



SCOTTISH
CHILDREN'S REPORTER
ADMINISTRATION

Practice Direction 16

Review Hearings

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SUMMARY

- A hearing to review a CSO will take place:
 - in the circumstances set out in s.137;
 - where a child moves placement as a matter of urgent necessity;
 - if a sheriff requires a review hearing on disposal of an appeal;
 - where the reporter decides to refer further grounds to a hearing and those grounds are accepted or established;
 - where a court remits a case for disposal under section 49 of the Criminal Procedure (Scotland) Act 1995;
 - where the sheriff requires the reporter to arrange a children's hearing under section 12(1A) of the Antisocial Behaviour etc. (Scotland) Act 2004;
 - in certain circumstances following a sheriff reviewing a grounds determination.
- The reporter must request a report from the local authority for a review hearing.
- A review hearing may terminate, vary (without substantive continuation), or vary and continue (for a period not exceeding a year) a CSO.
- A review hearing may defer making a substantive decision in relation to the CSO and if so, the hearing may:-
 - Issue an interim variation of the CSO, and/or
 - Continue the CSO until the subsequent hearing (i.e. when the CSO would otherwise expire).
- When a review hearing makes a substantive decision in relation to the CSO and if it appears to the review hearing that a section 81 deemed relevant person may no longer have (or recently have had) a significant involvement in the upbringing of the child, the hearing must review whether that person should continue to be deemed relevant. The hearing must direct that the individual is no longer to be deemed relevant if the hearing determines that that the individual no longer has nor has recently had that involvement.
- A review hearing will be required by the implementation authority when it intends to apply for a permanence order or place a child for adoption, or is aware that an application for an adoption order has been made or is pending. When such a hearing makes a substantive decision on the review, that hearing must at the same time provide a report of advice about these matters.

- Other relevant Practice Directions are:
 - Practice Direction 13 on Attendance at Hearings
 - Practice Direction 4 on Non-disclosure
 - Practice Direction 14 on Notifications and Papers
 - Practice Direction 19 on Orders, Warrants and Measures
 - Practice Direction 11 on Role of the Reporter at a hearing or Pre-hearing Panel

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1. Introduction

- 1.1 A “review hearing” is a hearing held to review an existing compulsory supervision order (CSO).
- 1.2 Provisions relating to review of CSOs are contained in sections 107, 108, 115 and 117 (all as modified by section 118), 116, 125, 129-142, and 146 of the Children's Hearings (Scotland) Act 2011 (unless contrary specified all statutory references are to the Act). Refer to Practice Direction 17 on Contact Direction Reviews for information on hearings held under section 126.
- 1.3 The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 (“the Hearing Rules”) set out specific procedural rules for panel members to follow in relation to review hearings. Rules 58, 60, 61, 62, 65, 66, 68, 69 and 77 are particularly relevant.
- 1.4 For notification of, papers for and notification of outcomes of review hearings see Practice Direction 14 on Notifications and Papers.
- 1.5 A review hearing may vary or continue a CSO only if the hearing is satisfied that it is necessary to do so for the protection, guidance, treatment or control of the child. In addition, as with all hearings, the general principles which apply to review hearing decisions are as follows:
 - Section 25: the hearing is to regard the need to safeguard and promote the welfare of the child throughout his/her childhood as the paramount consideration.
 - Section 26: a hearing may make a decision inconsistent with s.25 if it considers that to do so is necessary to protect members of the public from harm, but if so, the hearing is to regard the need to safeguard and promote the welfare of the child throughout his/her childhood as the primary rather than the paramount consideration.
 - Section 27: so far as practicable and taking account of the age and maturity of the child (a child aged 12 or over is presumed to be of sufficient age and maturity to form a view for these purposes), the hearing must (i) give the child an opportunity to indicate whether to express a view, (ii) if so, give the child an opportunity to express a view, and (iii) to have regard to any views expressed by the child.
 - Section 28: the hearing may vary or continue a CSO, make an interim variation of a CSO or grant a warrant to secure attendance only if the hearing considers that it would be better for the child if the order, interim variation or warrant were in force than not.

2. Requirement to Arrange Review Hearing

- 2.1 When a reporter is required to arrange a review hearing, this is to be done expeditiously, even if other hearing or court proceedings in relation to the child are still outstanding. For example, a reporter is not to delay arranging a review requested by a relevant person because an appeal or proof proceedings are still to be concluded.
- 2.2 In accordance with section 137(2), the reporter must arrange a children's hearing to review the CSO in the circumstances set out in section 137(1) – please see Appendix 1 for the full list of circumstances.
- 2.3 In addition, a sheriff may require the reporter to arrange a review hearing, if satisfied on an appeal that the decision of the hearing is not justified or there has been a change in the child's circumstances (s156). See Practice Direction 24 on Appeals.
- 2.4 When the reporter decides to arrange a further grounds hearing for a child already subject to a CSO, the grounds hearing becomes a hearing to review the CSO (and has all of the disposal options of a review hearing) if:
 - each section 67 ground is accepted or
 - at least one ground is accepted and the grounds hearing considers it is appropriate to make a decision on the basis of the accepted ground. Sections 91 and 97
- 2.5 For a child already subject to a CSO, when a sheriff determines an application for proof, and directs the reporter to arrange the hearing, the hearing is to be treated as a hearing to review the CSO. Sections 108(2) and 118(4)
- 2.6 Where a court remits a case for disposal under section 49 of the Criminal Procedure (Scotland) Act 1995, and the child is subject to a CSO, section 130 requires the reporter to arrange a review hearing under section 137. The remitted offence is treated as an established section 67(2)(j) ground – section 130(4).
- 2.7 Where the sheriff requires the reporter to arrange a children's hearing under section 12(1A) of the Antisocial Behaviour etc. (Scotland) Act 2004, and the child is subject to a CSO, section 129 requires the reporter to arrange a review hearing under section 137. The sheriff does not provide a 'section 12 statement' in these circumstances.
- 2.8 There are also a number of circumstances when a review hearing must be held following a sheriff reviewing a grounds determination under s111(2).

- 2.9 Where by virtue of section 143, a child is moved out of the place the child is required to reside in accordance with a CSO (or interim variation of CSO) to another place as a matter of urgent necessity, the reporter must arrange a review hearing under section 136. The reporter must arrange this hearing to take place before the expiry of the period of 3 working days beginning with the day the child is transferred. Section 137(3).

3. Attendance at Review Hearings

- 3.1 Refer to Practice Direction 13 on Attendance at Hearings.
- 3.2 If a child fails to attend a review hearing and has not been excused in advance, the review hearing may excuse the child from attending all or part of the hearing if satisfied the criteria in section 73(3) are met¹.
- 3.3 If either a child's or relevant person's attendance is excused, the reporter is to take the excusal as persisting for related subsequent hearings – section 138(9). However a subsequent hearing may decide (at any point during the hearing) that it does not want to make a decision without the child or relevant person attending and may therefore defer its decision for that reason. This 'breaks' the excusal and the child has a duty to attend the next hearing.
- 3.4 If a relevant person fails to attend a review hearing and has not been excused in advance, the hearing may:-
- Excuse the relevant person from attending if satisfied that the criteria in section 74(3)² are met; or
 - if it considers it appropriate to proceed with the hearing in the relevant person's absence, section 75.

¹ The criteria in section 73(3) under which a child may be excused are that the children's hearing is satisfied that:

- the hearing relates to the ground mentioned in section 67(2)(b), (c), (d) or (g) and the attendance of the child at the hearing, or that part of the hearing, is not necessary for a fair hearing,
- the attendance of the child at the hearing, or that part of the hearing, would place the child's physical, mental or moral welfare at risk, or
- taking account of the child's age and maturity, the child would not be capable of understanding what happens at the hearing or that part of the hearing.

² The criteria in section 74(3) under which a relevant person may be excused are that the children's hearing is satisfied that:

- it would be unreasonable to require the relevant person's attendance at the hearing or that part of the hearing, or
- the attendance of the relevant person at the hearing, or that part of the hearing, is unnecessary for the proper consideration of the matter before the hearing.

4. Reports for Review Hearings

- 4.1 The reporter must require the implementation authority to provide any reports the authority has prepared in relation to the child and any other information which the authority may wish to give to assist the hearing. Section 137(4)
- 4.2 The reporter may require the implementation authority to give the reporter a report (1) on the child generally or (2) on any particular matter relating to the child specified by the reporter. Section 137(5). The implementation authority may include information given to the authority by another person in any report given to the reporter. Section 137(6).
- 4.3 It is not competent for a hearing to vary a CSO to require a child to reside at a place where the child would be under the charge or control of a person who is not a relevant person unless:-
- the hearing has considered a report provided by the local authority under sections 66(4), 69(4)³ or 137(4) or (5) which provides recommendations on:
 - (1) the needs of the child,
 - (2) the suitability to meet those needs of the place or places in which the CSO requires the child to reside and
 - (3) the suitability to meet those needs of the person who is to have charge or control over the child, and
 - the local authority has confirmed that in compiling their report they have complied with regulations 3 and 4 of the Looked After Children (Scotland) Regulations 2009. Rule 80.

5. Review Hearing Disposal Options

- 5.1 Section 138, 139 and 142 set out the options open to a children's hearing when carrying out a review of a CSO. A review hearing can make procedural, interim or substantive decisions. For the full list of disposal options available to a review hearing, please see Appendix 3 of Practice Direction 18 on Completion of Forms. The following paragraphs highlight some of the decision options available to review hearings.
- 5.2 The hearing may make substantive decisions as follows:
- Terminate the CSO (section 138(3)(a));
 - Vary the CSO (section 138(3)(b));
 - Continue the CSO for a period not exceeding a year (section 138(3)(c); or

³ A hearing reviewing a CSO will have a report under section 66 and/or 69 rather than section 137 where the hearing started as a grounds hearing.

- Continue the CSO for a period not exceeding a year and vary it (section 138(3)(b) and (c)) or
- 5.3 The hearing must specify the period for which the order is continued. The hearing may continue the CSO for any period of less than a year.
- 5.4 Where an application for a permanence order or a variation of same has been made and has not been determined, a review hearing may not make a substantive decision to vary or continue and vary a CSO. However, the review hearing can issue an interim variation of a CSO. Section 96 Adoption and Children (Scotland) Act 2007. See PD 25 Adoption and Permanence Orders.
- 5.5 If the hearing varies the CSO without continuing it (section 138(3)(b)), the CSO will continue to have effect for the “relevant period” currently applying to the CSO (see Practice Direction 19 on Orders, Warrants and Measures. If a the hearing is considering varying the CSO without continuing it, the reporter is to alert panel members to the expiry date of the CSO, and make panel members aware of their option to vary the CSO **and** concurrently continue the CSO with a new relevant period of up to one year.
- 5.6 If the hearing varies or continues the CSO, it must consider whether to include a measure of the type specified in section 83(2)(g) (a direction regulating contact between the child and a specified person or class of persons) (section 29A).
- 5.7 A hearing which makes a substantive decision to make, vary or continue a CSO may require the order to be reviewed on a day or within a period specified in the order, section 125(1) and (3).
- 5.8 If the hearing includes a movement restriction condition in the order, the hearing **must** require the order to be reviewed on a day or within a period specified in the order, section 125(1) and (2). In other words, when making a movement restriction condition, the hearing must at the same time set a review date.
- 5.9 If the hearing terminates the CSO, it must consider whether supervision and guidance is needed by the child and if so make a statement to that effect. If a hearing has made this statement, the relevant local authority has a duty to give such supervision or guidance as the child will accept (section 138(6) and (7)).
- 5.10 The hearing may make procedural decisions. In particular, the hearing may:
- Defer making a decision until a subsequent children’s hearing (section 138(2)); or

- Defer and appoint a safeguarder (section 30).

Appendix 2 contains a flowchart showing the disposal options open to a review hearing.

- 5.11 If hearing defers making a decision under section 138(2) (or further defers under section 119), further powers to make interim decisions become available under section 139. In particular the hearing may:
- make an interim variation of the CSO, if the test in section 139(3) is met, and/or
 - continue the CSO until the subsequent hearing, section 139(2).

See the flowchart in Appendix 2 and Practice Direction 19 on Orders, Warrants and Measures.

- 5.12 If the hearing continues the CSO until the subsequent hearing under section 139(2), the hearing is not making a substantive decision in relation to the CSO. The effect of the decision under section 139(2) is to prevent the CSO from expiring despite the fact that a substantive decision has not been made when the CSO would otherwise have expired. If the hearing makes a decision under section 139(2), the hearing may (but is not required to) set a date for the subsequent hearing to be held under section 139. Rule 61(1)(c).

- 5.13 There is no limit to the number of hearings arranged or interim variations made under sections 138 and 139.

- 5.14 Where the reporter is required to arrange a review hearing by virtue of section 137⁴, and the review hearing is also a grounds hearing then, the following additional provisions apply:
- if the hearing directs the reporter to make an application for proof, the hearing may continue the CSO until the subsequent children's hearing
 - if the hearing discharges a referral because the ground has not been accepted or understood, the hearing may if appropriate review the CSO.
- Rule 69.

- 5.15. If the hearing defers a decision under section 138(2) it may also:
- require the reporter to: obtain a report from any person, make arrangements for an interpreter for the child or relevant person, or take any other step with a view to securing participation - rule 61(b)/(f)
 - determine that it may be necessary for the child and/or relevant person to be represented by a solicitor and they are unlikely to arrange such representation – rule 61(d)

⁴ See paragraph 2.2 and Appendix 1.

- give a direction on a matter to enable the hearing to make a decision on whether to make a CSO and if so the measures to be included in that order – rule 61(g).

6. Requirement To Review Relevant Person Status

- 6.1 A review hearing is required to review whether an individual should continue to be deemed relevant person in relation to a child if:
- The hearing determines a review of a CSO by continuing or varying the order (i.e. a substantive decision is made in relation to the CSO);
 - An individual is deemed to be a relevant person by virtue of section 81 (i.e. has been deemed to be a relevant person by a pre-hearing panel or by a children’s hearing – see Practice Direction 3 on Relevant Persons; and
 - It appears to the children’s hearing that the individual may no longer have (or recently have had) a significant involvement in the upbringing of the child. Section 142(1) and (2).
- 6.2 A review hearing does not require to carry out a review of deemed relevant person at every hearing, but only where it arises in the course of the hearing that a deemed relevant person may no longer have, or recently have had, significant involvement. Where the issue does arise, and the hearing is therefore required to carry out the review, the chair must inform those present of the purpose of the review. Therefore, the chair must be clear that the hearing is moving on to review whether a specific individual should continue to be deemed a relevant person. Rule 66 of the Hearing Rules sets out the procedure here.
- 6.3. If the hearing does proceed to make such a review decision, the reporter is to record it in the report of proceedings (see Practice Direction 18 on Completion of Forms.
- 6.4. If the hearing determines that that the individual no longer has (and has not recently had) a significant involvement in the upbringing of the child, then the children’s hearing must direct that the individual is no longer to be deemed to be a relevant person (section 142(4)(a)).
- 6.5. A review hearing may defer determining the review of relevant person status until a subsequent children’s hearing (section 142(3)).
- 6.6 Section 142 does not apply where the matter of whether the individual should continue to be deemed to be a relevant person has been determined by a pre-hearing panel or where the matter has been referred to the hearing for determination..

7. Requirement to Provide Report re Permanence Order or Adoption

- 7.1 The implementation authority must require a review of a CSO when the authority intends to place a child for adoption or apply for a permanence order, or the authority is aware that an application for an adoption order is pending, s.131(2)(c)-(e). See Practice Direction 25 on Adoption and Permanence Orders.
- 7.2 Where such a review has been requested, on making a substantive decision (i.e. to continue, terminate, or vary the CSO), the hearing must prepare a report for the court and the implementation authority providing advice about the placing for adoption or application for a permanence order or adoption order (section 141). Rule 65 sets out the procedure for the hearing to follow.
- 7.3 A hearing requested in terms of section 131(2)(c)-(e) has the full range of disposal options under sections 138 and 139. However, the terms of section 141 are such that it is only competent for the hearing to produce a report of advice, following a substantive decision on the review of the CSO. Therefore it is not competent for the hearing to provide a report of advice and defer the review of the CSO. There is no express power to defer the part of the hearing relating to producing the report of advice; the reporter is to take the view that if a substantive decision is made in relation to review of the CSO, the hearing must produce a report of advice.

Response to Case Practice Enquiries Since Publication of Practice Direction

Section 143 Transfer

Where a CSO contains a measure requiring the child to reside with his/her mother but no address is specified, can the local authority transfer the child in terms of section 143? Our view is no, but if the local authority purports to transfer the child we should proceed to arrange the review hearing in line with section 136 and 137(3). The reporter should provide a note explaining that the reporter does not consider section 143 properly applied but that the reporter has a duty to arrange the review hearing. This approach enables the hearing to review the situation within a very short timescale and flags up the issue in order to support robust consideration of whether a change to the CSO is justified.

Panel Member Continuity

Panel member continuity can be considered by a hearing, even if not requested by the child or a relevant person.

Appendix 1 : circumstances in which the reporter must arrange a review hearing

Type	Section	Description	Comments
Order expiring within 3 months	s.133	The order will expire within 3 months and not otherwise reviewed before then.	For example, the date is within 3 months of end of relevant period specified in the order, or child is approaching 18. NB when continued, a CSO may have a relevant period for a period less than a year, so terminology “annual review” is not to be used .
Child or Relevant Person Review	s.132	Where a child or Relevant Person require a review	The CSO may be reviewed any time after 3 months of the Order being made, continued or varied. Note, the person may still request a review within the 3 month period, but the reporter will arrange the hearing to take place after 3 months.
Panel member review	s.125(3)	In any case, the children’s hearing may require the order to be reviewed on a day or within a period specified in the order	The hearing may specify an early review on a specified date or within a period specified in the order. The order itself must set out the date or period. This power to set an early review is in addition to the hearing’s power to continue a CSO for a period of less than a year.
Movement Restriction	s.125(2)	A CSO contains a movement restriction condition and a review is set by the children’s hearing	Note that the review must be set by the children’s hearing.

Type	Section	Description	Comments
Implementation Authority requires a review	s.131(2)(a)	Implementation Authority must require a review where it is satisfied the CSO ought to be varied or terminated	
Implementation Authority requires a review	s.131(2)(b)	Implementation Authority must require a review where it is satisfied that the CSO is not being complied with	
Implementation Authority requires a review	s.131(2)(c)(i)	Implementation Authority must require a review where it is satisfied that the best interests of the child would be served by the authority making an application for a permanence order under s.80 of the Adoption and Children (Scotland) Act 2007	
Implementation Authority requires a review	s.131(2)(c)(ii)	Implementation Authority must require a review where it is satisfied that the best interests of the child would be served by the authority making an application for variation of a permanence order under s.92 of the Adoption and Children (Scotland) Act 2007	

Type	Section	Description	Comments
Implementation Authority requires a review	s.131(2)(c)(iii)	Implementation Authority must require a review where it is satisfied that the best interests of the child would be served by the authority making an application for amendment of a permanence order under s.93 of the Adoption and Children (Scotland) Act 2007	
Implementation Authority requires a review	s.131(2)(c)(iv)	Implementation Authority must require a review where it is satisfied that the best interests of the child would be served by the authority making an application for revocation of a permanence order under s.98 of the Adoption and Children (Scotland) Act 2007	
Implementation Authority requires a review	s.131(2)(d)	Implementation Authority must require a review where it is satisfied that the best interests would be served by the authority placing the child for adoption and the authority intends to place the child for adoption	
Implementation Authority requires a review	s.131(2)(e)	Implementation Authority must require a review where it is aware that an application has been made and is pending, or is about to be made under section 29 or 30 of the Adoption and Children (Scotland) Act 2007 for an adoption order in relation to the child	

Type	Section	Description	Comments
Secure Review	s.135	The reporter must initiate a review prior to the end of a three month period beginning at the start, continuation or variation of a secure accommodation authorisation	The reporter is to “initiate” the review by arranging for it to take place within the 3 months. The reporter does not have such a duty where the child has been removed from secure accommodation by the chief social worker as this will have resulted in the secure accommodation having ceased to have effect (s.135(1)).
Transfer of child by local authority	s.136	Where the child has been transferred by the chief social worker from the place of residence specified in an order (or interim variation) in a case of urgent necessity.	This review must take place not later than 3 working days beginning on the day of the transfer (s.137(3)).
Transfer of child by local authority to secure accommodation	s.131 or s.136	Where a child is subject to a CSO, and CSWO and Head of Unit decide to transfer a child to secure accommodation, CSWO must require a review of CSO and reporter must arrange this	The hearing must take place within 72 hours of the placement in secure.
Sheriff gives direction at court re established or earlier accepted grounds	s.108	The child is subject to a CSO, and sheriff gives a direction under s.108 having established one or more of the grounds to which a proof application relates OR one or more of the grounds were accepted at the hearing	Note: Section 108 requires the sheriff to direct the Reporter to arrange a children’s hearing.

Type	Section	Description	Comments
Application to sheriff to determine grounds is withdrawn	s.107	The child is subject to a CSO, and before the determination of an application for proof, the Reporter withdraws the application but one or more section 67 grounds were accepted at the children's hearing which directed the application	
<i>Post ASBO or interim ASBO</i>	s.129 C.f. s.12(1A), Antisocial Behaviour (Scotland) Act 2004	A sheriff requires the Reporter to do so under s.12(1A) of the Antisocial Behaviour etc. (Scotland) Act 2004 following an ASBO or an <i>interim ASBO</i>	A CSO must be in force.
Offence remit	s.130	A court remits a case under s49 of the Criminal Procedure (Scotland) Act 1995 to the Principal Reporter	A CSO must be in force. A certificate signed by the clerk of court stating the child admitted guilt or was found guilty is conclusive evidence that the offence committed by the child. The remit has equivalent standing to an offence ground (s.67(2)(j)) established by the sheriff under s.108.
Notice of removing child from Scotland	s.134	A relevant person gives notice of intent to remove the child from Scotland otherwise than in accordance with an order under section 11 of the 1995 Act	

Type	Section	Description	Comments
review of decision not to implement secure accommodation authorisation	Regulation 9 The Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013	Where a child is subject to CSO authorising secure, and CSWO agrees to placement but head of unit does not consent, CSWO must notify reporter and reporter must arrange hearing to review the CSO.	This is not a full review of the CSO, as the options open to the hearing are only to do nothing or vary or remove the secure authorisation. The hearing must take place no later than 3 working days after the reporter receives notice from the CSWO.
Section 110 application - grounds not established at Court	s.115	A sheriff has reviewed a grounds determination (s.111(2)) and recalls the grounds determination and makes an order discharging the referral to the children's hearing BUT another s67 ground specified in the same statement of grounds that gave rise to the grounds determination is either accepted or established.	
Section 110 application - different grounds are established	s.117	A sheriff has reviewed a grounds determination (s.110) and determines that another ground (not specified in the statement of grounds) is established	

Type	Section	Description	Comments
Enforcement	s.146	A children's hearing has considered an implementation authority to be in breach of a duty under a CSO and has directed the National Convenor to notify the authority of the National Convenor's intention to enforce a duty of the authority in which case it must require a review as soon as practicable after the expiry of twenty eight days from the start of the notice	
Review of CSO during live permanency application	s.137(1)(b)	The Reporter must arrange a review where a sheriff is considering an application for a permanency order (or variation thereof) and refers the child's case (whether following receipt of a report under section 95 or otherwise) S96(3), Adoption and Children (Scotland) Act 2007 Ss 29 & 30, Adoption and Children (Scotland) Act 2007	This relates to the situation where a hearing has been prevented from making or varying a CSO because of a live permanence order application, the hearing has prepared and submitted a s.95 report and the court has considered this and referred the case back to the reporter. See PD Adoption and Permanence Orders.
Referral by Registered Adoption Service	s.137(1)(b)	A registered adoption service must refer to the reporter, and the reporter must arrange a review hearing where: <ul style="list-style-type: none"> • There is a CSO • It is satisfied that the best interests of the child will be served by placing the child for adoption • It intends to apply for adoption S106, Adoption and Children (Scotland) Act 2007	A registered adoption service is different from a local authority as an adoption agency. Where the local authority is the adoption agency, it will also be the implementation authority. In that case, the implementation authority will require a review in terms of s.131(2)(c)-(e)



