

Children's Hearings (Scotland) Act 2011 – An Operational Framework and agreements between Social Work, Children's Hearings and the Reporter



Introduction and overview

The Children's Hearings (Scotland) Act 2011 (the 2011 Act) establishes a new national body for the Children's Panel, under the Leadership of the National Convener. This represents an opportunity to establish common practice across Scotland between the Children's Panel, Local Authorities and the Children's Reporter.

This three way framework is therefore an attempt to create agreement about how key operational aspects of the new 2011 Act will be taken forward. It covers some of the most immediate aspects of the Act which will have a bearing for CHS, SCRA and Local Authorities.

It deals *inter alia* with standard terminology on measures in Orders, provides advice in relation to new grounds of referral, creates expectation in relation to how transfer of responsibilities between Local Authorities should be managed and issues resolved.

There are important areas where we must work together to ensure the provisions and the spirit of the new Act work well for children and young people, encourages open communication and early identification of issues to be resolved to ensure the process of the Hearing itself goes smoothly and ensures a meaningful experience for all involved. To that end, this group encourages the development of local protocols, such as that between Highland Council and SCRA ("the Highland Protocol") attached at Appendix A.

The working group responsible for this initial framework continues to progress longer term issues about how our respective agencies will develop improved practice, quality of experience and outcomes so that the Hearings System continues to grow and improve as it has done continually over four decades.

**Association of Directors of Social Work
Children's Hearings Scotland
Scottish Children's Reporter Administration**

ADSW
ASSOCIATION OF DIRECTORS OF SOCIAL WORK



Agreed February 2014

1. **Implementation Authority', 'Relevant Local Authority' and 'Specified Authority' definitions**

- Implementation Authority – the local authority responsible for the delivery of the terms of the compulsory supervision order and all measures that apply. The 2011 Act provides that hearing may direct the National Convener to take action to enforce duties imposed on implementation authority.
- Relevant Authority – “Relevant local authority” is defined in the 2011 Act as the local authority in whose area the child ‘predominantly resides’ or, if the child does not predominantly reside in a particular local authority area, the local authority with whose area the child has the closest connection. Time spent in a residential establishment does not count towards determining predominant residence.
- Specified Local Authority – where a hearing makes a medical examination order, the order may require a specified local authority to arrange a medical examination.

- 1.1 Every hearing must decide which authority is the implementation authority and specify this in an order. This will usually be a straightforward decision. The decision as to implementation authority is that of the hearing alone and the hearing is not bound by any agreement between local authorities.

However if there is more than one local authority that could be named as the implementation authority, such an agreement between local authorities will be highly persuasive for hearings in deciding which authority should be named.

Where there is no agreement between local authorities, the expectation is that a hearing will name as the implementation authority the local authority that appears to it to be the relevant local authority. If a local authority asked the court to review this, the court must name what it considers to be the relevant local authority as the implementation authority on the compulsory supervision order.

- 1.2 It is important that there is agreement between local authorities in relation to transfer of cases as this will avoid disputes taking place within hearings and ultimately at court.

- 1.3 Therefore, the following principles are agreed:

1.4 **Children not currently subject to a compulsory supervision order (CSO)**

- 1.5 Children not currently subject to a CSO and not in an out of area placement should be supervised by the Relevant Authority where they predominantly reside

1.6 Where parents reside in another Local Authority

1.7 Where a person with parental rights and responsibilities¹ resides in an area that is not the same as the predominant residence of the child, it is the predominant residence of the child that generally determines how matters are progressed by Reporters. The need for close liaison between Reporters and Local Authority staff is important. Where a child is already subject to compulsory measures the implementation authority would already have been identified.

1.8 Children already subject to a compulsory supervision order

1.9 Where a child is already subject to a CSO, the hearing will have named an implementation authority. Local authorities should not request a review hearing to change the named implementation authority until an agreement has been reached, or there have been reasonable attempts to reach agreement between Local Authorities. Such circumstances would be related to a longer term or permanent change to the 'area where a child predominantly lives'. In such circumstances, Local Authorities should co-operate with each other in recommending to the hearing a change in the named implementation authority and Children's Hearings should be encouraged to agree such transfers of responsibility to the new implementation authority.

1.10 There is an expectation that in situations where a permanency plan is being considered or in place for a child, or there is no prospect of the child returning to the family home, Local Authorities should retain implementation authority status and avoid decisions to seek transfer to another authority.

1.11 Children in 'out of area' placements

1.12 Authorities who *place* a child in a resource/purchased placement, or where there are clear financial implications and external/out of area commitments involved in the care plan underpinning the compulsory supervision order (CSO) and where there is no prospect of the child returning to the family home, should always seek to retain implementation authority status. This should only change when there has been a long term or permanent change to the 'area where a child predominantly resides' (unless the child is in a residential establishment as this does not count towards predominant residence). At that point, there should be a formal agreement between the Authorities to transfer this to another Local Authority. This would be noted in the information available to Hearings. Where there is a longer term or permanent placement in another Local Authority area (unless the placement is in a residential establishment), the hearing will name the Authority where the child predominantly resides as the implementation authority.

¹ The term parental rights and responsibilities is purposefully used here. However Scottish legislation refers to parental responsibilities and rights, denoting the flow of rights from responsibilities.

1.13 Identification of the Implementation Authority in Reports

1.14 Social Workers who are authors of reports to the Hearing should clearly identify the 'implementation authority' in their reports. Local Authorities should not ask the hearing to change the implementation authority on the CSO, which will transfer responsibility to another authority, without firstly prior discussion/agreement between the Authorities and secondly by raising with the Reporter for information.

1.15 Resolution of disputes

1.16 In the event of disputes arising between Local Authorities, these should be resolved by Chief Social Work Officers wherever possible, and to avoid the use of the legal process of determination. In the final instance a Local Authority, where it is satisfied that it is not the relevant authority can request a Sheriff to review and make a ruling under section 166 of the 2011 Act.

2. Identification and definition of relevant persons

2.1 There are two routes to being a relevant person in children's hearings and related proceedings:-

- a. individuals who automatically meet the definition of relevant persons in s.200 of the Act ("section 200 relevant persons"); and
- b. individuals who are deemed relevant by a hearing or pre-hearing panel (PHP) ("deemed relevant persons") if they meet the test of having, or recently having had significant involvement in the upbringing of the child.

2.2 Section 200 relevant persons are:-

- individuals including parents who have parental rights and responsibilities for children, (other than those solely with a contact order) and
- "a parent of the child"² (except parents who have had parental responsibilities and rights removed).

2.3 A report from a Local Authority should therefore contain information about:-

- those whom the local authority believe to have parental responsibilities and rights in relation to the child,

²The 2011 Act does not define the term "parent of the child". The difficulty is not so much in defining "parent" but in establishing the legal basis for parenthood. A person named in the birth certificate as parent is the parent unless there is a further legal order. A definition of "parent" is contained in section 15 of the Children (Scotland) Act 1995 (though not strictly binding as regards the 2011 Act). This definition includes (but is not restricted to): a genetic mother or father; person(s) in relation to whom an adoption order for a child has been granted; a woman who has carried a child as a result of fertility treatment, and a man who is married to such a woman or the fertility treatment was provided for her and a man together through a licensed service; the female partner of a woman who has had fertility treatment through a licensed service and both women agree to the partner being treated as the parent.

- those whom the local authority believe to be the parents of the child (and their basis for being recognised as parents if they do not have parental rights and responsibilities), and
- any other person who appears to the local authority to have, or recently to have had, a significant involvement in the upbringing of the child.

2.4 The report writer should take reasonable steps to be satisfied that the parental rights or responsibilities, or the formal recognition of parenthood, exists before including that information in their report. If there is any doubt or contention, the report writer must make this clear.

2.5 Ultimately, if the reporter cannot satisfy him/herself that an individual is a parent of the child, or that the individual has parental rights and responsibilities, the reporter will not treat that individual as an s.200 relevant person.

2.6 Deemed relevant persons

2.7 The test which has to be met to be deemed a relevant person is having or recently having had ‘significant involvement in the upbringing of the child’. Where individuals who appear to meet this test are identified, or come forward, the Reporter is required to notify them of the date, time and place of the hearing and their right to request a PHP. The reporter also has the discretion automatically to organise a PHP which would consider whether to deem them to be a relevant person. If anyone requests a PHP to consider their relevant person status, the reporter is obliged to arrange one.

2.8 A person who is not a s.200 relevant person may nevertheless meet the test to be deemed a relevant person on the basis of current or recent significant involvement in the upbringing of the child.

- Other relationships with the child will be identified in local authority reports in order that the Reporter can apply the significant involvement test for notification of a hearing and right to ask for a PHP.
- Local authorities will seek to find means to identify such individuals in IAR/FAR material³ This could be through the use of a/the ‘significant relationships’ heading
- Foster carers are approved and supported by local authorities. A reporter will not generally automatically arrange a PHP for foster carers, but they have the right to choose to request a PHP if they wish and the local authority can support them in this. Otherwise, foster carers will likely attend hearings at the discretion of the chair on the basis that they are involved in the child’s life and therefore have information to share with the hearing. Foster carers will be informed of the hearing, whether they are deemed relevant persons or not.

³This includes ensuring that such a section identifying significant relationships exists in IAF forms

- 2.8 A person deemed to be a relevant person remains so until a children's hearing discharges all referrals, terminates any compulsory supervision order or directs that the person is no longer to be deemed a relevant person. A direction to 'undeem' is only possible following a review of a compulsory supervision order which makes a substantive decision to continue or vary the order.

3. Interim Compulsory Supervision Order

- 3.1 Interim Compulsory Supervision Orders (ICSOs) last for a maximum of 22 days (day 1 being the date the order was made) and Hearings can issue ICSOs for a total maximum duration of 66 days where there is a proof application ongoing. Thereafter, if necessary, the Reporter will apply to the Sheriff for an ICSO. Hearings can also issue interim variations to CSOs. Again these individually last for a maximum of 22 days but there is no total maximum duration.
- 3.2 An issue arises whenever a Sheriff decides the outcome of a proof application as at that point all ICSOs, whether issued by the Hearing or Sheriff, terminate. All interim variations of CSOs also terminate at that point.
- 3.3 The Sheriff can issue another ICSO or interim variation of CSO if grounds were established (or other grounds accepted at the Hearing) . If the ICSO or interim variation of CSO specifies that the child is to reside in a place of safety, but does not specifically name a place of residence, the interim order will last for 3 days only before it must be considered by a Hearing.
- 3.4 Where Social Work staff have a named place this should wherever possible be made known to the Reporter in order that the Hearing/Sheriff can be advised if making an ICSO or interim variation of CSO.
- 3.5 A Local Authority must not return the child to the care of a person where the child was, by virtue of any order removed from the care of that person.
- 3.6 In some circumstances a named place may not be known, for example if a child is in hospital but is due to be released and a further placement has not yet been identified. If that is the case, and the Sheriff issues an ICSO or interim variation of a CSO at the end of a proof, a hearing will have to be held no later than the 3rd day after the Sheriff issues the order. That Hearing is unlikely to be in a position to make a substantive decision as it has been arranged at short notice. Therefore, it is hoped that it becomes more common for an ICSO or interim variation of CSO to name a specified place of residence which would mean that after grounds are established a full Hearing could take place within 22 days.
- Sheriff issues ICSO or interim variation of CSO with a requirement to reside at a named place or with no requirement to reside – 22 days before being considered again by a Hearing

- Sheriff issues ICSO or interim variation of CSO – with requirement to reside in a place of safety (but place not named) – 3 days before being considered again by a Hearing

3.7 If an ICSO names a specific place, and the child has to be moved as a matter of urgent necessity, the CSWO (as delegated) may transfer the child to another place. The ICSO lasts for 22 days and a hearing does not have to be held any sooner than this to review the change in placement. If an interim variation of a CSO names a specific place, and the CSWO (as delegated) transfers the child to another place, a review hearing would have to be held to review this within 3 working days.

3.8 Good liaison between Social Work staff and Reporters is essential to ensure that information about the child's intended place of residence, and therefore the implications for ICSO/interim variation status can be understood.

4. Standard measures in a compulsory supervision order (CSO) or interim compulsory supervision order

4.1 Any order made by a hearing must, as a minimum, include one measure. For the purposes of consistency in approach across Scotland, the standard measure should be:-

The implementation authority will provide appropriate supervision and support to the child'

4.2 However, it will be for the hearing to decide whether to include the standard measure in an order. Children's Hearings can include additional measures in an order as they believe appropriate. Local Authorities may recommend measures to be included in an order based on the individual circumstances of the child. The 'appropriate supervision and support to the child' will be identified within the child's plan which the Hearing will have considered.

4.3 The standard condition will be subject to ongoing review as part of the operation of this operational framework, and as a minimum will be reviewed within the first year to ensure that it is working appropriately.

5. Section 67 Grounds

5.1 The 2011 Act introduces new grounds of referral (called section 67 grounds) to the Hearing. Some grounds of referral from the Children (Scotland) Act 1995 (the 1995 Act) appear in the new 2011 Act whilst others do not. This section deals with two particular section 67 grounds (domestic abuse and forced marriage). Further frameworks on the remaining new grounds may be developed in due course. Referrals to the Reporter can be on the basis of any concern about a child's welfare, safety, well being or behaviour provided the referrer considers that it might be necessary for a compulsory supervision order to be made. It is for the Reporter to

determine whether he considers that a section 67 ground applies and if so, which one or ones.

5.2 Domestic Abuse

5.3 There are already well established local protocols on domestic abuse in operation across Scotland. The existence of this new ground is unlikely to change referral practice to the Reporter which is guided by these local protocols. However local protocols will require to be updated to reflect the existence of the new ground as this will add specificity to how these cases are managed by Police, Reporters and Social Work staff.

5.4 Forced Marriage

5.5 This new ground may be relatively uncommon in day to day use, but will require detailed liaison between Social Work staff and Reporters and considerable sensitivity and certainty in handling.

- Provision of specific evidence and sufficiency of information
- Explicit and clear descriptions of the issues and concerns at hand
- Appropriate use of information and intelligence about members of the child's household
- Need to be clear about who will be allowed to have access to information and when – both within the legal process, but also in relation to agency staff access.
- Local protocols will be required to encourage best practice including in relation to restricting access/withhold information at all stages of the pre-legal process
- Potential for the use of justifiable and necessary restricted professional only fora to consider information, evidence and concerns. Reporters may require to be directly involved in such intra professional fora to give advice
- Explicit and clear assessment of any risk to the child from communications normally sent to a child and relevant persons by the reporter and appropriate consideration of a CPO or Forced Marriage Protection Order.

5.6 Further details on the links between this ground of referral and Forced Marriage Protection Orders can be found at Appendix A.

6. Withholding information/Non-Disclosure

6.1 General

6.2 Local Authorities have a general duty to consider information that could cause significant harm to a child and to make a request for this information to be withheld/not disclosed.

- 6.3 Information which may directly or indirectly reveal the child’s whereabouts should not be ‘peppered’ across reports, or used at all if this is appropriate. The child’s place of residence, if it is required to be shown, should be shown singularly and in such a way as to be easily and comprehensively redacted. *If any information is not strictly required in the report, and inclusion of this information could cause significant harm to the child if disclosed, it should be omitted. Naming of schools or other similar places which indirectly reveal the child’s whereabouts should be avoided where appropriate.*
- 6.4 There are provisions within the 2011 Act and secondary legislation as to withholding information/non-disclosure. There are 4 different types of provision, including a new provision in relation to a “non-disclosure request”.
- 6.5 Firstly, any person (including a social worker) may make a “non disclosure request” to be considered by a hearing or PHP. A non-disclosure request is a request that information should be withheld on the basis that disclosure would be likely to cause significant harm to the child. The reporter will withhold the information on a provisional basis and the Hearing or pre-hearing panel will decide whether that information can continue to be withheld.
- 6.6 Secondly, all orders⁴ or warrant to secure attendance may contain a measure prohibiting the disclosure (whether directly or indirectly) of the place a child is required to reside (or the place of safety) - a “non-disclosure measure”. It is important that the reporter is alerted to any information which may indirectly disclose the place where the child is required to reside.
- 6.7 Thirdly, rule 16 allows the reporter to withhold information disclosing the whereabouts of the child when sending any notification or documents before or after a hearing, if disclosing this would be likely to cause significant harm to the child or any relevant person. Again, it is important that the reporter is alerted to the fact that disclosure of the whereabouts of the child or relevant person would cause significant harm.
- 6.8 Fourthly, section 178 allows a hearing to withhold information if disclosure of the information would be likely to cause significant harm to the child. This provision may be relevant to verbal information provided at a hearing during the absence of a relevant person.
- 6.9 Non-Disclosure request**
- 6.10 Any person may make a non-disclosure request either in advance of the hearing or at the hearing if they believe that disclosure of a document or information will likely cause the child significant harm. If made in advance, then until the Hearing has decided whether the information is to be withheld the Reporter must not disclose the information.

⁴ Such as Compulsory Supervision Order (including interim variations). Interim Compulsory Supervision Order, etc.

6.11 Any non-disclosure request must be specific as to –

- Who is the information to be withheld from
- Why is the information to be withheld
- What information is to be withheld

6.12 Examples of where information might wish to be withheld because to disclose it would likely cause significant harm to the child.

- Historical information about a parent which would be highly distressing to the child to find out about in a report, if the level of distress amounts to significant harm to the child (NB report writers should be alert to the need only to include relevant and proportionate information in reports, and to discuss reports with parents and children)
- Information about a prospective carer's address where disclosure of that address is likely to cause significant harm to the child

6.13 Requests by Social Work staff to withhold information need to be sufficient in relation to who, what, why and should also consider how that information is to be managed within the reports made available to the Hearing.

6.14 How information is assembled may aid or inhibit the process of redaction should the Hearing agree it should be withheld. Social work staff/report authors should consider how information which might be subject to a withholding request is presented within reports, use of appendaging of some information, or including information under discrete headings may be helpful.

6.15 Good liaison between Social Work staff and Reporters will be essential in order to consider how the non-disclosure provisions are operating and to help develop a shared understanding.

6.16 Non-Disclosure Measure

6.17 A non-disclosure measure in an order, as with the current arrangements, must be justified, meet the required threshold (significant harm) and be kept under review.

6.18 Local authorities have a responsibility to consider whether disclosure of information about the child's residence would cause significant harm to the child and to alert the reporter to this. This includes *inter alia*:-

- Considering whether there is any information which may indirectly disclose the place a child is required to reside and alert the reporter to this;
- Considering whether disclosure of the whereabouts of the child or relevant person would cause significant harm to that person and alerting the reporter to this.

- 6.19 The local authority should complete a non-disclosure request (see Appendix B) in relation to any such information. The reporter will pass this information to the hearing to allow them to consider it, either by including the form in the hearing papers directly or providing a reporter note etc.
- 6.20 As with withholding of information requests, report authors should carefully consider how information is assembled as this may aid or inhibit the process of redaction should a non disclosure measure be agreed. Social work staff/report authors should consider how information which might be subject to a non disclosure measure is presented within reports, appendix information which might compromise the non disclosure measure, or include the information in the non-disclosure request only (or include under discrete headings) as this may be helpful for redaction and limit risk of breaches.

6.21 Rule 16

- 6.22 Rule 16 allows the reporter to withhold information disclosing the whereabouts of the child or relevant person when sending any notification or documents before or after a hearing, if disclosing this would be likely to cause significant harm to the child or any relevant person.
- 6.23 Again, the local authority must alert the reporter if disclosure of the child and/or relevant person's whereabouts would cause significant harm. To assist the reporter the local authority should complete the non-disclosure request to do so. Again, information should be assembled carefully, and report writers should include information which would cause significant harm in an appendix to the main report or in the non-disclosure request.

7. Legal Representation

- 7.1 Legal Aid is now available for a wider range of participants in the Hearing – including for relevant persons. It is available where the individual requires to be represented by a solicitor in order to be able to participate effectively in the hearing (and meets any means test applying). Social Work staff should encourage and assist the uptake of legal assistance to ensure that everyone's rights can be observed in the Hearing process. Where a hearing or PHP considers that the child or a relevant person requires to be represented at the hearing by a solicitor but is unlikely to arrange to be represented, the hearing or PHP can trigger a process which will put a solicitor in contact with the individual. However this generally will involve some delay, which could be avoided if the person is assisted to seek legal representation in advance.
- 7.2 The child always has a right to legal aid in the following situations and a duty solicitor service is available to give effect to this for these specific hearings:

- Custody cases
 - 2nd day working hearings
 - Secure hearings
 - Hearings before the sheriff which are considering variations/terminations to a CPO
- 7.3 A suite of information has been produced by SCRA and Social Work staff should ensure that they have access to this, in order that it can be used proactively with children, young people and their families, relevant persons and people seeking relevant person status. (your local SCRA Office can provide stocks of this material).
- 7.4 Solicitors receiving legal aid to act in Children’s Hearings are subject to a Code of Practice issued by SLAB and approved by Scottish Ministers. SLAB monitor compliance (and investigate complaints re non-compliance) and failure to comply may result in the solicitor or firm being de-registered. The code of conduct can be found here at www.slab.org.uk

8. Children’s attendance at Hearings

- 8.1 The policy intent behind the 2011 Act is that children should be visible and encouraged to participate in Hearing proceedings. Reporters and Social Work staff have an important role in the support and preparation of children, young people and families for Hearings so that they understand the process.
- 8.2 A child has the right to attend a PHP but is not required to do so.
- 8.3 In relation to Hearings, children have a right to attend, and a duty to attend unless they are excused. Children are expected to attend unless they are excused **in advance**. It is particularly important that children attend a grounds hearing where they have not been excused in advance. A grounds hearing cannot proceed to put the statement of grounds to relevant persons and cannot issue any interim order if the child is not present but has not been excused in advance. The only options are to require another grounds hearing to be arranged or to discharge the referral. A warrant for the child’s attendance **may** be issued. In circumstances where a warrant is not appropriate but the child would be at risk if no interim measures can be put in place immediately the local authority may wish to consider applying for a CPO.
- 8.4 The importance of the child attending a grounds hearing unless excused in advance is particularly acute for an eighth working day hearing following a Child Protection Order. The hearing will not be able to make any interim order in relation to the child if they are not in attendance and have not been excused in advance.
- 8.5 Dispensation for the child to attend are decisions only for Hearings or PHPs. Grounds for dispensing with attendance are:

- risk to child's physical, mental or moral welfare by attending, or
- the child would not be capable of understanding what happens at the hearing or at a part of the hearing, or
- the hearing relates to certain grounds (victim of or close connection with victim of schedule 1 offence, close connection with schedule 1 offender or sexual offender) and the attendance at the hearing is not necessary for a fair hearing.

8.7 Explicit and early consideration about a child's need to be excused from a Hearing, by Social Workers and requests submitted to Reporters will be required to ensure that Hearings can proceed effectively and efficiently and the need for deferral of Hearings is minimised.

8.8 There is a right and a duty for relevant persons (unless excused) to attend a children's hearing. Parental/carer awareness and understanding of the new arrangements is very important and should be promoted at every opportunity by Reporters, Social Workers, Panel Members and other staff in contact with families and they should equally should have sufficient knowledge to understand the importance of the new arrangements.

9. Reporter Generated Referrals

9.1 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.

9.2 Examples of a reporter generated referral here are where a child, one of 3 siblings is referred, but it seem to the Reporter that the other 2 children may also be in need of compulsory measures. The Reporter has discretion to investigate those children even though they have not been referred by an agency.

9.3 This is a very broad provision with important consequences and the Principal Reporter has therefore directed reporters to apply s66(1)(b) in the following way:

- Where there is no specific referral from an agency (or any other person) and the reporter considers that section 66(1)(b) might apply, the reporter will 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 will bring the child to the attention of the most appropriate agency and ascertain its position on referral. The reporter will 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.

- The reporter will only act on a non-agency referral 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)

10. Transitional arrangements for 1995 Act – 2011 Act

- 10.1 Children’s cases as of 24 June 2013 will be dealt with either under the 1995 Act or 2011 Act – not both.
- 10.2 Where proceedings are still active under the 1995 Act – cases will be routed via this legislation. Still active means:
- A hearing has been notified prior to 24 June
 - Hearing proceedings ongoing (incl. continued)
 - Court proceedings ongoing
 - Appeal period of a hearing decision under the 1995 Act has not yet expired
- 10.3 Children subject to secure accommodation authorisation made under the 1995 Act will continue to be dealt with under the 1995 Act until they are no longer subject to a secure authorisation (and no active proceedings are ongoing).
- 10.4 Supervision requirements in force on 24 June, but not subject to active proceedings, will automatically convert to Compulsory Supervision Orders under the 2011 Act on that day. Other supervision requirements in force on conclusion of active proceedings will convert at that point (with the exception of those containing secure accommodation authorisation).
- 10.5 The reporter will alert the child’s social worker if an appeal is made and on conclusion of the appeal will inform the Social Worker of the outcome this and explain the appeal period applying to the Sheriff’s decision.

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Appendix B

1. Forced Marriage Protection Orders

- 1.1 The child or a third party such as a local authority can apply to court for a Forced Marriage Protection Order (FMPO). It is also possible to apply for an interim FMPO. An interim FMPO provides immediate protection and may be granted by the court in the absence of the victim or any party and even if a party has not been notified of the application. An interim order would be used if the child was in immediate danger such as at risk of being taken abroad. An FMPO can remain in place for a specified period or until recalled.
- 1.2 FMPOs and interim FMPOs are flexible and can be tailored to the child's situation. For example, the order may contain conditions or restrictions preventing the child from being taken abroad, or requiring the child to be a place of safety, or requiring documents such as passports to be handed over.
- 1.3 Applications for these orders are made on the civil standard, the balance of probabilities. A full proof will not be required for an interim order, but some evidence may be presented to the court.

2. FMPO – Referral to the Reporter

- 2.1 As well as considering whether to apply for a FMPO or interim FMPO, if the local authority believes compulsory supervision order might be necessary, it may refer the child to the reporter. The reporter must consider whether there is sufficient evidence to establish any section 67 ground (this could be the forced marriage ground or another section 67 ground which most accurately reflects the concern for the child), and whether it is necessary for a compulsory supervision order to be made. In this sense, a referral to the reporter in relation to forced marriage is no different from any other referral.
- 2.2 The fact that a court has already granted a FMPO or an interim order is not evidence that the child is being or is likely to be forced into marriage. Evidence presented to the court in relation to the FMPO may be the same as or similar to the evidence that the reporter has to lead in order to establish a section 67 ground. If there is insufficient evidence for a sheriff to grant an FMPO, it is likely to be difficult for a reporter to establish a section 67 ground.
- 2.3 Key evidence will often be what the child has said in joint interview, and a Visually Recorded Interview may be used in evidence by the reporter rather than leading evidence from the child directly.
- 2.4 If an FMPO or interim FMPO is in place, the reporter may not consider that there is a need for a compulsory supervision order in addition to that. In terms of the need for the CSO, the reporter would consider factors such as how long the FMPO is to remain in place, the likelihood of the FMPO being recalled, and the reason for a potential recall. Again, if an FMPO is likely to be recalled due to further evidence coming to light which calls into question the original grant of the FMPO or interim FMPO, it may be difficult for the reporter to establish a section 67 ground.

Appendix C

Non-Disclosure Request Reports/Documents for Hearings or Pre-Hearing Panels

If you consider that any report or document, (or any information within the report or document) which you are submitting for a hearing or pre-hearing panel would be likely to cause significant harm to the child if disclosed to someone who has a right to receive it, you should provide this information by completing the following form. Please only provide any such information in this form or an appendix to this form. **If you do not complete this form, the reporter will assume that your report or document is to be provided to the child and to all relevant persons in full.** If you consider that other reports or documents for the hearing or pre-hearing panel contain information which would be likely to cause significant harm to the child if disclosed please also complete a form. Please complete a separate form for each report.

Child's Name and Date of Birth:

Name/description of report/document:

What is not to be disclosed ⁵	
Who is this not to be disclosed to ⁶	
Reason for non-disclosure request ⁷	

Name and role of person requesting:

Date of request:

⁵ Please be specific e.g. page, paragraph and sentence number or specific information not to be disclosed e.g. Academy A, 1 High Street, Anytown, AB12CD (name and address of school)

⁶ Please provide name and relationship to child

⁷ Please provide a reason for the non-disclosure request. If different parts of the report are not to be disclosed to different persons, you must provide a reason for each specific non-disclosure request relating to each person.