



SCOTTISH
CHILDREN'S REPORTER
ADMINISTRATION

Practice Direction 5

Receipt and Registration of Referrals and Receipt of References and Remits

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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.
- Certain 'pre-conditions' may apply before receipt of information is a referral.
 - The information must relate to a 'child'. Appendix 2 provides information about definition of a child.
 - The Children's Hearings System must have, or possibly have, jurisdiction in relation to the child. If there is any doubt about jurisdiction the reporter is immediately to inform his/her Senior Practitioner or Locality Reporter Manager and contact the Practice Team for advice. Appendix 3 provides information about jurisdiction.
 - For 'standard' referrals from the police, local authority or another person the person/agency providing the information must intend to refer the child through having applied the statutory criteria. These are that the referrer considers 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.
- 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 (child offender) 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. What is a 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 (provided any pre-conditions are met. See Section 3 of the Practice Direction):
 - the receipt of any information about a child of the type listed in section 66(1)(a)
 - the application of section 66(1)(b) by the reporter in relation to a child.
- 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 53 of the Criminal Justice (Scotland) Act 2016
 - (viii) a reference from a court under section 48(1) of the Criminal Procedure (Scotland) Act 1995
- 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.

3. Referral and 'Pre-conditions'

Certain 'pre-conditions' may require to be met before information received can be treated as a referral.

3.1 *Child*

- A referral must be about a child. If the person about whom information is received does not come within the definition of 'child', the information does **not** constitute a referral. The reporter is to tell the person providing the information that the information is not being treated as a referral.
- Further information about the definition of a 'child' is provided in Appendix 2 of this Practice Direction. Appendix 2 also addresses particular situations for children who have been jointly reported or children referred to a hearing on the basis of a section 67(2)(o) 'non-attendance') ground.

3.2 *Jurisdiction*

- The Children's Hearings System must have jurisdiction, or possibly have jurisdiction, in relation to the child. If it is clear when information is received (and after seeking advice from the Practice Team as appropriate) that the Children's Hearings System does not have jurisdiction, the information does **not** constitute a referral. The reporter is to tell the person providing the information the information is not being treated as a referral.
- If during the course of the reporter's investigation, it becomes apparent that the children's hearing would not have jurisdiction, the reporter is to record a decision not to arrange a children's hearing.¹ The reporter is not to refer the child for voluntary advice, guidance or assistance under section 68.
- Further information about jurisdiction is provided in Appendix 3. If a reporter has a case where there is any doubt over the jurisdiction of the Children's Hearing System, the reporter is immediately to inform his/her Senior Practitioner or Locality Reporter Manager and contact the Practice Team for advice.
- Where questions about jurisdiction arise in relation to another state it may be appropriate for there to be contact with staff from the embassy or consulate for that state. This contact will be made by a member of

¹ Select the 'no action' option from the drop-down list.

the Practice Team and will normally only take place where there is consent from the child and/or relevant person (e.g. in the form of written mandate obtained by the embassy or consulate).

3.3 *Intention to refer*

- For referrals under section 60, 61 or 64 ('standard' referrals from the police, local authority or another person) it is necessary that the person/agency providing the information intends to refer the child. Intention to refer requires there to have been application of the statutory criteria (see paragraph 4.1). Where the reporter has any doubt as to whether the person providing the information has applied the statutory criteria, the reporter must check that with the person. If the person providing the information has not applied the statutory test, the information is **not** to be treated as a referral.
- For other referrals under section 66(1)(a), intention to refer is not relevant.
- 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.

4. Referral under Section 66(1)(a)

Receipt of Information from local authority, police or other person

4.1 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**
- the referrer 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.

4.2 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.

Making of Child Protection Order

4.2 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

4.3 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.

4.4 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

4.5 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

4.6 Communication of the decision by COPFS that the reporter is to deal with a child who has been detained in a place of safety.

Reference under section 48 of the Criminal Procedure (Scotland) Act 1995 (child victim)

4.7 A reference under section 48 of the Criminal Procedure (Scotland) Act 1995 of a child victim (or member of the same household) 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.

5. Reporter Generated Referral under Section 66(1)(b)

5.1 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.

5.2 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).

6. Specific Referral Situations

6.1 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).

- 6.2 If the police or other person report a child who has allegedly committed an offence, and the victim of the offence is a child, the reporter is to treat only the alleged offender as being referred under sections 60/61/64 unless it is clear that the referrer intends to also refer the victim.
- 6.3 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.
- 6.4 Where the police submit a standard prosecution report in relation to a child and an adult and mark it as “Both”, the reporter is to treat this as a referral of child². The police have submitted the report to both the PF (in relation to the adult co-accused) and the reporter (in relation to the child) for both agencies to take action in terms of their respective powers.
- 6.5 Where the police submit a standard prosecution report in relation to a child and mark it as “Joint”, the reporter is to register the report as a jointly reported case³ and contact the Crown Office and Procurator Fiscal Service (COPFS) regarding the case⁴. The reporter is only to treat the report as being a referral of the child, and proceed to make a decision in terms of section 66, when COPFS has confirmed that the reporter is to deal with the case. If COPFS make it clear that the child is being referred to the reporter in relation to a lesser offence than that stated in the standard prosecution report due to an insufficiency of evidence in relation to the more serious offence, the reporter is to record the referral as being in relation to the less serious offence⁵.
- 6.6 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.
- 6.7 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 paragraphs 5.1 – 5.2.

² To be registered as “referral – standard”.

³ To be registered as “Joint Report”.

⁴ Reference should be made to the joint agreement with COPFS regarding “Decision making in cases of children jointly reported to the Procurator Fiscal and Children’s Reporter”. See paragraph 14 of the joint agreement for an exception to this in a situation where it is clear that to the reporter that the police have incorrectly jointly reported a child under 16 who is charged with an adult, when the police should have marked the report as having been reported to ‘Both’.

⁵ See paragraph 36 of the joint agreement with COPFS regarding “Decision making in cases of children jointly reported to the Procurator Fiscal and Children’s Reporter”.

7. Registration of Referral and Ground(s)

- 7.1 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 4.
- 7.2 The ground which most relevantly reflects the issues or concerns raised in the referral must be recorded.
- 7.3 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.
- 7.4 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)

7.5 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.⁶

- 67(2)(a) lack of parental care
- 67(2) (e) exposure to persons whose conduct likely to be harmful
- 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

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

7.7 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

7.8 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 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.

- 7.9 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.
- 7.10 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 referral⁷
- 7.11 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.⁸
- 7.12 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.

8. Specific Registration of Ground Situations

- 8.1 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.
- 8.2 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.
- 8.3 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,⁹ only one offence ground is to be recorded. If a children's hearing is arranged, the statement of grounds may reflect the different

⁷ 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.

⁸ 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.

⁹ For example, the offence could be contrary to section 1 or section 3 of the Sexual Offences (Scotland) Act 2009.

possible offences in the alternative, but not as multiple 'stand alone' offences.

- 8.4 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.
- 8.5 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 (exposure to persons whose conduct is likely to have an adverse impact) rather than a lack of parental care.
- 8.6 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).
- 8.7 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.
- 8.8 Where the police refer a child who has allegedly committed an offence in a standard prosecution report, the reporter is always to record this as a section 67(2)(j) ground. The reporter is to ensure that the offence recorded in the "offence code" reflects the offence in the standard prosecution report submitted by the police. The exception to this is when the offence was jointly reported and COPFS has referred the child to the reporter making it clear that the child is being referred to the reporter in relation to a lesser offence (as outlined in paragraph 6.5 above). Section 9 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.
- 8.9 If police use a format other than the standard prosecution report to refer the child (or another agency refers the child) and state that child has been involved in some form of sexual behaviour, the reporter is to register the referral with the section 67 ground being other than section 67(2)(j).
- 8.10 If a police report contains distinct offences, one referral registration is to be opened, with each offence recorded as a separate ground.

9. Changing or Adding a Ground

- 9.1 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.
- 9.2 Any change to registration must be made ahead of recording the final decision on CMS.
- 9.3 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 reported to the police and will be recorded against the offence in the police Criminal History System.
- 9.4 The reporter is also to change the offence recorded in the "offence code" to ensure that the offence recorded in the registration reflects:
- the offence in relation to which the reporter made a final decision; or
 - if different from the final decision, the offence that was accepted at a children's hearing or established by the sheriff.

10. Recording Information that is not a Referral

- 10.1 Where information is received, which is not a referral as defined in 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.

11. References and Remits (Child Offender/ASB)

- 11.1 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

- 11.2 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.

- 11.3 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).
- 11.4 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

- 11.5 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.
- 11.6 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.
- 11.7 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.

Definition of 'Child'

1. Information received under section 66(1)(a) must relate to a child as defined in section 199. Similarly, the reporter can only apply section 66(1)(b) in relation to a child as defined in that section.
2. Anyone under 16 years of age is a child (section 199(1)).
3. Any young person aged 16 or 17 years is a child if:
 - the young person was referred prior to their 16th birthday (i.e. section 66 applied to them) but there is no final outcome to that referral¹⁰ (section 199(3) – (5));
 - the young person is subject to a CSO (section 199(6));
 - the young person's case has been remitted to a children's hearing for disposal under section 49(7)(b) of the Criminal Procedure (Scotland) Act 1995 and there is no final decision by the children's hearing¹¹ (section 199(8) and (9)).
4. No one over 18 years of age can be a child for the purposes of section 199 and the Act in general.

Joint Reports

5. When someone is jointly reported by the police to the PF and reporter, section 66 does not apply to them (i.e. they have not been referred to the reporter) until the PF makes a decision that the reporter is to deal with the case. The PF can only make that decision if the young person remains a 'child' (under any part of the definition in section 199) at the time of the PF's decision. Therefore:
 - if the police jointly report a young person prior to their 16th birthday (where the young person does not come within the definition of a 'child' for any other reason) any decision by the PF that the reporter is to deal with the case must be made prior to the young person's 16th birthday.
 - If the police jointly report a young person aged 16 or 17 who remains a 'child' by virtue of being subject to a CSO, any decision by the PF that the

¹⁰ The final outcome is referred to as a 'relevant event' in section 199(5) and includes:

- The making of a CSO,
- The reporter notifying a decision not to arrange a children's hearing in relation to the referral, and
- The discharge of the referral by either a children's hearing or sheriff.

If the final outcome is that the young person is made the subject of a CSO, they will become a 'child' by virtue of being subject to a CSO.

¹¹ If the final outcome is that the young person is made the subject of a CSO, they will become a 'child' by virtue of being subject to a CSO.

reporter is to deal with the case must be made prior to the decision to terminate the CSO.

Section 67(2)(o) Ground

6. For the purposes of the ground in section 67(2)(o)¹² and other provisions of the act as they apply in relation to that ground, a young person aged 16 can also be a 'child' if they remain of school age¹³. Therefore, the reporter can receive a referral about a 16 year old who remains of school age (who is not otherwise a 'child' for the purposes of the Act) and arrange a children's hearing with the ground being section 67(2)(o). In practice, this situation is unlikely to arise - although the reporter might arrange a children's hearing after the young person's 16th birthday, it is more likely that the referral will have been received prior to their birthday and therefore the young person will remain a 'child' by virtue of section 199.

¹² The section 67 ground that "the child has failed without reasonable excuse to attend regularly at school".

¹³ 'School age' is defined in sections 31 – 33 of the Education (Scotland) Act 1980: a young person aged 16 remains of 'school age' until their relevant school leaving date (either in May or December – see section 33 of the Education (Scotland) Act 1980).

Jurisdiction

Introduction

1. For most children referred to the reporter no question of jurisdiction arises. This appendix addresses questions that may occur if there are doubts as to whether the Children's Hearings System has jurisdiction for any reason. This includes situations where the child has connections with another part of the UK, the child has connections with another state or the child has committed an offence outwith Scotland (not under Scots law).
2. If a reporter has a case where there is any doubt over the jurisdiction of the Children's Hearings System, he/she should immediately inform a Senior Practitioner or Locality Reporter Manager in the locality and contact a member of the Practice Team.
3. The general position for cases **other than offending by the child** is that jurisdiction follows the habitual residence of the child¹⁴.
4. 'Habitual residence' is generally described as a question of fact, to be determined on a consideration of all the circumstances of the case. It is the place which reflects some degree of integration by the child in a social and family environment in the country concerned. No one factor is necessarily determinative. There are no prescriptive rules concerning, for example, the attitude of a parent, or the length of time spent by the child in the new environment.¹⁵
5. In urgent cases, other than offending by the child, a children's hearing has jurisdiction to take at least provisional measures in relation to the child even if the child is not habitually resident in Scotland.
6. 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 except Denmark - the applicable rules are 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 (the "Council Regulation")¹⁶;

¹⁴ If however the child is not present in Scotland at the time of referral to the children's hearing for any reason other than a clear short-term absence (eg holiday), contact your Senior Practitioner and the Practice Team as additional considerations may apply.

¹⁵ A v A and another [2013] UKSC 60 and CM v ER [2017] CSIH 18.

¹⁶ Sometimes referred to as Brussels II bis or Brussels IIR ("bis" or "IIR" because it revised and replaced the previous regulation, Brussels II).

- 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.

Questions about jurisdiction involving other parts of the UK (non-offence by the child)

7. Where a child is habitually resident in another part of the UK, or it is not clear in which particular part of the UK the child is habitually resident, the children’s hearing has jurisdiction if:
 - the child is within Scotland at the time the reporter referred the child to the children’s hearing; or
 - the child is already subject to a compulsory supervision order.
8. Although there are conflicting sheriff court decisions on the point¹⁷, there is a clear consensus that the Council Regulation does not apply to questions of jurisdiction involving other parts of the UK¹⁸.
9. Following the decision of the Court of Session in *Mitchell v S 2000 SLT 524*¹⁹, 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.
10. 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 jurisdiction in the Children’s Hearings (Scotland) Act 2011 and therefore they remain authoritative.
11. Following *Mitchell v S*, if a child is present in Scotland and immediate, protective measures are required for the child 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 place of habitual residence also commencing proceedings for the protection of the child. The reporter is to generally promote the position that the authorities in the child’s place of habitual residence should take action and the reporter should then take

¹⁷ 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.

¹⁸ See paragraph I6 of Division I on Cross-border jurisdiction of Butterworths Family Law Service.

¹⁹ Also reported as *Mitchell v H 2000 SC 334*

that action into account in deciding on the need to continue with proceedings within the children's hearing system.

Questions about jurisdiction involving another EU state except Denmark (non-offence by the child)

12. Where there is a question of jurisdiction involving another EU state (except Denmark²⁰) the Council Regulation applies to cases other than those of offending by the child. The Council Regulation expressly does not apply to measures taken as a result of criminal offences committed by children.²¹

13. A children's hearing will have substantive jurisdiction if:

- the child is habitually resident in Scotland at the time the reporter referred the child to a children's hearing (Article 8), provided there are no ongoing court proceedings in another country relating to parental responsibilities, or
- 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).

See paragraph 2 for a broad outline of habitual residence. Habitual residence is not defined in the Council regulation.

14. Even where a children's hearing does not have substantive jurisdiction for one of the reasons in paragraph 13, in an urgent case a children's hearing has jurisdiction to take provisional measures in relation to the child²². These specifically include measures taken for the protection of the child (Article 20). The provisional measures taken by a children's hearing include the making of a CSO²³. The measures are 'provisional' as they will cease to have effect when the courts of the state of the child's habitual residence (which do have substantive jurisdiction) take whatever action they consider appropriate. This will involve contact being made with the 'central authority' of the other member state (this will be made by the Practice Team and will likely involve the Scottish Government).

15. Contact the Practice Team if there is:

- any doubt that the child is habitually resident in Scotland,
- information that suggests that there are ongoing court proceedings in relation to parental responsibilities in another country, or
- although the child is habitually resident in Scotland, they are not subject to a CSO and are not present in Scotland.²⁴

16. In some situations a children's hearing may have to decide the basis on which it has jurisdiction²⁵. In cases where it has no substantive jurisdiction, Article 17 of

²⁰ In the case of Denmark the Hague Convention for Children 1996 will apply – see paragraphs 17 - 21.

²¹ See Article 1(3)(g)

²² Principal Reporter v LZ 2017 SLT 961

²³ Principal Reporter v LZ 2017 SLT 961

²⁴ Other than clear short term absence eg holiday

the Council Regulation requires the children's hearing to declare it has no jurisdiction. The Practice Team will assist in identifying what decisions, if any, the children's hearing will require to consider.

17. Where a child is wrongfully removed or retained away from their home country, the courts and tribunals of their home country retain jurisdiction. A court in another country can only acquire jurisdiction when certain strict conditions are met (Article 10).

Questions about jurisdiction involving a state in which the Hague Convention for Children 1996 is in force (non-offence by the child)

18. Where there is a question of jurisdiction involving a state in which the Hague Convention for Children 1996 is in force (but to whom the Council Regulation does not apply) the Hague Convention applies²⁶. The Hague Convention expressly does not apply to measures taken as a result of criminal offences committed by children.²⁷
19. 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), provided there are no ongoing court proceedings in another country relating to parental responsibilities, or
 - 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).

See paragraph 2 for a broad outline of habitual residence. Habitual residence is not defined in the Hague Convention.

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 (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. Contact the Practice Team if there is:
 - any doubt that the child is habitually resident in Scotland,
 - information that suggests that there are ongoing court proceedings in relation to parental responsibilities in another country, or

²⁵ For example, whether it is because it is under Article 8 of the Council Regulation as it considers the child is habitually resident in Scotland or under Article 20 as it is taking provisional measures for a child habitually resident in another state.

²⁶ A table showing cases where the Hague Convention for Children 1996 is in force is available here.

²⁷ see Article 4(i)

- although the child is habitually resident in Scotland, they are not subject to a CSO and are not present in Scotland.²⁸

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 contact the Practice Team if there is:
- any doubt that the child is habitually resident in Scotland,
 - information that suggests that there are ongoing court proceedings in relation to parental responsibilities in another country, or
 - although the child is habitually resident in Scotland, they are not subject to a CSO and are not present in Scotland.

Offences committed by child

23. The Council Regulation and the Hague Convention for Children 1996 expressly do not apply to measures taken as a result of criminal offences committed by children.

Offences contrary to Scots law

24. 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 if:
- the child is habitually resident in Scotland²⁹;
 - the child is within Scotland at the time the reporter referred the child to a children's hearing (*Mitchell v S 2000 SLT 524*); or
 - the child is already subject to a compulsory supervision order (*C v Walker (No 1) 2003 SLT (Sh Ct) 31*).
25. Most offences contrary to Scots law are offences that take place in Scotland. However, some legislation creates an offence under Scots law where the behaviour took place outside of Scotland³⁰.
26. It would appear likely that a children's hearing will have jurisdiction in relation to a child who is in Scotland by virtue of an order made by a court outwith Scotland³¹, if the child is within Scotland at the time the reporter referred the

²⁸ Other than clear short term absence eg holiday

²⁹ If however the child is not present in Scotland at the time of referral to the children's hearing for any reason other than a clear short-term absence (eg holiday), contact your Senior Practitioner and the Practice Team.

³⁰ 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.

³¹ For example, a child from England who has been placed by an English court at a residential unit in Scotland.

child to a children's hearing (*Mitchell v S 2000 SLT 524*). However, it is very unlikely that any CSO made by a children's hearing will be able to be transferred to a local authority in England, Wales or Northern Ireland (see Practice Direction 27 on Cross Border Issues). The reporter is to take this into account when deciding whether to refer the child to a children's hearing.

27. If the children's hearing does not have jurisdiction in relation to a child who has allegedly committed an offence contrary to Scots law, the child could be prosecuted in Scotland³².

Offences not contrary to Scots law

28. A children's hearing does **not** have jurisdiction to deal with an offence that is committed outwith Scotland and which is not an offence under Scots Law³³. It is likely that it will be possible to prosecute the child in the jurisdiction in which the alleged offence was committed.
29. There may be circumstances where it would be appropriate for the reporter to refer the child to a hearing on other grounds. The reporter should always involve the Senior Practitioner and Practice Team in any such consideration.

³² Provided the alleged offence was committed when the child was aged 12 years or more.

³³ For example, a child resident at a residential unit or on holiday in England commits an offence of assault there.

Appendix 4

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).
5.	Social Work report on joint investigation re assault by adult against a child – police report already received and	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.

	Information Received	Referral	Ref Category	Ground	Notes
	registered.				
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> .