



SCOTTISH  
**CHILDREN'S REPORTER**  
ADMINISTRATION

# **Practice Direction 5**

## **Receipt and Registration of Referrals**

Date Issued:	21 June 2013
Date Implemented:	24 June 2013
Date Last Revised:	21 June 2013

## Summary

- Section 66(1) sets out the triggers which constitute a referral. A referral requires the reporter to determine whether a ground applies and if so whether a compulsory supervision order is necessary.
- Section 66(1)(a) referrals are primarily:
  - referral from the local authority, police or other person
  - notice of the making of a child protection order
  - decision that reporter to deal with child in custody
  - referral from civil proceedings
- Section 66(1)(b) enables the reporter to treat other information as a referral. It is to be used on receipt of notice of: a JP order, police removal of the child to a place of safety or an exclusion order. It is to be used in other circumstances only where it appears to the reporter that:
  - the child might be in need of protection, guidance, treatment or control **and**
  - it might be necessary to make a CSO **and**
  - either no referral from another source will be forthcoming or there is an urgent need for the reporter to act.
- Standard referrals by a local authority, police or other person require the referrer to consider that the child is in need of protection, guidance, treatment or control **and** that a compulsory supervision order might be necessary. If the reporter has any doubt about whether these statutory tests have been applied the reporter is to check. If the statutory tests have not been applied, receipt of the information is not a referral under section 66(1)(a).
- Registration of a referral involves identifying the appropriate category of referral on CMS and the appropriate section 67 ground or grounds.
- The selected ground is to be the one that best reflects the issues or concerns in the referral. More than one ground may be recorded only where:
  - the referral contains distinguishable information which supports more than one ground **and**
  - a single ground does not more appropriately reflect the issues or concerns in the referral **and**
  - each recorded ground reflects significant concerns
- Where a ground which reflects an ongoing concern or pattern of behaviour is recorded, subsequent referrals in relation to the same or similar concerns are to be recorded as duplicate or additional referrals – depending on content.
- The recorded section 67 ground(s) may be changed before the reporter's final decision is made on the referral.

- References or remits under the Criminal Procedure (Scotland) Act 1995 or the Antisocial Behaviour etc. (Scotland) Act 2004 or are not referrals under section 66. Where there is a remit, a hearing is arranged either as a 'grounds established' hearing under section 119 (for a child not subject to a CSO) or a review hearing under section 137 (for a child who is subject to a CSO). Where there is a reference for advice, an advice hearing is arranged.

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## **1. Introduction**

- 1.1 This Practice Direction identifies what constitutes a referral to the reporter under section 66 of the Children's Hearings (Scotland) Act 2011 and sets out the action a reporter is to take on receipt of a referral. It also addresses remits and references under the Antisocial Behaviour etc. (Scotland) Act 2004 and the Criminal Procedure (Scotland) Act 1995.
- 1.2 The reporter may engage in pre-referral discussion about a case in order to assist the person or agency to decide whether to refer the child to the reporter. Further information about this is contained in Appendix 1.
- 1.3 The sections of the Children's Hearings (Scotland) Act 2011 most relevant to receipt of information and registration of referrals are sections 66, 69 and 89.

## **2. Referral – Section 66**

- 2.1 Section 66(1) sets out the triggers which require the reporter to determine whether he considers that a section 67 ground applies in relation to a child and, if so, whether the reporter considers that a compulsory supervision order is necessary. The following circumstances constitute a referral for the purposes of this Practice Direction:
  - receipt of any information of the type listed in section 66(1)(a)
  - application of section 66(1)(b) by the reporter
- 2.2 Section 66(1)(a) specifies the following information:
  - (i) notice under section 43 of the making of a child protection order,
  - (ii) information from a local authority under section 60,
  - (iii) information or a report from a constable under section 61,
  - (iv) a section 62 statement,
  - (v) evidence under section 63,
  - (vi) information from a person under section 64,
  - (vii) information from a constable under section 43(5) of the Criminal Procedure (Scotland) Act 1995 (c.46),
  - (viii) a reference from a court under section 48(1) of the Criminal Procedure (Scotland) Act 1995

In essence, the primary referrals under section 66(1)(a) are:

- 'standard' referral from the local authority, police or other person
  - notice of the making of a child protection order
  - decision that the reporter is to deal with a child in custody
  - referral from civil proceedings
- 2.3 Section 66(1)(b) enables the reporter to in effect create a referral. The reporter's duty to decide whether a ground applies and, if so, whether a compulsory supervision order is necessary is triggered if it appears to the reporter that a child might be in need of protection, guidance, treatment or

control. Given the potential breadth of this provision and the significance of the consequences, Section 4 of this Practice Direction sets out how section 66(1)(b) is to be applied by the reporter.

- 2.4 Jurisdiction by the children’s hearing and intention to refer (based on application of the statutory criteria) are necessary before information can be treated as received under sections 60, 61 or 64 (‘standard’ referrals from the local authority, police or other person). For other referrals under section 66(1)(a), intention to refer is not relevant, and questions about jurisdiction will not affect the creation of the referral (though may affect the decision-making options available to the reporter and any hearing). Further information on jurisdiction is provided in Appendix 2.

### **3. Referral under Section 66(1)(a)**

#### Receipt of Information from local authority, police or other person

- 3.1 A referral from a local authority, the police or any other person requires the referrer to have applied the statutory test. The test is set out in sections 60, 61 and 64 respectively but is the same in each case. It is that the referrer must consider that the child is in need of protection, guidance, treatment or control **and** must consider that it might be necessary for a compulsory supervision order to be made. If the person providing the information has **not** applied the statutory test then the information is not to be treated as received under section 60, 61 or 64 and therefore does not constitute a referral under any of those sub-sections.
- 3.2 Where the reporter has any doubt as to whether the person providing the information has applied the statutory test, the reporter must check that with the person.
- 3.3 If the information received is not a referral under section 66(1)(a) there may be occasions where it is appropriate for the reporter to apply section 66(1)(b). The approach in Section 2.3 must be followed.
- 3.4 The information received must be about a child in relation to whom a children’s hearing may have jurisdiction. Further information on jurisdiction is contained in Appendix 2.

#### Making of Child Protection Order

- 3.5 Section 43 requires the applicant for a Child Protection Order to give notice of the making of the Order to the reporter. Receipt of this notice is a referral.

#### Referral from Civil Court Proceedings

- 3.6 Section 62 provides that where a court dealing with relevant civil proceedings considers that a section 67 ground might apply in relation to a child, the court may refer the matter to the reporter. The court may not refer on the basis of a section 67(2)(j) ground – offence by the child. The court must provide a ‘section 62 statement’ which specifies which of the section 67 grounds the

court considers might apply, the reasons for so considering and any other relevant information about the child.

- 3.7 The relevant civil proceedings are listed in section 62(5) and include actions in relation to divorce, separation, declarator of marriage or nullity of marriage, equivalent actions in relation to civil partnerships, declarator of parentage or non-parentage, parental responsibilities or rights, adoption, permanence order (where child not subject to a compulsory supervision order) and the Education (Scotland) Act 1980.

#### Receipt of Evidence from Lord Advocate

- 3.8 Section 63 provides that the Lord Advocate may direct that in any specified case or class of case evidence must be given to the reporter (whether or not the reporter has requested it). Receipt of such evidence constitutes a referral. At present, no such directions have been made by the Lord Advocate.

#### Custody

- 3.9 Communication of the decision by COPFS that the reporter is to deal with a child in custody constitutes a referral.

#### Section 48 Reference

- 3.10 A reference under the Criminal Procedure (Scotland) Act 1995 section 48 constitutes a referral. If arranging a hearing on the basis of the referral, the reporter arranges a grounds hearing. However, in terms of section 48 of the CP(S)A the offence is treated as a ground established.

### **4. Reporter Generated Referral under Section 66(1)(b)**

- 4.1 Section 66(1)(b) triggers decision-making by the reporter where it appears to the reporter that a child might be in need of protection, guidance, treatment or control. Section 66(1)(b) is to be interpreted and applied as follows:

- It is to be read as if it contained the words 'and it appears to the reporter that it might be necessary to make a compulsory supervision order'.
- It is to be taken to apply where notice is received of: the making of a JP Order (section 55), police removal of a child to a place of safety (section 56) or the making of an exclusion order under the Children (Scotland) Act 1995 .
- It is to be applied in other situations only where the available information does not constitute a referral under any other section 66(1) trigger and only if the approach set out in paragraph 4.2 is adopted.

- 4.2 Other than the situations specified in paragraph 4.1, section 66(1)(b) is to be used only as a measure of last resort where no other agency appears likely to refer or there is a need to act urgently in the interests of the child. The reporter is to apply the following approach.

- Where the available information constitutes a referral under any other section 66(1) trigger, that is the referral category which is to be applied.

- Where the information cannot be treated as a referral under section 66(1)(a) and the reporter considers that section 66(1)(b) might apply, the reporter is to contact the lead agency for the child. This is to ascertain whether the agency thinks the test for referral by the agency is met. If there is no lead agency, the reporter must bring the child to the attention of the most appropriate agency and ascertain its position on referral.
- The reporter must take into account the view of the agency and any intended action by the agency, including referral to the reporter, before deciding whether to act under section 66(1)(b).
- The reporter may act under section 66(1)(b) where it continues to appear to the reporter that:
  - the child might be in need of protection, guidance, treatment or control,
  - it might be necessary for a compulsory supervision order to be made **and**
  - either no referral from another source will be forthcoming or there is an urgent need for the reporter to act under section 66(1)(b),
- In terms of the Casework Scheme of Delegation the reporter is to consult with the Locality Reporter Manager or Senior Practitioner wherever practicable before acting under section 66(1)(b).

## 5. Specific Referral Situations

- 5.1 If the police or other person submit a report about an adult offending against a child, the reporter is to treat the child as referred under section 60/61/64. The reporter is to treat any child who is or is likely to have a close connection with the adult offender, or who is or is likely to become a member of the same household as the child victim, as referred only if this is the clear intention of the referrer (through the application of the statutory test).
- 5.2 If the police or other person report a child offender, and the victim of the offence is a child, the reporter is to treat only the offender as being referred under sections 60/61/64 unless it is clear that the referrer intends to also refer the victim.
- 5.3 The reporter is to treat Information received from the police regarding a child who has been reported as a missing person or an absconder as a referral under section 61 only if that is the clear intention of the police.
- 5.4 Where information is received in the form of case conference minutes and the decision of the case conference was to refer the child, then this is a referral. However, no referral can be made, nor investigation undertaken, before the child is born. Where the decision of the case conference was not to refer the child, receipt of the minutes is not a referral. An invitation to attend a case conference is not a referral.
- 5.5 In any of these situations, and others, where there is no referral under section 66(1)(a) the reporter may consider the application of section 66(1)(b) by applying the approach set out in paragraph 4.2.

## 6. Registration

- 6.1 When a referral is received under section 66(1)(a), or a referral is created by the reporter under section 66(1)(b), it must be registered on CMS. The category of referral and the appropriate section 67 ground or grounds must be identified. The primary purpose of recording these details is to identify the key focus for the reporter's assessment, investigation and decision making. This complements Practice Direction 7 on Statement of Grounds. Registration requires careful consideration and this section sets out the approach which must be followed. Further details and examples are provided in Appendix 3.
- 6.2 The ground which most relevantly reflects the issues or concerns raised in the referral must be recorded.
- 6.3 For some referrals, the information in the referral might broadly support more than one ground. More than one ground is to be recorded against a referral only where:
- the information in the referral can support different grounds with each ground being supported by separate and distinguishable information contained within the referral (such that one ground might be established even if another is not)
- and**
- a single ground does not more appropriately reflect the concerns for the child
- and**
- each recorded ground reflects significant concerns about the child.
- 6.4 Referrals received will be registered as *referral – standard* or one of the more specialised categories as appropriate. Where there is an existing open referral the appropriate category for any new referral will depend on a combination of factors:
- whether the open referral reflects an ongoing concern or pattern of behaviour
  - whether the new referral contains only the same/similar broad concerns as the open referral, significant additional information or different concerns
  - whether the referral is a specialised category (eg CPO)
- 6.5 There is a strong presumption that the following section 67 grounds be treated as reflecting an ongoing concern or pattern of behaviour. It is possible for other grounds to do so, including an offence against a child.<sup>1</sup>
- 67(2)(a) lack of parental care
  - 67(2) (e) exposure to persons whose conduct likely to be harmful

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<sup>1</sup> Where actus reus of the offence may be constituted by a course of conduct in the particular circumstances of the case. This may arise for example in relation to offences involving neglect or exposure under section 12 of the Children and Young Persons (Scotland) Act 1937.

- 67(2)(f) close connection with person who has carried out domestic abuse
- 67(2)(m) child's conduct likely to have serious adverse effect
- 67(2)(n) beyond control
- 67(2)(o) failure to attend school
- 67(2)(p), (q) forced civil partnership or marriage

6.6 Significant additional information includes increased frequency or severity of incidents or behaviours, or changing/evolving character of incidents or behaviours.

6.7 Subject to paragraphs 6.8 and 6.9, where there is an open referral any further referral is to be registered as follows:

**referral - duplicate**

- open referral with any ground
- same incident or similar broad concerns as open referral
- no significant additional info

**referral - additional**

- open referral which reflects an ongoing concern or pattern of behaviour
- similar broad concerns as open referral
- includes significant additional information

**referral – standard**

- open referral with any ground
  - different incident or different broad concerns as open referral
- or**
- different incident/concerns in addition to similar broad concerns as open referral (ie distinguishable information) - new ground to be based on the different/distinguishable incident or concerns

6.8 Where there is an open referral reflecting an ongoing concern or pattern of behaviour, a further *referral - standard* with a ground of the same category as is already open must **not** be recorded (subject to paragraph 6.9).

6.9 Where a specialised category of referral applies (eg notification of a child protection order) then this category must always be applied even if there is an open referral relating to similar concerns or behaviour.

6.10 The information contained in any new referral, whatever the category of referral, must be taken into account and considered in terms of:

- how it impacts on any current assessment, investigation and decision making for the child
- whether the contents of the new information should be passed to any other agency, such as those who are providing reports

- advising the child and family of the new referral<sup>2</sup>
- 6.11 When making decisions in relation to the original referral to which a duplicate or additional referral relates, the reporter must ensure that appropriate information about the decision is provided to the person who made the duplicate or additional referral.<sup>3</sup>
- 6.12 The referral category of duplicate should also be used where there is a referral based on the same incident or similar broad concerns as a previous referral, with no significant additional information, and a final decision has already been made on that previous referral. The reporter must ensure that appropriate information is provided to the person who makes the duplicate referral.

## **7. Specific Registration Situations**

- 7.1 Where a child is referred as the victim of a Schedule 1 offence, the start point is to record this in terms of 67(2)(b) (offence committed in respect of the child) only. Section 67(2)(b) is not to be used in conjunction with 67(2)(c) or (g) (close connection with person who committed the offence) in relation to the same incident.
- 7.2 Where both section 67(2)(c) (close connection with schedule 1 offender) and section 67(2)(g) (close connection with offender under Parts 1, 4 or 5 of the Sexual Offences (Scotland) Act 2009) may apply, the reporter is to record section 67(2)(g) only.
- 7.3 Where information forms the basis of an alleged offence by or against a child and more than one offence categorisation could apply to the information,<sup>4</sup> only one offence ground is to be recorded. If a children's hearing is arranged, the statement of grounds may reflect the different possible offences in the alternative, but not as multiple 'stand alone' offences.
- 7.4 Where the primary concern in the referral is the child's contact with a perpetrator of domestic abuse, there is a strong presumption that the reporter record a section 67(2)(f) ground (close connection with perpetrator of domestic abuse) rather than defining the behaviour as a schedule 1 offence or as a lack of parental care.
- 7.5 Where the primary concern in the referral is the child's exposure to persons whose conduct is likely to have a detrimental effect on the child, there is a strong presumption that the reporter record a section 67(2)(e) ground

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<sup>2</sup> The child and relevant persons should be informed about the referral unless to do so would place any person at risk of serious harm or, re information to the child, the child is incapable of understanding the information.

<sup>3</sup> Sections 68(3) and (4) set out who is to be notified if the reporter decides that no ground applies or that a CSO is not necessary.

<sup>4</sup> For example, the offence could be contrary to section 1 or section 3 of the Sexual Offences (Scotland) Act 2009.

(exposure to persons whose conduct is likely to have an adverse impact) rather than a lack of parental care.

- 7.6 Where the primary concern is that the child is displaying a range of concerning behaviour, there is a strong presumption that (subject to paragraph 7.8) the reporter record a section 67(2)(m) ground (child's conduct) rather than record a specific section 67 ground for each aspect of behaviour (eg the misuse of alcohol or drugs, the failure to attend school or being beyond the control of a relevant person).
- 7.7 Where information is received from a civil court under section 62, the ground specified by the court in the section 62 statement is to be recorded.
- 7.8 An SPR2 referral from the police must be always be recorded as a section 67(2)(j) ground, with the appropriate incoming offence code. [LINK protocol.] Section 8 of this Practice Direction provides information about changing or adding grounds before the final decision and Practice Direction 7 on Statement of Grounds provides information at paragraphs 3.6 – 3.10 on choice of section 67 ground in the statement of grounds.
- 7.9 If a police report contains distinct offences, one referral registration is to be opened, with each offence recorded as a separate ground.

## **8. Changing or Adding a Ground**

- 8.1 At the point of final decision making the reporter is to consider whether it is appropriate to add to or change the recorded grounds, taking into account the information received during investigation. Part 1 of Practice Direction 7 on Statement of Grounds addresses choice of section 67 ground in the statement of grounds.
- 8.2 Any change to registration must be made ahead of recording the final decision on CMS.
- 8.3 Where a child has been referred by the police on offence (j) grounds, and the reporter decides to refer the child to a hearing on a different ground, the (j) registration cannot be changed but the other ground can be added. The reporter must record a 'not to arrange a hearing' decision against the (j) referral. That outcome will be reporter to the police and will be recorded against the offence in the police Criminal History System.

## **9. Referral Process**

- 9.1 Referrals from the local authority, police or other agency should be in writing. Where a member of the public refers a child the reporter is to encourage that person to make the referral in writing. However, the reporter may accept a verbal referral from a member of the public. If the referrer's details are known,

the reporter must immediately confirm in writing to the referrer the information which has been received and that it is being treated as a referral.

- 9.2 Checking the intention to refer of a person may be done verbally, but a record of the conversation must be made. Where intention to refer requires to be clarified the date of receipt of the referral is the date intention becomes clear. There should be no delay in seeking clarification.
- 9.3 Where information is received, which is not a referral as defined in Section 2 of this Practice Direction nor connected with a current investigation or other statutory function of the reporter, receipt of the information must not be recorded in the child's record (or a child record created). Such information and any related correspondence must be dealt with in the same way as general correspondence and stored in accordance with information security requirements.

## 10. References and Remits

- 10.1 A reference or remit under the Criminal Procedure (Scotland) Act 1995 or the Antisocial Behaviour etc. (Scotland) Act 2004 is not a referral under section 66.

### Criminal Procedure (Scotland) Act 1995

- 10.2 Where a court remits a case for disposal under section 49 of the Criminal Procedure (Scotland) Act 1995, and the child is **not** subject to a compulsory supervision requirement, section 71 of the 2011 Act requires the reporter to arrange a hearing under section 119 as if a section 67(2)(j) ground had been established.
- 10.3 Where a court remits a case for disposal under section 49 of the Criminal Procedure (Scotland) Act 1995, and the child **is** subject to a compulsory supervision requirement, section 130 of the 2011 Act requires the reporter to arrange a review hearing under section 137. The remitted offence is treated as an established section 67(2)(j) ground – section 130(4).
- 10.4 Where a court requires a children's hearing to provide advice under sections 49(1)(b), (3) or (6) of the Criminal Procedure (Scotland) Act 1995, the reporter must arrange an advice hearing. There is no express provision within the 2011 Act, but rules 44 and 75 address procedural issues.

### Antisocial Behaviour etc. (Scotland) Act 2004

- 10.5 Where the sheriff requires the reporter to arrange a children's hearing under section 12(1A) of the Antisocial Behaviour etc. (Scotland) Act 2004, and the child is **not** subject to a compulsory supervision requirement, section 70 (of the 2011 Act) requires the reporter to arrange a hearing under section 119 as if a section 67 ground had been established. The sheriff must provide a 'section 12 statement' specifying which section 67 ground the sheriff considers to apply (and the reasons and any other relevant information). The specified ground is treated as the ground established.

- 10.6 Where the sheriff requires the reporter to arrange a children's hearing under section 12(1A) of the Antisocial Behaviour etc. (Scotland) Act 2004, and the child **is** subject to a compulsory supervision requirement, section 129 (of the 2011 Act) requires the reporter to arrange a review hearing under section 137. The sheriff does not provide a 'section 12 statement' in these circumstances.
- 10.7 Where the sheriff requires under section 4 of the Antisocial Behaviour etc. (Scotland) Act 2004 that a children's hearing provide advice, the reporter is to arrange a hearing for this purpose. There is no express provision within the 2011 Act or the Rules but the reporter is to borrow procedure from rules 44 and 75.

## Appendix 1

### Pre-referral Discussion

1. The reporter may engage in pre-referral discussion about a case in order to assist the other person or persons to decide whether to refer the child to the reporter. The reporter can neither prevent nor require a referral.
2. The reporter must not give any undertaking or expectation about what specific action will be taken in relation to the case if a referral is made.
3. Where the child under consideration is not yet born, neither referral nor investigation can take place before the child is born.
4. If attending a case conference, the reporter is not a member of the case conference and must not express a view as to whether the child should be placed on the Child Protection Register. The reporter must not take part in voting on this issue nor on referral to the reporter. The reporter must ensure that the reporter's status at the case conference is accurately reflected in the minutes.
5. Disclosure of case related personal data during pre-referral discussion must only take place for the purpose of assisting the person or persons to whom it is disclosed to decide on whether to refer the child to the reporter. The recipient must use the information only for this purpose and must comply with all other aspects of the Data Protection Act in relation to the information. The reporter may provide such information only to representatives of agencies with statutory responsibilities in relation to children (or to individuals with a right to receive such information). The content of any disclosure must be proportionate to the aim pursued in order to be compliant with ECHR and Data Protection requirements.
6. Information received during a pre-referral discussion may form the basis for a reporter generated referral under section 66(1)(b) but the approach set out in Section 4 of the Practice Direction must be applied.

## Appendix 2

### Jurisdiction

1. Most children referred to a children's hearing are clearly resident in Scotland, and so questions of jurisdiction of the Children's Hearings System do not arise. This appendix addresses questions that may occur if there are doubts as to whether the Children's Hearings System has jurisdiction, whether because of the child's connections with another part of the UK or another state.
2. A brief summary of the current position is provided here. If you have a case where there is any doubt over the jurisdiction of the Children's Hearings System, you should inform a Senior Practitioner or Locality Reporter Manager in your locality and contact a member of the Practice Team.
3. Where the Children's Hearings System does have jurisdiction, rules of international law mean that there is the possibility of a children's hearing requiring a child to live outwith the UK. The rules in relation to that are also referred to in this appendix.
4. A number of EU and international regulations and treaties are relevant to the jurisdiction of children's hearings. Different rules apply depending on whether the question relates to:
  - another part of the UK;
  - an EU state (other than Denmark) (in which case the applicable rules will be in the Council Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (known as "*Brussels II bis*"));
  - a state that is a party to the Hague Convention of 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (the "*Hague Convention for Children 1996*");
  - any other state; or
  - offences committed by a child.
5. The general position can be summarised as follows:
  - 5.1. A children's hearing will have jurisdiction in relation to a child as a result of offences contrary to Scots law allegedly committed by the child.
  - 5.2. In an urgent case, a children's hearing will have jurisdiction to take provisional measures in relation to the child (for example, a second working day hearing continuing a child protection order).
  - 5.3. Where a question about jurisdiction arises in relation to another part of the UK, a children's hearing will have jurisdiction if:
    - the child is within Scotland at the time the reporter referred the child to a children's hearing; or

- the child is already subject to a compulsory supervision order.
- 5.4. Where a question about jurisdiction arises in relation to another state a children's hearing will have jurisdiction if:
- The child is habitually resident in Scotland; or
  - The child is present in Scotland but it is not clear where the child's habitual residence is or the child is a refugee or displaced child.

### **Offences committed by child**

6. When a child is referred to the reporter as a result of allegedly committing an offence contrary to Scots law, a children's hearing will have jurisdiction in relation to the child. For the most part these will be offences that took place in Scotland. However, some legislation creates an offence under Scots law where the behaviour took place outside of Scotland<sup>5</sup>. *Brussels II bis*<sup>6</sup> and the Hague Convention for Children 1996<sup>7</sup> expressly state that they do not apply to measures taken as a result of criminal offences committed by children.
7. If a children's hearing makes a child subject to a compulsory supervision order and the child is resident in another part of the UK, the order may be transferred to that part of the UK under the Reciprocal Enforcement Regulations.

### **Questions about jurisdiction involving other parts of the UK**

8. Although there are conflicting sheriff court decisions on the point<sup>8</sup>, it is unlikely that *Brussels II bis* applies to questions of jurisdiction involving other parts of the UK. The Hague Convention for Children 1996 does not apply to such questions of jurisdiction.
9. Following the decision of the Court of Session in *Mitchell v S 2000 SLT 524*, a children's hearing will have jurisdiction over a child who is in Scotland at the time the reporter referred the child to a children's hearing. The presence of the child in Scotland is sufficient; the child does not require to be normally or habitually resident in Scotland. If the child is subject to a compulsory supervision order but is ordinarily resident outwith Scotland and is outwith Scotland at the time of the referral to a children's hearing, the children's hearing will also have jurisdiction (see *C v Walker (No 1) 2003 SLT (Sh Ct) 31*). Although both *Mitchell v S* and *C v Walker (No 1)* relate to the Children (Scotland) Act 1995, there are no substantive changes to the provisions on

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<sup>5</sup> See for example an offence under section 1(1) of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 (read along with section 10 of that Act) and section 55(1) of the Sexual Offences (Scotland) Act 2009.

<sup>6</sup> see Article 1 (3)(g)

<sup>7</sup> see Article 4(i)

<sup>8</sup> In *B v B 2009 SLT (Sh Ct) 24* Sheriff Dunbar held that the regulation only applied where there was a question of jurisdiction between EU member states, not within the UK. In *S v D 2007 SLT (Sh Ct) 37*, Sheriff McPartlin held that the regulation did apply in questions of jurisdiction between Scotland and England.

jurisdiction in the Children's Hearings (Scotland) Act 2011 and therefore they remain authoritative.

10. Following *Mitchell v S*, if a child is present in Scotland and immediate, protective measures are required for the child (for example continuing a child protection order at a 2<sup>nd</sup> working day hearing or arranging a grounds hearing) then the children's hearing will have jurisdiction. However, where a child is normally resident in another part of the UK, the fact that a children's hearing will have jurisdiction in such circumstances may not prevent the authorities from the child's normal place of residence also commencing proceedings for the protection of the child.

### **Questions about jurisdiction involving another EU state (not Denmark)**

11. Where there is a question of jurisdiction involving another EU state (but not Denmark<sup>9</sup>) *Brussels II bis* applies.
12. A children's hearing will have jurisdiction if the child is habitually resident in Scotland at the time the reporter referred the child to a children's hearing (Article 8).
13. "Habitual residence" is not defined in *Brussels II bis* but elsewhere is described as being residence that is being enjoyed voluntarily for the time being and with the settled intention that it should continue for some time. However it need not be intended to be permanent or indefinite. It is question of fact to be decided by reference to all the circumstances of any particular case. In the case of a child who can form no intention of his or her own, the child's habitual residence is the residence chosen for him or her by his or her parents.
14. A children's hearing will also have jurisdiction if the child is present in Scotland but it is not clear where the child's habitual residence is or if the child is a refugee or displaced child (Article 13).
15. Even where a child is clearly habitually resident in another EU state, in an urgent case a children's hearing may still take provisional measures in relation to the child. These specifically include measures taken for the protection of the child (for example, arranging a 2<sup>nd</sup> working day hearing to consider continuing a child protection order) (Article 20). However, any such urgent measures taken by a children's hearing shall cease to apply when the court of the child's habitual residence has taken the measures it considers appropriate.
16. Where a child is wrongfully removed from their home country, the courts and tribunals of their home country will retain jurisdiction for a period of time. The precise period of time will depend on the particular circumstances of the case (Article 10).

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<sup>9</sup> In the case of Denmark the Hague Convention for Children 1996 will apply – see paragraphs 17 - 21.

### **Questions about jurisdiction involving a state in which the Hague Convention for Children 1996 is in force**

17. Where there is a question of jurisdiction involving a state in which the Hague Convention for Children 1996 is in force (but to whom *Brussels II bis* does not apply) the Hague Convention applies<sup>10</sup>.
18. A children's hearing will have jurisdiction if the child is habitually resident in Scotland at the time the reporter referred the child to a children's hearing (Article 5). As in *Brussels II bis*, habitual residence is not defined.
19. A children's hearing will also have jurisdiction if the child is present in Scotland but it is not clear where the child's habitual residence is or if the child is a refugee or displaced child (Article 6).
20. Even where a child is clearly habitually resident in a state in which the Hague Convention for Children 1996 is in force, in an urgent case a children's hearing may still take provisional measures in relation to the child. These specifically include measures taken for the protection of the child (for example, arranging a 2<sup>nd</sup> working day hearing to consider continuing a child protection order) (Article 11). However, any such urgent measures taken by a children's hearing shall cease to apply when the authorities of the child's habitual residence have taken the measures required by the situation.
21. A situation may arise where the Principal Reporter considers that it is necessary for a compulsory supervision order to be made in respect of a child (and a section 67 ground applies) but another state has jurisdiction under the Hague Convention for Children 1996 and it is not the urgent situation referred to in paragraph 20. In such circumstances, the Principal Reporter may apply to the other state for jurisdiction (see regulation 5 of The Parental Responsibility and Measures for the Protection of Children (International Obligations) (Scotland) Regulations 2010). In practice, the child would require to be in Scotland for this to have practical effect. If you consider that such an approach may be appropriate, you should inform a Senior Practitioner or Locality Reporter Manager in your locality and contact a member of the Practice Team.

### **Question about jurisdiction involving any other state**

22. A question of jurisdiction may arise involving a state that is neither a member of the EU nor a party to the Hague Convention for Children 1996. In such a situation the principles underpinning the Hague Convention for Children 1996 will inform the approach to be taken. Therefore the country of the child's habitual residence will have the primary jurisdiction but a children's hearing may take urgent measures for the protection of a child. Any such urgent measures taken by a children's hearing shall cease to apply when the

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<sup>10</sup> A table showing cases where the Hague Convention for Children 1996 is in force is available.

authorities of the child's habitual residence have taken the measures required by the situation.

23. However the Principal Reporter, children's hearings and the sheriff court are public authorities, and in terms of the Human Rights Act 1998 must not act in a way that is incompatible with a Convention right. Therefore if a child is present in Scotland but habitually resident elsewhere, and returning the child to their home country will be incompatible with their Convention rights, it is arguable that a children's hearing will continue to have jurisdiction.

### **Children's Hearing has jurisdiction and wants to place child in another state outwith the UK**

24. Regulation 12 of the Parental Responsibility and Measures for the Protection of Children (International Obligations) (Scotland) Regulations 2010 allows for a children's hearing to make a compulsory supervision order that requires a child to reside in another EU member state or a state party to the Hague Convention for Children 1996. If such an order may be considered by a children's hearing, you should inform a Senior Practitioner or Locality Reporter Manager in your locality and contact a member of the Practice Team.
25. Although regulation 12 enables such a compulsory supervision order to be made, the effect of the order is such that the practical value of this option will be limited. The effect of a compulsory supervision order that requires a child to reside in another state is likely to be that the child will become habitually resident in that state and therefore the children's hearing will no longer have jurisdiction over the child. Even if the children's hearing retains jurisdiction there is no mechanism (such as a section 123 warrant) to enforce the child's return to Scotland to attend a children's hearing.

## Appendix 3

### Examples

All assume intention to refer unless otherwise stated.

All assume no open referral unless otherwise stated.

	Information Received	Referral	Ref Category	Ground	Notes
1.	Young child not attending school	Yes	standard	(o)	Do not register (a) ground unless additional distinguishable information to support (a) ground. If additional distinguishable information becomes available during investigation, such a ground may be added at the time of the final decision (section xx)
2.	Child victim of assault	Yes	standard	(b)	Do not register (a) ground unless additional distinguishable information to support (a) ground. If additional distinguishable information becomes available during investigation, such a ground may be added at the time of the final decision (section xx)
3.	Police Report - Offence of drunk and incapable	Yes	standard	(j)	Do not register (k) or (n) ground unless additional distinguishable information to support such a ground. If additional distinguishable information becomes available during investigation, such a ground may be added at the time of the final decision (section xx)
4.	Police report on investigation into assault by adult against a child	Yes	standard	(b)	Start point is to register (b) ground. Do not register (c) in addition to (b).

	Information Received	Referral	Ref Category	Ground	Notes
5.	Social Work report on joint investigation re assault by adult against a child – police report already received and registered.	Yes	duplicate	(b)	Referral is <i>duplicate</i> because it relates to the same incident as the open referral and contains no significant additional information.
6.	Social Work report referring child re further similar incident of parents' behaviour already raised in a current open referral, (a) ground.	Yes	duplicate	(a)	Referral is duplicate as it raises similar broad concerns as the open referral with no significant additional information and is .
7.	Social Work report referring child re further similar incidents of parents' behaviour already raised in a current open referral, (a) ground, but significantly increased severity and/or frequency.	Yes	additional	(a)	Referral is <i>additional</i> as although there are similar broad concerns as in the open referral, the significantly increased severity or frequency means the referral contains significant additional information. (Compare with Example 6 which did not amount to significant additional information.)
8.	Social Work report referring child re further similar incident of parents' behaviour already raised in a current open referral, (a) ground, and also containing information about the child being beyond parental control.	Yes	standard	(n)	Referral is <i>standard</i> as although it contains similar broad concerns as the open referral it also contains distinguishable information supporting a different ground. The different ground is the one to be registered.
9.	Letter from HV referring to child regularly found in filthy and neglected condition and parents regularly under the influence of alcohol. Also referring to child misusing drugs. Already open referral from SW, (a) ground, re child's condition and parental alcohol abuse.	Yes	standard	(l)	Referral is <i>standard</i> as although it contains similar broad concerns as the open referral it also contains distinguishable information supporting a different ground. The different ground is the one to be registered.

10.	Open referral, (a) ground, from SW re level of parenting. Further report detailing significant new incident where parents were too drunk to look after the child.	Yes	standard	(b)	Referral is <i>standard</i> as it contains distinguishable information supporting a different ground. If the additional incident does not contain distinguishable information supporting a (b) ground it may constitute significant additional information in which case it would be a referral <i>additional</i> with (a) ground.
11.	Open referral, (a) ground, from SW re level of parenting. Also open referral, (b) ground, from SW re specific incident where parents too drunk to look after child. Police report on the 'drunk in charge' incident received.	Yes	duplicate	(b)	The referral is <i>duplicate</i> as it relates to the same incident in one of the open referrals, with no significant additional information.
12.	Invitation to attend a case conference.	No			
13.	Receipt of case conference minutes where the decision was not to refer to the reporter.	No			
14.	Receipt of case conference minutes where the decision was to refer the child once he/she is born.	No			The child cannot be referred until he/she is born.
15.	Police report containing 2 offences of assault against the child by an adult.	Yes	standard	(b) x 2	Two (b) grounds registered if the information supporting each is distinguishable.
15.	Police Report containing 3 offences by the child	Yes	standard	(j) x 3	

16.	Open referral from school, (o) grounds. Further letter from school detailing continuing poor attendance figures.	Depends on intention to refer	Duplicate (if intention to refer)	(o)	If the school intended to make a referral, it will be an <i>info only</i> referral as it relates to the same broad concerns, with no significant additional information. LRMs should seek to minimise inappropriate referrals.
17.	School report received during investigation of a 52(2)(j) referral indicates 20% unexplained absence rate.	Depends on intention to refer	standard (if intention to refer)	(o) (if intention to refer)	If it is not clear whether the school intended to refer or not, the reporter must seek clarification (see section 3).
18.	Report from police about incident of domestic abuse.	Yes, if intention to refer	standard	(f)	If the incident contains distinguishable information supporting an assault against the child, a <i>referral standard</i> , (b) ground may also be recorded.
19.	Open (f) referral in relation to incident of domestic abuse. Police report about another similar incident received.	Yes, if intention to refer	additional	(f)	The referral is <i>additional</i> as it relates to similar broad concerns as the open referral but contains significant additional information.
20.	Open (e) referral in relation to exposure of child to persons likely to cause the child harm. Report received about further incidents of such exposure.	Yes, if intention to refer	additional	(e)	The referral is <i>additional</i> as it relates to similar broad concerns as the open referral but contains significant additional information. If the new incidents, in the circumstances of the case, are not considered to amount to significant additional information the new referral will be <i>inf duplicate</i> .