

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



Date: May 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 B.

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 C) 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 seems 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.

APPENDIX A

PLANS FOR HEARINGS UNDER THE 2011 ACT

HIGHLAND PROTOCOL

June 2013

Background

A protocol governing the provision of Child's Plans for Hearings in Highland has worked extremely effectively since 2008. The introduction of the Children's Hearings (Scotland) Act 2011 means this is the right time to revisit it.

Goals

- 1) To improve Hearings further under the 2011 Act by ensuring that papers for every child's Annual Review or Review required by a Hearing:
 - Are sent by SCRA to recipients in one mailing;
 - Contain a single, up-to-date Child's Plan, containing the information necessary for an effective hearing;
 - Arrive with children, relevant persons and panel members in good time.
- 2) To ensure that new processes under the 2011 Act work effectively.

Framework

Effective Hearings can only take place on the basis of good information received in good time. Children and families need time to consider the Plans about them if they are to participate in hearings. They need time to seek support over and above discussion with the Lead Professional, if necessary. Panel members need time to prepare for hearings on the basis of good, up-to-date information and recommendations.

To ensure that all involved have adequate time to prepare for such an important event, SCRA in Highland will send out the papers seven days before any Hearing.

The 2011 Act introduces a number of new processes, particularly Pre-Hearing Panels, and new arrangements for considering the non-disclosure of sensitive information. The earlier that the Child's Plan can be provided for a given Hearing, the more effectively these processes will work.

Core agreement

- SCRA will, wherever possible, give Health and Social Care (Children & Family team or YAT) at least 20 working-days' notice of any Annual/Hearing-requested review Hearing;

- In all cases where at least 20 working-days' notice has been given, Health and Social Care will provide a single, up-to-date Child's Plan at least 10 working days before the Hearing;
- SCRA will then send out all papers to all parties, including the up-to-date Child's Plan, 7 calendar-days before the Hearing;
- If no Child's Plan has been received 10 working days (at the latest) before the hearing, SCRA will cancel the scheduled Hearing, and immediately:
 - Schedule a fresh Hearing, with that Hearing to take place within 20 working days;
 - Write to the appropriate Area Manager, copied to the relevant Health and Social Care team-leader, indicating why the original Hearing has had to be cancelled, and giving the re-arranged date;
 - Write to all relevant parties indicating why the original Hearing has had to be cancelled, and giving the re-arranged date;
- SCRA will not 'chase' any late Child's Plans.

Other Hearings

This protocol applies to Annual/Hearing-requested review Hearings. However, the existing, general agreement regarding reviews called by the LA itself still stands – in all such cases the request for a review must be accompanied by an up-to-date Child's Plan.

In cases where a review hearing is required as a result of a child or relevant person request, SCRA will generally give 20 working-days' notice to all parties. Such hearings will not be postponed in the absence of a timely Child's Plan without the agreement of the individual who has made the request.

Every effort should be made to ensure that the Child's Plan for every type of hearing is received at least 10 working days before the hearing, so that they can be sent out in good time with the rest of the hearing papers. However, a Child's Plan received later than 10 working days before the Hearing will be sent out after the main bundle of papers has gone if the hearing is:

- For some other purpose than an Annual/Hearing-requested review (Interim Compulsory Supervision Order renewal, for example);
- An Annual/Hearing-requested review, but SCRA have been unable to give Health and Social Care 20 working-days' notice of the hearing.

However, no additional papers will be sent out for any hearing if received less than 3 working-days before the Hearing.

Risks to children

Those cases where there are high-level concerns about a child, and a need for a Hearing to consider them, are the cases where a Child's Plan received and distributed in good time is most necessary.

In cases where a Hearing has been cancelled and re-arranged in line with this Protocol, and:

- Health and Social Care have concerns about the child's situation that require urgent consideration at a Hearing; and
- Health and Social Care believe that the re-arranged Hearing is too far off; and
- The use of emergency powers such as CP O application or Section 72 transfer is likely if the hearing does not take place within the shortest possible timescale

Health and Social Care should make a request in writing that the Hearing be brought forward, setting out the reasons why this is required and enclosing an up-to-date Child's Plan. The SCRA team will make every effort to schedule such hearings as soon as possible, allowing for the statutory notice to the child and relevant persons.

Over and above these processes, in any case where it is clear to the Reporter that the child will be placed at risk if the initially scheduled hearing does not go ahead, the Reporter will not cancel that hearing but will notify the Area Manager and Team Manager of the position.

The Child's Plan itself

A one-page **checklist** of the key components of an effective Child's Plan for an effective Hearing is at **Appendix 1** of this Protocol. There is a key role for Section 7 within the Child's Plan, and the links made with the assessment and plan that precedes it.

The formal requirements set out in the bottom three criteria of that **checklist** are significant:

- **Placement recommendation**
- **Non-disclosure of address**
- **Non-disclosure generally**

Non-disclosure

A copy of the **Non-Disclosure Request Form** is at **Appendix 2** of this Protocol.

In any case where the Lead Professional believes that the disclosure of relevant material to the child or a Relevant Person would be likely to cause significant harm:

- the Child's Plan should be in a form that it is safe for all parties to receive, with the sensitive material removed and contained within the **Non-Disclosure Request Form** (save in cases where that material relates to the Plan as a whole, or is too extensive for the Plan to make sense – in such cases the Child's Plan should be submitted in its fuller form, but alongside a **Non-Disclosure Request Form** which sets out the position);
- the Child's Plan should be clear as to **who** it's believed should not receive the sensitive material, and **why** the Lead Professional believes disclosure of the material to those identified would be likely to cause significant harm. Section 7 should clearly set out the basis for the non-disclosure recommendation;
- the formal **Non-Disclosure Request Form** should always be completed, detailing the sensitive material, and submitted to the Reporter alongside the Child's Plan.

Information for Pre-Hearing Panel re potential Relevant Persons

The **Significant Involvement Information Sheet** is at **Appendix 3** of this Protocol.

Birth parents (other than those who have had all their parental rights and responsibilities removed by Court Order) and other persons with parental rights/responsibilities are automatically Relevant Persons.

It is for Pre-Hearing Panels and Hearings to determine who else is a Relevant Person, on the basis of the statutory test: ‘*Any person who has, or has recently had, a significant involvement in the upbringing of the child*’

In cases where Pre-Hearing Panels are being arranged to consider that issue, the full Child’s Plan cannot be provided to parties – it would contain sensitive information that should not be disclosed to someone who has not yet been formally deemed a Relevant Person. Following discussion with the Reporter regarding potential Relevant Persons the Lead Professional should provide the Reporter with the **Significant Involvement Information Sheet**. It should contain brief information regarding the role that each of those individuals, as identified with the Reporter and due to be considered at the Pre-Hearing Panel, play in the child’s life.

Preparing Children and Families for Hearings and Pre-Hearing Panels

Effective joint work between Lead Professionals and SCRA is at the heart of better preparing children and families for Hearings and Pre-Hearing Panels. The **Preparing Children and Families** suggestion sheet is at **Appendix 4** of this Protocol. Links to all the 2011 Act SCRA material/resources now available for Lead Professionals to use in their preparatory work with children and families can be found at:

http://www.scra.gov.uk/cms_resources/SCRA%20Information%20materials%20for%20partners%20-%20June%202013.pdf

and

http://www.scra.gov.uk/publications/information_leaflets.cfm

Review

This protocol will be reviewed in January 2014.

Bill Alexander, Director of Health and Social Care, Highland Council

Tom Boyd, Locality Reporter Manager, Highlands & Islands

24 June 2013

The Child's Plan Appendix 1

The criteria for a good plan provided to Children's Reporter/Hearing

- No prior knowledge assumed** – Does this Plan paint a full enough picture to meet the needs of readers who may never have considered the child before?
- Accurate and understandable** – Are the 'Details' sections of the Plan accurate and up-to-date; Is the Plan written in clear, understandable, factual language, avoiding repetition?
- Reasons for the Plan** – Does this section provide an overview of why this child needs a multi-agency Plan?
- Basis to Assessment** – Are the sources of information for this Plan clear? Is it based on the best available information? If not, why not, and what's needed to strengthen the assessment of what this child needs?
- Assessment** – Does the Assessment paint a rich enough picture of how this child is growing and developing, what she needs and what she gets from the people who look after her, and from her wider world? Does the Analysis capture the impact or likely impact of strengths and pressures?
- Current needs/risks** – Does this section pull together the assessment, and what's now needed?
- Action Plan** – Does the Plan provide a clear sense of direction for this child? Does it capture the goals, the stepping stones to them, the action required, and the who/when of how it's to be delivered?
- Compulsory measures** – Does the Plan provide a clear assessment of the role for compulsory measures, and any conditions, in supporting the Action Plan?
- Child's/Carers' views and action** – Does the Plan capture the role and views of the child and her carers in the Assessment and the Action Plan?
- Placement recommendation** – *Are you recommending a condition of residence/respite with a person who is not a relevant person?* Need to show that both place and carers meet the child's needs. Need to confirm that relevant Looked After Children Regulations met;
- Non-disclosure of address** – *Are you recommending non-disclosure of an address, or is an order already in place?* Details section of Plan must be clear that 'address not to be disclosed', with good reasons why. The Plan must not contain the address, and must be in a form that you believe can safely be sent to all parties. The recommendation/reasons/evidence re risk must be clear in Section 7 of the Plan;
- Non-disclosure generally** – *Is there any information (address or any material within the Plan, etc) that requires consideration by the Hearing, but which would be likely to cause significant harm to the child if disclosed to someone who otherwise would have the right to receive it?* Non-Disclosure Request Form must be completed. This includes the situation when it is the child who should not receive the material – if the Form is not completed the child, any child aged 12 or over will receive a full copy of the Papers, along with all Relevant Persons.

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 and returning 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 ¹	
Who is this not to be disclosed to ²	
Reason for non-disclosure request ³	

Name and role of person requesting:

Date of request:

¹ 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, AB1 2CD (name and address of school)

² Please provide name and relationship to child

³ 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.

Significant Involvement Information Sheet

Child's Name and Date of Birth:

A Pre-Hearing Panel will be considering whether the following individual(s) should be deemed Relevant Persons, with formal rights and obligations in relation to the child.

The test that the Pre-Hearing Panel will be applying is whether the individual is a ***person who has, or has recently had, a significant involvement in the upbringing of the child.***

The following information is provided by the Social Worker Lead Professional regarding the involvement of each individual in the upbringing of the child:

Name:

Information:

Name:

Information:

Name:

Information:

Delete/expand as appropriate



Preparing families for a Children's Hearing

What a social worker can do to prepare and empower children, young people and relevant persons coming to a Hearing.

Going to a Hearing can be a daunting experience for many young people and their families. A social worker can play a very important role in making this a less intimidating experience, and empowering families in the legal process. This document sets out the main ways in which social workers can contribute prior to a Hearing and the SCRA resources available which can assist.

Explain what happens at a Hearing and how it fits with other types of meetings:

- Child's Plan meeting - what this is.
- Pre Hearing Panels - when this would happen, what it could decide.
- Hearings - who will be there, what happens, respective roles, independence of the Panel, the focus on the child and their best interests, possible delay to the start of the Hearing.
- Explain they have the opportunity to ask the Reporter questions before the Hearing (in person or by telephone, immediately prior to the Hearing or at an earlier stage).

Help them understand the Child's Plan, the recommendations made and what decisions the Panel Members can make:

- Go through the Child's Plan to ensure they understand it.
- Complete section 7 of the Child's Plan (i.e. compulsory measures and explain your recommendation).
- Outline the decisions and options open to the Hearing (what being on CSO/ISCO means).

Ensure they have their say at every stage:

- Complete child/young person's views and parent/carer's views in Child's Plan (sections 2 and 3) including views on compulsory measures.
- Explain opportunity for child/young person to speak to the Panel Members on their own (NB substance normally disclosed to others).
- Support the child/young person to have their say through completion of All About Me forms or equivalent.

Reinforce their rights:

- Representation at the Hearing: legal; Who Cares? Scotland; Advocacy Highland; teacher; friend.
- To challenge the grounds of referral (and what might happen).
- To complain/appeal if they are unhappy with how they have been treated.

Practicalities and linking up with the Reporter prior to the Hearing:

- Who should be at the Hearing to make it effective?
- Consider and arrange a Pre Hearing visit for child/family if appropriate
- Discuss practical considerations with the Reporter: access, security, potential conflict or anxiety, length/complexity of Hearing and any recent issues.

Provide information and support after the Hearing:

- Ensure they understand the Hearing outcome and what this means for them.
- Explain the Hearing review and appeal process.
- Explain the court process if grounds are going to court for proof.
- General debrief and support.

SCRA has a number of information materials for children and young people to help prepare them for going to a Hearing.

Here's what's available for young children...

All About Me form – this is aimed at children 11 years and younger to help them express their views. They should receive a printed copy with their Panel papers and an electronic version is also available on SCRA's website.

Leaflet for children - this leaflet is aimed at children aged 11 and under going to a Hearing.

Chloe and Billy storybook – This is aimed at children aged 4 to 7 years and tells the story of a sister and brother, Chloe and Billy, going to a Hearing.

Colouring in book – the storybook is also available in a colouring in book format.

Here's what's available for young people...

All About Me form – this is aimed at children aged 12 years and over.

Leaflet for young people - This leaflet is for young people aged 12+ going to a Hearing.

Your Rights flyer - This provides information about children's rights, how to appeal etc.

All about Supervision Requirements leaflet - For when a Supervision Requirement has been made.

Secure Accommodation flyer - When a Hearing decides to place a child/young person in secure accommodation.

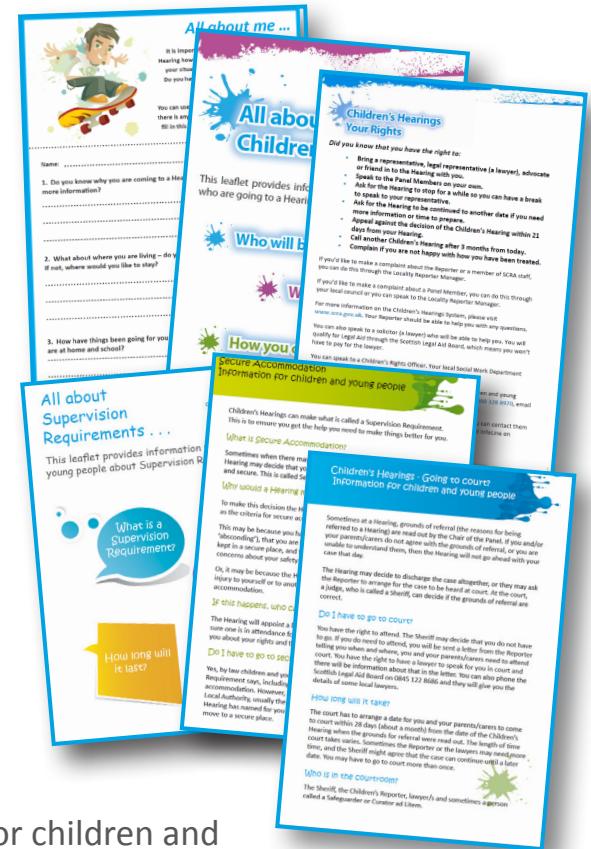
Going to Court flyer - About court proceedings.

Additional information...

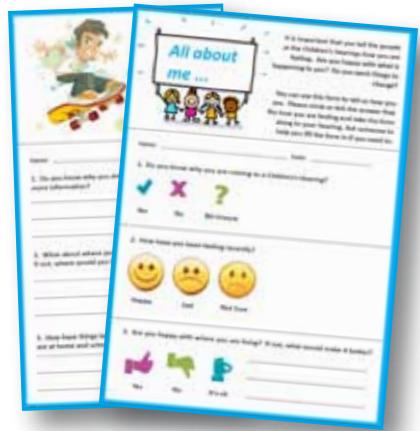
SCRA's website www.scra.gov.uk has a dedicated section for children and one for young people. There is also a section for parents/carers. In addition, there is easy read information for parents/carers with learning disabilities.

Two DVDs for young people and their parents/carers are also available – Going to a Children's Hearing and Going to Court.

For further copies of any of the materials, please email communications@scra.gsi.gov.uk.



SCRA's information for children and young people



1. All About Me forms

These forms are sent to children and young people before their Hearing. Electronic copies are also available on our website.



6. Cartoon poster

The story of Chloe and Billy attending a Hearing is also available as a poster.



II. Going to Court flyer

This flyer explains information about Children's Hearings court proceedings and where to get more information.



2. Leaflet for children

This leaflet is sent to children aged 11 and under going to a Hearing for the first time.



7. Your Rights

This flyer provides information about children's rights, how to appeal, where to get more information etc.



12. Changes to the law

This A4 sheet provides information about changes as a result of The Act (new terminology etc).



3. Leaflet for young people

This leaflet is sent to young people aged 12 and over going to a Hearing for the first time.



8. All about Compulsory Supervision Orders

This updated leaflet explains about CSOs.



13. CSOS 16 plus

This flyer will be sent out alongside a young person's Hearing notification, when reviewing the Compulsory Supervision Order at 16 years of age or if considering new grounds of referral where a child will soon be reaching 16 years of age.



4. Cartoon booklet and colouring in booklet

This is aimed at children aged 4 to 7 years and tells the story of a sister and brother, Chloe and Billy, going to a Hearing.



9. Secure Accommodation flyer

This flyer explains when a Hearing decides to place a child or young person in secure accommodation.



14. Your Views

This will be included with the Pre-Hearing Panel letter. It gives children and young people the chance to have their say. This is separate from the All About Me forms.



5. Going to a hearing DVD

The DVD is available on our website and on Young Scot's website. A small number of hard copies are available.



10. Going to Court DVD

This 5 minute film is available on SCRA's website and on You Tube. A small number of hard copies are available on request.

SCRA's website contains a dedicated area for children and for young people.

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.