



## SCRA response to the Scottish Government's consultation

### Background

The Children's Hearings System is Scotland's distinct system of child protection and youth justice. Among its fundamental principles are:

- That children who offend and children who are in need of care and protection are dealt with in the same system
- That the welfare of the child remains at the centre of all decision making

SCRA operates the Reporter service which sits at the heart of the system. SCRA employs Children's Reporters who are located throughout Scotland, working in close partnership with other professionals such as social work, education, the police, the health service and the courts system.

SCRA's vision is that vulnerable children and young people in Scotland are safe, protected and offered positive futures. We will seek to achieve this by adhering to the following key values:

- The voice of the child must be heard.
- Our hopes and dreams for the children of Scotland are what unite us.
- Children and young people's experiences and opinions guide us.
- We are approachable and open.
- We bring the best of the past with us into the future to meet new challenges.

### Response

We welcome the opportunity to comment on these regulations.

As with the current regulations, the draft regulations require the Reporter to arrange a hearing within 72 hours of the transfer (with an additional 24 hours if child is not already subject to CSO). For consistency, the timescale for the hearing should be same as in section 137(3) of the 2011 Act – "before the expiry of 3 working days beginning with the day on which the child is transferred." Any less would not be workable and the different timescales between primary and secondary legislation are confusing. This period should be extended by one working day when child is not currently subject to a Supervision Order (as per the current 24 hour extension).

#### Regulation 2

For some reason the draft regulations use the term "reporter" rather than Principal Reporter. This is a minor drafting point as "reporter" is defined in regulation 1, so it makes no practical difference, but there seems no reason to take an approach that is not consistent with other legislation.

The current regulation 2 defines 72 hours as not including Sundays or public holidays – that is not repeated here, so 72 hours will mean what it says. We would greatly prefer the approach outlined above in relation

to timescales, but if that is not adopted then the exclusion of Sundays should be reinstated as otherwise it is difficult to make practical arrangements for the hearing. As the definition of “public holidays” is unclear, and gives rise to much confusion, it is better that public holidays are included in the calculation of 72 hours.

#### Regulation 4

The obligation contained in the current regulation 4 on the unit manager to ensure that the “child receives such provision for his education, development and control as is conducive to his best interests” has been removed. We are not clear why this is the case and suggest that it be reinstated.

#### Regulation 5

The total of 72 hours in secure without authorisation within 28 days can cause practical difficulties as the majority of that 72 hour period may have been used in the initial placement, so very little of the “balance” is left if the subsequent hearing does not authorise secure (or a 2<sup>nd</sup> interim variation or ICSSO) is not issued by a later hearing, and the local authority decide at a later date within the 28 day period that child again requires to be placed in secure. We strongly suggest that both the 72 hour and 28 day periods should be longer.

#### Regulation 7

Reg 7(4)(b) requires the local authority to do one of two things (require a review under s131 or inform the Reporter of need to initiate a review under s136). The current regulation 6 only specifies one action, so it is not clear why two options are required here. We consider that two options are likely to give rise to confusion and lack of clarity.

#### Regulation 8

Another minor drafting point, but there is a missing “or” between the 92 and 120 in (a). In regulation 8(5), we wonder why the child is not on the list of those to be notified as in regulation 7. We suggest that the child be notified.

#### Regulation 9

The current regulation 7 applies to child who is looked after by a local authority under chapters 1 or 4 of Part II of the 1995 Act – this new regulation is more specific in applying to the child being provided with accommodation under section 25 or subject to a permanence order. We don't think there is any practical difference, and the clearer description of the new regulation is helpful.

#### Regulation 10

As with the current regulation 8, the Reporter has an extra 24 hours to arrange a hearing as there is a requirement to prepare statement of grounds. However, see the comment above about Sundays being included in that calculation and our strong view that a timescale consistent with other parts of legislation is preferable.

### Other issues

We note that there is no equivalent to the current regulation 11 which requires the reporter to arrange a review hearing within 3 months of the SR with secure authorisation being made – section 135 imposes that duty. In practice under the 1995 Act we have taken the approach that a review hearing must come to a substantive decision within the 3 months. However, the current legislation does not require this (nor does section 135) as it does not say that the CSO will lapse. If there is the power to do so in these regulations, we would prefer that there is clarity and it is stated that the CSO (or at least the secure authorisation) will lapse after 3 months. As the hearing now has the power to continue a CSO beyond the expiry date if a decision has been deferred, it is particularly important that there is clarity in this area.



When a child is moved into secure and then back to an open unit within the 72 hours and before the hearing, we have taken the view that we still require to arrange a hearing within the 72 hours. The regulations should be clear that a review hearing is still required in this situation.

Currently a child who is subject to a CPO can't be placed or moved to secure. If possible, it would be helpful for the regulations to allow this.

When a child is remanded to secure and is then referred to the Reporter by the PF or remitted to a hearing by the court, they cannot be kept in secure pending a children's hearing. It would be very useful if they could, with an obligation on the Reporter to arrange the review hearing within 72 hours (or 3 working days if our proposal above is accepted). If the child has to be released from secure if he is to be referred to reporter/remitted to hearing, it can be a disincentive to doing so.

**SCRA**  
**March 2012**

