

CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 14 – Implementation of Orders

Implementation of compulsory supervision order

Section 144 – Implementation of compulsory supervision order: general duties of implementation authority

208. This section places a duty on the implementation authority to give effect to a compulsory supervision order. The “implementation authority” is the local authority specified in the order as being responsible for giving effect to the measures included in the order. Subsection (3) makes clear that the implementation authority may need to secure services from another source.

Section 145 – Duty where order requires child to reside in certain place

209. This section applies when the compulsory supervision order requires the child to stay in accommodation provided by the parents or relatives of the child, by any person associated with them or with the child or in any other accommodation not provided by the local authority. In these circumstances, the local authority must check that the conditions attached to the compulsory supervision order are being fulfilled. If the local authority finds that any of those conditions are not being fulfilled, subsection (2) (b) places a duty on the local authority to take such steps as the authority consider reasonable.

Section 146 – Breach of duties imposed by sections 144 and 145

210. This section applies where it appears to the Children's Hearing when making a decision about a compulsory supervision order that the local authority specified in the order (“the implementation authority”) is not fulfilling the obligations contained in the order.
211. Subsection (2) provides that the Children's Hearing may direct the National Convener to notify the implementation authority of an intended application by the National Convener to enforce the authority's duty. Subsections (3) and (4) relate to the conditions of the notice. The notice must set out how the local authority is in breach of its duties and state that if the local authority does not perform its duties within 21 days of the notice the National Convener, on the direction of the Children's Hearing, will make an application to enforce the local authority's duty. A copy of the notice served on the implementation authority must also be sent to the child and each relevant person.
212. Subsection (5) provides that where a Children's Hearing gives a direction under subsection (2), the hearing must require that a further review of the compulsory supervision order take place as soon as possible after 28 days have expired from the day the notice was given. Subsection (6) provides that if the review hearing considers that the implementation authority is still not fulfilling the obligations contained in the compulsory supervision order, the Children's Hearing may direct the National

Convener to proceed with an application to the sheriff principal under section 147. Subsection (7) makes clear that the Children's Hearing must not take account of the resources available to the implementation authority when considering whether to direct the National Convener to make an application to enforce the authority's duty.

Section 147 – Application for order

213. This section places a duty on the National Convener, where directed by the Children's Hearing under section 146(6), to make a summary application to the relevant sheriff principal, for an order to enforce the implementation authority's duty in relation to a child. Subsection (3) makes clear that the National Convener may only apply for such an order if the implementation authority has been given notice by the National Convener as required under section 146(2) and the authority has failed to carry out the duty within the period specified in the notice.

Section 148 – Order for enforcement

214. This section provides for the sheriff principal, on the application of the National Convener under section 147, to make an order requiring the relevant local authority to fulfil the obligations imposed under the compulsory supervision order. Subsection (2) makes clear that an order made by the sheriff principal under this section is final.