

Practice Direction 16

Review Hearings

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SUMMARY

- A hearing to review a CSO will take place:
 - in the circumstances set out in s.137;
 - in the circumstances set out in s.132(3A) or s. 132A;
 - where a child moves placement as a matter of urgent necessity;
 - if a sheriff requires a review hearing on disposal of an appeal;
 - where the reporter decides to refer further grounds to a hearing and those grounds are accepted or established;
 - where a court remits a case for disposal under section 49 of the Criminal Procedure (Scotland) Act 1995;
 - where the sheriff requires the reporter to arrange a children's hearing under section 12(1A) of the Antisocial Behaviour etc. (Scotland) Act 2004;
 - in certain circumstances following a sheriff reviewing a grounds determination.
- The reporter must request a report from the local authority for a review hearing.
- A review hearing may terminate, vary (without substantive continuation), or vary and continue (for a period not exceeding a year) a CSO.
- A review hearing may defer making a substantive decision in relation to the CSO and if so, the hearing may:-
 - make an interim variation of the CSO, and/or
 - continue the CSO until the subsequent hearing (the CSO will remain in force until that hearing even if it would otherwise have expired).
- When a review hearing makes a substantive decision in relation to the CSO and if it appears to the review hearing that a section 81 deemed relevant person may no longer have (or recently have had) a significant involvement in the upbringing of the child, the hearing must review whether that person should continue to be deemed relevant. The hearing must direct that the individual is no longer to be deemed relevant if the hearing determines that that the individual no longer has nor has recently had that involvement.
- A review hearing will be required by the implementation authority when it intends to apply for a permanence order or place a child for adoption, or is aware that an application for an adoption order has been made or is pending. When such a hearing makes a substantive decision on the review, that hearing must at the same time provide a report of advice about these matters.

Other relevant Practice materials are:

- Practice Direction 12 on Pre-hearing Panels
- Practice Direction 13 on Attendance at Hearings
- Practice Direction 14 on Notifications and Papers

- Practice Direction 4 on Non-disclosure
 - Practice Direction 11 on Role of the Reporter at a hearing or Pre-hearing Panel
 - Practice Direction 17 on Contact Direction Reviews
 - Practice Direction 19 on Orders, Warrants and Measures
 - Practice Direction 20 on Secure Accommodation
 - Practice Direction 22 on Legal Aid
 - Practice Direction 28 on Translation and Interpretation
 - Practice Direction 30 on Local Authority Duties
 - Practice Direction 33 on Participation Rights and Legislative Changes in July 2021
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- Practice Note on Measures relating to Residence
 - Practice Note on Requests by Children's Hearings for Independent Reports

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1. Introduction

- 1.1 A “review hearing” is generally a hearing held to review an existing compulsory supervision order (CSO) and this Practice Direction addresses those reviews. However, there are two exceptional review hearings which have the more limited purpose of reviewing a particular measure - these are dealt with in separate Practice Directions¹.
- 1.2 Provisions relating to review of CSOs are contained in sections 107, 108, 115 and 117 (all as modified by section 118), 116, 125, 129-142, and 146 of the Children's Hearings (Scotland) Act 2011 (unless contrary specified all statutory references are to the Act).
- 1.3 The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 (“the Hearing Rules”) set out specific procedural rules for panel members to follow in relation to review hearings. Rules 58, 60, 61, 62, 65, 66, 68, 69 and 77 are particularly relevant.
- 1.4 For information on attendance at hearings, including review hearings, see Practice Direction 13 on Attendance.
- 1.5 For notification of, papers for and notification of outcomes of hearings, including review hearings, see Practice Direction 14 on Notifications and Papers.
- 1.6 A review hearing may vary or continue a CSO only if the hearing is satisfied that it is necessary to do so for the protection, guidance, treatment or control of the child – section 138(4). In addition, as with all hearings, the general principles which apply to review hearing decisions are as follows:
 - Section 25: the hearing is to regard the need to safeguard and promote the welfare of the child throughout his/her childhood as the paramount consideration. The hearing must also have regard to any risk of prejudice to the child's welfare that delay in the proceedings would pose.
 - Section 26: a hearing may make a decision inconsistent with s.25 if it considers that to do so is necessary to protect members of the public from harm, but if so, the hearing is to regard the need to safeguard and promote the welfare of the child throughout his/her childhood as the primary rather than the paramount consideration.

¹ Review following a decision by the head of a secure unit to not consent to the child's placement in secure accommodation, which is addressed in section 7 of PD 20 on Secure Accommodation, and review of a contact direction, which is addressed in PD 17 on Contact Direction Review Hearings.

- Section 27: so far as practicable and taking account of the age and maturity of the child (a child aged 12 or over is presumed to be of sufficient age and maturity to form a view for these purposes), the hearing must (i) give the child an opportunity to indicate whether to express a view, (ii) if so, give the child an opportunity to express a view, and (iii) to have regard to any views expressed by the child.
- Section 28: the hearing may vary or continue a CSO, make an interim variation of a CSO or grant a warrant to secure attendance only if the hearing considers that it would be better for the child if the order, interim variation or warrant were in force than not.

1.7 In relation to individual measures within a CSO, the necessity test in section 138(4) has been found by a sheriff² to not apply; rather the test for a measure is the test set out in sections 25 to 28. Section 138(4) and section 25 are not necessarily opposing tests, but if the distinction requires to be made the reporter is to accept that the necessity test in section 138(4) applies to decisions to make, vary or continue a CSO and that the test for including a measure, except where a more specific test applies³, is sections 25 – 28. The reporter is to take the position that the inclusion of any measure must be necessary in the sense of being both proportionate and meeting the test in section 28. Any measure must be proportionate and adequately justified taking into account the extent of interference with the article 8 rights of the child and family.

2. Requirement to Arrange Review Hearing

- 2.1 For most reviews, the duty on the reporter to arrange the review hearing is set out in section 137. Other review hearings arise from directions from the sheriff in proof or appeal proceedings or proceedings to review established grounds, or from remits by a criminal court.
- 2.2 Appendix 1 sets out the full list of circumstances where the reporter is obliged to arrange a review hearing, along with additional details. The circumstances include
- CSO is within 3 months of expiry
 - CSO contains a secure accommodation authorisation
 - Request by the implementation authority
 - Request by the child or relevant person
 - Request by a person who had participation rights at the last hearing
 - Request by a person who was not afforded participation rights, subject to certain criteria
 - Direction from a hearing to arrange an early review

² Judgement of Sheriff Stirling in appeal by JS [2021] SC Edin Latest News - Judgment of Sheriff Stirling in appeal by JS.pdf

³ Eg for a non-disclosure measure, a secure accommodation authorisation or a movement restriction condition.

- Direction from sheriff to arrange a hearing on determination of a proof application, having found a ground established or where a ground was accepted at the grounds hearing, and child is already subject to a CSO
 - Direction from sheriff to arrange a review hearing on disposal of an appeal
 - Remit from court for disposal under section 49 of the Criminal Procedure (Scotland) Act 1995 where the child is already subject to a CSO
 - Referral from court under section 12 of the Anti-social Behaviour (Scotland) Act 2004 where the child is already subject to a CSO
 - Certain circumstances following the sheriff reviewing a grounds determination.
- 2.3 In addition, where a child is already subject to a CSO, a grounds hearing in effect becomes a review hearing if the hearing proceeds on the basis of an accepted ground or grounds (ie no proof application is to be made). The hearing then has all of the disposal options of a review hearing⁴.
- 2.4 When the reporter is required to arrange a review hearing, this is to be done expeditiously even if other hearing proceedings, or proof or appeal proceedings before the sheriff, are ongoing. If an appeal to the sheriff is ongoing, the reporter is to alert the sheriff that a review hearing has been arranged.

3. Review Required by Person with or Seeking Participation Rights

- 3.1 There are two routes by which a person with participation rights (a participation individual) or a person seeking participation rights can require a review hearing to take place:
- The first applies only to persons who had participation rights at the most recent hearing to make, vary or continue the order. It gives the person an equivalent right to that of the child and relevant persons to require a review of the CSO. The detail is in section 132(3A).
 - The second applies to some persons who had participation rights and some persons who think they should have had participation rights. It is designed to address a lack of opportunity to participate in the previous hearing. The detail is in section 132A.

⁴ Section 91 is read as amended by 97(4) so that section 91(2) reads 'The grounds hearing is to be treated as if it were a hearing to review the compulsory supervision order (and sections 138, 139 and 142 apply accordingly)'.

Section 132(3A) – ‘three month review’

- 3.2 If a person had participation rights at the time of the most recent decision to make, vary or continue a CSO (or at any deferred hearing prior to the substantive decision), they may require a review of the CSO after 3 months.
- 3.3 This right is identical to that of the child and relevant persons to require a review after 3 months. When the person has required such a review, the reporter must arrange the review hearing. For the purposes of that review hearing (and any deferred hearing), the person will be treated as having participation rights.

Section 132A – review to redress limited opportunity to participate

See the flowchart at Appendix 3 for the steps and considerations in relation to the application of section 132A.

- 3.4 A person may require a review hearing where they claim that the criteria in section 132A apply. The criteria are:

- The person did not attend the children’s hearing that made the last substantive decision to make, continue or vary a CSO;

AND EITHER:

- *Where the person did not have participation rights at the last hearing:*
 - no determination was made at the time by a PHP or hearing about whether the person met the participation criteria.
 - the reporter didn’t consider the issue or was not satisfied the participation criteria were met, and
 - if a PHP or hearing had considered the issue, it is more likely than not that it would have decided the participation criteria were met.⁵

OR

- Where the person did have participation rights at the last hearing (whether because of a decision of the reporter, PHP or children’s hearing):
 - The person was not able to participate properly in the children’s hearing’s decision-making as a result of either:
 - a material failure to treat the individual, or any representative of the individual, in accordance with the rules⁶, or
 - exceptional circumstances.⁷

⁵ Section 132A(3).

⁶ An example of this might be the reporter failing to notify the participation individual of the hearing, or the chair failing to allow them to attend any of the hearing.

⁷ Section 132A(4).

3.5 Where the person claims the criteria in section 132A are met, the reporter must arrange the review hearing (subject to paragraph 3.6 below). There is no time constraint in relation that review hearing – it can be arranged prior to the expiry of 3 months from the last hearing.

3.6 If the person is claiming the criteria in section 132A are met but it is clear the criteria are not met, the reporter may alert the person to this before arranging the review hearing. This is only to be done in relation to the objective elements of the criteria:

- whether the person attended the hearing that made the most recent substantive decision
- whether a PHP/hearing determined the issue of whether the person met the participation criteria.

If the person continues to claim the criteria are met, the reporter must arrange the review hearing.

3.7 If it is not clear whether the person requesting the review is claiming that the criteria in section 132A are met, but the basis for requesting the review appears to fall broadly within section 132A, the reporter is to check with the person.

3.8 If the reporter is not satisfied that the person claiming to meet the criteria in section 132A does meet the criteria, the reporter must also arrange a PHP when arranging the review hearing.⁸ It is then for the PHP to decide whether the person meets the criteria⁹. The possible outcomes of that PHP are:

- If the PHP decides that the person meets the criteria in section 132A, the review hearing will proceed as arranged.
- If the PHP decides that the person does not meet the criteria in section 132A and there is no other reason for the review hearing to proceed¹⁰, the PHP must discharge the review hearing that has been arranged.

3.9 Where the reporter arranges a PHP because they are not satisfied that the criteria in section 132A are met, the reporter need only make initial arrangements for the review hearing by scheduling it in CSAS and Outlook. The reporter may delay sending formal notifications of the hearing until after the PHP has taken place. The reporter may also delay requesting reports for the review, though must be alert to being able to obtain them in time for the scheduled review if it does take place.

⁸ Section 79(2)(bb). See Practice Direction 12 on Pre-hearing Panels for information about notifications and papers for the pre-hearing panel.

⁹ Section 81B.

¹⁰ Other reasons for the review hearing to proceed could be because the review has been required by the local authority.

4. Reports for Review Hearings

See Practice Direction 14 on Notifications and Papers, which contains information relevant to review hearings.

- 4.1 The reporter must require the implementation authority to provide any reports the authority has prepared in relation to the child and any other information which the authority may wish to give to assist the hearing. Section 137(4)
- 4.2 The reporter may require the implementation authority to give the reporter a report (1) on the child generally or (2) on any particular matter relating to the child specified by the reporter. Section 137(5). The implementation authority may include information given to the authority by another person in any report given to the reporter. Section 137(6).
- 4.3 It is not competent for a hearing to vary a CSO¹¹ to require 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 unless¹²:
 - The hearing has received and considered a report or information¹³ 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 has confirmed that in compiling its report it has complied with regulations 3 and 4 of the Looked After Children (Scotland) Regulations 2009. Rule 80.

The reporter is to alert the hearing to the requirements of rule 80 if it appears the hearing is considering such a variation in the absence of the required information.

5. Review Hearing Disposal Options

See the flowchart at Appendix 2 on decisions available to a review hearing.

- 5.1 Sections 138, 139 and 142 set out the options open to a children's hearing when carrying out a review of a CSO. A review hearing can make procedural and interim or substantive decisions. The full list of

¹¹ Including through an interim variation.

¹² Rule 80

¹³ Provided under sections 66(4), 69(4), 137(4) or 137(5). A hearing reviewing a CSO will have a report under section 66 and/or 69 rather than section 137 where the hearing started as a grounds hearing.

disposal options is available on CSAS. The following paragraphs highlight some of the decision options available to review hearings.

Substantive Decisions

5.2 The hearing may make substantive decisions as follows:

- Terminate the CSO (section 138(3)(a));
- Vary the CSO (section 138(3)(b));
- Continue the CSO for a period not exceeding a year (section 138(3)(c); or
- Continue the CSO for a period not exceeding a year and vary it (section 138(3)(b) and (c)) or

5.3 The hearing must specify the period for which the order is continued. The hearing may continue the CSO for any period of less than a year.

5.4 If the hearing varies the CSO without continuing it (section 138(3)(b)), the CSO will continue to have effect for the “relevant period” currently applying to the CSO - see Practice Direction 19 on Orders, Warrants and Measures. If a hearing is considering varying the CSO without continuing it, the reporter is to alert panel members to the expiry date of the CSO, and make panel members aware of their option to vary the CSO **and** continue the CSO with a new relevant period of up to one year.

Procedural and Interim Decisions

5.5 A review hearing may make procedural and interim decisions. In particular, the hearing may defer making a decision until a subsequent children’s hearing (section 138(2)). As with other hearings, a review hearing must consider whether to appoint a safeguarder where a safeguarder has not already been appointed¹⁴.

5.6 In deciding whether to defer, the hearing must consider whether to require the reporter to obtain any report, from any person, which the hearing considers relevant to any matter which is to be determined by the subsequent hearing¹⁵.

5.7 If the hearing defers making a decision under section 138(2), further powers to make interim decisions become available under section 139. In particular the hearing may:

¹⁴ A decision to appoint a safeguarder must be recorded by the reporter as part of the record of proceedings. A decision to not appoint is to be recorded only if there was significant or lengthy consideration of the issue by the hearing or someone other than a professional asked the hearing to appoint a safeguarder. See Practice Note on Recording Additional Hearing Decisions.

¹⁵ Section 138(3A). If, in considering whether to defer, the hearing does not consider whether a further report is relevant and whether to require the reporter to obtain such a report, the reporter is to intervene to explain the duty on the hearing and also that the usual criteria for decision-making apply.

- make an interim variation of the CSO, if the test in section 139(3) is met, and/or
 - continue the CSO until the subsequent hearing, section 139(2).
- 5.8 If the hearing continues the CSO until the subsequent children's hearing under section 139(2), the hearing is not making a substantive decision in relation to the CSO. The effect of the decision under section 139(2) is to prevent the CSO from expiring despite the fact that a substantive decision has not been made when the CSO would otherwise have expired.¹⁶ If the hearing makes a decision under section 139(2), the hearing may (but is not required to) set a date for the subsequent hearing to be held under section 139. Rule 61(1)(c).
- 5.9 If the hearing makes an interim variation (with or without an interim continuation), the reporter is to record all the measures on the record of proceedings. If the hearing makes only an interim continuation (no interim variation) the reporter is to record only the decision to make the interim continuation¹⁷ - CSAS will then generate an order that contains all the measures.
- 5.10 There is no limit to the number of hearings arranged or interim variations made under sections 138 and 139.
- 5.11 If the hearing defers a decision under section 138(2) it may also:
- require the reporter to: obtain a report from any person, make arrangements for an interpreter for the child or relevant person, or take any other step with a view to securing participation - rule 61(b)/(f)
 - determine that it may be necessary for the child and/or relevant person to be represented by a solicitor and they are unlikely to arrange such representation – rule 61(d)
 - give a direction on a matter to enable the hearing to make a decision on whether to make a CSO and if so the measures to be included in that order – rule 61(g).

Consideration of Contact Direction

- 5.12 Section 29A requires that if the hearing varies or continues the CSO, it must consider whether to include a contact direction in relation to the following persons (provided the child does not reside with them):

- a relevant person

¹⁶ However, a decision to continue a CSO under section 139(2) is to be regarded as appealable under section 154.

¹⁷ In line with the usual approach to recording decisions to not do something material, if the hearing gave significant consideration to making an interim variation (or was asked to make one by someone other than a professional) but did not make one, the reporter is to record the decision not to make a interim variation. See Practice Note on Recording Additional Hearing Decisions.

- a sibling¹⁸
- any other person with whom the child has resided and with whom the child has an ongoing relationship with the character of a relationship between siblings.

5.13 Note that the duty to consider whether to include a contact direction in relation to a relevant person or sibling applies even if the child has never resided with them. This means it applies to a wider group of people than those who meet the criteria to have participation rights¹⁹.

5.14 Although there is a duty on the hearing to consider whether to include a contact direction, the usual decision-making criteria apply. There is no presumption that a contact direction should be made.²⁰

Permanence Order Application

5.15 Where an application to make or vary a permanence order has been made but has not been determined, a review hearing may not make a substantive decision to vary or to continue and vary a CSO. However, the review hearing can make an interim variation of the CSO. Section 96 Adoption and Children (Scotland) Act 2007. See Practice Direction 25 Adoption and Permanence Orders.

Early Review Set by Hearing

5.16 A hearing which makes a substantive decision to make, vary or continue a CSO may require the order to be reviewed on a day or within a period specified in the order, section 125(1) and (3).

5.17 If the hearing includes a movement restriction condition in the order, the hearing **must** require the order to be reviewed on a day or within a period specified in the order, section 125(1) and (2). In other words, when making a movement restriction condition, the hearing must at the same time set a review date.

Statement Under Section 138

5.18 If a hearing terminates a CSO, it must consider whether supervision and guidance is needed by the child and if so make a statement to that effect.

¹⁸ Two people are siblings if they have at least one parent in common (section 29A(5)).

¹⁹ The social worker should provide information about a sibling's contact for the children's hearing even where the sibling does not have participation rights.

²⁰ In line with the usual approach to recording decisions not do something material, if the hearing gave significant consideration to making a contact direction (or was asked to make one by someone other than a professional) but did not make one, the reporter is to record the decision not to make an interim variation. See Practice Note on Recording Additional Hearing Decisions.

If a hearing has made this statement, the relevant local authority has a duty to give such supervision or guidance as the child will accept (section 138(6) and (7)).

Panel member continuity

- 5.19 A review hearing, like any other hearing, can request panel member continuity by requesting that the National Convener select, where practicable, one of the members of that children's hearing to be a member of the next children's hearing. Rule 3(1).
- 5.20 Panel member continuity can be considered by a hearing, even if not requested by the child or a relevant person.

6. Hearing Arranged for Both Review and New Grounds

- 6.1 Where the reporter arranges a review hearing by virtue of section 137²¹, and the hearing is also a grounds hearing, then the following additional provisions apply in terms of rule 69:
- if the hearing directs the reporter to make an application for proof, the hearing may continue the CSO until the subsequent children's hearing
 - if the hearing discharges a referral because the ground has not been accepted or understood, the hearing may if appropriate review the CSO.
- 6.2 In practice, where a hearing has been arranged to consider both a review and new grounds, the hearing will require to dispose of each aspect at the appropriate point:
- If all the grounds are accepted, or some are and the hearing discharges all grounds that are not accepted/understood, the hearing will then proceed as a review hearing.
 - If all grounds are not accepted/understood and the hearing discharges all grounds, the hearing will then proceed as a review hearing.
 - If the hearing directs a proof application in relation to grounds that are not accepted/understood, the hearing may proceed to make interim decisions in relation to the review pending determination of the proof application²². If the grounds are established (and/or other grounds were accepted at the grounds/review hearing), the hearing that then takes place will be a review hearing.

²¹ See paragraph 2.1 and Appendix 1.

²² Our view is that it would be inappropriate, but not clearly incompetent, for the hearing to proceed to deal with the review on a substantive basis. The grounds, if established, would be a material factor in the hearing's consideration.

- 6.3 The above should be contrasted with a grounds hearing for a child already subject to a CSO. The grounds hearing will become a review hearing only if all the grounds are accepted (or at least one ground is accepted and the hearing discharges any not accepted/understood ground). If the hearing directs a proof application to be made, the hearing remains a grounds hearing and the only interim decision it may consider is whether to make an interim variation of the child's CSO (sections 93 and 94 as modified by section 98). If all grounds are not accepted/understood and the hearing discharges them, there are no further matters open to the hearing for consideration.

7. Requirement to Review Deemed Relevant Person Status

- 7.1 A review hearing is required to review whether someone should continue to be a deemed relevant person in relation to a child if:
- the hearing determines the review of the CSO by continuing or varying the order (i.e. a substantive decision is made in relation to the CSO); and
 - it appears to the children's hearing that the deemed relevant person may no longer have (or recently have had) a significant involvement in the upbringing of the child. Section 142(1) and (2).
- 7.2 The power and the duty of the children's hearing to review deemed relevant person status arises only if it appears to the hearing that a deemed relevant person may no longer have, or recently have had, significant involvement. A request by someone to review the status does not create the power or duty to do so.
- 7.3 Further, section 142 does not apply where the matter of whether the individual should continue to be deemed to be a relevant person has been determined by a pre-hearing panel or where the matter has been referred to the hearing for determination²³.
- 7.4 Where the duty does arise, the chair must inform those present of the purpose of the review. Therefore, the chair must be clear that the hearing is moving on to review whether a specific individual should continue to be deemed a relevant person. Rule 66 of the Hearing Rules sets out the procedure that applies.
- 7.5 If the hearing does proceed to make such a review decision, the reporter is to record it as a decision in the report of proceedings (see Practice Direction 18 on Completion of Forms).
- 7.6 If the hearing determines that that the individual no longer has (and has not recently had) a significant involvement in the upbringing of the child,

²³ Section 142(1A)

then the children's hearing must direct that the individual is no longer to be deemed to be a relevant person²⁴.

- 7.7 The review hearing may defer determining the review of relevant person status until a subsequent children's hearing²⁵. The hearing should be alert to issues of fairness in deciding whether to proceed or defer, for example whether the deemed relevant person, other relevant persons and the child are present and/or whether these persons had any expectation that the issue might arise at the hearing.

8. Requirement to Provide Report in relation to Permanence Order or Adoption Proceedings

- 8.1 The implementation authority must require a review of a CSO when the authority intends to place a child for adoption or apply for a permanence order, or the authority is aware that an application for an adoption order is pending, s.131(2)(c)-(e). See Practice Direction 25 on Adoption and Permanence Orders.
- 8.2 Where such a review has been requested, on making a substantive decision (i.e. to continue, terminate, or vary the CSO), the hearing must prepare a report for the court and the implementation authority providing advice about the placing for adoption or application for a permanence order or adoption order (section 141). Rule 65 sets out the procedure for the hearing to follow.
- 8.3 A hearing requested in terms of section 131(2)(c)-(e) has the full range of disposal options under sections 138 and 139. However, the terms of section 141 are such that it is only competent for the hearing to produce a report of advice, following a substantive decision on the review of the CSO. Therefore it is not competent for the hearing to provide a report of advice and defer the review of the CSO. There is no express power to defer the part of the hearing relating to producing the report of advice; the reporter is to take the view that if a substantive decision is made in relation to review of the CSO, the hearing must produce a report of advice.

²⁴ Section 142(4)(a)

²⁵ Section 142(3)

APPENDIX 1: Table with Details of Different Categories of Review Hearing

Type	Section	Trigger	Comments
Expiry Review -	s.133	The order will expire within 3 months and will not otherwise be reviewed before then.	The timescale is within 3 months of end of of the order, or the child is within 3 months of 18. The duty applies only if the order would not otherwise be reviewed. Where a review is to take place within the 3 month period for another reason, there is no separate duty or power to arrange an expiry review. If a review hearing makes a substantive decision maintaining a CSO in place within three months of the child turning 18, the duty is to be taken as no longer applying. The reporter is to explain our approach within the hearing so that the hearing can consider the issue, and if the hearing wants a further review to take place before the child turns 18 it can direct an early review under section 125 (the timescale for example could be specified as ‘before the child turns 18’).²⁶ This approach also enables the hearing to take into account whether it might want to make a statement in terms of section 138(6). If not arranging another review within the 3 month period the reporter is to inform the child, relevant persons and implementation authority that the CSO will expire at the 18th birthday and there will not be another hearing.
Child or Relevant Person Review	s.132	The child or a relevant person gives notice that they require a review	The CSO may be reviewed any time after 3 months of the Order being made, continued or varied. Note, the person may request a review within the 3 month period, but the reporter will arrange the hearing to take place after 3 months. ²⁷

²⁶ While some CSOs may appear in system terms to have ‘lapsed,’ review of ‘lapsed orders’ will identify where orders have ended because the child has turned 18.

²⁷ Where a deemed relevant person requests a review, but the person is undeemed by a pre-hearing panel in advance of the review hearing, the hearing should still take place. The reporter’s duty under section 137(2) to arrange a review has been properly triggered even if the individual who requested the review is no longer a relevant person. Although the person who requested the review will no longer be a relevant person and will no longer have a right to attend and receive papers, our view is that the chair should allow them to have an appropriate degree of participation. The hearing can address the reason the review was requested. .

Type	Section	Trigger	Comments
Individual with participation rights at last hearing	s.132(3A)	An individual who had participation rights at the time of the last decision to make, continue or vary the CSO gives notice that they require a review	The CSO may be reviewed any time after 3 months of the order being made, continued or varied. Note, the person may request a review within the 3 month period, but the reporter will arrange the hearing to take place after 3 months. The person must be treated as a person who has participation rights for the purposes of the review hearing (s.132(7))
Individual who claims s.132A applies & requests review	s.132A	An individual requests a review and claims they meet the criteria in s.132A(2) ²⁸	See section 3 of this Practice Direction for more detail. The reporter must arrange the review hearing, There is no time constraint – it can be arranged to take place before 3 months has elapsed. If not satisfied that the person does in fact meet the criteria, the reporter must also arrange a PHP for the purpose of determining whether the person meets the criteria ²⁹ .
Early review	s.125(2) and(3)	The hearing - when making, continuing or varying a CSO - require the order to be reviewed on a day or within a period specified in the order. The reporter must arrange the review accordingly.	The hearing may specify an early review on a specified date or within a period specified in the order. The order itself must set out the date or period. This power to set an early review is in addition to the hearing's power to continue a CSO for a period of less than a year. If the CSO contains a movement restriction condition, the hearing must require an early review. If a sheriff varies and/or continues a CSO on appeal, and the hearing had set an early review, generally the reporter should not arrange the early review. However, exceptionally the terms of the sheriff's interlocutor may justify doing so. If not arranging the early review, the reporter is to inform parties in case they want to request one.
Local Authority review	s.131(2)(a)	Implementation Authority gives notice that it requires a review.	It must require a review where it is satisfied the CSO ought to be varied or terminated

²⁸ If the reporter is arranging a PHP because the reporter is not satisfied that the criteria are met, the reporter need only make initial arrangements for the review hearing by scheduling it in CSAS and Outlook.

²⁹ Where the reporter is arranging a PHP, the reporter need only make initial arrangements for the review hearing by scheduling it in CSAS and Outlook.

Type	Section	Description	Comments
Local Authority review	s.131(2)(b)	Implementation Authority gives notice that it requires a review.	It must require a review where it is satisfied that the CSO is not being complied with
Local Authority review -permanence order	s.131(2)(c)	Implementation Authority gives notice that it requires a review.	It must require a review where it is satisfied that the best interests of the child would be served by the authority making an application for a permanence order under s.80 of the Adoption and Children (Scotland) Act 2007. The duty to request a review also applies where the implementation authority is satisfied the best interests of the child would be served by the authority making an application for variation, amendment or revocation of a permanence order under section 92, 93 or 98 On determining the review, the hearing must prepare a report providing advice for the implementation authority and court (section 141).
Local Authority review – placing for adoption	s.131(2)(d)	Implementation Authority gives notice that it requires a review.	It must require a review where it is satisfied that the best interests of the child would be served by the authority placing the child for adoption and the authority intends to place the child for adoption On determining the review, the hearing must prepare a report providing advice for the implementation authority and court (section 141).

Type	Section	Description	Comments
Local Authority review – adoption order	s.131(2)(e)	Implementation Authority gives notice that it requires a review.	It must require a review where it is aware that an application has been made and is pending, or is about to be made under section 29 or 30 of the Adoption and Children (Scotland) Act 2007 for an adoption order in relation to the child. On determining the review, the hearing must prepare a report providing advice for the implementation authority and court (section 141). Note that this situation may arise after the implementation authority has brought about a review at the point of intending to place the child for adoption. The hearing requires to provide advice each time.
Secure Review	s.135	The child's CSO contains a secure accommodation authorisation. The reporter must initiate a review prior to the end of the three month period beginning with the day the CSO was made, varied or continued.	See Practice Direction 20 on Secure Accommodation for more information. The reporter is to “initiate” the review by arranging for it to take place within the 3 months. Provided the children's hearing takes place within the 3 month period, the hearing may defer its decision so that a further hearing takes place more than 3 months after the order was made. Neither the CSO nor the SAA will cease to have effect after the 3 months period has elapsed. The reporter does not have a duty to initiate a review where the child has been removed from secure accommodation by the chief social worker, as this will have resulted in the secure accommodation having ceased to have effect (s.135(1)). Note that the decision options available to the review hearing are the same as for any review of a CSO. The decision option on CSAS ‘to not vary the CSO’ applies in a secure accommodation situation only where a hearing is reviewing just the secure accommodation authorisation (not the whole CSO)³⁰.

³⁰ This is where the head of unit does not consent to the child being placed in secure accommodation. This type of hearing rarely takes place. See section 7 of Practice Direction 20 on Secure Accommodation for more information.

Type	Section	Description	Comments
Secure Review	s.135	The child's CSO contains a secure accommodation authorisation. The reporter must initiate a review prior to the end of the three month period beginning with the day the CSO was made, varied or continued.	See Practice Direction 20 on Secure Accommodation for more information. The reporter is to "initiate" the review by arranging for it to take place within the 3 months. Provided the children's hearing takes place within the 3 month period, the hearing may defer its decision so that a further hearing takes place more than 3 months after the order was made. Neither the CSO nor the SAA will cease to have effect after the 3 months period has elapsed. The reporter does not have a duty to initiate a review where the child has been removed from secure accommodation by the chief social worker, as this will have resulted in the secure accommodation having ceased to have effect (s.135(1)). Note that the decision options available to the review hearing are the same as for any review of a CSO. The decision option on CSAS 'to not vary the CSO' applies in a secure accommodation situation only where a hearing is reviewing just the secure accommodation authorisation (not the whole CSO)³¹.
Emergency transfer	s.136	The child has been transferred under s.143 by the chief social worker from the place of residence specified in their CSO (including an interim variation) in a case of urgent necessity.	The review must take place not later than 3 working days beginning on the day of the transfer (s.137(3))³². Section 143 applies even if the requirement to reside is with a relevant person at a specified place. However, it is not competent for a local authority to transfer a child in terms of section 143 where the CSO requires the child to reside with a person but not at a specified address³³. If the local authority purports to transfer the child in such circumstances, the reporter is to arrange the review hearing, and

³¹ This is where the head of unit does not consent to the child being placed in secure accommodation. This type of hearing rarely takes place. See section 7 of Practice Direction 20 on Secure Accommodation for more information.

³³ See Practice Note on Measures relating to Residence

			provide a note explaining that the reporter does not consider section 143 properly applied but that the reporter has a duty to arrange the review hearing. This approach enables the hearing to review the situation within a very short timescale and flags up the issue in order to support robust consideration of whether a change to the CSO is justified. Where the local authority does not notify the reporter until after the 3rd working day (or very shortly before expiry of the 3rd working day), the reporter is to arrange the hearing to take place as soon as possible³⁴.
Transfer to secure accommodation	s.131 or s.136	Where a child is subject to a CSO, and CSWO and Head of Unit decide to transfer a child to secure accommodation, CSWO must require a review of CSO and reporter must arrange this	See Practice Direction 20 on Secure Accommodation for more information. The hearing must take place within 72 hours of the placement in secure.
Sheriff gives direction at court re established or earlier accepted grounds	s.108	The child is subject to a CSO, and sheriff gives a direction under s.108 having established one or more of the grounds to which a proof application relates OR one or more of the grounds were accepted at the hearing	Note: Section 108 requires the sheriff to direct the Reporter to arrange a children's hearing.

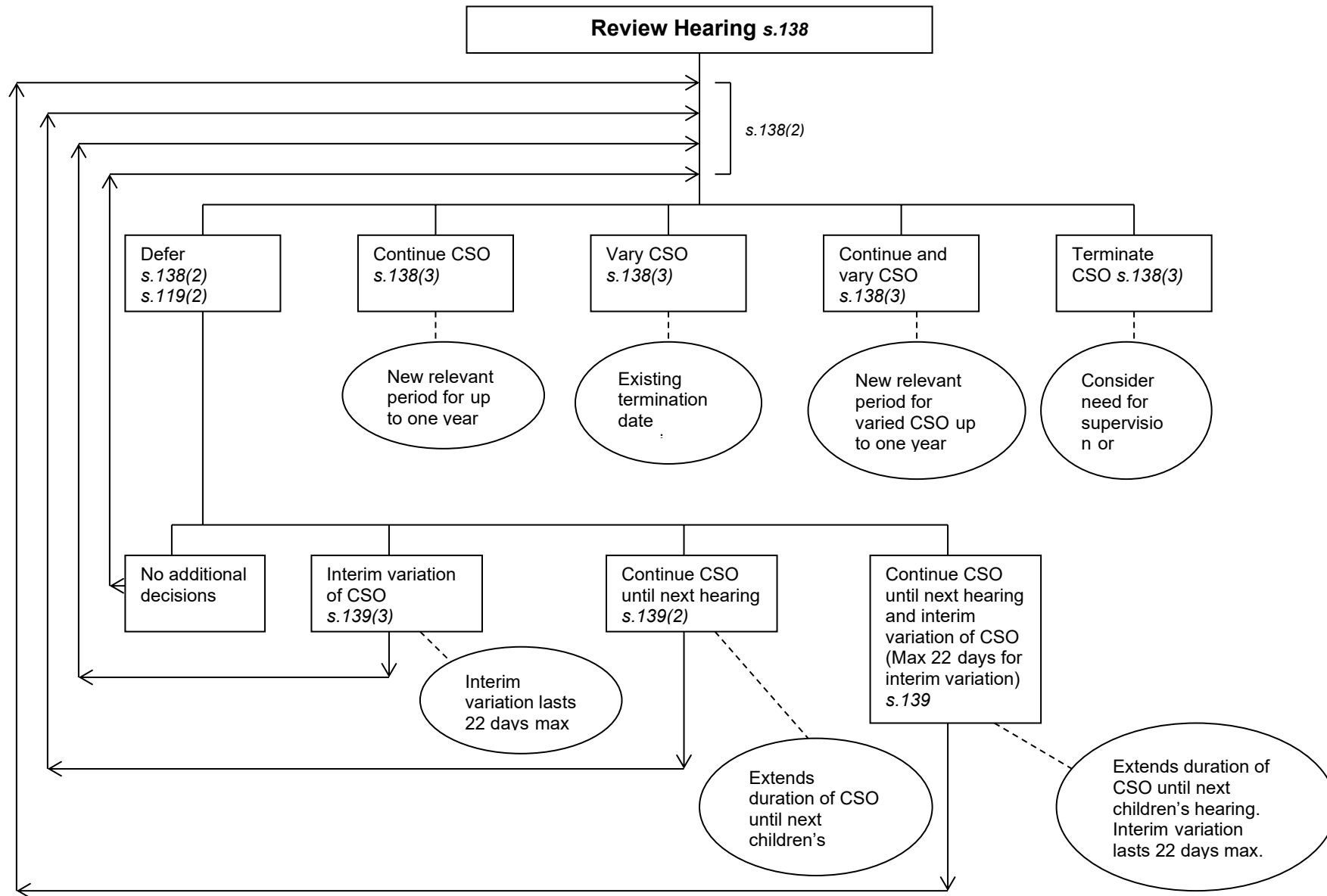
³⁴ This reflects the general approach to timescales that have not been met, where the legislation does not specify any particular consequences of a failure to comply (e.g. see the approach to appeals against relevant persons decisions in para 5.2 of Practice Direction 24). By setting a time limit of 3 working days, the intention behind the legislation is that the child's CSO is reviewed very quickly. The case of R v Soneji [2006] 1 AC 340 provides support for arranging the hearing even though outwith the statutory timescale.

Type	Section	Description	Comments
Application to sheriff to determine grounds is withdrawn	s.107	The child is subject to a CSO, and before the determination of an application for proof, the Reporter withdraws the application but one or more section 67 grounds were accepted at the children's hearing which directed the application	
ASB	s.129 c.f. s.12(1A), Antisocial Behaviour (Scotland) Act 2004	A sheriff requires the Reporter under s.12(1A) of the Antisocial Behaviour etc. (Scotland) Act 2004 to arrange a hearing and the child is subject to a CSO.	As the child is subject to a CSO the sheriff does not provide a 'section 12 statement' (which for children not subject to a CSO specifies the section 67 ground the sheriff thinks applies and other information).
Offence remit	s.130	A court remits a case under s.49 of the Criminal Procedure (Scotland) Act 1995 for disposal by a hearing and the child is subject to a CSO	See Practice Direction 5 on Receipt and Registration of Referrals and Receipt of References and Remits for more information. A certificate signed by the clerk of court stating the child admitted guilt or was found guilty is conclusive evidence for the purposes of the children's hearing that the offence was committed by the child. The remit has equivalent standing to an offence ground established by the sheriff under s.108 (s.130(4))
Notice of removing child from Scotland	s.134	A relevant person gives notice of intent to remove the child from Scotland and the proposed move is not in accordance with the CSO or an order under section 11 of the 1995 Act	See Practice Direction 27 on Cross Border Issues for more information. Although section 134 specifies that a relevant person is to give the notice, we consider that notice from the implementation authority would meet the notice requirement.

Type	Section	Description	Comments
Review where head of secure unit does not consent to the placement	Regulation 9 The Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013	Where a child is subject to CSO authorising secure, and CSWO agrees to placement but head of unit does not consent, CSWO must notify reporter and reporter must arrange hearing to review the CSO.	See Practice Direction 20 on Secure Accommodation for more information. This is not a full review of the CSO, as the options open to the hearing are only to leave the CSO unchanged or vary or remove the secure authorisation. The hearing must take place no later than 3 working days after the reporter receives notice from the CSWO.
Section 110 application - grounds not established at Court	s.115	A sheriff has reviewed a grounds determination (s.111(2)) and recalls the grounds determination and makes an order discharging the referral to the children's hearing BUT another s67 ground specified in the same statement of grounds that gave rise to the grounds determination is either accepted or established.	
Section 110 application - different grounds are established	s.117	A sheriff has reviewed a grounds determination (s.110) and determines that another ground (not specified in the statement of grounds) is established	

Type	Section	Description	Comments
Enforcement	s.146	A children's hearing requires an early review when directing the National Convenor to notify the implementation authority of an intended application to enforce the authority's duties.	See Practice Direction 30 on Local Authority Duties for more information. The hearing must require an early review And it must require that the review takes place on or as soon as reasonably practicable after the expiry of 28 days beginning on the day the notice is given to the implementation authority.
Review of CSO during permanence order application	s.137(1)(b)	The sheriff considering an application for a permanence order (or variation thereof) refers the child's case (whether following receipt of a report under section 95 or otherwise) S96(3), Adoption and Children (Scotland) Act 2007 Ss 29 & 30, Adoption and Children (Scotland) Act 2007	See Practice Direction 25 on Adoption and Permanence Orders for more information. This relates to the situation where a hearing has been prevented from making or varying a CSO because of a live permanence order application, the hearing has prepared and submitted a s.95 report and the court has considered this and referred the case back to the reporter.
Referral by Registered Adoption Service	s.137(1)(b)	A registered adoption service must refer to the reporter, and the reporter must arrange a review hearing where: • There is a CSO • It is satisfied that the best interests of the child will be served by placing the child for adoption • It intends to apply for adoption S106, Adoption and Children (Scotland) Act 2007	See Practice Direction 25 on Adoption and Permanence Orders for more information. A registered adoption service is different from a local authority as an adoption agency. Where the local authority is the adoption agency, it will also be the implementation authority. In that case, the implementation authority will require a review in terms of s.131(2)(c)-(e)

APPENDIX 2 - Flowchart of Substantive and Interim Decisions



APPENDIX 3: Flowchart of the Application of Section 132A

