

Practice Direction 2

Transitional Provisions

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SUMMARY

- A child's case will be dealt with either under the 2011 Act or the 1995 Act, but not both.
- If there are active proceedings under the 1995 Act on 24 June 2013, the child's case will remain under the 1995 Act until the active proceedings have concluded.
- There are active proceedings under the 1995 Act if:
 - The reporter has arranged a children's hearing for any reason (the reporter has arranged a children's hearing when he/she has notified the hearing);
 - any proceedings at children's hearings are ongoing;
 - any related court proceedings are ongoing; or
 - any appeal period has not yet expired.
- If the reporter has an open referral on or after 24 June 2013 (and there are no active proceedings), the reporter's decision is made under the 2011 Act.
- If the reporter has an open referral on or after 24 June 2013 (and there are active proceedings), the reporter's decision is made under the 1995 Act.
- If the reporter has an open review request on or after 24 June 2013 (and there are no active proceedings), the hearing is arranged under the 2011 Act.
- If the reporter has an open review request on or after 24 June 2013 (and there are active proceedings), the hearing is arranged under the 1995 Act.
- A child protection order is an exception to the general rule about active proceedings:
 - If application for the CPO is made before 24 June 2013, the reporter is to arrange the 2nd working day under the 1995 Act.
 - If the 2nd working day hearing takes place on or after 24 June 2013, the reporter is to arrange the 8th working day hearing under the 2011 Act (so long as there no other active proceedings).
- On 24 June 2013, if a child is subject to a supervision requirement and there are no active proceedings, the supervision requirement will convert into a compulsory supervision order.
- On 24 June 2013, if a child is subject to a supervision requirement and active proceedings are ongoing, the supervision requirement will convert into a compulsory supervision order at the conclusion of the active proceedings.

- If a children's hearing is proceeding under the 1995 Act on or after 24 June 2013 and makes or continues a supervision requirement, the children's hearing must specify which local authority is to be the relevant local authority in relation to that supervision requirement. The supervision requirement will convert into a compulsory supervision order after the conclusion of the active proceedings under the 1995 Act (for example, at the conclusion of the appeal period if no appeal is lodged and there are no other active proceedings).
- If on 24 June 2013, a child is subject to a supervision requirement with a condition authorising placing the child in secure accommodation, the child's case will continue to be dealt with under the 1995 Act until the secure authorisation is removed at a subsequent review hearing. After the active proceedings have then concluded (either at the end of the appeal period or conclusion of any other active proceedings), the supervision requirement will convert into a compulsory supervision order.
- If a children's hearing arranged under the 1995 Act appoints a safeguarder, the appointment is made under the 1995 Act and the previous arrangements for appointment of a safeguarder will be followed.
- If a children's hearing arranged under the 1995 Act appoints a legal representative for a child or relevant person, the appointment is made under the 1995 Act and related regulations, and the previous arrangements for appointment of a legal representative will be followed.
- Regardless of whether the hearing is proceeding under the 1995 Act or 2011 Act, all children's hearings will be constituted from the national Children's Panel. The reporter is to delete any reference to the children's hearing being from a particular local authority area on the report of proceedings and any statutory form. A children's hearing proceeding under the 1995 Act cannot transfer the case to another local authority area under section 48 of the 1995 Act.

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1. Introduction

- 1.1 Although the main sections of the Children's Hearings (Scotland) Act 2011 ("the 2011 Act") as they relate to the practice of reporters come into force on 24 June 2013, not all cases will be dealt with under the 2011 Act from that date.
- 1.2 The principal order that governs the transition between the Children (Scotland) Act 1995 ("the 1995 Act") and the Children's Hearings (Scotland) Act 2011 ("the 2011 Act") is The Children's Hearings (Scotland) Act 2011 (Transitional, Savings and Supplementary Provisions) Order 2013 (the "Transitional Provisions Order"). This Practice Direction explains the main transitional provisions that apply to the reporter.
- 1.3 In this Practice Direction, a reporter will have "arranged" a children's hearing when he/she has notified that hearing.

2. Deciding which act applies to a child's case

- 2.1 The key principle underpinning the Transitional Provisions Order is that a child's case will be dealt with under either the 1995 Act or the 2011 Act¹.
- 2.2 If there are "active proceedings"² under 1995 Act on 24 June 2013, a child's case will continue to be dealt with under the 1995 Act until the conclusion of those proceedings. A child will have "active proceedings" if:
 - The reporter has arranged a children's hearing for any reason;
 - Any children's hearing proceedings are ongoing;
 - Any related court proceedings are ongoing; or
 - Any period for appealing against a decision of a children's hearing or sheriff has not expired.
- 2.3 If a child has "active proceedings" under the 1995 Act (for any reason in paragraph 2.2) and the reporter arranges a further children's hearing for any reason³, the reporter must arrange the hearing under the 1995 Act.

¹ References to both acts include the subordinate legislation made under the respective acts.

² Although the Transitional Provisions Order uses the term "relevant proceedings", this Practice Direction adopts the term "active proceedings" to assist with understanding of the Order.

³ For example, because the reporter requires to arrange a review hearing or has decided to refer the child to a hearing to consider new grounds for referral.

- 2.4 If the child has no “active proceedings” under the 1995 Act, and on or after 24 June 2013 the reporter makes a decision in relation to an open referral of a child, the reporter will make the decision under the 2011 Act.
- 2.5 If the child has no “active proceedings” under the 1995 Act, and on or after 24 June 2013 the reporter arranges a children’s hearing to consider a statement of grounds in relation to an open referral of a child, the reporter will arrange the hearing under the 2011 Act. This is the case whether or not the reporter made the decision prior to 24 June 2013.
- 2.6 If there are no “active proceedings” under the 1995 Act, and on or after 24 June 2013 the reporter arranges a review children’s hearing for a child (for any reason), the reporter will arrange the hearing under the 2011 Act.

3. Child Protection Orders

- 3.1 In some situations when a child is subject to a child protection order on 24 June 2013, there is an exception to the general approach in section 2 above. In particular:
- If the application for the child protection order is made before 24 June 2013, the reporter must arrange the 2nd working day hearing under the 1995 Act;
 - If the 2nd working day hearing takes place on or after 24 June 2011, the reporter must arrange the 8th working day hearing under the 2011 Act⁴ (unless there are other “active proceedings” in relation to the child, in which case the reporter must arrange the hearing under the 1995 Act).

4. Conversion of supervision requirements into compulsory supervision orders

- 4.1 Where a child is subject to a supervision requirement on 24 June 2013, the supervision requirement will be converted to become a compulsory supervision order (CSO) under the 2011 Act at some time on or after that date. In particular:
- If the child has no “active proceedings” under the 2011 Act on 24 June 2013, the supervision requirement will become a CSO on that date.

⁴ The hearing will a grounds hearing arranged under section 69(2) of the 2011 Act.

- If the child has “active proceedings” under the 2011 Act on 24 June 2013, the supervision requirement will become a CSO at the conclusion of those active proceedings⁵.
- 4.2 When a supervision requirement becomes a CSO, the CSO is treated as having been made on the same day on which the supervision requirement was made or continued under the 1995 Act. Therefore the “relevant period” for the CSO⁶ ends on the day one year after the day on which the supervision requirement was made or continued, or the child’s 18th birthday if sooner.
- 4.3 If a children’s hearing is proceeding under the 1995 Act on or after 24 June 2013 and makes or continues a supervision requirement, the children’s hearing must specify which local authority is to be the relevant local authority in relation to that supervision requirement⁷. The specified local authority will then be the “implementation authority” when the supervision requirement converts to become a CSO (on the conclusion of the “active proceedings” in relation to the child). The reporter is to record this decision of the children’s hearing on both the report of proceedings and the form for the supervision requirement as: “[name of local authority] Council is the relevant local authority.”

5. Secure accommodation

- 5.1 The position regarding the conversion of supervision requirements outlined in section 4 above does not apply, if on or after 24 June 2013, a child is subject to, or made subject to, a supervision requirement with a condition authorising placement in secure accommodation.
- 5.2 In that situation, the supervision requirement will not convert into a CSO until a children’s hearing varies the supervision requirement and removes the condition authorising placement in secure accommodation, *and*
- The period in which to appeal that decision has expired with no appeal having been lodged, or
 - If an appeal is taken against the decision, until that appeal or any further appeal is concluded.

During the period when the child remains subject to a supervision requirement under the 1995 Act, the 1995 Act will continue to apply to all proceedings in relation to the child.

⁵ As “active proceedings” includes any relevant appeal period, the “active proceedings” will only have concluded at the expiry of that appeal period.

⁶ As defined in section 83(7) of the 2011 Act. The CSO has effect for the “relevant period”.

⁷ Article 9(2) of the Transitional Provisions Order.

6. Structural issues

Children's Panel

- 6.1 On 24 June 2013, children's panel members for each local authority area will become members of the national Children's Panel. All children's hearings held on or after that date will consist of 3 members of the Children's Panel. The children's hearing will not be one for a particular local authority area. This will be the case regardless of whether the child's case is arranged under the 1995 Act or the 2011 Act.
- 6.2 If the child's case is arranged under the 1995 Act, the children's hearing is to be treated for all purposes as if it were a children's hearing constituted under the 1995 Act.
- 6.3 If the child's case is arranged under the 1995 Act, the children's hearing cannot transfer the case to another local authority area under section 48 of the 1995 Act⁸. As stated at paragraph 4.3 above, when making or continuing a supervision requirement under the 1995 Act, the children's hearing must specify which local authority is to be the relevant local authority in relation to that supervision requirement. In doing so, the children's hearing may specify as the relevant local authority a different local authority from the authority that provide a report for the hearing.
- 6.4 As the children's hearing will no longer be one for a particular local authority area, the reporter is to delete any reference to the children's hearing being from a particular local authority area on the report of proceedings and any statutory form. This will result in the form saying: "A children's hearing in respect of the case of: Name:...."

Safeguarders

- 6.5 If a children's hearing arranged under the 1995 Act on or after 24 June 2013 decides to appoint a safeguarder, the appointment is made under the 1995 Act. The previous arrangements for the appointment of a safeguarder involving the local authority will continue for such appointments.

⁸ Article 2(3) of the Transitional Provisions Order.

Legal Representatives

- 6.6 A children's hearing arranged under the 1995 Act on or after 24 June 2013 may decide to appoint a legal representative for a child or relevant person under The Children's Hearings (Legal Representation) (Scotland) Rules 2002 (as amended). If the hearing makes such an appointment, the appointment is made under the 1995 Act and the previous arrangements for the appointment of a legal representative involving the local authority will continue.