*Delete as appropriate

Note: If the residential establishment providing secure accommodation does not have an open residential facility, there will also need to be reference to some such place.

FORM 10
Rule 27

CONTINUATION UNDER SECTION 63(5) OF THE ACT OF A WARRANT FOR
KEEPING A CHILD IN A PLACE OF SAFETY

(Place and date)

A children's hearing for (local authority area), in respect of the case of (name and address of child) and in exercise of the powers conferred on them by section 63(5) of the Children (Scotland) Act 1995, continues the warrant dated (insert date of warrant), a copy of which is attached, for the keeping of the child in a place of safety for a period from (date) to (date) both days inclusive (insert period not exceeding 22 days) [and for the bringing of that child before a children's hearing at (insert time and/or date)].

[The continuation of the warrant is subject to the variations]* noted below]*

[VARIATIONS REFERRED TO

1. (insert variations)]*

.....

Chairman of the Children's Hearing

*Delete as appropriate

CONTINUATION UNDER SECTION 63(5) OF THE ACT OF A WARRANT FOR
PLACING AND KEEPING A CHILD IN A PLACE OF SAFETY WITH FIRST
AUTHORISATION TO KEEP THE CHILD IN SECURE ACCOMMODATION

(Place and date)

A children's hearing for (local authority area), in respect of the case of (name and address of child) and in exercise of the powers conferred on them by section 63(5) of the Children (Scotland) Act 1995.

(firstly) being satisfied that [it is necessary that the child shall be kept in a place of safety in order to safeguard or promote his/her* welfare]* [there is reason to believe that the child may not attend any hearing or his/her* case]* [there is reason to believe that the child may not comply with a requirement under section 69(3) of the Act]*

(secondly) being satisfied [that, having previously absconded he/she* is likely to abscond unless kept in secure accommodation, and that if he/she* absconds it is likely that his/her* physical, mental or moral welfare will be at risk]* [that he/she* is likely to injure himself/herself* or some other person unless he/she* is kept in such accommodation]*, grant continuation, subject to the variations noted below of the warrant dated (insert date of warrant), a copy of which is attached,

Variations referred to above

1. _The warrant is varied to read as a warrant to (name and address and where appropriate full designation of applicant) to keep the child in (name of residential establishment providing secure accommodation) for the period from (date) to (date) (insert period not exceeding 22 days) both days inclusive and with an order that during the duration of the warrant pending the disposal of his/her case, the child shall be liable to be placed and kept in secure accommodation within the said residential establishment at such times as the person in charge of the residential establishment, with the agreement of the chief social work officer of (name of local authority), considers necessary.

[name of place or places]* (see Note below)

2. etc.

.....

Chairman of the Children's Hearing

*Delete as appropriate

Note: If the residential establishment providing secure accommodation does not have an open residential facility there will also need to be a reference to some such place.

WARRANT UNDER SECTION 66(1) OF THE ACT FOR KEEPING A CHILD IN A
PLACE OF SAFETY

(Place and date)

A children's hearing for (local authority area) in respect of the case of (name and address of child), being unable to dispose of the case and in exercise of the powers conferred on them by section 63(5) of the Act, being satisfied [that it is necessary that the child should be kept in a place of safety in order to safeguard or promote his/her welfare]* [the child may not attend at any hearing of his/her case]* [there is reason to believe that the child may fail to comply with a requirement that under section 69(3) of the Act]* [there is reason to believe that the child may not attend at any hearing of his/her case]* grant warrant to (insert name and address and where appropriate full designation of applicant) to [find and keep the child in (name of place or places) for a period from (date) to (date) both days inclusive (insert period not exceeding 22 days) [and for the bringing of that child, before a children's hearing at (insert time and/or date)]*.

[For the duration this warrant the child should be subject to the conditions noted below]*

[The children's hearing in granting this warrant order that the place or places where (the child) is to reside in accordance with the warrant shall not be disclosed to (person or class of persons)]*

[CONDITIONS REFERRED TO IN THE FOREGOING WARRANT

1. (insert conditions)]*

.....

Chairman of the Children's Hearing

*Delete as appropriate

WARRANT UNDER SECTIONS 66(1) AND 66(6) OF THE ACT FOR PLACING AND
KEEPING A CHILD IN PLACE OF SAFETY WITH AUTHORISATION TO KEEP IN
SECURE ACCOMMODATION

(Place and date)

A children's hearing for (local authority area), in respect of the case of (name and address of child) being unable to dispose of the case and in exercise of the powers conferred on them by section 66(1) and 66(6) of the Children (Scotland) Act 1995, (firstly) being satisfied that [it is necessary to keep the child in a place of safety in order to safeguard or promote his/her welfare]* [there is reason to believe that the child may not attend any hearing of his/her* case]* [there is reason to believe that the child may fail to comply with a requirement under section 69(3) of that Act]* and (secondly) being satisfied [that, having previously absconded, he/she* is likely to abscond unless kept in secure accommodation, and that if he/she* absconds it is likely that his/her* physical, mental or moral welfare will be at risk]* [that he/she* is likely to injure himself/herself* or some other person unless he/she* is kept in such accommodation]*, grant warrant to (insert name and address and where appropriate full designation of applicant) to [find and keep]* [keep]* the child in (name of residential establishment providing the secure accommodation) subject to the conditions noted below for the period from (date) to (date) both days inclusive (insert period not exceeding 22 days) and for the bringing of that child before a children's hearing at (insert time and date). [name of place or places]* (see Note below)
[The children's hearing in granting this warrant order that the place where the child is to reside in accordance with the warrant shall not be disclosed to (person or class of person)]*

CONDITIONS REFERRED TO IN THE FOREGOING WARRANT

1. The child is liable to be placed and kept in secure accommodation in (name of residential establishment) at such times as the person in charge of the residential establishment, with the agreement of the chief social work officer of (name of local authority), considers it necessary that the child do so.

.....

Chairman of the Children's Hearing

*Delete as appropriate

Note: If the residential establishment providing secure accommodation does not have an open residential facility there will also need to be a reference to some such place.

CONTINUATION UNDER SECTION 66(5) OF A WARRANT OF THE ACT FOR
KEEPING A CHILD IN A PLACE OF SAFETY

(Place and date)

A children's hearing for (local authority area), in respect of the case of (name and address of child), being unable to dispose of the case and in exercise of the powers conferred on them by section 66(5) of the Children (Scotland) Act 1995, being satisfied that (specify cause shown by the Principal Reporter) continue a warrant dated (insert date of warrant), a copy of which is attached, for a period from (date to (date) both days inclusive (insert period not exceeding 22 days) and for the bringing of that child before a children's hearing at (insert time and date).

[The continuation of the warrant is subject to the variations of the warrant [as varied]* noted below]*

[VARIATIONS REFERRED TO IN THE FOREGOING WARRANT

1. (insert variations)*

.....

Chairman of the Children's Hearing

*Delete as appropriate

CONTINUATION UNDER SECTION 66(5) OF THE ACT OF A WARRANT FOR
PLACING AND KEEPING A CHILD IN A PLACE OF SAFETY WITH FIRST
AUTHORISATION TO KEEP IN SECURE ACCOMMODATION

(Place and date)

A children's hearing for (local authority area), in respect of the case of (name and address of child) being unable to dispose of the case, in exercise of the powers conferred on them by section 66(5) and 66(6) of the Children (Scotland) Act 1995

(firstly) being satisfied that (specify cause shown by the Principal Reporter,)

(secondly) being satisfied that the child having previously absconded, he/she* is likely to abscond unless kept in secure accommodation, and that if he/she* absconds it is likely that his/her* physical, mental or moral welfare will be at risk]* [that he/she* is likely to injure himself/herself* or some other person unless he/she* is kept in such accommodation]*,

grant continuation, subject to the variations noted below, of the warrant dated (insert date of warrant), a copy of which is attached.

[The children's hearing in granting this warrant order that the place where (name) is to reside in accordance with the warrant shall not be disclosed (person or class of persons)]*

[VARIATIONS REFERRED TO

1. The warrant is varied to read as a warrant to (name and address and where appropriate full designation of applicant) to keep the child in (name of residential establishment providing secure accommodation) for the period from (date) to date (insert period not exceeding 22 days) both days inclusive and with an order that during the duration of the warrant, pending disposal of his/her case, the child shall be liable to be placed and kept in secure accommodation within the said residential establishment at such times as the person in charge of the residential establishment with the agreement of the chief social work officer of (name of local authority), considers necessary.

[name of place or places]* (see Note below)

2.

Chairman of the Children's Hearing

*Delete as appropriate

Note: If the residential establishment providing secure accommodation does not have an open residential facility there will also need to be a reference to some such place.

WARRANT UNDER SECTION 69(4) OF THE ACT FOR APPREHENSION OF CHILD
AND REMOVAL TO PLACE OF SAFETY

(Place and date)

A children's hearing for (local authority area) having considered the case of (name and address of child) continue the case and in exercise of the power conferred on them by section 69(4) of the Children (Scotland) Act 1995, being satisfied that (name of child) has failed to fulfil a requirement made under section 69(3) of the Act, grant warrant to (insert name and address and where appropriate full designation of person) to find the child for the purpose of removing him/her* (insert name of place or places of safety) and keeping the child there [and where that place or those places of safety is or are not (insert name of clinic, hospital or establishment named in section 69(3) requirement), to take him/her* from the place of safety to (insert name of clinic, hospital or other establishment) for the purpose of investigation]*

[For the duration of this warrant the child should be subject to the conditions noted below]*

[The place or places where the child is to reside shall not be disclosed to (person or class of persons)]*

[CONDITIONS REFERRED TO IN THE FOREGOING WARRANT

1. (insert conditions)]*

.....

Chairman of the Children's Hearing

*Delete as appropriate

WARRANT UNDER SECTION 69(4) OF THE ACT TO REMOVE AND KEEP CHILD IN
PLACE OF SAFETY WITH AUTHORISATION TO KEEP IN SECURE
ACCOMMODATION

(Place and date)

A children's hearing for (local authority area) having considered the case of (name and address of child) continue the case and in exercise of the power conferred on them by section 69(4) of the Children (Scotland) Act 1995, (firstly) being satisfied that the child has failed to fulfil a requirement made under section 69(3) of the Act, grant warrant to (insert name and address and where appropriate full designation of person) to find the child for the purpose of removing him/her* (insert name of place or places of safety) and keeping the child there [and where that place or those places of safety is or are not (insert name of clinic, hospital or establishment named in section 69(3) requirement), to take him/her* (insert name of clinic, hospital or other establishment) for the purpose of investigation]*

(secondly) being satisfied that, the child having previously absconded, he/she* is likely to abscond unless kept in secure accommodation, and that if he/she* absconds it is likely that his/her* physical, mental or moral welfare will be at risk]* [that he/she* is likely to injure himself/herself* or some other person unless he/she* is kept in such accommodation]*, orders that while the warrant or requirement under section 69(3) is in effect the child shall be liable to be placed in secure accommodation within (name of residential establishment providing secure accommodation)* (see Note below) at such times as the person in charge of the establishment, with the agreement of the chief social work officer of (name of local authority) considers necessary.

[For the duration of this warrant the child should be subject to the conditions noted below]*

[The place or places where the child is to reside shall not be disclosed to (person or class of persons)]*

[CONDITIONS REFERRED TO IN THE FOREGOING WARRANT

1. (insert conditions)]*

.....

Chairman of the Children's Hearing

*Delete as appropriate

Note: If the place of safety does not provide secure accommodation there will also need to be a reference to some such secure accommodation.

WARRANT UNDER SECTION 69(7) OF THE ACT FOR KEEPING A CHILD IN A
PLACE OF SAFETY

(Place and date)

A children's hearing for (local authority area) having considered the case of (name and address of child) continue the case and in exercise of the powers conferred on them by section 69(7) of the Children (Scotland) Act 1995, being satisfied that [it is necessary that the child should be kept in a place of safety in the interests of safeguarding or promoting his/her* welfare]* [there is reason to believe that (name and address) may not attend the subsequent hearing of his/her* case]* grant warrant to (insert name and address and where appropriate full designation of person) for that child to be taken to and kept in (insert name of place or places of safety)]* [until the day on which the subsequent hearing of the child's case by a children's hearing begins]*

[For the duration of this warrant the child should be subject to the conditions noted below]* [The place or places of safety referred to if this warrant shall not be disclosed to (person or class of person)]*

[CONDITIONS REFERRED TO IN THE FOREGOING WARRANT

1. (insert conditions)]*

.....

Chairman of the Children's Hearings

*Delete as appropriate

WARRANT UNDER SECTION 69(7) OF THE ACT FOR PLACING AND KEEPING A
CHILD IN PLACE OF SAFETY WITH AUTHORISATION TO KEEP IN SECURE
ACCOMMODATION

(Place and date)

A children's hearing for (local authority area) having considering the case of (name and address of child) continue the case and in exercise of the powers conferred on them by section 69(4) of the Children (Scotland) Act 1995,
[being satisfied that it is necessary for the child to be kept in a place of safety in the interests of safeguarding or promoting his/her* welfare]* [there is reason to believe that the child may not attend the subsequent hearing of his/her* case]*
being satisfied [that, having previously absconded he/she* is likely to abscond unless kept in secure accommodation, and that if he/she* absconds it is likely that his/her* physical, mental or moral welfare will be at risk]* [that he/she* is likely to injure himself/herself* or some other person unless he/she* is kept in such accommodation]*
grant warrant to (insert name and address and where appropriate full designation of person) ordering the taking to and keeping of the said child in (name of residential establishment providing the secure accommodation) [for the period from (date) to (date) both days inclusive (insert period not exceeding 22 days)]* [until the day on which the subsequent hearing of the child's case by a children's hearing begins]* and order that while the warrant is in effect the child shall be liable to be placed in secure accommodation at such times as the person in charge of the residential establishment, with the agreement of the chief social work officer of (name of local authority), considers necessary.

[name of place or places]* (see Note below)

[For the duration of this warrant the child shall be subject to the conditions noted below]*

[The children's hearing in granting this warrant order that the place where (name) is to reside in accordance with the warrant shall not be disclosed to

[CONDITIONS REFERRED TO IN THE FOREGOING WARRANT

1. (insert conditions)]*

.....

Chairman of the Children's Hearing

*Delete as appropriate

Note: If the residential establishment providing secure accommodation does not have an open residential facility there will also need to be a reference to some such place.

FORM 20
Rule 28

REQUIREMENT UNDER SECTION 69(3) OF THE ACT

(Place and Date)

The children's hearing for (name of local authority) in respect of (name and address of child) having considered his/her case and being satisfied that, in order to complete their consideration of the case, it is necessary to have further investigation of the case, continue the case and for the purposes of the said investigation, in exercise of their powers under section 69(3) of the Act, require the child to [attend]* [reside at]* (insert name of clinic, hospital or establishment) during (insert time or period not exceeding twenty-two days).

.....

Chairman of the Children's Hearing

*Delete as appropriate

FORM 21
Rule 28(2)

NOTIFICATION BY PRINCIPAL REPORTER UNDER SECTION 60(3) TO PERSON
WHO IMPLEMENTED CHILD PROTECTION ORDER THAT CONDITIONS FOR THE
MAKING OF THE ORDER ARE NO LONGER SATISFIED

(Date and place)

(To (name and address))

The Principal Reporter, hereby notifies you that having regard to the welfare of (name and address of child) he has decided that, [as a result of a change in the circumstances of his/her* case]* [in the light of further information relating to his/her* case having received by him]* that [the conditions of the making of a child protection order in respect of (name of child) are no longer satisfied]* or [the [term]* [condition]* [direction]* set out below is no longer appropriate]*.

[TERM, CONDITION OR DIRECTION REFERRED TO IN THE FOREGOING
NOTIFICATION]

1. (Insert term, condition or direction)]*

.....

Principal Reporter
(on behalf of the Principal Reporter)

*Delete as appropriate

FORM 22
Rule 28(3)

NOTIFICATION BY PRINCIPAL REPORTER UNDER SECTION 60(3) TO PERSON
WHO IMPLEMENTED CHILD PROTECTION ORDER THAT CONDITIONS FOR THE
MAKING OF THE ORDER ARE NO LONGER SATISFIED

(Date and place)

(To (name and address))

The Principal Reporter, hereby notifies you that having regard to the welfare of (name and address of child) has decided that, [as a result of a change in the circumstances of his/her* case]* [in the light of further information relating to his/her* case having received by him]* that [the conditions of the making of a child protection order in respect of (name of child) are no longer satisfied]* or [the [term]* [condition]* [direction]* set out below is no longer appropriate]*.

[TERM, CONDITION OR DIRECTION REFERRED TO IN THE FOREGOING
NOTIFICATION]

1. (Insert term, condition or direction)]*

.....

Principal Reporter
(on behalf of the Principal Reporter)

*Delete as appropriate

FORM 23
Rule 28(4)

FORM OF REPORT BY CHILDREN'S HEARING OF ADVICE UNDER SECTION 60(10)
OF THE ACT FOR CONSIDERATION BY SHERIFF IN HIS DETERMINATION OF
APPLICATION UNDER SECTION 60(7) OF THE ACT

(Date and place)

To

On (date) a children's hearing for (local authority area), after considering the case of (name of child and address) and the application under section 60(7) to [set aside]* [vary]* [the child protection order]* [a direction under section 58 of the Act]* [the child protection order]* [direction]* continued under section 59(4)]* provide the advice set out below to assist the sheriff in his determination of the application.

ADVICE REFERRED TO IN THE FOREGOING ADVICE STATEMENT

1. (insert advice)

.....

Chairman of the Children's Hearing

*Delete as appropriate

FORM 24
Rule 28(5)

FORM OF REPORT BY CHILDREN'S HEARING OF ADVICE UNDER SECTION 73(13)
OF THE ACT PROVIDING ADVICE FOR CONSIDERATION BY SHERIFF IN HIS
DETERMINATION OF DECISION OF ADOPTION AGENCY

(Date and place)

To

On (date) a children's hearing for (local authority area), after considering the case of (name of child and address) and the [proposed application under section 86 of the Act]* [proposed application under [section 12]* [section 18]* of the Adoption (Scotland) Act 1978]* [the proposed placing for adoption]* provide the advice set out below to assist the sheriff in his determination of the application.

ADVICE IN RELATION TO THE DECISION OF THE ADOPTION AGENCY

1. (insert advice)

.....

Chairman of the Children's Hearing

*Delete as appropriate

CHILDREN (SCOTLAND) ACT 1995 CERTIFICATE OF NOTIFICATION OF
CHILDREN'S HEARING TO RELEVANT PERSON

(to be subjoined to copy of notification)*

I, [Principal Reporter/on behalf of Principal Reporter]* of (name of
local authority) notified (name of relevant person) by
[speaking to him in person on (date), (time), (place)]*

[delivering a copy of the notification to him in person on (date), (time), (place)]*

[leaving a copy of the notification for him at his [(address), (house), (business), (address
of business) or (date)]

[leaving a copy of the notification for him on board (name of vessel) at (place) or (date)]*

[sending to him in [a recorded delivery/registered] letter and the post office receipt of said
letter accompanies this certificate]*

.....

Principal Reporter to the Children's Hearing

*Delete as appropriate

Statutory Instrument 1996 No. 3261 (S.251)
Children's Hearings (Scotland) Rules 1996 - continued

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules consolidate and amend the Children's Hearings (Scotland) Rules 1986 taking into account the new provisions introduced by the Local Government etc. (Scotland) Act 1994, the Criminal Procedure (Scotland) Act 1995 and the Children (Scotland) Act 1995. They provide *inter alia* for-

business meetings preparatory to the constitution of a children's hearing (rule 4);

the constitution of a children's hearing (rule 10);

incorporation of the Children's hearings (Scotland) Amendment Rules 1996 regarding availability of reports to "relevant persons" (rule 5(3)(a));

the opportunity for the child to express his views and for the children's hearing to take these views into account (rule 15);

revised provisions for the appointment of safeguarders and a requirement for safeguarders to produce a written report for a children's hearing (rule 14); and

extension of the provision for the conduct of advice hearings to include advice on adoption and parental responsibility (rule 22).

These Rules also incorporate with amendments Parts I and II of the Reporter's Duties and Transmission of Information etc. (Scotland) Rules 1971 and effect a reduction and modification of prescribed forms and notifications.

2002 No. 63

CHILDREN AND YOUNG PERSONS

The Children's Hearings (Legal Representation) (Scotland) Rules 2002

<i>Made</i>	<i>14th February 2002</i>
<i>Laid before the Scottish Parliament</i>	<i>15th February 2002</i>
<i>Coming into force</i>	<i>23rd February 2002</i>

The Scottish Ministers, in exercise of the powers conferred by sections 42(1) and (2)(a), (b), (d) and (i) and 103(3) of the Children (Scotland) Act 1995[1], and of all other powers enabling them in that behalf, and after consultation with the Scottish Committee of the Council on Tribunals in accordance with section 8(1) of the Tribunals and Inquiries Act 1992[2] hereby make the following Rules:

Citation and commencement

1. These Rules may be cited as the Children's Hearings (Legal Representation) (Scotland) Rules 2002 and shall come into force on 23rd February 2002.

Interpretation

2. In these Rules-

"the Act" means the Children (Scotland) Act 1995;

"legal representative" means a person appointed under these Rules to act as the legal representative of a child who is the subject of a Children's Hearing;

"local authority" means the local authority for the area of the Children's Hearing; and

"the Principal Reporter" means the Principal Reporter appointed under section 127 of the Local Government etc. (Scotland) Act 1994[3] or any officer of the Scottish Children's Reporter Administration to whom there is delegated under section 131(1) of that Act any functions of the Principal Reporter.

Legal representation for the purpose of assisting children at a Children's Hearing

3. - (1) A business meeting arranged by the Principal Reporter under section 64(1) of the Act may appoint to any child who is due to appear before the Children's Hearing a legal representative if it appears to that business meeting, notwithstanding that an appointment may be made under section 41(1) of the Act, that-

(a) legal representation is required to allow the child to effectively participate at the Hearing; or

(b) it may be necessary to make a supervision requirement (or a review of such requirement) which includes a requirement for the child to reside in a named residential establishment and the child is likely to meet the criteria specified in section 70(10) of the Act and the Secure Accommodation (Scotland) Regulations 1996[4].

(2) The Children's Hearing may at any time appoint to any child a legal representative if it appears to that Hearing that either of the circumstances in paragraph (1)(a) or (b) above apply notwithstanding that:

(a) a business meeting or a previous Children's Hearing has considered the appointment of a legal representative for the child who is the subject of the Hearing; or

(b) an appointment has been or may be made under section 41(1) of the Act.

(3) When any appointment of a legal representative is made, the business meeting or the Children's Hearing shall direct the Principal Reporter to advise the local authority of that appointment.

Notification of Children's Hearings and provision of documents to legal representative

4. - (1) The Principal Reporter shall make any document, information or copies of any document provided to the Chairman and members of the Children's Hearing available to the legal representative.

(2) Subject to the Children's Hearings (Scotland) Rules 1996[5], where the Principal Reporter arranges any Children's Hearing, he or she shall, wherever practicable-

(a) at least seven days before the date of the Hearing, notify the legal representative of the time and place of the Hearing; and

(b) at least three days before the date of the Hearing, give to the legal representative a copy of the documents which are relevant to the case of a child to be considered at the Hearing.

Panel of legal representatives

5. - (1) Where the business meeting or Children's Hearing appoints a legal representative, the local authority shall make appropriate arrangements for a legal representative to attend the Hearing, who shall be a person who holds a current practising certificate issued by the Law Society of Scotland and who is appointed to one of the following:-

(a) the panel of persons to safeguard the interests of children established under the Panels of Persons to Safeguard the Interests of Children (Scotland) Regulations 2001[6] for the local authority area within which the child resides, or if circumstances require, from any other local authority list in Scotland; or

(b) the panel of curators ad litem and reporting officers established under the Curators ad Litem and Reporting Officers (Panels) (Scotland) Regulations 2001[7] for the Sheriff Court area within which the child resides or, if circumstances require, any other Sheriff Court district within Scotland.

(2) The local authority shall notify the Principal Reporter of the name of the legal representative.

Revocations

6. The Children's Hearings (Legal Representation) (Scotland) Rules 2001[8] and the Children's Hearings (Legal Representation) (Scotland) Amendment Rules 2002[9] are hereby revoked.

CATHY JAMIESON

A member of the Scottish Executive

St Andrews House, Edinburgh

14th February 2002

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules permit legal representatives to attend Children's Hearings as defined in section 39(3) of the Children (Scotland) Act 1995 in certain circumstances.

Rule 3 specifies when the business meeting and the Children's Hearing may consider the appointment of a legal representative, and the circumstances in which an appointment may be made.

Rule 4 authorises the Principal Reporter to make copies of the relevant documentation available to legal representatives.

Rule 5 specifies groups of persons from whom a legal representative may be appointed.

Rule 6 revokes the Children's Hearings (Legal Representation) (Scotland) Rules 2001 (S.S.I. 2001/478) and the Children's Hearings (Legal Representation) (Scotland) Amendment Rules 2002 (S.S.I. 2002/30).

Notes:

[1] 1995 c.36. The functions of the Secretary of State transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

[2] 1992 c.53.

[3] 1994 c.39.

[4] S.I. 1996/3255.

[5] S.I. 1996/3261.

[6] S.S.I. 2001/476.

[7] S.S.I. 2001/477.

[8] S.S.I. 2001/478.

[9] S.S.I. 2002/30.

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