

CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 14 – Implementation of Orders

Power to transfer child in cases of urgent necessity

Section 143 – Transfers in cases of urgent necessity

207. This section applies when a child is required to stay in a specified place as a condition of their compulsory supervision order or interim compulsory supervision order. Subsection (2) provides the chief social work officer with the power to transfer the child from that accommodation where such a transfer is required in the interests of the child or another child in that accommodation as a matter of urgent necessity. This would apply where there is an immediate necessity that cannot wait until a hearing has been arranged. A hearing to review the compulsory supervision order must be held within 3 days (see section 137(3)).

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.

Compulsory supervision orders etc.: further provision

Section 149 – Compulsory supervision orders etc.: further provision

215. This section enables the Scottish Ministers to make regulations relating to compulsory supervision orders, interim compulsory supervision orders, medical examination orders and warrants to secure attendance. Such regulations may concern one or more of the following: the transmission of information about children who are subject to an order or warrant; temporary accommodation for the child; taking the child to a place specified in an order or warrant; or taking the child to a place of safety.

Movement restriction conditions: regulations etc.

Section 150 – Movement restriction conditions: regulations etc.

216. This section enables the Scottish Ministers to make regulations relating to the restrictions that can be placed upon a child and the monitoring arrangements that may be imposed as part of a movement restriction condition. Subsection (2) provides that the regulations may in particular: prescribe methods of monitoring compliance; specify the devices that may be used for monitoring; prescribe the people who can carry out the monitoring; specify a maximum duration of any movement restriction condition included in an order; require that the condition be varied to designate another person if the person designated ceases to be a prescribed person or fall within a class of prescribed persons. Regulations will be subject to affirmative procedure. Subsection (4) provides

that Ministers may make arrangements, including contractual arrangements, to have monitoring carried out and subsection (5) provides for appropriate information sharing with a person providing a monitoring service in order to allow full and proper provision of that monitoring.

Secure accommodation

Section 151 – Implementation of secure accommodation authorisation

217. This section sets out the way in which secure accommodation authorisations are implemented. It applies where a hearing makes a compulsory supervision order, an interim compulsory supervision order, a medical examination order or a warrant to secure attendance which includes a secure accommodation authorisation. Subsection (3) provides that the chief social work officer of the relevant local authority for the child may implement the authorisation only with the consent of the person in charge of the residential establishment containing the secure accommodation in which the child will be placed. Subsection (4) provides that the chief social work officer must remove the child from secure accommodation where he considers it unnecessary for the child to be kept there or he is required to remove the child by virtue of regulations. Subsection (5) provides that the secure accommodation authorisation ceases to have effect once the child is removed from the secure accommodation under subsection (4).
218. Subsection (6) enables the Scottish Ministers to make regulations with regard to the decisions of the chief social work officer to implement the secure accommodation authorisation or remove the child from secure accommodation and with regard to the decisions of the head of unit to consent to the implementation of the secure accommodation authorisation under subsection (3). Subsection (7) sets out the areas that may, in particular, be covered by regulations. These areas include: the timescales for the decision; the procedures to be followed, the criteria to be applied; who must be consulted; and who must consent to a decision. Regulations may also make provision about the notification of decisions, the giving of reasons for decisions, the reviewing of decisions and the review of an order or warrant containing a secure accommodation authorisation where the head of unit does not consent. Subsection (8) provides that such regulations will be subject to affirmative procedure.
219. The term “chief social work officer” is defined in section 202. The definition refers to both implementation authorities and relevant authorities. This is necessary because under compulsory supervision orders and interim compulsory supervision orders an “implementation authority” will be specified but this will not be the case for medical examination orders or warrants to secure attendance where the duties will fall on the relevant local authority.

Section 152 – Secure accommodation: placement in other circumstances

220. This section enables the Scottish Ministers to make provision in regulations specifying circumstances in which children may be placed in secure accommodation if a relevant order or warrant is in force in relation to the child and that order does not include a secure accommodation authorisation. A relevant order or warrant is a compulsory supervision order, an interim compulsory supervision order, a medical examination order, or a warrant to secure attendance. Subsection (2) provides that the regulations may in particular include provision about: the procedure to be followed in deciding whether to place a child in secure accommodation; the notification of decisions; the giving of reasons for decisions; the review of decisions; and the review of placements by Children's Hearings. Such regulations will be subject to the affirmative procedure.

Section 153 – Secure accommodation: regulations

221. This section enables the Scottish Ministers to make provision by regulations about children placed in secure accommodation under the Act. Such regulations may in

*These notes relate to the Children's Hearings (Scotland) Act
2011 (asp 1) which received Royal Assent on 6 January 2011*

particular include provision imposing requirements on the Principal Reporter, the relevant local authority or implementation authority and in relation to protecting the welfare of children placed in secure accommodation under the Act. Requirements may be placed on both the implementation authority in relation to compulsory supervision orders and interim compulsory supervision orders and the relevant local authority in relation to the medical examination orders and warrant to secure attendance. Such regulations will be subject to the affirmative procedure.