

Practice Direction 19

Orders, Warrant, Measures

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SUMMARY

- There are 3 orders and one warrant that a children's hearing can make:
 - a compulsory supervision order (CSO)
 - a interim compulsory supervision order (ICSO)
 - a medical examination order (MEO), and
 - a warrant to secure attendance (warrant).

CSO

- A CSO is the substantive order which a hearing can make. A CSO must specify which local authority is the implementation authority and include at least one of the measures listed in section 83(2).
- The measures are, in essence:
 - a requirement that the child reside at a specified place;
 - a prohibition on disclosure of that place;
 - a movement restriction condition;
 - a secure accommodation authorisation;
 - a requirement that the implementation authority arrange medical or other examination or treatment;
 - a direction regulating contact;
 - a requirement that child comply with any other condition; and
 - a requirement that the local authority carry out specified duties.
- A CSO lasts for a year when first made and up to a year when continued.

ICSO

- An ICSO lasts for a maximum of 22 days. It must specify the implementation authority and include at least one of the measures listed in section 83(2). It can only be made for a child who is not already subject to a CSO.
- A hearing may only make a total of 3 ICSOs when a proof application is current. Thereafter the sheriff may issue further ICSOs. There is no limit to the number of ICSOs a hearing can make after grounds are accepted or established.
- An ICSO may require the child to reside in a specified place or in an unspecified place of safety, but need not do either.

Interim Variation

- A child who is subject to a CSO cannot be made subject to an ICSO. However, a hearing may vary the CSO on an interim basis. The interim variation lasts for a maximum of 22 days. There is no limit to the number of interim variations that a hearing can make.

MEO

- An MEO can be made for a child who is not already subject to a CSO where grounds have been accepted or established but before a substantive decision is made. It lasts for a maximum of 22 days. It must include at least one of the measures listed in section 87(2). This includes the option of a measure requiring a local authority to arrange a medical examination of the child, but not one requiring the local authority to arrange medical treatment. The measures that can be included in an MEO can all be included in a ICSO.

Warrant

- A children's hearing can grant a warrant, on the application of the reporter, to secure the child's attendance at a children's hearing or certain court hearings (proof applications or applications to review established grounds).

Secure Accommodation and movement restriction condition

- A movement restriction condition can be included in a ICSO or CSO (including through an interim variation of the CSO)
- A secure accommodation authorisation can be included in a warrant, MEO, ICSO or CSO (including through an interim variation of the CSO).
- A secure accommodation authorisation or movement restriction condition can only be included if other criteria are met.

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1. INTRODUCTION

- 1.1 This Practice Direction describes the orders and the warrant which can be made under the Children's Hearings (Scotland) Act 2011, and the measures which can be included in them.

It refers primarily to the functions and powers of a children's hearing, though also touches on the functions and powers of the sheriff in proof applications and applications to review established grounds.

- 1.2 The Practice Direction explains:

- compulsory supervision order (CSO)
- interim compulsory supervision order (ICSO)
- interim variation of a CSO (interim variation)
- medical examination order (MEO)
- warrant to secure attendance (warrant), and
- the available measures.

- 1.3 The relevant statutory provisions are contained in:

- The Children's Hearings (Scotland) Act 2011 (The key definitions of the orders and warrant are contained in Part 9 of the Act.)
- The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013
- Act of Sederunt (Child Care and Maintenance Rules) 1997 as amended by the Act of Sederunt (Children's Hearings (Scotland) Act 2011) (Miscellaneous Amendments) 2013.

2. COMPULSORY SUPERVISION ORDER

2.1 CSO Meaning

A CSO is the substantive order by which a children's hearing imposes compulsory measures in relation to a child. Section 83(1) defines a CSO as an order that:

- includes one or more of the measures mentioned in section 83(2),
- specifies the local authority that is responsible for giving effect to the measures included in the CSO (the "implementation authority"), and
- has effect for a period of time (the "relevant period")

2.2 CSO Measures

The measures that may be included in a CSO are set out in section 83(2). They are:

- (a) a requirement that the child reside at a specified place;
- (b) a direction authorising the person in charge of that place to restrict the child's liberty as appropriate (having regard to the measures in the order);
- (c) a prohibition on disclosure (direct or indirect) of the specified place where the child is to reside;
- (d) a movement restriction condition
- (e) a secure accommodation authorisation
- (f) a requirement that the implementation authority arrange a specified medical or other examination or treatment of the child

- (g) a direction regulating contact between the child and a person or class of person
- (h) a requirement that the child comply with any other specified condition;
- (i) a requirement that the implementation authority carry out specified duties in relation to the child.

A CSO must include at least one of the measures listed in section 83(2). If it does not, it is not a valid order.

The standard form for a CSO includes a standard measure requiring the local authority to provide supervision and support to the child. However the standard measure will not form part of the CSO unless the hearing decides to include it. The reporter is to remove the standard measure from the form unless the hearing decides to include it. When making, varying or continuing a CSO the children's hearing must consider whether to include a contact direction – section 29A.

Further information on each of the measures is contained in Section 7 of this Practice Direction.

2.3 CSO Test

The test for making a CSO is set out in the various sections of the Act that apply to different situations. However, it is the same wherever it occurs: **that the hearing is satisfied that it is necessary to make a CSO for the protection, guidance, treatment or control of the child.**

The specific situations and sections in which this test is applied are:

Situation	Section
Grounds accepted at a grounds hearing	91(3)
Hearing considering accepted or established grounds following deferral of a previous hearing or following proof proceedings	119(3)
Review hearing considering whether to vary or continue a CSO	138(4)

2.4 CSO Timescales

(i) Relevant period when making a CSO

A CSO has effect for a period of time, known as the "relevant period". The "relevant period" is defined in section 83(7). When a CSO is first made this is the period beginning with the making of the order and ending with the day one year after the day on which the order is made, or the child's 18th birthday if sooner – section 83(7)(a).

(ii) Relevant Period when continuing or varying a CSO

When a CSO is continued, the children's hearing may continue it for a period not exceeding one year – section 138(3)(c). Accordingly, a review hearing may decide to continue a CSO for one year or a period less than one year. The "relevant period" period for a continued CSO is the end of the period for which the order was last continued (or the child's 18th birthday if sooner) – section 83(7)(b).

The relevant period must always be specified in the hearing's decision and the continued CSO. If a panel member in giving a decision to continue a CSO under section 138 does not specify how long the continued CSO is to last for, the reporter is to intervene to check the intended duration.

(iii) Relevant Period when varying a CSO

A review hearing may decide to vary a CSO without continuing the CSO – section 138(3)(b). The wording of section 83(7) means that a variation does not change the end date of the CSO; the relevant period applying to the CSO can only be changed by a continuation of the CSO.

In most cases where a hearing wishes to vary a CSO, it will be appropriate to also continue the CSO. If a panel member varies a CSO without also continuing it, the reporter is to intervene to check the panel member's intention unless it is clear that the panel member does not wish the existing duration of the CSO to be extended.

(iv) Deferred review hearings

Where a review hearing defers making a substantive decision, the hearing may continue the CSO under section 139(2) until the subsequent hearing. If the CSO would otherwise expire before the subsequent hearing, a decision under section 139(2) has the effect of extending the relevant period of the CSO, but only until the subsequent hearing. However subsequent hearings may again defer making a substantive decision and continue the CSO under section 139(2).

A review hearing which defers the substantive decision may make an interim variation of the CSO under section 139(3). The hearing may both continue the CSO under section 139(2) and make an interim variation under section 139(3).

Further information on interim variation is contained in Section 4 and further information on all aspects of review hearings is contained in Practice Direction 16 - Review Hearings.

(v) Mandatory early reviews

A hearing which makes, varies or continues a CSO can itself specify when the CSO is to be reviewed – section 125. The children's hearing **must** require the CSO to be so reviewed when the order includes, or is varied to include, a movement restriction condition – section 125(2).

Where a hearing includes a secure accommodation authorisation in a CSO, the reporter must initiate a review of the CSO within 3 months – section 135. In complying with this, the reporter is to arrange the review hearing to take place within the 3 month period.

(vi) New grounds and review

Where new grounds are presented at a hearing which is also a review hearing (i.e. a review hearing required by section 137 – not a review that is only the result of the new grounds), rules 38 and 69 apply. If the new grounds are sent for proof, the hearing may continue the CSO until the subsequent children's hearing – rule 69(2). This is taken to be a continuation under section 139(2). The hearing may make an interim variation of the CSO – sections 93(5) and 94(5) as modified by section 97.

2.5 Specification of implementation authority

The hearing is obliged to specify a local authority as the implementation authority. Although it may be the “relevant local authority” for the child, it need not be. The relevant local authority is defined in section 201 as the authority in whose area the child predominantly resides or, if there is no area of predominant residence, the authority with whose area the child has the closest connection.
[See the published case practice enquiry at page 29 of this Practice Direction.]

Where a duty is imposed on a local authority by virtue of a CSO, ICSO or MEO and the authority considers that it is not the relevant local authority for the child, it may apply to the sheriff under section 166 for a review of the decision or determination to impose the duty on it.

There is also provision in sections 146 – 148 for enforcement of the implementation authority’s duties towards the child. Further information is contained in PD X on Local Authority Duties.

If it is appropriate for a different local authority to be specified as the implementation authority in a CSO, this can be achieved through a review of the CSO by a children’s hearing. A review in these circumstances is likely to be triggered by the implementation authority. The children’s hearing may vary the CSO to specify a different local authority.

3. INTERIM COMPULSORY SUPERVISION ORDER

3.1 ICSO Meaning

An ICSO is an interim order which imposes compulsory measures on a child at a stage where grounds have been presented at a grounds hearing but no substantive decision has been made.

Section 86 defines an ICSO as an order that.

- includes any of the measures that a CSO can include (see paragraph 1.2) but with the additional option that an ICSO can specify that the child is to reside at any place of safety away from the place where the child predominantly resides - section 86(2);
- specifies the implementation authority (see paragraph 2.5); and
- has effect for the relevant period (see paragraph 3.4).

An ICSO can only be made in relation to a child who is not already subject to a CSO.

Once a child is subject to a CSO, any interim measures required at any stage are dealt with by way of interim variation to the CSO – see Section 4 below.

The detailed situations in which an ICSO may be made are given in the table at paragraph 3.3.

3.2 ICSO Measures

The measures which can be included in an ICSO are the same as those which can be included in a CSO with the following differences.

- As an alternative to specifying a place of residence, an ICSO can require the child to reside in a non-specified place of safety away from the place where the child predominantly resides - section 86(2). An ICSO may therefore include:
 - a requirement to reside at a specified place,
 - a requirement to reside at a place of safety away from the place the child predominantly resides, or
 - may make no requirement in relation to residence. Where a child is required to reside in a specified place, section 143 enables the local authority to transfer the child to a different place in a case of urgent necessity.
- Where an ICSO is made by a grounds hearing which directs a proof application, the ICSO may not include a requirement for the implementation authority to arrange a specified medical or other examination of the child – section 93(6). The reporter is to take this restriction as also applying to further ICSOs made during the currency of the proof application.
- If including a secure accommodation authorisation in an ICSO, the hearing need not require the child to reside at a specified residential establishment – section 86(4).

When making an ICSO, the hearing must consider whether to include a contact direction in the order – section 83(3) read with section 86(4).

As with a CSO, an ICSO must include at least one measure. If it does not, it is not a valid order. The standard form for an ICSO developed for use under the 2011 Act includes a standard measure. The wording is the same as the standard measure in a CSO – see paragraph 2.2 above. The reporter is to remove the standard measure from the form if the hearing does not decide to include it.

3.3 ICSO Test

An ICSO can be made by either a hearing or a sheriff in different circumstances. The test to be applied varies according to those circumstances. Generally, the test requires an element of urgency for an ICSO to be made for the first time, but this element of urgency is not specified in the test for making subsequent ICSOs. However, in practice, for a further ICSO to be justified it is likely that some degree of urgency or immediacy will be required.

Situation	Section(s)	Test for making ICSO
Child fails to attend a grounds hearing having not been excused from attending, and the hearing directs the reporter to arrange another grounds hearing	95(4)	for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that an ICSO be made

Situation	Section(s)	Test for making ICSO
Grounds are accepted at a grounds hearing, but a substantive decision is deferred	92(2)	for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that an ICSO be made
At a grounds hearing , grounds are referred to court for proof	93(5) and 94(5)	for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that an ICSO be made
A hearing is considering the need for a further ICSO, where an application for proof has been made but not disposed of	96(3)	for the protection, guidance, treatment or control of the child it is necessary that an ICSO be made
A deferred hearing or a hearing considering established grounds decides to defer a substantive decision, where no ICSO was in force immediately prior to that hearing	120(3)	for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that an ICSO be made
A deferred hearing or a hearing considering established grounds decides to defer (again) a substantive decision, where an ICSO was in force immediately prior to that hearing	120(5)	for the protection, guidance, treatment or control of the child it is necessary that an ICSO be made
Application is made to the sheriff for an extension, or further extension, (with or without variation) of an existing ICSO, where an application for proof has been made but not disposed of	98(4) and 99(4)	for the protection, guidance, treatment or control of the child it is necessary that the ICSO be (further) extended (or extended and varied)
<ul style="list-style-type: none"> • The sheriff makes an ICSO where a child is not already subject to an ICSO and • an application for proof has been made but not disposed of 	100(2)	for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that an ICSO be made
<ul style="list-style-type: none"> • The sheriff determines a proof application and grounds are established, <i>or</i> there is an established or accepted ground to be dealt with at a subsequent hearing, and • there was no ICSO in force immediately before that determination 	109(3)	for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that an ICSO be made

Situation	Section(s)	Test for making ICSO
<ul style="list-style-type: none"> The sheriff determines a proof application and grounds are established, or there is an established <i>or</i> there is an accepted ground to be dealt with at a subsequent hearing, and there was an ICSO in force immediately before that determination 	109(5)	for the protection, guidance, treatment or control of the child it is necessary that an ICSO be made
<ul style="list-style-type: none"> There is a section 110 review of established grounds, and the sheriff finds that an existing ground or a new ground is established 	115(3) and 117(3)	for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that an ICSO be made

3.4 ICSO Timescales

(i) Relevant period

An ICSO has effect for a maximum of 22 days at a time. The detailed definition given in section 86(3) defines the “relevant period” for an ICSO as the period beginning with the making of the order and ending with whichever of the following first occurs:

- the next children’s hearing;
- the disposal by the sheriff of a proof application (or application to review established grounds);
- a day specified in the ICSO;
- where the ICSO has not been extended by the sheriff under section 98 or 99, the expiry of the period of 22 days beginning on the day the order is made;
- where the ICSO has been extended by the sheriff (with or without variation) under section 98 or 99, the expiry of the period of 22 days beginning on the day the order is extended.

(ii) Proof applications

Where a proof application has been made but not disposed of, and the grounds hearing made an ICSO for the child, the hearing may grant 2 further ICSOs (section 96(4)). During the currency of the 3rd ICSO that a hearing can make, the reporter may apply to the sheriff for an extension (with or without variation) of the ICSO. The application is made under section 98 for a first extension and section 99 for any further extensions. There is no statutory limit on the number of extensions which may be granted by the sheriff at this stage. However, as the “relevant period” for an ICSO is defined in section 86(3), it can have effect for a maximum of 22 days at a time.

Where no ICSO was made by the grounds hearing, the sheriff may make an ICSO at any stage during the proof application - section 100.

Further information on ICSOs during proof applications is contained in Practice Direction 23 on Court Applications.

(iii) Conclusion of proof application

An ICSO ceases to have effect on conclusion of a proof application. In particular:

- Where the reporter withdraws a proof application and there were no other grounds accepted at the grounds hearing, any ICSO in relation to the child ceases to have effect – section 107(4).
- Where the sheriff disposes of a proof application, the ICSO ceases to have effect whatever the Sheriff's decision.

However the sheriff may make a further ICSO under section 109(5) to cover the period until the next children's hearing where

- grounds are established or
- there were other grounds accepted at the original grounds hearing.

If the child was not already subject to an ICSO, the sheriff may make an ICSO under section 109(3).

If the sheriff makes an ICSO under section 109 the usual relevant period will apply – with one significant exception - and the reporter is to arrange the children's hearing to take place within 22 days.

Where the sheriff's ICSO requires the child to reside in a place of safety (rather than a specified place or no requirement regarding residence) section 109(7) provides that the children's hearing must be arranged to take place **no later than the third day after the day on which the child begins to reside at the place of safety**.

The reporter is to take the day on which the sheriff makes the ICSO as the day on which the child begins to reside in the place of safety. The first day of the 3 days is the following day. (Therefore if the sheriff makes the ICSO on a Tuesday, the hearing must take place on or before the Friday.) The calculation is based on days, **not** working days.

(iv) Accepted or established grounds

Once grounds are accepted and/or established, children's hearings may continue to make ICSOs for the child until a substantive decision is made – section 120. In these circumstances the maximum of 3 ICSOs which applies pre-proof does **not** apply and there is no maximum number imposed.

4. INTERIM VARIATION OF A CSO

4.1 Interim Variation Meaning

An interim variation of a compulsory supervision order is not a separate order under the Act but is a variation of an existing CSO which has effect on an interim basis. It plays the equivalent role for a child subject to a CSO as an ICSO plays for a child who is not, and generally speaking can be made in similar circumstances.

The primary provisions relating to interim variation are found in Part 13 of the Act, which relates to review hearings. There are also provisions for interim variation in

Part 9 (relating to grounds hearings and interim measures when grounds have been sent for proof) and Part 10 (relating to proceedings before the sheriff). For a child already subject to a CSO, interim variation takes the place of an ICSO through modification of relevant provisions as set out in sections 97 and 118 respectively. Accordingly the statutory framework is fairly complex.

An interim variation is defined in section 140 as “a variation of the CSO having effect for the relevant period.” The relevant period is defined in section 140(4) – see paragraph 4.5. An interim variation of a CSO cannot change the relevant period of the CSO itself, and so cannot change the duration of the CSO.

The table in paragraph 4.4 sets out in detail the circumstances in which an interim variation may be made, and the statutory basis for this in each situation.

4.2 Interim Variation Measures

The measures listed in section 83(2) for a CSO remain relevant when there is an interim variation. However, section 140 makes the following modifications:

- an interim variation may vary the CSO so that instead of specifying a named place of residence, the order specifies that the child is to reside at any place of safety away from the place where the child predominantly resides – see section 140(2). Therefore a CSO as varied under an interim variation:
 - may include a requirement to reside at a specified place (where a child is required to reside in a specified place, section 143 enables the local authority to transfer the child to a different place in case of urgent necessity – Practice Direction 16 - Review Hearings.
 - may include a requirement to reside at a place of safety away from the place the child predominantly resides, or
 - may make no requirement in relation to residence.
- Where an interim variation is made by a grounds hearing which directs a proof application, the interim variation may not include a requirement for the implementation authority to arrange a specified medical or other examination of the child – see section 93(6). The reporter is to take this restriction as also applying to further interim variations made during the currency of the proof application.
- If including a secure accommodation authorisation through an interim variation, the hearing need not require the child to reside at a specified residential establishment – section 140(3).

4.3 Interim Variation Test

An interim variation can be made by either a hearing or a sheriff in different circumstances and the test to be applied varies according to those circumstances. Generally, the test requires an element of urgency for an interim variation to be made for the first time. There is inconsistency as to whether an element of urgency is required for subsequent interim variations after the first, as illustrated in the table below. However, in practice, for a further interim variation to be justified it is likely that some degree of urgency or immediacy will be required.

Situation	Section(s)	Test for making interim variation
Child fails to attend a grounds hearing having not been excused from attending, and the hearing directs the reporter to arrange another grounds hearing	95(4) as modified by section 97	for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that the CSO be varied
Grounds are accepted at a grounds hearing, but a substantive decision is deferred	91(2) as substituted by section 97(4), read with section 139(3)	for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that the CSO be varied
At a grounds hearing, grounds are referred to court for proof	93(5) and 94(5) as modified by section 97	for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that an interim variation be made
A hearing is considering the need for a further interim variation, where an application for proof has been made but not disposed of	96(3) as modified by section 97	for the protection, guidance, treatment or control of the child it is necessary that a further interim variation be made
A review hearing defers making a substantive decision (if the decision is deferred more than once, the same test applies each time the decision is deferred)	139(3)	for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that the CSO be varied
<ul style="list-style-type: none"> • The sheriff makes an interim variation where a child is not already subject to an interim variation and • an application for proof has been made but not disposed of 	100(2) as modified by section 118	for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that an interim variation be made
<ul style="list-style-type: none"> • The sheriff determines a proof application and grounds are established, or there is an established or accepted ground to be dealt with at a subsequent hearing, and • there was no interim variation in force immediately before that determination 	109(3) as modified by section 118	for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that an interim variation be made

Situation	Section(s)	Test for making interim variation
<ul style="list-style-type: none"> The sheriff determines a proof application and grounds are established, or there is an established or accepted ground to be dealt with at a subsequent hearing, and there was an interim variation in force immediately before that determination 	109(5) as modified by section 118	for the protection, guidance, treatment or control of the child it is necessary that a further interim variation be made
<ul style="list-style-type: none"> There is a section 110 review of established grounds, and the sheriff finds that an existing ground or a new ground is established 	115(3) and 117(3), both as modified by section 118	for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that an interim variation be made

4.4 Interim Variation Timescales

(i) Relevant period

An interim variation lasts for a maximum of 22 days at a time. Section 140(3) defines the “relevant period” for an interim variation as the period beginning with the variation of the order and ending with whichever of the following first occurs:

- the next children’s hearing;
- the disposal by the sheriff of a proof application (or application to review established grounds);
- a day specified in the variation;
- the expiry of the period of 22 days beginning on the day the order is varied.

(ii) Proof applications

Where a proof application has been made but not disposed of, and the grounds hearing made an interim variation, further interim variations may be made by a hearing until the application is determined at court. There is no limit on how many interim variations may be made by a hearing - section 97(6).

Where no interim variation was made by the grounds hearing the sheriff may make an interim variation during the proof application - section 100 as modified by section 118.

(iii) Conclusion of Proof Application

An interim variation comes to an end on conclusion of a proof application. In particular:

- Where a proof application is withdrawn at court and there were no other grounds accepted at the grounds hearing, any interim variation will cease to have effect – section 107(4) as modified by s118. The CSO itself will continue to have effect.
- Where the sheriff disposes of a proof application, the interim variation ceases to have effect whatever the Sheriff’s decision.

However the sheriff may make an interim variation under section 109(5) (as modified by section 118) to cover the period until the next children's hearing where:

- grounds are established or
- there were other grounds accepted at the original grounds hearing.

If the child was not already subject to an interim variation, the sheriff may make an interim variation under section 109(3) (as modified by section 118).

If the sheriff makes an interim variation under section 109 (as modified by section 118) the usual relevant period will apply – with one exception - and the reporter is to arrange the children's hearing to take place within 22 days.

Where the sheriff's interim variation requires the child to reside in a place of safety (rather than a specified place or no requirement re residence) section 109(7) requires that the children's hearing must be arranged to take place **no later than the third day after the day on which the child begins to reside at the place of safety.**

The reporter is to take the day on which the sheriff makes the interim variation as the day on which the child begins to reside in the place of safety. The first day of the 3 days is the following day. (Therefore if the sheriff makes the interim variation on a Tuesday, the hearing must take place on or before the Friday). The calculation is based on days, **not** working days.

(iv) Accepted or established grounds

Where grounds are accepted at the grounds hearing for a child already subject to a CSO, the grounds hearing then becomes a review hearing – see section 97(4). Similarly, when grounds are established at court, the subsequent hearing is a review hearing – see section 118(4). Hearings may continue to make interim variations until a substantive decision on the review is made. If the CSO would otherwise expire before the substantive decision is made, the hearing should consider continuing the CSO under section 139(2) to maintain it in force.

5. MEDICAL EXAMINATION ORDER

5.1 MEO Meaning

A MEO is an interim order which can be made by a hearing for a child who is not already subject to a CSO when grounds have been accepted or established but before a substantive decision is made - see sections 92(3) and 120(6). It cannot be made at an earlier stage, for example, when a hearing refers grounds to court for proof, and it is not an option available to a review hearing.

Section 87 defines a MEO as an order authorising for the relevant period any of the measures in section 87(2).

There is significant overlap between a MEO and an ICSO. All of the measures available under a MEO may be included in an ICSO, which may also include a number of additional measures.

5.2 MEO Measures

A MEO must include at least one of the measures listed in section 87(2) or it is not a valid order:

- (a) a requirement that the child attend or reside at a specified clinic, hospital or other establishment;
- (b) a requirement that a specified local authority arrange a specified medical examination of the child;
- (c) a prohibition on disclosure (direct or indirect) of the specified place where the child is to reside;
- (d) a secure accommodation authorisation;
- (e) a direction regulating contact between the child and a person or class of person;
- (f) any other specified condition appearing to the children's hearing to be appropriate for the purposes of ensuring that the child complies with the order.

Notwithstanding the name of the order, section 87 does **not** require a MEO to include a measure requiring a medical examination of the child to be arranged in terms of section 87(2)(b).

While a MEO may authorise medical examination of the child, there is no provision for it to include a measure authorising medical treatment. This is in contrast to an ICSO, which can be made at the same stage of proceedings, and which may authorise both medical examination and medical treatment of the child.

A MEO may include a contact direction but there is no express requirement for the hearing to consider whether to include one.

A MEO may include a secure accommodation authorisation but may not include a movement restriction condition.

5.3 MEO Test

The test for making a MEO is that the hearing considers that it is necessary to make a MEO for the purpose of obtaining any further information, or carrying out any further investigation, that is needed before the subsequent children's hearing – sections 92(3) and 120(6).

5.4 MEO Timescales

A MEO has effect for a maximum of 22 days at a time. The "relevant period" for a MEO is defined in section 87(5) as the period beginning with the making of the order and ending with whichever of the following first occurs:

- the beginning of the next children's hearing;
- a day specified in the order;
- the expiry of the period of 22 days beginning on the day on which the order is made.

It is competent for a further MEO to be made by subsequent children's hearings if the substantive decision is further deferred – section 119(2) read with section 120(6). There is no overall limit on the length of time a child may be subject to a series of MEOs.

6. WARRANT TO SECURE ATTENDANCE

6.1 Warrant Meaning

A warrant to secure attendance is defined in section 88 as a warrant effective for the relevant period, authorising an officer of law to:

- search for and apprehend a child;
- take the child to, and detain the child in, a place of safety;
- bring the child before the relevant proceedings;
- so far as necessary for the execution of the warrant, break open shut and lockfast places.

In addition the warrant may:

- prohibit disclosure of the place of safety, whether directly or indirectly, to any person specified in the warrant - section 88(1)(b)
- include a secure accommodation authorisation – section 88(2).

6.2 Warrant Test

Section 123 empowers a children's hearing to grant a warrant to secure attendance on the application of the Principal Reporter. This may be done where:

- a children's hearing has been or is to be arranged for a child, or a court hearing is to take place under Part 10 of the Act, and
- the warrant is required to secure the child's attendance at the forthcoming children's hearing or court hearing.

The warrant may only be granted on cause shown, and it will be for the reporter to set out reasons why the warrant should be granted. If the reporter has not made an application for a warrant and the hearing indicates it would like the reporter to consider making an application, the reporter is to consider the matter. The reporter is not obliged to make an application. The reporter may request an adjournment to consider the matter if appropriate. If the reporter does not make an application, the hearing cannot issue the warrant.

A warrant to secure attendance may also be granted by the sheriff in various circumstances to secure the child's attendance at court or at a subsequent children's hearing. In general a warrant may be issued by the sheriff where either a child has not attended a scheduled court hearing or the sheriff is satisfied that there is reason to believe that the child would not otherwise attend the relevant children's hearing or court hearing.

The detailed circumstances, relevant sections of the Act and timescales are set out in para. 6.3 below.

6.3 Warrant Timescales

The following table sets out the period for which a warrant is effective. However, rule 17 provides a timescale for the reporter to arrange a hearing once the child is detained. That timescale is the first working day after the child was detained, wherever practicable. In practice, where the child was first detained on a working day, the reporter is to arrange the hearing for that day, wherever practicable.

Situation	Section	Relevant period for warrant
Warrant issued by children's hearing under s.123 to secure attendance at children's hearing or proof proceedings at court	88(4)(a)	begins with granting of warrant, ends with earlier of: (i) beginning of hearing or court proceedings for which warrant granted; or (ii) expiry of 7 days beginning with day on which child is first detained in pursuance of warrant In terms of Rule 17(2), the reporter must, wherever practicable, arrange the children's hearing to take place on the first working day after the child was first detained in pursuance of the warrant.
Warrant issued by sheriff under s.103(7), (proof is continued to another date and sheriff is satisfied that the child will not attend)	88(4)(b)	begins with granting of warrant, ends with earlier of: (i) beginning of continued court hearing; or (ii) expiry of 14 days beginning with day on which child is first detained in pursuance of warrant
Warrant issued by sheriff under s.103(5) (child does not attend court for hearing of proof application) or s.112(4) (sheriff satisfied child will not attend court for review of grounds determination)	88(4)(c)	begins with granting of warrant, ends with earlier of: (i) beginning of proceedings for which warrant granted; or (ii) expiry of 14 days beginning with day on which child is first detained in pursuance of warrant
Warrant issued by sheriff under ss.109(6), 115(4), 117(4) or 156(3)(e), to secure attendance at a subsequent children's hearing	88(4)(d)	begins with granting of warrant, ends with earlier of: (i) beginning of hearing for which warrant granted; or (ii) expiry of 7 days beginning with day on which child is first detained in pursuance of warrant

7. SECTION 83(2) MEASURES

The inclusion of any measure within an order must be capable of justification. Some measures have specific statutory criteria attached to them, while others do not. Section 28 requires a children's hearing to be satisfied that in making, continuing or varying an order or warrant it would be better for the child if the order were in force than not. A similar approach is appropriate for each measure within an order or warrant and will help ensure that hearing decisions are compliant with Article 8 of the European Convention on Human Rights.

(a) Requirement to reside at a specified place

Rule 80 provides that a children's hearing may not make a CSO which includes (or vary a CSO to include) a requirement for the child to reside under the charge and control of a person other than a relevant person unless:

- the hearing has received and considered a report or information from the local authority or implementation authority giving the authority's recommendations on the child's needs and the suitability to meet those needs of both the place where the child is to reside and the person who will have charge or control of the child; and
- the local authority or implementation authority have confirmed that in compiling the report they have complied with the requirements of regulations 3 and 4 of the Looked After Children (Scotland) Regulations 2009.

There is no equivalent to rule 80 for an ICSO.

It is not explicitly stated whether rule 80 applies to an interim variation of a CSO. However, it would appear that the rule *does* apply to a decision of a children's hearing to make an interim variation that includes a requirement for the child to reside under the charge and control of a person other than a relevant person.

Rule 80 does not apply a decision of a sheriff to include such a requirement in an interim variation at the conclusion of proof proceedings.

(b) Direction authorising appropriate restriction of liberty

If including in an order a requirement that the child reside at a specified place, the hearing may also include a direction authorising the person in charge of the place to restrict the child's liberty to the extent that the person considers appropriate having regard to the measures included in the order. This measure does not add to the powers otherwise available to residential establishments, and there is no need nor benefit to a hearing including such a measure.

(c) Prohibition on disclosure (directly or indirectly) of place required to reside

Where an order includes a requirement that the child is to reside at a specified place, the hearing may also include a prohibition on the disclosure of the place. The prohibition applies to direct or indirect disclosure. It is expected that the hearing will specify the persons to whom disclosure is not to be made.

Indirect disclosure is to be taken as meaning the place of residence being ascertainable from other information such as name of carers, name of school etc. When a hearing includes a prohibition on the disclosure of a place, the reporter is to identify the specific information (for example the name of the school) which is not to be

disclosed in order to prevent indirect disclosure. All SCRA staff are then to ensure that this information is not disclosed.

Practice Direction 4 on Non-Disclosure contains further information about all aspects of non-disclosure.

(d) Movement restriction condition

A movement restriction condition (MRC) may be included in a CSO or ICSO. An MRC is defined in section 84 as:

- a restriction on the child's movements in a way specified in the MRC, and
- a requirement that the child comply with arrangements specified in the MRC for monitoring compliance with the restriction.

The test for making a MRC is set out in section 83(4) (read with section 86(4) for an ICSO). A MRC can be included in a CSO or ICSO only where one or more of the following conditions in section 83(6) applies **and** the children's hearing, or sheriff, is satisfied that it is necessary to include a MRC in the order:

- that the child has previously absconded and is likely to abscond again and, if the child were to abscond, it is likely that the child's physical, mental or moral welfare would be at risk,
- that the child is likely to engage in self-harming conduct,
- that the child is likely to cause injury to another person.

When a children's hearing makes or continues a CSO which includes a MRC, or varies a CSO to include a MRC, the hearing must specify under section 125 when the CSO to be reviewed.

When a children's hearing makes or continues a CSO which includes a MRC, varies a CSO to include an MRC, or makes an ICSO which includes a MRC, the MRC must:

- include a requirement regarding the place at which the child is to reside;
- state the days of the week during which the child is required to remain at that place, and the period or periods when the child is required to remain there, which period or periods must not exceed 12 hours in any one day;
- state the period for which the MRC is to have effect, which must not exceed 6 months;
- designate a responsible local authority officer or any person employed or otherwise instructed by the implementation authority to carry out certain functions¹; and
- any person² whose services are secured to monitor compliance with the condition.³

Further details on the operation of MRCs are contained in Practice Direction X on Movement Restriction Conditions.

¹ The functions are stated in regulation 4(2) of The Children's Hearings (Scotland) Act 2011 (Movement Restriction Conditions) Regulations 2013.

² In practice, a company providing an electronic monitoring service.

³ Regulations 4 and 6 of The Children's Hearings (Scotland) Act 2011 (Movement Restriction Conditions) Regulations 2013.

(e) Secure accommodation authorisation

A secure accommodation authorisation (SAA) may be included in a CSO, ICSO, MEO or warrant. Section 85 defines a SAA as an authorisation enabling the child to be placed and kept in secure accommodation within a residential establishment.

CSO

The test for making an SAA in a CSO is set out in section 83(5) of the 2011 Act. A SAA can be included in a CSO only if:

- the order contains a measure requiring the child to reside at:
 - a residential establishment which contains both secure accommodation and accommodation which is not secure accommodation, or
 - two or more residential establishments, one of which contains accommodation which is not secure accommodation,
- one or more of the conditions mentioned in section 83(6) applies, **and**
- having considered the other options available (including a movement restriction condition) the children's hearing or, as the case may be, the sheriff is satisfied that it is necessary to include a secure accommodation authorisation in the order.

The conditions mentioned in section 83(6) are:

- that the child has previously absconded and is likely to abscond again and, if the child were to abscond, it is likely that the child's physical, mental or moral welfare would be at risk,
- that the child is likely to engage in self-harming conduct,
- that the child is likely to cause injury to another person.

If a CSO includes an SAA, the Principal Reporter must initiate a review of the order before the end of the period of 3 months beginning with the day on which the order is made, varied or continued – section 135. The reporter is to arrange the hearing to take place within the 3 month period.

ICSO

The test in section 83(5) applies to inclusion of an SAA in an ICSO **except** that there is no requirement for the order to require the child to reside at a specified residential establishment – see section 86(4).

Interim variation

Where a CSO is varied on an interim basis, the test in section 83(5) applies, **except** that there is no requirement for the order to require the child to reside at a specified residential establishment – see section 140(3).

MEO

In terms of section 87(3), a MEO may include an SAA only if:

- the order authorises the keeping of the child in a residential establishment,
- one of the conditions mentioned in section 87(4) applies (these are exactly the same as the conditions in section 83(6) , and
- having considered the other options available, the children's hearing is satisfied that it is necessary to include an SAA in the order.

Warrant

In terms of section 88(2), an warrant to secure attendance may include an SAA only if:

- the warrant authorises the keeping of the child in a residential establishment,
- one of the conditions mentioned in section 88(3) applies, and
- having considered the other options available, the children's hearing or sheriff is satisfied that it is necessary to include an SAA in the warrant.

The conditions mentioned in section 88(3) are exactly the same as those specified in section 83(6).

A warrant authorises an officer of law to detain the child in a place of safety. The definition of place of safety in section 202 includes a residential establishment provided by a local authority. Therefore if the child is to be detained in secure accommodation in a residential establishment other than one provided by a local authority, this will need to be specified in the warrant. It may be good practice to specify the residential establishment in any warrant authorising secure accommodation.

Further information about secure accommodation is contained in Practice Direction 20 on Secure Accommodation.

(f) Requirement to arrange medical examination or treatment

The requirement is on the implementation authority to arrange medical or other examination or treatment. The hearing must specify the examination or treatment within the order. Medical is defined as including psychological – section 83(8). Where the child has capacity to consent, the examination or treatment can only be carried out with the child's consent - section 186.

Where an ICSO or interim variation is made by a grounds hearing which directs a proof application, the ICSO or interim variation may not include a requirement for the implementation authority to arrange a specified medical or other examination of the child – sections 93(6) and 97(5). The reporter is to take this restriction as also applying to further ICSOs or interim variations made during the currency of the proof application.

A MEO may authorise medical examination of the child but there is no provision for it to authorise medical treatment.

It is not known whether the medical profession will view the requirement as replacing parental consent where the child does not have capacity to consent.

(g) Direction regulating contact

A children's hearing or sheriff must consider whether to include a contact direction when making a CSO – section 83(3).

A hearing must consider whether to include a contact direction when varying or continuing a CSO – section 138(5).

A hearing must consider whether to include a contact direction when making an ICSO – sections 83(3) and 86(4) – or an interim variation of a CSO – sections 83(3), 86(4) and 97(5).

A hearing may include a contact condition in an MEO but is not obliged to consider one. There is no provision for including a contact direction in a warrant.

(h) Requirement that child comply with a condition

This provides wide scope for the hearing to identify specified conditions with which the child must comply. The measure must be framed in the form of a requirement on the child. This can include ‘The child is to [specify required action]’.

(i) Requirement that implementation authority carry out specified duties

This provides wide scope for the hearing to identify specified duties with which the child must comply. The measure must be framed in the form of a requirement on the implementation authority, for example, “The implementation authority will [specify required action]”. The standard measure is a requirement of this type.

Further information about specific duties being placed on the implementation authority is contained in Practice Direction 18 on Completion of Forms.

8. OTHER RELEVANT MATERIAL

Practice Direction 4 on Non-Disclosure
Practice Direction 14 on Notifications and Papers
Practice Direction 15 on Grounds Hearings
Practice Direction 16 on Review Hearings
Practice Direction 18 on Completion of Forms
Practice Direction 20 on Secure Accommodation
Practice Direction 23 on Court Applications