

Practice Direction 30

Local Authority Duties

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SUMMARY

Referral

- A local authority has a duty to refer a child in its area to the reporter with all relevant information, where it considers that a CSO *might* be necessary.
- The reporter may require the local authority to provide a report on the child, and must do so if arranging a grounds hearing and no report was sought previously.

Implementation and Relevant Authorities

- The implementation authority is the local authority specified in a CSO or an ICSO.
- The 'relevant local authority' for a child is the local authority in whose area the child predominantly resides or, where the child does not predominantly reside in a particular local authority area, the local authority with whose area the child has the closest connection.
- If a local authority which has duties imposed on it by a CSO, ICSO or MEO is satisfied that it is not the relevant local authority for the child, the authority may apply to the sheriff. The sheriff will determine which is the relevant local authority and vary the order accordingly.
- Local authorities should seek to reach agreement as to who is the relevant local authority. The implementation authority should require a review hearing if change is appropriate, before deciding whether to make an application to the sheriff.

Review Hearings

- The implementation authority has a duty to require a review hearing to be arranged in certain circumstances.
- When arranging a review hearing, the reporter must require the implementation authority to provide any reports the authority has prepared and may require a report on the child generally or on any particular matter.

Duties arising from a Hearing's Decision

- The implementation authority has duties towards the child as a looked after child.
- The implementation authority may be required to carry out specified duties and/or to arrange specified medical or other examination or treatment of the child (examination cannot be required during a proof application).

- An MEO may require a specified local authority to arrange specified medical examination of the child (an MEO cannot be made during a proof application).
- The implementation authority is responsible for giving effect to a CSO and for giving effect to the measures in a CSO or ICSO.

Enforcement

- A children's hearing can institute enforcement action against an implementation authority for breach of certain duties, in particular failure to give effect to a CSO or failure to comply with any requirements imposed on it by a CSO.
- The enforcement process has four distinct stages and full details are set out in the Appendix.

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1. Introduction

This Practice Direction deals with the main responsibilities of a local authority as they relate to the reporter and children's hearings. It covers referral, meaning of 'implementation' and 'relevant' authority, reviews, other duties, and the enforcement process for certain duties. The Appendix sets out the details of the enforcement process.

2. Duties applying to a Local Authority re Referral to the Reporter

2.1 Section 60 of the Children's Hearings (Scotland) Act 2011 places obligations on a local authority for any child in its area. The local authority must make all necessary inquiries into the child's circumstances, where the local authority considers that it is **likely** that:

- the child is in need of protection, guidance, treatment or control, and
- it **might** be necessary for a compulsory supervision order to be made in relation to the child.

Where the local authority considers that the above criteria apply, it must refer the child to the reporter and provide the reporter with any information it has about the child.¹

2.2 Where the reporter has received a referral in relation to a child from any source, the reporter may **require** a local authority to provide a report on the child generally, or on any particular matter specified by the reporter. Section 66(4).

2.3 The local authority may include in the report information given to the local authority by another person. Section 66(5).

2.4 If the reporter decides to arrange a grounds hearing:

- where the reporter has requested a report under section 66(4), the reporter may request additional information from the local authority – section 69(4);
- where the reporter has not already requested a report under section 66(4), the reporter **must** require a local authority to give the reporter such a report – section 69(5).²

¹ The CHIP Guidance on Referral to the Reporter provides further information for anyone making a referral.

² Rule 80 provides that a hearing may not make or vary a CSO requiring a child to reside at a place where the child would be under the charge or control of a person who is not a relevant person unless the hearing has considered a report provided by the local authority or implementation authority. This report must provide recommendations on the needs of the child, the suitability to meet those needs of the place or places in which the CSO requires the child to reside and the suitability to meet those needs

3. Implementation Authority and Relevant Local Authority

- 3.1 When a children's hearing makes, varies or continues a CSO or makes an ICSO it must specify in the order the local authority which is to be responsible for giving effect to the order. The local authority so specified becomes the "implementation authority". Sections 83(1)(b) and 86(1)(b).
- 3.2 Relevant local authority is defined in Section 201(1) of the 2011 Act as the local authority in whose area the child predominantly resides, or, where the child does not predominantly reside in the area of a particular local authority, the local authority with whose area the child has the closest connection.
- 3.3 For the purposes of determining the area in which the child predominantly resides, no account is to be taken of any period of residence in a residential establishment. Section 201(2)
- 3.4 For the purpose of determining the local authority with whom the child has the closest connection (where the child does not predominantly reside in the area of any local authority) no account is to be taken of any connection with an area that relates to a period of residence in a residential establishment. Section 201(3)³.
- 3.5 If a local authority which has duties imposed on it by a CSO, ICSO or MEO is satisfied that it is not the relevant local authority for the child, it may apply to the sheriff under section 166 and the sheriff must determine which local authority is the relevant local authority.⁴ If the sheriff determines that a different local authority is the relevant local authority, the sheriff must vary the order to reflect this.⁵ The sheriff has no power under section 166 to vary the terms of order other than to vary the name of the implementation authority or specified authority.
- 3.6 However, best practice where the implementation authority believes a different local authority is the relevant local authority, is for the two local authorities involved to communicate with each other and try to reach agreement as to which of them is the relevant local authority.⁶ Reporters are to promote this approach in local partnership working.

of the person who is to have charge or control over the child. The local authority must also confirm that in compiling their report they have complied with regulations 3 and 4 of the Looked After Children (Scotland) Regulations 2009.

³ In a section 167 Application by East Renfrewshire Council, the Sheriff Appeal Court found that the section 201(3) excludes a connection which arises directly from the residence in the residential establishment but does not exclude a connection that arises for other reasons. See 2016] SAC (Civ) 14

⁴ An application may be made whether the order being challenged was made by a children's hearing or a sheriff.

⁵ Section 166(8)(d)

⁶ See section 1 of An Operational Framework between Social Work, Children's Hearings and the Reporter agreed February 2014

- 3.7 If the implementation authority continues to believe that a different local authority is the relevant local authority - and that the CSO therefore requires to be varied - the implementation authority must request a review hearing, section 131(2)(a). The obligation to give effect to the measures included in the order remains with the implementation authority specified in the CSO until a children's hearing (or sheriff) makes a decision to specify a different local authority.
- 3.8 Any agreement between the two local authorities will be helpful for the hearing in determining which authority to specify as implementation authority, but such an agreement is not binding on the hearing.⁷
- 3.9 If the implementation authority makes an application to the sheriff, the reporter plays no direct role in the proceedings under Section 166, and is not one of the parties to receive notice of the application.⁸ However, the sheriff may require the reporter to lodge a copy of the decision and reasons of the children's hearing which imposed the duty.⁹
- 3.10 In determining the application, the sheriff may hear evidence from those listed in section 166(4). The reporter is not listed as someone from whom the sheriff may hear evidence.
- 3.11 A local authority, the child and any relevant person can appeal by stated case to the Sheriff Appeal Court within 28 days of the sheriff's decision, section 167. Such an appeal is to be intimated on the reporter by the party lodging the appeal.¹⁰ The decision of the Sheriff Appeal Court is final.¹¹

⁷ See section 1 of An Operational Framework between Social Work, Children's Hearings and the Reporter agreed February 2014

⁸ The parties to receive notice of an application for review are specified in Rules 3.58A & 3.58B of the Act of Sederunt (Childcare and Maintenance Rules) 1997 as amended by the Act of Sederunt (Child Care and Maintenance Rules) (Amendment) (Children's Hearing (Scotland) Act 2011) 2013.

⁹ Where the duty to be reviewed was imposed by a children's hearing, Section 166(5).

¹⁰ Rule 30.1 of the Act of Sederunt (Sheriff Appeal Court Rules) 2015 SSI 2015/356 read with Rule 3.59 of the Child Care and Maintenance Rules.

¹¹ Section 167(7).

4. Duties on Implementation Authority re Review Hearings

- 4.1 Where a child is subject to a CSO, the implementation authority **must** require a review hearing by giving notice to the reporter in any of the circumstances set out in section 131(2). Those circumstances are:
- The CSO should be varied or terminated,
 - The CSO is not being complied with,
 - The implementation authority intends to apply for a permanence order or to place the child for adoption, or is aware that an application for an adoption order has been made or is about to be made (see PD 25 on Adoption and Permanence Orders).
- 4.2 If the reporter is required to arrange a review hearing for any reason, the reporter:
- must require the implementation authority to give the reporter any reports that the authority has prepared for the child and any other information that the authority wishes to give to assist the hearing, section 137(4)
 - may require the implementation authority to give the reporter a report on the child generally, or on any particular matter specified by the reporter. Section 137(5)

5. Other Duties arising from a Hearing's Decision

Looked After Children

- 5.1 Any child who is subject to a CSO or an ICSO is a child looked after by a local authority in terms of Section 17 of the Children (Scotland) Act 1995.¹² Section 17 of the 1995 Act sets out the general duties of the local authority in respect of a looked after child. These are:
- To safeguard and promote the child's welfare.
 - To make such use of services available for children cared for by their own parents as seems reasonable to the local authority in the child's case.
 - To take steps to promote, on a regular basis, personal relations and direct contact between the child and any person with parental rights or responsibilities in relation to him as appear to be practical and appropriate having regard to the child's welfare.
 - Prior to making any decision about the child, to obtain where practicable the views of the child, her parents, any person with

¹² 1995 Act, Section 17(6), as amended by the 2011 Act.

parental rights in relation to her and any other person whose views appear to the authority to be relevant, and thereafter to consider these views in making any decision.

- In making any decision, to consider the child's religious persuasion, racial origin, and cultural and linguistic background.

5.2 The manner in which the local authority is to implement these duties is set out in the Looked After Children (Scotland) Regulations 2009

Specific Duties

- 5.3 A CSO or ICSO may contain a measure requiring the implementation authority to carry out specified duties in relation to the child – section 83(2)(i).
- 5.4 A CSO or an ICSO may require the implementation authority to arrange specified medical or other examination or treatment of the child – section 83(2)(f). Note that a requirement to arrange examination is prohibited during a proof application. An MEO may require a specified local authority to arrange a specified medical examination. Note that an MEO cannot be made during a proof application.¹³
- 5.5 Section 83(1)(b) and section 86(1)(b) specify the implementation authority is responsible for giving effect to the measures in a CSO and ICSO respectively.

Sections 144 and 145

5.7 Section 144 of the 2011 Act provides that:

- The implementation authority must give effect to a CSO.¹⁴
- The implementation authority must comply with any requirements imposed on it in relation to the child by the CSO.
- The duties which an implementation authority can be required to carry out under a CSO include securing or facilitating the provision or services for the child of a kind which the implementation authority does not provide.

5.8 Section 145 of the 2011 Act provides that:

¹³ See the Practice Note on Medical Examination and Treatment for detailed information on requiring medical examination or treatment, the principles that apply and alternative options available to the local authority.

¹⁴ Where a child is required to reside in a place specified in a hearing order, but the implementation authority is unable to make immediate arrangements for the child to go there, the implementation authority must arrange for the child to be accommodated in another suitable place for up to 22 days beginning on the day of the hearing's decision. Regulation 6 of The Children's Hearings (Scotland) Act 2011 (Compulsory Supervision Orders etc.: Further Provision) Regulations 2013.

- Where a CSO requires a child to reside in accommodation not provided by a local authority¹⁵, the implementation authority must investigate from time to time whether the child is resident in the accommodation, whether any conditions are being complied with, and if not, must take such steps as the local authority considers reasonable.

6. Enforcement of Duties arising under Sections 144 or 145

- 6.1 Sections 146 – 148 Act provide a process for the National Convener to take enforcement action where an implementation authority is in breach of a duty imposed under section 144 or 145.
- 6.2 The enforcement process can apply only where the duty is imposed by a CSO - not a duty imposed by any other order.
- 6.3 Section 144 requires the implementation authority to give effect to the CSO, and *in particular* to comply with any requirement imposed on it by the CSO. Therefore it is not necessary for the CSO to contain a measure under section 83(2)(i) requiring the implementation authority to carry out a specified duty before enforcement action can apply.
- 6.4 The enforcement process does not apply to duties which arise other than under section 144 or 145. For example, it is thought that enforcement action does not apply to breach of duties towards the child as a looked after child under section 17 of the 1995 Act, or breach of the various duties to provide a report or require a review.
- 6.5 The enforcement process has four distinct stages, each with specific procedural requirements. Full details of the process and the actions which the reporter must take are set out in the Appendix, but in summary the four stages are:
 - (i) A review hearing, once it has made a substantive decision, directs the National Convener to give notice of intended enforcement.
 - (ii) The National Convener gives such notice to the implementation authority.
 - (iii) A further review hearing, once it has made a substantive decision, directs the National Convener to make an application to the sheriff principal to enforce the duty.

¹⁵ This includes where the CSO requires the child to live with accommodation provided by the parents, or relatives, or anyone associated with them

- (iv) The National Convener makes the application to the sheriff principal.

6.6 The panel member Practice and Procedure Manual addresses enforcement action in Section 7 paragraphs 7.37 to 7.42. If a hearing which is considering enforcement action appears to be unaware of this, the reporter is to draw the existence of the material to the hearing's attention.

7. Referral to Scottish Ministers where Failure to Provide Education for Excluded Pupil

- 7.1 An education authority has a duty under section 14(3) of the Education (Scotland) Act 1980 to provide education for a child excluded from school. Where it appears to a children's hearing that an education authority is failing to discharge this duty, section 127 of the 2011 Act enables the children's hearing to require the National Convener to make a reference to the Scottish Ministers.
- 7.2 The reporter is to record the hearing's decision to require the National Convener to make a reference to the Scottish Ministers in the Record of Proceedings¹⁶.
- 7.3 The Principal Reporter is entitled to receive notice of the referral from the National Convener. However, the reporter has no active role to play in this procedure.

¹⁶ See List of Purposes and Decisions (Appendix 3 of Practice Direction 18 on the Completion of Forms): to require the National Convener to refer the matter of provision of education for a child excluded from school to the Scottish Ministers s.127

APPENDIX 1 - ENFORCEMENT OF IMPLEMENTATION AUTHORITY'S DUTIES – DETAILED PROCESS

Stage 1 – Hearing directs National Convener to give Notice of Intended Enforcement Action

- 1.1 A review hearing which, on continuing or varying a CSO, thinks that the implementation authority is in breach of a duty imposed by section 144 or section 145, may direct the National convener to give notice to the implementation authority of an intended application to the sheriff principal to enforce the duty.
- 1.2 The hearing must also require a review of the CSO as soon as practicable after 28 days from the notice being given. Note that the 28 period runs from the National Convener actually giving notice to the implementation authority, and the hearing must not take place until the 28 day period has expired. The National Convener will confirm to the Practice Team the date notice was given. The Practice Team will provide this information to the case reporter, thereby allowing the arrangements for the further review hearing to be finalised.
- 1.3 The three decisions that must be recorded on the record of proceedings are:¹⁷
 - to continue or vary the CSO under section 138
 - to direct the National Convener to give notice to the implementation authority of an intended application to enforce the authority's duty s. 146(2)
 - to require a review of the CSO as soon as practicable after 28 days from the notice being given by the National Convener.
- 1.4 The chair must record details of the ways in which the implementation authority is in breach of its duty – rule 67(1). In practice, this will be done both in the reasons for decision and in the Form entitled *Notice to National Convener of Breach of Duty* (see next paragraph).
- 1.5 In terms of rule 67(2) the chair may prepare a report for the National Convener, providing such other information as the hearing considers appropriate. The National Convener expects the chair to do this by completing the Form entitled *Notice to National Convener of Breach of Duty*. The reporter is to ensure that the correct Form is available to the chair and is to email the completed Form to CHS - the email address is at the bottom of the Form. In addition the reporter is to email the following documents with the Form:

¹⁷ Use the wording for each decision as specified in the list of Purposes and Decisions (Appendix 3 of Practice Direction 18 on the Completion of Forms):

- the record of proceedings,
- the current CSO
- the previous CSO
- the previous record of proceedings.

1.6 The same information is to be copied to the Practice Team. The Practice Team will liaise with CHS in relation to the provision of any additional information to the National Convener and the ongoing process.

Stage 2 – National Convener gives Notice to Implementation Authority

- 2.1 Provided the procedural requirements of Stage 1 are met, the National Convener gives notice to the implementation authority that if it does not perform its duty within 21 days of the notice being given, the National Convener will, on the direction of the children's hearing, make an application to enforce the duty¹⁸.
- 2.2 The National Convener must give a copy of the notice to the child and relevant persons – section 146(4).
- 2.3 The National Convener will confirm to the Practice Team the date when the notice is given to the implementation authority. The Practice Team will pass this information to the case reporter to enable the '28 day' review to be scheduled appropriately.
- 2.4 If the National Convener receives any written response from the implementation authority to the notice, the National Convener will generally provide a copy to the Practice Team and if appropriate the Practice Team will copy to the case reporter for inclusion in the hearing papers.

Stage 3 – Further Review Hearing directs National Convener to make Application

- 3.1 If it appears to the further review hearing, once it has made a substantive decision, that the authority continues to be in breach of its duty, the review hearing may direct the National Convener to make an application under section 147 for an order to enforce the implementation authority's duty – section 146(6).
- 3.2 In determining whether to direct the National Convener to make an application under section 147, the children's hearing must not take into account any factor relating to the adequacy of the means available to the implementation authority to enable it to comply with the duty – section 146(7).

¹⁸ Section 146 (2) & (3). The notice must set out the respects in which the authority has failed in its duty to the child, and state that the National Convener shall make application to enforce the duty if the local authority does not perform the duty within 21 days.

- 3.3 The reporter must record a decision under section 146(6) on the record of proceedings¹⁹.
- 3.4 The chair must record details of the ways in which the implementation authority is in breach of its duty – rule 67(3). In practice, this will be done in the reasons for decision and in the Form entitled *Notice to National Convener of Local Authority Continued Beach* (see next paragraph).
- 3.5 In terms of rule 67(3) the chair may prepare a report for the National Convener, providing such other information as the hearing considers appropriate. The National Convener expects the chair to do this by completing the Form entitled *Notice to National Convener of Local Authority Continued Beach*. The reporter is to ensure the correct Form is available to the chair and is to email the completed Form to CHS - the email address is at the bottom of the Form. In addition, the reporter is to email the following documents with the Form:
- the record of proceedings
 - the new Order.
- 3.6 The same information is to be copied to the Practice Team. The Practice Team will liaise with CHS and provide relevant information to the case reporter.
- 3.7 If the review hearing does not consider that the implementation authority continues to be in breach of its duty, the National Convener expects the chair to complete the Form entitled *Notice to NC of LA Compliance with Duty*. The reporter is to ensure the correct Form is available to the chair and is to email the completed Form to CHS - the email address is at the bottom of the Form. The reporter is to copy the Form to the Practice Team.

Stage 4 – National Convener makes the Application to Sheriff Principal

- 4.1 Section 147 requires the National Convener to make the application to the sheriff principal, if so directed. The application is made to the 'relevant' sheriff principal.²⁰
- 4.2 The Principal Reporter has no locus in such an application. The Practice Team will be the contact point with CHS as to the progress of the application and will keep the case reporter informed.
- 4.3 The sheriff principal's decision is final.²¹

¹⁹ Using the wording as specified in the list of Purposes and Decisions (Appendix 3 of Practice Direction 18 on the Completion of Forms):to direct the National Convener to make an application under section 147 s.146(6)

²⁰ Section 147(1)&(2). This is the sheriff principal of the sheriffdom in which the principal office of the implementation authority is situated.

²¹ Section 148(2).