



SCOTTISH
CHILDREN'S REPORTER
ADMINISTRATION

Practice Direction 8

Child Protection Orders and Other Emergency Orders

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SUMMARY

- There are various ways in which a child can be protected in an emergency situation, namely:- Child Protection Order, Child Assessment Order, an order from a Justice of the Peace, a police constable's power to remove a child to a place of safety, and the local authority's power to provide short term refuge.
- Anyone can apply to the sheriff for a CPO and the sheriff may grant a CPO if there are reasonable grounds to believe that the child is at risk of significant harm and the order is necessary to protect the child from that harm.
- A CPO may also include provisions (called "directions") regarding non-disclosure of information, contact, and parental rights and responsibilities.
- Notice of a CPO is a referral to the reporter, irrespective of what happens with the CPO.
- The reporter must, after receiving notice, notify the making of a CPO to any person who the reporter considers to have (or recently have had) a significant involvement in the upbringing of the child (other than a relevant person).
- A CPO authorising removal of a child to a place of safety must be sought to be implemented within a period of 24 hours. If such a CPO is not implemented within 6 days the order will cease to have effect.
- The reporter may terminate a CPO or terminate directions in the order in certain circumstances.
- Certain persons may apply to the sheriff to vary or terminate the CPO. The reporter may apply to vary the CPO but not to terminate it. Such an application must be made before the 2nd working day hearing or within two working days of it.
- If the CPO remains in force, the reporter must arrange a hearing to review the CPO on the 2nd working day after the day the order was granted or the day the child was taken to a place of safety. If an application to vary or terminate the CPO has been made, the reporter is to convert the 2nd working day hearing to an advice hearing.
- Following the 2nd working day hearing, if the CPO remains in force, the reporter must make a determination on the referral, but this determination must be made within shortened timescales. If the reporter's determination is not to arrange a hearing, the CPO ceases to have effect when the person specified in the order (or the applicant) receives notice of that decision from the reporter.

- The CPO grounds hearing (the 8th working day hearing) must be held no later than the 8th working day starting from either the day after the order was made or the day after the child was removed to a place of safety. At the end of the 8th working day, the CPO automatically ceases to have effect.
- A child assessment order authorises an assessment of the child's health and wellbeing. It is a short term order which can only last for 3 days. The granting of a child assessment order is not automatically a referral to the reporter, but the applicant may also refer the child separately.
- An order from a Justice of the Peace might be used when it is impossible to contact a sheriff. It lasts for a maximum of 24 hours. The reporter must be notified of the order as soon as practicable after it is granted. This is treated as a referral to the reporter. The reporter has the power to terminate the order in certain circumstances.
- A police constable might use his powers to remove a child to a place of safety when neither a sheriff nor a JP can be contacted. This power lasts for a maximum of 24 hours. The police must inform the reporter as soon as practicable, and the reporter must treat this as a referral. The reporter may require the constable to release the child in certain circumstances.
- A child can request short term refuge and this may be provided by a local authority or by a person who provides a care home service. This refuge lasts up to 7 days or in exceptional circumstances 14 days. The reporter does not have to be informed, nor is there a requirement to refer the child to the reporter. However, the local authority may decide to make a referral and if the child is subject to a CSO which requires variation, the local authority is under a duty to request a review hearing.
- Other relevant Practice Directions are:

Practice Direction 4 – Non-Disclosure

Practice Direction 5 – Receipt and Registration of Referrals

Practice Direction 14 - Notifications and Papers

Practice Direction 15 - Grounds Hearings

Practice Direction 16 - Review Hearings

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1. Application For CPO

- 1.1 Anyone can apply to the sheriff for a child protection order (CPO) in respect of a child. Section 37(1)

A reporter can competently apply for a CPO, but is to be highly cautious about doing so. If a reporter considers that the statutory criteria for making a CPO are met, the reporter is to, if necessary, encourage other key agencies or persons to take appropriate action. If no other organisation or person is willing to initiate action, and the reporter considers a CPO is necessary to protect a child, the reporter is to apply for a CPO.

- 1.2 The sheriff must be satisfied that certain criteria exist before making the CPO. The most frequently used criteria are likely to be those set out in section 39. These apply to anyone applying for a CPO including a local authority. Section 39 states that the sheriff may make the order if satisfied that:

1. there are reasonable grounds to believe that:

- the child has been or is being treated in such a way that the child is suffering or is likely to suffer significant harm,
- the child has been or is being neglected and as a result of the neglect the child is suffering or is likely to suffer significant harm,
- the child is likely to suffer significant harm if the child is not removed to and kept in a place of safety, or
- the child is likely to suffer significant harm if the child does not remain in the place at which the child is staying (whether or not the child is resident there),

AND

2. the order is necessary to protect the child from that harm or from further harm.

- 1.3 There are alternative criteria in section 38 that can only apply where a local authority is applying for a CPO. Sections 38 and 39 are not mutually exclusive: a local authority can apply under section 39 alone or under sections 38 and 39.

Where the application is made by a local authority under section 38, the sheriff may grant the order if satisfied that:

1. the local authority has reasonable grounds to suspect that:
 - the child has been or is being treated in such a way that the child is suffering or is likely to suffer significant harm,
 - the child has been or is being neglected and as a result of the neglect the child is suffering or is likely to suffer significant harm, or
 - the child will be treated or neglected in such a way that is likely to cause significant harm to the child,

AND

2. the local authority is making enquiries to allow it to decide whether to take action to safeguard the welfare of the child, or is causing those enquiries to be made,

AND

3. those enquiries are being frustrated by access to the child being unreasonably denied,

AND

4. the local authority has reasonable cause to believe that access is required as a matter of urgency.

- 1.4 The following principles apply to the sheriff, hearing or pre-hearing panel in coming to a decision about a child protection order:

- Section 25, the need to safeguard and promote the welfare of the child throughout his/her childhood as the paramount consideration.
- Section 26, court/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 court 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 29, the sheriff may make or vary a CPO only if the sheriff considers that it would be better for the child if the order were in force than not.
- Section 27 in relation to the views of children does not apply to the decision of the sheriff to make a CPO, but does apply to every other decision of a sheriff or children's hearing in relation to a CPO (S27(2)).

- Section 28 (preconditions for a hearing making certain orders and warrants) does not apply in relation to a hearing's decision at the second working day hearing.
 - Whilst sections 25 - 27 do not expressly apply to reporter's decision making, reporters will follow these principles in making any decisions in relation to CPOs.
- 1.5 Local arrangements should encourage advance notice to the reporter of the potential for a CPO application to enable operational difficulties – availability of staff, hearings, etc. – to be avoided. However, the reporter is not to express a concluded view to any potential applicant about whether the statutory criteria are likely to be met prior to the granting of a CPO.
- 1.6 An application for a child protection order must:-
- identify the applicant,
 - in so far as is practicable, identify the child in respect of whom the order is sought,
 - state the grounds on which the application is made, and
 - be accompanied by supporting evidence, whether documentary or otherwise, sufficient to enable the sheriff to determine the application

Section 37(5)

- 1.7 A CPO application by a local authority must be in Form 47. Any other person must apply using Form 48. Rule 3.30¹
- 1.8 On receipt of an application, the sheriff, having considered the grounds of the application and the supporting evidence must forthwith grant or refuse the application. Rule 3.31(1)²

Following the decision of the Court of Session in NJ and EH v The Lord Advocate and Others [2013] CSOH 27 the sheriff may allow a parent or carer to make representations before deciding whether to grant the application.

¹ Act of Sederunt, (Child Care and Maintenance Rules) 1997 ("the 1997 Act of Sederunt")

² the 1997 Act of Sederunt

2. Grant of CPO

2.1. A CPO is an order doing one or more of the following:

- requiring any person in a position to do so to produce the child to a specified person³ (“specified” means specified in the order S.37(6));
- authorising the removal of the child by the specified person to a place of safety and keeping the child in that place⁴;
- authorising the prevention of removal of the child from any place where the child is staying⁵ (whether or not the child is resident there);
- If the CPO authorises the removal or prevention of removal of the child from a place of safety, it may also authorise the carrying out (subject to section 186)⁶ of an assessment of:
 - the child’s health or development, or
 - the way in which the child has been or is being treated or neglected⁷.

A child protection order may also include any other authorisation or requirement necessary to safeguard or promote the welfare of the child. (S.37(3))

2.2 As soon as practicable after the making of a CPO, the applicant must give notice to the reporter (amongst others), section 43(1)(e) . This notice must be in Form 51 (Rule 3.32(b)⁸), and will be accompanied by a copy of the application (including the supporting documentation) and the CPO itself (see Form 51). The CPO should be contained in Form 49. (Rule 3.31(2)⁹).

2.3 The reporter’s duties following the grant of a CPO must be followed even if there is a defect in the CPO, unless the CPO is reduced or suspended by court order. Therefore, if the defect is significant, or the CPO appears to be fundamentally null or incompetent or authorises an incompetent action¹⁰, the reporter is to contact the Practice Team as it may be necessary to Petition the Court of Session for a reduction or suspension CPO. See Opinion of Lady

³ Section 37(2)(a)

⁴ Section 37(2)(b)

⁵ Section 37(2)(c)

⁶ As with any authorisation or measure in relation to medical examination or treatment, where the child has sufficient understanding to consent to medical procedures, s/he may refuse any medical examination.

⁷ Section 37(2)(d) and 37(4)

⁸ Act of Sederunt, (Child Care and Maintenance Rules) 1997 (“the 1997 Act of Sederunt”)

⁹ The 1997 Act of Sederunt

¹⁰ For example, it does not appear to be competent for a CPO to authorise removal of a child to secure accommodation

Wise in Petition of City of Glasgow Council regarding Decision of Principal Reporter, in particular paragraph 18.

3. Directions in a CPO

- 3.1 The sheriff may include certain directions in the order, namely an “information non-disclosure direction”, a “contact direction”, and a “parental responsibilities and rights direction”.
- 3.2 Any such direction will cease to have effect when the CPO ceases to have effect¹¹. Where an application to vary or terminate a CPO is made to the sheriff, the sheriff may under section 51(3) terminate the CPO or remove or vary the direction.
- 3.3 When making a CPO, the sheriff must consider whether to include in the order (1) an information non-disclosure direction (section 40(1) and (2), and (2) a contact direction. (section 41(1) and (2)).
- 3.4 An information non-disclosure direction is defined in section 40(3) as a direction that:
 - the location of any place of safety at which the child is being kept, and
 - any other information specified in the direction relating to the child, must not be disclosed (directly or indirectly) to any person or class of person specified in the direction.
- 3.5 The reporter must comply with the information non-disclosure direction, and must be clear on the following key points
 - Whether the location of any place of safety is not to be disclosed.
 - Whether any other information is not to be disclosed, and if so, what information is not to be disclosed.
 - That the information is not to be disclosed directly or indirectly. Therefore the reporter must assess any risk of indirect disclosure e.g. if the reporter considers that the name of the school would indirectly disclose the address, the reporter must not disclose the name of the school. This assessment must be recorded on CMS.
 - To which person or class of persons the information is not to be disclosed.

See Practice Direction 4 on Non-Disclosure

¹¹ Sections 40(4) (information non-disclosure direction), 41(5) (contact direction) and 42(3) parental responsibilities and rights direction)

- 3.6 A contact direction must specify the person(s) or class of persons with whom the child's contact is regulated. There is a wide range of persons to whom the contact direction might apply (S.41(4)). These are:
- a parent of the child,
 - a person with parental rights and responsibilities for the child
 - any other person specified in the direction.
 - a person falling within a class of persons (in other words the contact direction need only specify the class of persons, and if a certain person falls within that class, their contact with the child will be regulated).
- 3.7 A contact direction is widely defined (section 41(3)) as a direction which:
- prohibits contact between the child and such a person;
 - makes contact between the child and such a person subject to any conditions which the sheriff considers appropriate to safeguard and promote the welfare of the child,
 - makes such other provision as the sheriff considers appropriate about contact between the child and such a person.
- 3.8 Unlike information non-disclosure and contact directions, section 42 does not require a sheriff to consider whether to include a parental responsibilities and rights direction when making a CPO. A person applying to the sheriff for a CPO may, at the same time, apply to the sheriff for this (section 42(1))¹². However, the Sheriff can include such a direction even where no such application is made.
- 3.9 A parental responsibilities and rights direction is defined in section 42(2) as a direction about the fulfilment of parental responsibilities or exercise of parental rights in relation to:
- the treatment of the child arising out of any assessment authorised by the CPO (see Effect of CPO, 2.1 above), or any other matter that the sheriff considers appropriate.
- 3.10 Note that the sheriff cannot do anything other than make a direction in relation to the use of parental responsibilities or rights. It is thought that this effectively is a substitute for the consent of the parent. In the absence of such a direction a parent could prevent assessment, examination or treatment which is considered

necessary for the child. The sheriff cannot direct that such an examination, assessment, interview or treatment shall take place. He can only deal with the exercise of the parental responsibility or right. The child's right to refuse consent remains intact.

4. Implementation of CPO

- 4.1 In practice, attempts should be made to implement a CPO immediately. There are no specific timescales for implementation where the CPO does not authorise removal of the child to a place of safety.
- 4.2 For a CPO authorising removal of a child to a place of safety (under S.37(2)(b)), an attempt must be made to implement it within 24 hours beginning with the time the order was made, S.52(1) and (2). If such a CPO has not in fact been implemented within 6 days, no matter what efforts have been made, the order will cease to have effect (S.52(1) and (3)). See Appendix 1 - Timescales and Ready Reckoner table below.
- 4.3 The person implementing a CPO may only take such steps to implement it as that person reasonably believes are necessary to safeguard or promote the welfare of the child, S.58.
- 4.4 A court may grant a warrant authorising an officer of the law to (1) enter and search premises and (2) use reasonable force for that purpose, where there are reasonable grounds for believing that the child is within premises (sections 169(3), (4) and 170(3), (4)).
- 4.5 A child who absconds from a place where the child is to be kept or from a person who has control of a child by virtue of a CPO may be arrested without warrant and taken to that place or person (Sections 169(1), (2) and s170(1), (2)).
- 4.6 A person who intentionally obstructs a person acting under a CPO commits an offence, S.59(1)(b). S.171 also sets out offences in relation to assisting or inducing a child to abscond, harbouring a child, or knowingly preventing a child from returning to a place of safety.

5. Powers and Duties of Reporter Prior to 2nd Working Day Hearing

- 5.1 Notice that a CPO has been granted is a referral to the Reporter which triggers investigation and determination under section 66 (S.66(1)(a)(i)). This continues to be a referral whether or not the CPO is implemented or ceases to have effect, the reporter terminates the CPO, or the CPO is not continued at the 2nd working day hearing.

See also Practice Direction 5 on Receipt and Registration of Referrals.

- 5.2 As soon as the reporter receives notice of a CPO, s/he must give notice of the making of the CPO to any person who the reporter considers to have (or to recently have had) a significant involvement in the upbringing of the child (other than a relevant person). Section 43(2) There is no specific timescale for this, but where practicable, the reporter is to do so on the same day that the reporter receives notification of the CPO.
- 5.3 Prior to the second working day hearing and if no application has been made to the sheriff under section 48 to vary or terminate a CPO, the reporter has the power to:
- terminate the order if satisfied that the conditions for the making of the CPO are no longer satisfied (section 53(1), or
 - vary the CPO by terminating a relevant direction in the order (i.e. information non-disclosure direction, contact direction or parental rights and responsibilities direction), if satisfied that the conditions for including the relevant direction in the CPO are no longer satisfied. (section 53(2)).
- 5.4 These powers are effected by giving notice to the person specified in the order under section 37(2)(a) or by notifying the applicant for the order. (section 53(1) and (2))
- 5.5 The “conditions for making the order” are not defined in section 53. The reporter is to take this to mean the conditions set out section 38, or section 39, as the case may be.

In other words, where the CPO related to section 38, the reporter must be clear that either:

1. there are no reasonable grounds to believe that **any** of the following apply:

- the child has been or is being treated in such a way that the child is suffering or is likely to suffer significant harm,
- the child has been or is being neglected and as a result of the neglect the child is suffering or is likely to suffer significant harm,
- the child is likely to suffer significant harm if the child is not removed to and kept in a place of safety, or
- the child is likely to suffer significant harm if the child does not remain in the place at which the child is staying (whether or not the child is resident there),

OR

2. the order is not necessary to protect the child from harm or from further harm.

If the reporter believes that either 1 or 2 apply, the reporter is to terminate the CPO.

- 5.6 However, if there are any reasonable grounds for the CPO and the order is necessary to protect the child from harm, even if the precise circumstances have changed since the sheriff granted the CPO, the reporter is not to terminate the CPO. It does not matter that the reporter's statement of grounds differs from the information presented to the sheriff in the CPO application.
- 5.7 The reporter is not to reassess the decision of the sheriff, as section 53 pre-supposes that the conditions for making the order were satisfied. Therefore, it is most likely that there would be further information or a change of circumstances before the reporter would terminate the CPO, but that is not exclusively the case.
- 5.8 There are no specific conditions which must be satisfied before the sheriff can include a relevant direction in a CPO. Therefore, if the reporter considers that the relevant direction is no longer required in the best interests of the child, the reporter is to vary the CPO by terminating the relevant condition. This power could be utilised, for example if the reporter considers that a non-disclosure direction is not necessary, or if the sheriff has authorised an unclear or unnecessary contact direction.
- 5.9 If the reporter terminates the CPO, or a relevant direction in the CPO, s/he must notify the sheriff who granted the order. Section 53(5).

6. Application To Sheriff To Vary Or Terminate CPO

- 6.1 An application to the sheriff for variation/termination of a CPO can only be made before the 2nd working day hearing begins or within two working days of the 2nd working day hearing. (Section 48(3))
- 6.2 The reporter cannot apply to the sheriff to terminate the order (section 48(2)) but may apply to the sheriff to vary the order (section 48(1)). The reporter's powers in section 53 are to be used where competent in preference to an application under section 48¹³.
- 6.3 The following persons may apply to the sheriff to vary or terminate the CPO:
- the child
 - a relevant person in relation to the child,
 - a person who has (or recently had) has had a significant involvement in the upbringing of the child,
 - the person who applied for the child protection order,
 - the person specified to implement the order
- 6.4 A person applying for variation or termination of a CPO must, as soon as practicable after making the application, give notice of it to the persons listed in section 49, including the reporter. This will allow the reporter the opportunity to arrange a hearing to give advice to the sheriff, see para 6.9/6.10 below.
- 6.5 The sheriff must allow the persons listed in section 51(2), including the reporter, the opportunity to make representations, prior to deciding on the variation or termination.
- 6.6 The primary respondent to the application to vary or terminate will be the applicant for the CPO, not the reporter. The reporter's role is to assist the sheriff in making a decision which promotes the best interests of the child. The reporter is to where possible attend the hearing before the sheriff, but should make his/her role clear. The reporter may speak to advice offered by a children's hearing where an advice hearing has taken place, and may provide a view in relation to the termination/variation of the CPO.

¹³ In other words, prior to the 2nd working day hearing, if the reporter wishes to terminate the order or terminate relevant directions, the reporter is to use the power in section 53 (unless an application has been made by another party under section 48). If after the 2nd working day hearing, the reporter has determined to refer the child to a hearing, but wishes to vary the order, the reporter would have to apply under section 48. However, if the reporter determines not to refer a child to a hearing in terms of section 68, the CPO will cease to have effect.

- 6.7 The application must be determined within 3 working days after the day on which it is made (S.51(3)). If not, the CPO ceases to have effect at the end of that period (S.51(4)). See Appendix 1 - Timescales and Ready Reckoner table below
- 6.8 The disposal options open to the sheriff are listed in S.51(5). The sheriff may do one of the following:-
- terminate the CPO, but only if s/he is not satisfied of the matters mentioned in sections 38(2)(a)-(d) (for an order made under S.38), or 39(2)(a)-(d) (for an order made under S.39).
 - vary the CPO. This includes varying the CPO by terminating, varying or including any direction.
 - confirm the CPO.

If the sheriff orders that the child protection order is to be terminated, the order ceases to have effect at the end of the hearing before the sheriff, S.51(6).

- 6.9 Section 50 gives the reporter the power to arrange a children's hearing to give any advice the children's hearing may consider appropriate to assist the sheriff in determining an application for variation or termination under section 48. Reporters are to arrange an advice hearing wherever practicable. As the advice hearing must be held before the hearing before the sheriff, there is a very short timescale to arrange the hearing.
- 6.10 Where a 2nd working day hearing has been arranged before the reporter has received notice of an application under section 48, the reporter is to where possible convert this hearing from a 2nd working day hearing to an advice hearing. If possible, all parties are to be given written notice of the change of purpose, but failing that, all parties are to be notified verbally. If verbal notification of the change of purpose has been made, the reporter must provide the child and relevant persons written notification of the purpose of the hearing when they arrive at the hearing centre.

7. 2nd Working Day Hearing

- 7.1 Where the CPO remains in force, and the reporter has not received notice of an application to the sheriff to terminate or vary the order under section 48, the reporter must arrange a hearing to take place.
- 7.2 The hearing must take place as follows:

- (1) If the child has been taken to a place of safety, on the second working day after the day on which the child is taken to the place of safety, section 45.
- (2) If the CPO authorised prevention of removal from a place where the child is staying, on the second working day after the day on which the CPO is made.

The reporter must notify the date, time and place of the hearing as soon as practicable. See Practice Direction 14 - Notifications and Papers.

7.3 The 2nd working day hearing has the following disposal options in terms of section 47:-

- if the hearing is not satisfied that the conditions for making the order are met, it may terminate the order;
- if the hearing is satisfied that the conditions for making the order are met, it may:
 - continue the order; or
 - continue and vary the order, including terminating, varying or including any relevant direction.

7.4 It is competent for the 2nd working day hearing to excuse the child from the CPO grounds hearing. The reporter is to draw this to the hearing's attention if necessary.

7.5 The reporter must, as soon as practicable before the beginning of the hearing give copies of the CPO, application for CPO and any report or other document relevant to the hearing's consideration to:

- the child (if old enough to understand),
- relevant persons,
- any individual other than a relevant person who appears to the reporter to have or recently to have had significant involvement in the upbringing of the child,
- the person who applied for the CPO,
- the person specified in the order to implement the CPO,
- any safeguarder
- the chief social work officer of the relevant local authority

Rule 39 of the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013. See Practice Direction 14 - Notifications and Papers.

- 7.6 The local authority papers submitted to the sheriff are part of the supporting papers for the application and will be relevant to the hearing. The reporter is to include these papers in the hearing papers unless there are exceptional reasons not to do so, such as information in the supporting papers which may place someone at some risk from a relevant person, or which could prejudice a police investigation.

If there is such information within the papers, and this is likely to cause significant harm to the child, the reporter is to make a non-disclosure request. Otherwise, the reporter is not to include the supporting documents in the papers for the hearing - instead the reporter is to ask the social worker to provide a written summary of relevant basic information in the case.

8. Reporter's Role Following 2nd Working Day Hearing

- 8.1 After the second working day hearing, the reporter's role is to make the determination required under section 66(2), that is to determine:-

- (1) whether the reporter considers that a section 67 ground applies in relation to the child, and
- (2) if so, whether the reporter considers that it is necessary for a compulsory supervision order to be made in respect of the child.

Whilst there are shorter timescales for making this determination (see 9.2 below), there is no substantive difference between a referral flowing from a CPO and any other type of referral to the reporter.

- 8.2 If the reporter determines that:

- (1) none of the section 67 grounds applies in relation to the child, or
- (2) it is not necessary for a compulsory supervision order to be made in respect of the child;

then section 68 would apply and the reporter would not refer the matter to a hearing.

- 8.3 The reporter must inform certain persons (the child, relevant person, relevant local authority, person specified in the order and others all listed in S.68(4)) of the reporter's determination and that the child will not be referred to a children's hearing. (S.68(3)).

- 8.4 The CPO ceases to have effect when the person specified in the order (or the applicant) receiving notice of the reporter's determination under S.68(3). (S.54(b)).
- 8.5 If the reporter determines that:
- (1) a section 67 ground applies in relation to the child, AND
 - (2) it is necessary for a compulsory supervision order to be made in respect of the child;
- then the reporter must arrange a grounds hearing, section 69. Where a CPO is in place, this will be referred to as the CPO grounds hearing (see below).

9. CPO Grounds Hearing (8th working day hearing)

- 9.1 The CPO grounds hearing is simply a grounds hearing but with shorter periods of notification. This hearing has all of the same disposal options as any other grounds hearing ([see Practice Direction 15 on Grounds Hearings](#)).
- 9.2 The CPO grounds hearing must be arranged before termination of the CPO on the 8th working day. This is because the CPO will cease to have effect at the end of the 8th working day starting with the earlier of:
1. the day after the child was removed to a place of safety, where the CPO authorised this (S.54(c)); or
 2. if the CPO did not authorise this, the day after the order was made (S.54(d)).
- 9.3 Note that the day on which the CPO is granted (or the day the child is removed) is NOT **included** in the calculation of days. See Appendix 1 - Timescales and Ready Reckoner table below.
- 9.4 There is flexibility for the reporter to arrange the grounds hearing before the 8th working day, but the grounds hearing will have to take place no later than the 8th working day.
- 9.5 The content of the statement of grounds and the choice of which section 67 ground is used is a matter entirely for the reporter. Even if the information or evidence has changed since the CPO was granted, if the reporter believes there is sufficient evidence of a section 67 ground and the child needs a compulsory supervision

order, the reporter may draft grounds based on the most suitable section 67 ground.

- 9.6 Notification of the CPO grounds hearing, including grounds and papers must be given as soon as reasonably practicable before the hearing. Every effort is to be made to post notification, grounds and papers at least 3 days before the hearing.
- 9.7 For a child already subject to a CSO, if the statement of grounds is accepted or established, this will trigger a review of the CSO in the usual way, and the hearing will have all of the powers under sections 138 and 139 (see Practice Direction 16 on Review Hearings).

10. Child Assessment Orders

- 10.1 Only a local authority may apply to the sheriff for a child assessment order (CAO) in respect of a child, s35(1). A CAO authorises an officer of the local authority to carry out an assessment of:
 - (a) the child's health or development, or
 - (b) the way in which the child has been or is being treated or neglected s35(2)
- 10.2 A CAO therefore extends beyond medical examinations and allows for a wider assessment of a child's health and wellbeing and the way in which they have been treated without the need for a parent to consent to the assessment on behalf of their child. However, where a child has sufficient understanding to consent to medical procedures, the child may refuse any medical examination directed as part of the order. S.35(2) and S.186.
- 10.3 The CAO may also require any person in a position to do so to produce the child to the officer (S.35(3)(a)) and authorise taking and keeping the child in a place for a period specified in the order for the purpose of carrying out the assessment (S.35(3)(b)). If the CAO authorises the latter, it may also include directions about contact between the child and any other person (S.35(3)(c)).
- 10.4 A CAO must specify the period during which it has effect, S.35(4). The CAO must begin no later than 24 hours after the order is granted, and not last for a period exceeding 3 days, (S.35(5)).
- 10.5 Before a sheriff may make CAO, the sheriff must be satisfied of the criteria set out in S.36. The sheriff may make a CPO instead of a CAO if s/he believes the conditions in S.38(2) are satisfied. (S.36(3))

- 10.6 The granting of a child assessment order is not automatically a referral to the reporter, but the applicant may also refer the child separately.

11. Application to JP

- 11.1 An application to the justice of the peace (“JP”) for an order may be made when it is not practicable to apply to the sheriff for a CPO. This is most likely to be used in remote areas.
- 11.2 This is a short term order which will terminate on the earlier of (i) 24 hours from the time the order was made or (ii) the determination by a sheriff of an application for a CPO. (S.55(5)) Therefore, it will be necessary either to apply for a CPO within 24 hours of the JP order or allow the child to go home at the end of that period.
- 11.3 Any person may apply to a JP for an order in respect of a child:
- requiring any person in a position to do so to produce the child to a specified person,
 - authorising the removal of the child by the specified person to a place of safety and the keeping of the child in that place
 - authorising the prevention of the removal of the child from any place where the child is staying (S.55(1)).
- 11.4 The reporter may be consulted prior to an application being made, but should not express a concluded view about the likelihood of the application being granted. Reporters may apply for a JP order, but should take the same approach to this as with CPOs.
- 11.5 Before making such an order the JP must be satisfied:-
- of the same conditions as for making a CPO; and
 - that it is not practicable in the circumstances for an application for a CPO to be made to or considered by the sheriff (S.55(2)).
- 11.6 As soon as practicable after the making of the order, the applicant must inform the reporter of the making of the order. S(.55(3)) The reporter must treat this as a referral (see Practice Direction 5 on Receipt and Registration of Referrals). The applicant must also inform certain other persons including relevant persons, and regulations provide the information which must be given¹⁴. The location of the place of safety and the reasons for the order being

¹⁴ Regulation 4 and 5 of The The Children's Hearings (Scotland) Act 2011 (Child Protection Emergency Measures) Regulations 2012 (“the Child Protection 2012 Regulations”)

granted may be withheld from any relevant person or person with whom the child was residing immediately before the order was taken¹⁵.

- 11.7 An order must be implemented as soon as practicable.¹⁶ The order must be implemented within 12 hours, as it will cease to have effect if it has not been implemented in that timescale (S.55(4)).
- 11.8 The specified person, or the applicant, as soon as reasonably practicable after implementation of the order, must provide the child with certain information, and allow the child to express views so far as practicable and taking account of the age and maturity of the child¹⁷. The applicant or specified person may permit contact between the child and any person, subject to any conditions considered appropriate to safeguard the welfare of the child¹⁸.
- 11.9 The reporter has the power to terminate the order, if satisfied that:
- (a) the conditions for the making of an order are no longer satisfied, or
 - (b) it is no longer in the best interests of the child for the order to continue to have effect.
- 11.10 Where an order made under section 55(2) of the Act is terminated by the Reporter by virtue of section 55(6), the Reporter must as soon as practicable inform the specified person, if different from the applicant¹⁹.

12. Constable's Power to Remove Child to Place of Safety

- 12.1 Section 56 provides a power for a police constable to remove a child to a place of safety and keep the child there if certain criteria are satisfied. This is most likely to be used in remote areas, where it is difficult to get access to a sheriff or to a JP. This statutory power is in addition to a police officer's power generally to take a child to a safe place, for example, if a parent is being arrested.
- 12.2 This is a short term provision, which lasts for only 24 hours (S.56(3)), and allows some time for a CPO to be applied for. Once granted the

¹⁵ Regulation 6 of the Child Protection 2012 Regulations

¹⁶ Regulation 3 of The Children's Hearings (Scotland) Act 2011 (Child Protection Emergency Measures) Regulations 2012 ("the Child Protection 2012 Regulations")

¹⁷ Reg 9 of the Child Protection 2012 Regulations

¹⁸ Reg 9 of the Child Protection 2012 Regulations

¹⁹ Reg 8 of the Child Protection 2012 Regulations

CPO takes precedence, (S.56(4)(a)). A child must be released from the place of safety if an application for a CPO or for an order from a JP has been made and not granted, (S.56(4)(b)).

- 12.3 Before invoking the power in S.56, the police constable must be satisfied
- of the matters mentioned in section 39(2)(a), and
 - that the removal of the child is necessary to protect the child from the harm mentioned there or from further harm, and
 - it is not practicable in the circumstances for an application for a child protection order to be made to or considered by the sheriff.
- 12.4 The police must inform the reporter as soon as practicable after a constable removes a child under this section (S.56(2)). The reporter must treat this as a referral (see Practice Direction 5 on Receipt and Registration of Referrals). The police must also inform certain other persons including relevant persons, and regulations set out the information which must be given²⁰. The location of the place of safety and the reasons for the order being granted may be withheld from any relevant person or person with whom the child was residing immediately before the order was taken²¹.
- 12.5 A constable can only continue to keep a child in a place of safety if satisfied:
- of the matters mentioned in section 39(2)(a); and
 - that it is necessary to keep the child in a place of safety to protect the child from the harm mentioned there or from further harm²².
- 12.6 The constable, as soon as reasonably practicable after implementation of the order, must provide the child with certain information, and allow the child to express views so far as practicable and taking account of the age and maturity of the child²³. The constable may permit contact between the child and any person, subject to any conditions considered appropriate to safeguard the welfare of the child²⁴.
- 12.7 The reporter may, by giving notice to the constable, require the constable to release the child if satisfied that:
- the conditions for placing the child in a place of safety under s56 are no longer satisfied, or

²⁰ Reg 10 of the Child Protection 2012 Regulations

²¹ Reg 12 of the Child Protection 2012 Regulations

²² Reg 13 of the Child Protection 2012 Regulations

²³ Reg 14 of the Child Protection 2012 Regulations

²⁴ Reg 14 of the Child Protection 2012 Regulations

- it is no longer in the best interests of the child to be kept in a place of safety (S.56(5)).

13. Short Term Refuge

- 13.1 The provisions for short term refuge remain in the Children (Scotland) Act 1995, as amended by the 2011 Act.
- 13.2 S.38 of the 1995 Act provides that a child may request refuge and if the child appears to be at risk of harm, may be provided either by the local authority or by a person who provides a care home service with short term refuge (S.38(1)).
- 13.3 There is no obligation to inform the reporter of the provision of refuge, nor does this automatically constitute a referral. However, we consider that best practice is for the person providing refuge or the local authority to consider making a referral to the reporter. There may also be a need to consider applying for a CPO.
- 13.4 Further, if a child is subject to a CSO and the circumstances leading to the short term refuge mean that there is a need to vary the CSO, the local authority is under a duty to request a review hearing. (S.131(2))
- 13.5 The child must not be provided with refuge for longer than 7 days except in exceptional circumstances when the limit is 14 days. (S.38(5)²⁵ and Reg 11 of the Refuges for Children (Scotland) Regulations 1996.)
- 13.6 As soon as reasonably practicable after providing refuge for a child, and in any event within 24 hours of such provision, the person who provides the child with refuge must inform the local authority and the “authorised officer” (a police constable authorised by the chief constable) of this and must also provide certain other information.²⁶
- 13.7 When the local authority are providing the refuge, the local authority must provide the authorised officer with this information.²⁷
- 13.8 Certain offences under S.171 of the 2011 Act in relation to assisting absconding and harbouring are disapplied by S.38(4).
- 13.9 See also Scotland's Children The Children (Scotland) Act 1995 Regulations and Guidance, Vol 1 Support and Protection for Children and Their Families, Chapter 8.

²⁵ And Refuges for Children (Scotland) Regulations 1996, Reg 11

²⁶ Refuges for Children (Scotland) Regulations 1996, Reg 8

²⁷ Refuges for Children (Scotland) Regulations 1996, Reg 8

Appendix 1 – Timescales and Ready Reckoner

Definition of "working day" – s202(1)

every day except Saturday and Sunday, 25 and 26 December and 1 and 2 January

Definition of "day"

no specific definition, but likely to mean a period of 24 hours commencing at midnight

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|------------|---|---|--|---|--|
| S.35 | Child Assessment Orders | Child Assessment Order | has effect for a period | beginning no later than 24 hours after order granted and not exceeding 3 days | Order granted Tuesday 9am, must be specified to take effect no later than Wednesday at 9am, and to have effect from then until no later than Saturday at 9am |
| S.45 | Child Protection Order | If: CPO in force, and the child has been taken to a place of safety, and PR has not received notice of application for variation or termination | Reporter must arrange for the CH to take place | on the 2nd working day after the day on which the child is taken to the place of safety | Child taken to place of safety on Friday, 2 nd working day hearing must be held on Tuesday following |
| S.46 | Child Protection Order | If: CPO in force, and the order authorises prevention of child's removal from a place and PR has not received notice of application for variation or termination PR | Reporter must arrange for the CH to take place | on the 2nd working day after the day on which the CPO is made | CPO made Thursday, 2 nd working day hearing must be held on Monday following. |
| S.48(3)(a) | Application for variation or termination of CPO | Application for variation or termination of CPO | must be made | before commencement of CH under s45 or s46 | |

| | | | | | |
|---------------------|---|---|--|--|---|
| S.48 (3)(b)) | Application for variation or termination of CPO | Application for variation or termination of CPO if CH under s 45 or s46 continues CPO | must be made | within 2 working days after the day on which the CPO is continued | CPO continued on Monday, application must be made no later than Wednesday |
| S.51 (3) | Determination of application under s48 | Sheriff | must determine the application under s48 | within 3 working days after the day on which the application is made | Application made on Wednesday, sheriff must determine no later than Monday following |
| S.51 (4) | Determination of application under s48 | CPO | ceases to have effect if application is not determined | within 3 working days after the day on which the application is made | In above example, if application not determined by Monday, CPO ceases to have effect |
| S.52 (2) | Automatic termination of CPO | Where a CPO authorises the removal of a child to a place of safety and the keeping of the child in that place CPO | ceases to have effect at the end of the following period if no attempt to implement within | the period of 24 hours beginning with the making of the CPO | CPO made at 6am Tuesday, if no attempt to implement it by 5.59am Wednesday, ceases to have effect |
| S.52 (3) | Automatic termination of CPO | Where a CPO authorises the removal of a child to a place of safety and the keeping of the child in that place CPO | ceases to have effect if the child has not been removed to a place of safety | within a period of 6 days beginning with the making of the order | As above example, attempt made to implement but not implemented by Sunday |
| S.54 S.54 (c) | Termination of CPO | Where a CPO authorises the removal of a child to a place of safety and the keeping of the child in that place CPO | ceases to have effect | on the end of the period of 8 working days beginning on the day after the child was removed to a place of safety | Child taken to POS on Friday, CPO ceases to have effect on 2 nd Wednesday following |
| S.54 (d) | | Where a CPO does not authorise the removal of a child to a place of safety and the keeping of the child in that place CPO | ceases to have effect | on the end of the period of 8 working days beginning on the day after the order was made | CPO made on Thursday, ceases to have effect on 2 nd Tuesday following |

| | | | | | |
|-------|-------------------------------------|--|---|---|--|
| S.55 | Application to Justice of the Peace | A person may apply to the JP for an order in respect of a child (a) requiring any person in a position to do so to produce the child to a specified person, (b) authorising the removal of the child by the specified person to a pos and the keeping of the child in that place (c) authorising the prevention of the removal of the child from any place where the child is staying, and the JP may make such an order in certain circumstances and if so, the order | ceases to have effect if (a) where the order authorises removal of the child to a place of safety, the child has not been taken or is not being taken to that place within the period (b) where the order authorises the prevention of removal of the child from a place where the child is staying, arrangements have not been made within period to prevent that removal, at the end of the period of | 12 hours beginning with the making of the order | Order made at 2.45am on Saturday, child must be being taken to a place of safety by 2.44pm Sunday. |
| S.55 | As above | As above | other than above ceases to have effect on | the earlier of (a) the end of the period of 24 hours beginning with the making of the order or (b) the determination by the sheriff of an application for a CPO | As above, order ceases to have effect at 2.45am on Sunday |
| Reg 3 | As above | As above | must be implemented | as soon as practicable | |
| Reg 8 | As above | When an order as above has been granted by JP, PR has power to terminate the order in certain circumstances and if so, PR | must inform the "specified person" (to be defined by further regulations), if different from the applicant | as soon as practicable | |

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|------|--|---|--|--|--|
| S.56 | Constable's power to remove a child to a place of safety (POS) | A constable may remove a child to a POS in certain circumstances, and if so | the child may not be kept in a POS for a period of | more than 24 hours (or earlier if a CPO is granted or a CPO or JP order has been applied for on the basis of the facts before the constable, and refused) | Child removed to place of safety at 1.51am Sunday. CPO must be applied for by 1.51am Monday, otherwise child must not be kept in place of safety |
|------|--|---|--|--|--|

Appendix 2 - CPO Timetable

| CPO Implemented | 2nd WD | 8th WD | Notifications, grounds and papers for 8th wd given as soon as practicable before hearing. Every effort to post (first class) at latest by |
|------------------------|--------------------------|--------------------------|---|
| Monday | Wednesday | Thursday | Monday |
| Tuesday | Thursday | Friday | Tuesday |
| Wednesday | Friday | Monday | Tuesday |
| Thursday | Monday | Tuesday | Friday |
| Friday | Tuesday | Wednesday | Friday |
| Saturday | Tuesday | Wednesday | Friday |
| Sunday | Tuesday | Wednesday | Friday |

EVERY WEEK DAY IS A WORKING DAY EXCEPT

25th and 26th December and 1st and 2nd January. Where the 2nd or 8th working days falls on these dates, adjustments will have to be made to the CPO timetable.

*Notification and grounds to be sent as soon as practicable before the hearing. Every effort is to be made to post notification and grounds no later than 3 days before the hearing (see Practice Direction 14 - Notifications and Papers).