

ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 12 – Children’s Hearings

Section 135 – Supervision requirements: conditions restricting movement

297. **Section 135** amends section 70 of the Children (Scotland) Act 1995 to enable children’s hearings to impose, as a condition of a supervision requirement, a “movement restriction condition”, the meaning of which it sets out in subsection (4), which inserts new subsection 11. Subsection (2) amends section 70(9) of the Act to enable a children’s hearing to provide for a child to be kept in secure accommodation or alternatively to impose a movement restriction condition. In either case the hearing must be satisfied that the child is otherwise likely to abscond, with risk to his welfare, or is likely to injure himself or others, and also that it is necessary to proceed in such manner. Consequential amendments to the Children (Scotland) Act 1995, which arise from the introduction of tagging through the hearings, are set out in Schedule 4, paragraph 4 (1) to (5).
298. **Section 135** makes further amendments to section 70 of the 1995 Act. These include a new subsection(13), providing for the making of regulations by the Scottish Ministers. These may include provision to prescribe how monitoring of movement restrictions will operate, including specification of the devices which may be used and who may carry out the monitoring. Subsection (15) provides how the Scottish Ministers may provide the monitoring service, which may be by contract or otherwise. The regulations introduced under section 135 are subject to negative resolution procedure.

Section 136 – Supervision requirements: duties of local authorities

299. **Section 136** places a new duty on local authorities to implement decisions of children’s hearings contained in supervision requirements and empowers hearings to require the Reporter to apply for an order from the sheriff court requiring a local authority in breach of its duty to perform that duty. The section also sets out the procedures to be observed.
300. Subsection (1)(a) states that a hearing may impose duties on the local authority and that these duties may include the securing or facilitating of services other than those provided by the local authority.
301. Subsection (1)(b) sets out the procedure to be observed. In new subsection (7A), where the Reporter is required to send the notice to any person appointed under section 41 of the 1995 Act. This may be a safeguarder, a curator ad litem or a legal representative appointed under the Children’s Hearings (Legal Representation) (Scotland) Rules 2002.
302. Section 71 of the Children (Scotland) Act 1995 places a duty on the local authority to give effect to a supervision requirement. Section 136(2) introduces an additional

requirement that where a hearing imposes duties on a local authority in the context of a supervision requirement, the local authority must perform these duties.

303. [Section 136\(3\)](#) introduces a new section into the 1995 Act to specify the procedures and circumstances in which the Reporter may apply to the sheriff principal for an order and that the sheriff principal's decision shall be final.

Section 137 – Failure to provide education for excluded pupils: reference

304. [Section 137](#) gives the Reporter and a children's hearing power to refer a child who has been excluded from school to the Scottish Ministers if it appears that the local authority concerned has failed to comply with its duty under section 14(3) of the Education (Scotland) Act 1980 to provide education to a pupil excluded from school.
305. Subsection (2) deals with children who are referred to the Reporter but not to a hearing. Subsection (3) concerns those children who are referred to a hearing.