



SCOTTISH  
**CHILDREN'S REPORTER**  
ADMINISTRATION

# **THE PURPOSE OF A COMPULSORY SUPERVISION ORDER**

## **Information for Partners**

[www.scra.gov.uk](http://www.scra.gov.uk)

This guide is for anyone wanting to know what the purpose of a Compulsory Supervision Order (CSO) is, and how it is different to - and interacts with - other supports or interventions that can be provided for a child. The guide focusses on the differences in law that a CSO makes<sup>1</sup>.

The guide also explains the decision criteria that apply to the children's reporter and children's hearing and gives some information about referring a child to the reporter. Full information about referring a child to the reporter is available in the '[Guide to Referral to the Children's Reporter](#)' published by the Children's Hearings Improvement Partnership.

Other information about the children's hearings system, the reporter and making a referral is available on the [SCRA website](#).

## What is the purpose of a CSO?

- The purpose of a CSO is to provide an enforceable framework where:
- a child requires support and intervention to safeguard and promote their welfare, and
- this support or intervention, if offered or provided, is unlikely to be sufficiently effective without the enforceable framework of a CSO.

A CSO should address the child's needs for protection, guidance, treatment or control - with safeguarding and promoting the child's welfare throughout childhood being paramount. A CSO is enforced through review and decision-making by a children's hearing and on occasion by application to court.

## What is a CSO?

A CSO is an order made by a children's hearing in relation to a child. The order must specify which Scottish local authority is the 'implementation authority' and must contain at least one measure. The possible measures include the following categories:

- Requirements directly on the child eg specifying where the child is to reside or specifying restrictions on the child's movements
- Regulation of contact between the child and another person
- Authorisation of certain actions eg authorising the use of secure accommodation
- Requirements on the implementation authority eg requiring medical examination or treatment of the child to be arranged

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<sup>1</sup> Good practice should always guide support and intervention for children and families, whether or not a child has a CSO.

A CSO has effect for a specific period, but may be reviewed by a children’s hearing which can continue, vary or terminate it. A CSO cannot last longer than 12 months without being reviewed. Subject to this, a CSO may be in place for a child until they become 18.

## What is the effect of a CSO?

The effect of a CSO is that the measures in the order must be implemented. The local authority specified in the CSO (the ‘implementation authority’) is responsible for giving effect to the CSO as a whole. If the implementation authority is satisfied that a CSO is not being complied with or that a CSO ought to be varied or terminated, it has a duty to require the children’s reporter to arrange a children’s hearing to review the CSO.

A review of a CSO by a children’s hearing may take place for other reasons and be triggered by other persons. For any review, the children’s hearing will take account of all relevant information and may continue, vary or terminate the CSO. The implementation authority must provide a report for the children’s hearing. This is expected to include an update on the child’s circumstances and recommendations specific to the decision options open to the children’s hearing.

Where a CSO is not being complied with, the children’s hearing will in particular consider whether any change to the CSO is needed, for example including different measures. These may include requirements that the child must comply with, and/or duties that the implementation authority must carry out such as providing specific support to the child<sup>2</sup>.

If a children’s hearing thinks that the implementation authority is in ongoing breach of its duty to give effect to a CSO, the hearing may ultimately direct the National Convener to apply to court for an order to enforce the duty.

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<sup>2</sup> For example, a CSO contains a measure regulating contact between the child and their mother, but the specified contact has not been taking place because the mother has not been turning up. As the CSO is not being complied with, the implementation authority will require the reporter to arrange a review hearing. The hearing will consider all the circumstances including why the mother has not been turning up and the actions taken by the implementation authority to resolve the matter. The hearing might decide to change the measure about contact (eg by varying the frequency, the duration and/or the location) to make it work better. The hearing might place expectations or duties on the implementation authority to support the mother’s attendance. The hearing might prohibit contact if such a decision is justified. The hearing will review the whole CSO not just the measure about contact.

Another example, a CSO requires the child to attend support sessions to address their offending behaviour and possible exploitation, but the child has not been attending. As the CSO is not being complied with, the implementation authority will require the reporter to arrange a review hearing. The hearing will consider all the circumstances including why the child has not been attending and the actions taken by the implementation authority to resolve the matter. The hearing will consider how best to ensure the child receives the necessary support; this might include, for example, considering requiring the child to reside somewhere away from home. The hearing will review the whole CSO not just the specific measure.

Exceptionally, the child or others may seek to enforce the implementation authority's duties in relation to a CSO through direct court proceedings<sup>3</sup>.

## How is a CSO different to other supports or interventions for a child?

### a) Compulsion

A key feature of a CSO is that it must be complied with and implemented. There is no need for agreement from the child, their parents, the local authority or others to the terms of the CSO or its implementation.

This can be compared to other interventions that are dependent on the agreement of the child and/or parents, such as:

- implementing a child's plan on a voluntary basis
- implementing Early and Effective Intervention measures (EEI) or restorative justice approaches
- Family Group Decision Making approaches
- any other intervention based on consent from the child and/or parents, including voluntary accommodation under section 25 of the Children (Scotland) Act 1995.

### b) Enforcement

There are formal processes of review by a children's hearing where a CSO is not being complied with. There are also formal processes through court where a local authority appears to be in breach of its duty to give effect to a CSO.

### c) Statement of grounds

Another key feature of a CSO is that it can be made only after a 'statement of grounds' has been formally accepted by the child and 'relevant persons'<sup>4</sup> (if present) or has been established by a sheriff<sup>5</sup>. The statement of grounds is prepared by the children's reporter and sets out one or more of the statutory grounds, and the facts supporting that ground or grounds, that justify a children's hearing being able to consider the child's circumstances<sup>6</sup>. The process before the sheriff allows for evidence to be led on any disputed content. The statement of grounds - as accepted or established - becomes the principal legal basis for decision-making by the children's hearing, though the hearing may also take into account all other relevant information.

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<sup>3</sup> For example, judicial review proceedings.

<sup>4</sup> A 'relevant person' for the purpose of children's hearings is generally: most parents; others who have parental rights or responsibilities in relation to the child; and persons who have significant involvement in the upbringing of the child and have been deemed to be relevant persons by a children's hearing or pre-hearing panel.

<sup>5</sup> A children's hearing (and sheriff) can make an interim order pending the sheriff's decision about whether the statement of grounds is established. Each order can last for a maximum of 22 days at a time. (There are also other situations when a children's hearing may make an interim order, for example where the hearing requires further information.)

<sup>6</sup> The statutory grounds are set out in section 67 of the Children's Hearings (Scotland) Act 2011.

Any facts that were found to be not established by the sheriff cannot be taken into account by the children's hearing.

There are formal processes through court by which the child and/or 'relevant persons' can challenge accepted or established grounds. In the absence of a successful challenge the grounds as accepted or established are, and remain, the principal legal basis for decision-making by the children's hearing, and also for the assessment and recommendations made by the local authority to the children's hearing. This is the case however much someone might continue to dispute the grounds or have doubts about them.

If the child or a 'relevant person' is unable to understand the statement of grounds, they cannot be treated as accepting the statement of grounds. The hearing will only be able to deal with the grounds if they are found to be established by the sheriff. It is for the hearing to decide whether the child or a relevant person is capable of understanding, or has understood, the statement of grounds.

#### **d) Rights to participate in decision-making**

The child and 'relevant persons' have rights to be fully involved in the decision-making process of the children's hearing. These include the rights to attend and participate throughout the hearing and to receive the same papers as the panel members (both subject to limited exceptions).

In some circumstances other people also have a right to attend part of the hearing and to receive some of the information from the hearing papers<sup>7</sup>.

#### **e) Appeal**

The decision of a children's hearing to not make, make, vary or terminate a CSO can be appealed to the sheriff by the child and/or 'relevant persons'. Decisions by a sheriff about grounds or in an appeal can be appealed to a higher court.

### **How does a CSO interact with other supports or interventions?**

Consideration of the need for a CSO does not mean all other types of intervention become irrelevant or inappropriate. Similarly, the existence of other types of intervention does not mean a CSO should not also be considered. Voluntary options do not require to be tried or exhausted before consideration is given to a CSO. What is appropriate for a particular child will depend on all the circumstances.

While consideration of the need for a CSO will sometimes arise because of child protection concerns, the test or threshold for child protection processes and registration is different to the tests for referral to the children's reporter or making a CSO. There is no threshold of 'significant harm' in relation to referral to the reporter or making a CSO (though some grounds involve a similar concept). A referral to the

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<sup>7</sup> For example, some siblings have a right to attend for part of a hearing and to have some of the hearing papers.

reporter can be appropriate whatever decision is made about initiating child protection procedures or whether a child protection planning meeting takes place. A child protection plan or adding the child's name to the child protection register does not create any compulsory or enforceable element for the child or family.

Referral to the reporter does not create immediate support or intervention for the child. A Child Protection Order can be applied for to the sheriff as part of child protection processes – this is a short-term order for the immediate protection of the child. The making of a Child Protection Order constitutes a referral to the reporter – the reporter must then apply the usual assessment and decision-making approach to the referral itself alongside the short-term processes in relation to the Child Protection Order. The criteria for the reporter to arrange a children's hearing in relation to the referral are different to the criteria for the sheriff to grant the Child Protection Order or for a children's hearing to continue the Child Protection Order.

A Child's Plan remains relevant and necessary for a child who has a CSO; the plan must reflect and be consistent with the terms of the CSO.

## How does a CSO interact with the criminal justice system?

### Child victim of an offence

Sometimes criminal proceedings take place for someone alleged to have committed an offence against a child. The commencement or outcome of criminal proceedings does not affect whether a CSO can be considered to protect relevant children (the victim and/or children connected to the victim or alleged offender). The standard of proof and rules of evidence for establishing the offence in the children's hearings system are different to those applying to a criminal prosecution of the alleged offender. Grounds may be established and a CSO made whether or not criminal proceedings are undertaken or result in a conviction.

### Child accused of committing an offence

A child may be referred to the reporter where it is thought the child has committed an offence. If the reporter refers the child to a children's hearing on the basis of having committed an offence, the criminal standard of proof and rules of evidence apply to the reporter's assessment of evidence and to any application to the sheriff to determine whether the statement of grounds is established.

For some offences, a child may be reported to both the procurator fiscal and the reporter. The procurator fiscal and the reporter liaise with each other before the procurator fiscal decides whether to prosecute the child.

Where a child is prosecuted and pleads or is found guilty of the offence, the court may – and in some circumstances must – obtain advice from a children's hearing before deciding whether the court or a children's hearing is to deal with the child<sup>8</sup>. If the court

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<sup>8</sup> Criminal Procedure (Scotland) Act 1995 section 49.

decides a children's hearing is to deal with the child, the children's hearing will apply the same approach as for any other child<sup>9</sup>.

## What are the criteria for a children's hearing to make a CSO?

The fundamental criterion for the children's hearing in deciding whether to make a CSO is that it is satisfied that a CSO is necessary for the protection, guidance, treatment or control of the child.

In coming to this decision the hearing must apply the following:

- The paramount consideration is the need to safeguard and promote the welfare of the child throughout childhood<sup>10</sup>. (Though the hearing may treat this need as a primary consideration, rather than the paramount consideration, if necessary to protect members of the public from serious harm<sup>11</sup>.)
- It would be better for the child if the CSO were in force than not<sup>12</sup>.
- The CSO, and each of the measures in it, is for a legitimate aim and is a proportionate interference in the child's and family's right to respect for private and family life<sup>13</sup>. A CSO is unlikely to be for a legitimate aim or proportionate if made for the purpose of causing any part of the state to provide a service it could or should provide anyway.

## How does the reporter decide whether to arrange a children's hearing?

If someone refers a child to the reporter, the reporter must decide whether to arrange a children's hearing for the child.

The reporter must decide whether they think a 'ground' applies and, if so, whether they think the child needs a CSO. If the answer to both of these is 'yes', the reporter must arrange a children's hearing. It is then for the children's hearing to decide whether to make a CSO.

The reporter's decision about whether a 'ground' applies is an evidential one. The reporter must assess whether there is sufficient evidence to prove a 'ground'. If the reporter assesses there is not sufficient evidence, the reporter cannot arrange a hearing.

In considering whether a CSO is necessary, the reporter takes account of:

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<sup>9</sup> See also the [Social Work Scotland Position Statement on the Whole System Approach for children aged 15-17 in the hearings system](#).

<sup>10</sup> Section 25 of the Children's Hearings (Scotland) Act 2011.

<sup>11</sup> Sections 26 of the Children's Hearings (Scotland) Act 2011.

<sup>12</sup> Section 28 of the Children's Hearings (Scotland) Act 2011.

<sup>13</sup> European Convention on Human Rights, article 8.

- the statutory test to be applied by a children’s hearing,
- the rights of children and parents, and
- duties on the state.

The reporter in particular considers 4 main factors in deciding whether a CSO is necessary:

- The extent of concern for the child’s welfare.
- The history of cooperation of the child and parents with any previous intervention and the impact of any previous intervention.
- The current motivation to change the behaviours and actions that give rise to the concern about the child’s welfare and willingness to co-operate with any intervention.
- The views of the child about what decision the reporter should make.

The greater the level of concern for the child’s welfare, the more likely that a CSO is necessary. However, the reporter considers all the factors together. The history of co-operation with, and impact of, any previous intervention and the current motivation to change also influence whether a CSO is necessary. The less likely it is that voluntary support and intervention will be effective, the more likely it is that a CSO is necessary.

The reporter carries out such investigation as they think necessary. This may include requesting reports from one or more agencies and/or individual agencies or persons. The existence of a multi-agency approach to providing reports in any particular area does not prevent the reporter requesting a report from a specific agency or person. The reporter will weigh up all the relevant information, including the views of the child about what decision the reporter should make (if available), before making a decision.

The reporter generally writes to the child and parents to tell them each time that the child is referred, subject to some exceptions. The letters usually say which agency has made the referral, a broad description of why the referral was made, a broad description of the concerns that are causing the reporter to investigate and the extent of the reporter’s initial investigation. The letters also explain how the child can give their views about what decision the reporter should make.

If the child or family is not co-operative in the preparation of a report, the author of the report should still provide what information and assessment they can. The reporter will have to make a decision even if the available information is limited, and the current motivation to change and the willingness to co-operate are relevant considerations for the reporter.

## What decisions can the reporter make in relation to a referral?

The reporter may decide:

- to arrange a children’s hearing for the child,
- to not arrange a children’s hearing, or
- to not arrange a children’s hearing, and refer the child to the local authority for advice, guidance and assistance.

The reporter must arrange a children's hearing if the reporter considers that a ground applies and a CSO is necessary for the child. If the reporter decides to arrange a children's hearing, the ground or grounds selected by the reporter need not directly reflect any specific incidents or behaviours contained in the referral, nor any categorisation made by the referrer (eg lack of care, neglect, offending)<sup>14</sup>.

If the reporter considers there is insufficient evidence of a ground or does not consider that a CSO is necessary, the reporter cannot arrange a hearing. The reporter may however, refer the child to the local authority for the provision of advice, guidance and assistance to the child and family. The reporter can make this decision even if there is insufficient evidence of a ground, or the child is already receiving voluntary support, or the child's social worker is recommending a CSO. The decision is informed by the local authority's commitment to provide a service or intervention that the reporter considers acceptable in relation to the child's needs and/or behaviour. The local authority may provide the advice, guidance and assistance direct or make arrangements for another person or body to do so. The child or family are not obliged to accept the support.

If the reporter decides not to arrange a children's hearing, the reporter must tell the person who referred the child. The reporter must also tell the child, their parents and the local authority.

## Who can refer a child to the reporter?

Anyone can refer a child to the reporter.

Local authorities and the police have a duty to refer in certain circumstances<sup>15</sup>. Other people *may* refer a child to the reporter<sup>16</sup>. The criteria that the referrer should apply are that they think:

- the child is in need of protection, guidance, treatment or control, and
- the child might need a CSO.

Many organisations have procedures, which may be multi-agency, in place for staff in relation to dealing with concerns about the welfare or wellbeing of children. National guidance and inter-agency processes exist for many aspects of child welfare and wellbeing - including GIRFEC, child protection, Early and Effective Intervention etc. Individuals should have regard to their organisation's policies and procedures before deciding to make an individual referral to the reporter. While these generally set out the processes to be followed including consideration of whether a referral to the children's reporter should be made, none can prevent an individual making a referral to the children's reporter at any point.

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<sup>14</sup> Other than the police if referring on the basis of an alleged offence by the child, there is no need nor expectation that a referrer provide any categorisation or indicate what ground they think is relevant. It is for the reporter to assess the information and decide which ground most appropriately applies and the legal sufficiency of evidence.

<sup>15</sup> Sections 60 and 61 of the Children's Hearings (Scotland) Act 2011.

<sup>16</sup> Section 64 of the Children's Hearings (Scotland) Act 2011.

The consent of the child or their parents is not needed for a referral to the children's reporter.

Fuller information about referring a child to the reporter is available in the [Guide to Referral to the Children's Reporter](#) published by the Children's Hearings Improvement Partnership.

## Re-referral to the reporter

A child may be referred to the reporter even if there is a current ongoing referral, a previous referral that has been dealt with, or the child already has a CSO.

If there is a current ongoing referral, any new referral will be taken into account as part of the reporter's investigation and decision-making.

If there is a previous concluded referral, the reporter's new investigation and decision-making will take account of previous information held by the reporter. If the reporter had previously decided not to arrange a children's hearing for the child, the reporter cannot arrange a hearing in relation to the new referral unless there is new information about the child. This means that previous information will be relevant but there must also be some new information before a hearing could be arranged.

If a child already has a CSO, it can still be appropriate to refer the child to the reporter. This enables the reporter to decide whether to draft a new 'statement of grounds' for the children's hearing to consider and potentially make changes to the child's CSO.