
STATUTORY INSTRUMENTS

1996 No. 3261

Children's Hearings (Scotland) Rules 1996

PART I

INTERPRETATION, ETC

Citation and commencement

1. These Rules may be cited as the Children's Hearings (Scotland) Rules 1996 and shall come into force on 1st April 1997.

Interpretation

- 2.—(1) In these Rules, unless the context otherwise requires—
- “the Act” means the Children (Scotland) Act 1995;
 - “the 1978 Act” means the Adoption (Scotland) Act 1978(1);
 - “the 1994 Act” means the Local Government etc. (Scotland) Act 1994(2);
 - “the 1995 Act” means the Criminal Procedure (Scotland) Act 1995(3);
 - “the 1996 Regulations” means the Secure Accommodation (Scotland) Regulations 1996(4);
 - “chairman” means the chairman of a children's hearing;
 - “child” has the meaning given to that term by section 93(2)(b) of the Act;
 - “child protection order” has the meaning given to that term by section 57 of the Act;
 - “children's hearing” means a children's hearing as defined in section 39(3) of the Act;
 - “day” means a period of twenty-four hours commencing at midnight;
 - “enactment” includes any order, regulation or other instrument made under the Act;
 - “local authority” means the local authority for the area of the children's hearing;
 - “relevant person” has the meaning given to that term by section 93(2)(b) of the Act;
 - “Principal Reporter” has the meaning given to that term by section 93(1) of the Act;
 - “representative” has the meaning given to that term by rule 11(3) below;
 - “safeguarder” means a person appointed by a children's hearing under section 41(1) of the Act for the purpose of safeguarding the interests of the child in the proceedings;
 - “Scottish Children's Reporter Administration” has the meaning given to that term by section 128 of the 1994 Act;
 - “secure accommodation” means accommodation provided in a residential establishment in accordance with the 1996 regulations for the purpose of restricting the liberty of children.

(1) 1978 c. 28.

(2) 1994 c. 39.

(3) 1995 c. 46.

(4) 1996 S.I. 3255.

- (2) Unless the context otherwise requires, any reference in these Rules to:
- (a) a numbered rule or Form shall be construed as a reference to the rule or Form bearing that number in these Rules; and any reference to a specified paragraph or sub-paragraph shall be construed as a reference to that paragraph or sub-paragraph in the rule in which that reference occurs; and
 - (b) a Form includes a Form substantially to the same effect as that set out in these Rules with such variation as circumstances may require.

PART II

CONSTITUTION AND ARRANGEMENTS OF CHILDREN'S HEARINGS

Recording and transmission of information at beginning of case

3.—(1) Where the Principal Reporter receives information from any source of a case which may require a children's hearing to be arranged, he shall keep a record of the name and address where available of the person from whom the information was received.

(2) Where the Principal Reporter decides that no further action on the case is required as mentioned in subsection (4) of section 56 of the Act, or refers the case to the local authority under subsection (4)(b) of that section, or arranges a children's hearing under subsection (6) of that section, he shall—

- (a) keep a record of that decision or, as the case may be, that course of action; and
- (b) if the information was received from a local authority or an officer of a police force, give notice of that decision, or as the case may be, that course of action to that local authority or, the chief constable of that police force.

Business meeting preparatory to constitution of children's hearing

4.—(1) Where the Principal Reporter arranges a children's hearing, he may, for the purpose of—

- (a) determining any procedural matter specified in paragraph (2), and
- (b) obtaining any direction or guidance in relation to the performance of his functions in relation to the proceedings,

arrange a meeting (in this rule referred to as a “business meeting”) with members of the children's panel from which the children's hearing is to be constituted and with the provisions the same as in section 39(5) of the Act applying to the business meeting.

(2) A business meeting shall determine any of the following procedural matters as may be referred to the meeting by the Principal Reporter—

- (a) whether notice of the children's hearing is to be given by the Principal Reporter under rule 7 to a person as a “relevant person” in terms of paragraph (c) of the definition of that term in section 93(2)(b) of the Act (person who appears to be a person who ordinarily (and other than by reason only of his employment) has charge of, or control over, the child);
- (b) where notice of the children's hearing has been or is to be given by the Principal Reporter to the child under rule 6, whether notice is also to be given that the child is released under section 45(2)(5) of the Act from the obligation to attend the hearing under subsection (1) (b) of that section; and

(5) 1995 c. 36; section 45(2) was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40), Schedule 4, paragraph 97.

- (c) where notice has been or is to be given by the Principal Reporter to a relevant person under rule 7, whether notice is also to be given that the hearing are satisfied under section 45(8)(b) of the Act that it would be unreasonable to require his attendance or that his attendance is unnecessary for the proper consideration of the case.
- (3) Where the Principal Reporter arranges a business meeting under paragraph (1), he shall, not later than 4 working days before the date of the meeting—
- (a) give notice in writing to the members of the panel who will attend the meeting of the date, time and place of the meeting;
 - (b) give notice in writing to the child, any relevant person and any safeguarder that the meeting has been arranged and of the date on which it is to be held;
 - (c) give to the members of the panel and to the child, any relevant person and any safeguarder—
 - (i) notice of the matters referred to the business meeting for determination or for direction and guidance;
 - (ii) a copy of any documents or information relevant to these matters; and
 - (iii) a copy of the grounds of referral of the case of the child prepared in terms of section 65 of the Act.
- (4) The Principal Reporter shall, when giving notice under paragraph (3), advise the child, any relevant person and any safeguarder—
- (a) of their entitlement to make their views on the matters to be considered by the business meeting known to the Principal Reporter, and
 - (b) that any such views shall be presented by him to the meeting.
- (5) The Principal Reporter shall record in writing any views given to him other than in writing under paragraph (4), for the purpose of presenting these views to the business meeting for consideration.
- (6) The Principal Reporter shall as soon as reasonably practicable after receiving any views give a copy of these views in writing to the members of the children’s panel who will attend the business meeting and to the other persons who received notice of the meeting under paragraph (3).
- (7) Before making a determination, or giving guidance or directions to the Principal Reporter, the business meeting shall consider any views given to them under paragraph (6).
- (8) Where the business meeting has made a determination, or given guidance or directions to the Principal Reporter as to the exercise of his functions, the Principal Reporter shall as soon as reasonably practicable give notice in writing of the determination or, as the case may be, the guidance or direction, to the child, any relevant person and any safeguarder.

Notification of children’s hearings and provision of documents to chairman and members, relevant persons etc.

5.—(1) Subject to the 1996 Regulations, where the Principal Reporter arranges any children’s hearing, he shall wherever practicable at least seven days before the date of the hearing notify the chairman and members of the time and place of the hearing and, subject as aforesaid, as soon as reasonably practicable but not later than three days before the date of the hearing, he shall give to each of them a copy of any of the following documents as are relevant to the case of a child to be considered at the hearing:—

- (a) a report of a local authority on the child and his social background;
- (b) the statement of the grounds for the referral of the case to the children’s hearing prepared under rule 18;
- (c) any judicial remit or reference or any reference by a local authority;

- (d) any supervision requirement to which the child is subject;
- (e) any report prepared by any safeguarder appointed in the case;
- (f) any views of the child given in writing to the Principal Reporter by virtue of rule 15(4).

(2) If the Principal Reporter has obtained any information (including any views of the child given orally to the Principal Reporter by virtue of rule 15) or any document, other than a document mentioned in paragraph (1) which is material to the consideration of the case of a child at any children's hearing, he shall make that information or copies of that document available to the chairman and members of the children's hearing before the hearing.

(3) Where the Principal Reporter gives a copy of any document to the chairman and members of the children's hearing under paragraph (1), or makes available to them information or any document or copy thereof under paragraph (2), he shall at the same time give a copy of the document or, as the case may be, make available the information or a copy of the document, to—

- (a) each relevant person in relation to the child, whose case is to be considered at the children's hearing; and
- (b) any father of the child whose case is to be considered at the children's hearing who is living with the mother of the child where both the father and the mother are parents of the child as defined in section 15(1) of the Act,

except that where a children's hearing is arranged to continue consideration of the case of the child by virtue of section 69(2) of the Act, this obligation of the Principal Reporter shall apply only in respect of any information or document which has not already been made available to the person concerned.

(4) The chairman and members of children's hearings shall keep securely in their custody any documents made available to them under this rule and, except as otherwise provided in rules 20(4) and 22(4), they shall not cause or permit any information contained in the documents or otherwise disclosed during the hearing to be made known to any person.

(5) Immediately after the conclusion of a children's hearing the chairman and members shall return to the Principal Reporter any documents which have been made available to them under this rule.

(6) Any information or document which the Principal Reporter makes available under this rule to the chairman and members of any children's hearing shall also be made available, if requested, to any member of the Scottish Committee of the Council on Tribunals who is attending that hearing and the Council on Tribunals shall be required to return all papers to the Principal Reporter at the end of the hearing.

(7) Any information or document which the Principal Reporter makes available under this rule to the chairman and members of any children's hearing shall also be made available, if requested, to any member of the Children's Panel Advisory Committee or to any member of a sub-committee of the Advisory Committee who has given notice of his intention to attend that hearing as an observer. Any person provided with papers under this rule shall not cause or permit any information contained in the said documents or otherwise disclosed during the hearing to be made known to any person and shall return to the Principal Reporter at the end of the hearing any document which has been made available to him.

Notification of children's hearings to children

6.—(1) Subject to paragraphs (2) and (3), where the Principal Reporter arranges a children's hearing he shall not less than 7 days before the hearing give notice in writing to the child whose case has been referred to the hearing of his right and obligation to attend the hearing and of the date, time and place of the hearing.

- (2) Where the Principal Reporter arranges a children's hearing—

- (a) to consider under section 45(7), 59(2), 68(10) or by virtue of section 82(5) of the Act the case of a child kept in a place of safety;
- (b) to consider under Chapters 2 or 3 of Part II of the Act the case of a child placed in secure accommodation under regulation 7 of the 1996 Regulations;
- (c) to review an application under section 51(9) of the Act for the suspension of a supervision requirement; or
- (d) to review the case of a child transferred under section 72 of the Act to a place of residence other than that named in the supervision requirement;

he shall as soon as reasonably practicable before the hearing give the notice required under paragraph (1) above in writing; provided that if such notice cannot be given in writing, the Principal Reporter may give notice to the child orally.

(3) Where under section 45(2) of the Act a children's hearing are satisfied either in a case as specified in 45(2) of the Act that the attendance of the child is not necessary or in any case that it would be detrimental to the interests of the child for him to be present at the hearing of his case, the Principal Reporter shall give him notice in writing of his right under section 45(1) of the Act to attend the hearing and of the date, time and place of the hearing.

(4) When giving to a child under this rule notice of a children's hearing to which rule 15 applies, the Principal Reporter shall inform the child—

- (a) of the entitlement by virtue of section 16(2) of the Act and these rules to indicate whether he wishes to express his views;
- (b) that if he does so wish, he will be given an opportunity to express them; and
- (c) that any such views as may be given by the child to the Principal Reporter before the time at which the children's hearing is to be held will be conveyed by the Principal Reporter to the members of the children's hearing, to any relevant person and to any safeguarder, for the purpose of the hearing.

Notification of children's hearings to relevant persons and certain parents with right to attend

7.—(1) Where a relevant person in relation to a child whose case is to be considered at a children's hearing, has a right to and is obliged under section 45(8) of the Act to attend at all stages of the hearing, the Principal Reporter shall give him notice in writing, if his whereabouts are known, of the right to and obligation to attend at all stages of the hearing and of the date, time and place of the hearing.

(2) Where under section 45(8) of the Act a children's hearing are satisfied either that it would be unreasonable to require the attendance of a relevant person at a children's hearing or that the attendance of that person would be unnecessary for the proper consideration of the case, the Principal Reporter shall give him notice in writing, if his whereabouts are known, of his right under section 45(8) of the Act to attend at all stages of the hearing and of the date, time and place of the hearing but that for the above reason or reasons he is not obliged to attend.

(3) Where a person has a right by virtue of rule 12(1) to attend at all stages of the children's hearing, the Principal Reporter shall give such notice in writing of his right, if his whereabouts are known.

(4) Any notice under this rule, except a notification to a relevant person of a children's hearing mentioned under rule 6(2), shall be given not later than seven days before the date of the children's hearing to which it relates.

(5) In the case of such a children's hearing mentioned in rule 6(2), the notice to the relevant person under paragraph (1) shall be given as soon as reasonably practicable in writing before the

hearing, and if such notice cannot be given in writing the Principal Reporter may give notice to a relevant person orally.

Notification of children's hearing to chief social work officer

8. Where the Principal Reporter arranges any children's hearings he shall notify the chief social work officer of the local authority for the area in which the children's hearing is to sit of the date, time and place of the hearing, and of the name, date of birth and address, so far as is known of the child whose case is to be considered.

Withholding of address where disclosure may result in serious harm

9. Where in fulfilling his obligations under rules 5, 7 or 8 the Principal Reporter considers that the disclosure of the whereabouts of the child or any relevant person may place that person at risk of serious harm (whether or not physical harm) he may withhold such information as is necessary to prevent such disclosure and indicate the address of the person as that of the Principal Reporter.

Constitution of children's hearing and functions of chairman of children's hearing

10.—(1) The selection of the chairman and the members of any children's hearing from among the members of the children's panel for a local authority area shall be made either directly by the chairman of the children's panel, or in his absence by the deputy chairman, or by the operation of standing arrangements in that behalf made by the chairman of the children's panel after such consulting the Principal Reporter and such members of the panel as he may think fit. Such standing arrangements may provide for the selection of the chairman and members of any hearing to be made by members of the panel appointed for that purpose by the chairman of the panel.

(2) The chairman of the children's panel shall keep under review any standing arrangements which he has made under paragraph (1) and shall from time to time consult the Principal Reporter and such members of the panel as he thinks fit as to the operation of those arrangements.

(3) Except as otherwise provided by these Rules and any other enactment, the procedure at any children's hearing shall be such as the chairman shall in his discretion determine.

(4) Without prejudice to the generality of paragraph (3) and to the power of a children's hearing under the Act to continue a hearing for the further investigation of a case, the chairman of a children's hearing may at any time during the hearing adjourn the hearing provided that any adjournment under this rule shall be such as to enable the children's hearing to sit again on the same day as the adjournment was made.

(5) As soon as reasonably practicable after a children's hearing make—

- (a) a decision disposing of the case of a child on a referral or at a review of a supervision requirement or a condition imposed under section 70(9) of the Act with respect to residence in secure accommodation;
- (b) a decision to issue a warrant to find a child or for the keeping of a child in a place of safety or to continue a warrant for the keeping of such a child;
- (c) a requirement or warrant, or continuation of a warrant, under section 69 of the Act,

the chairman shall make or cause to be made a report of the decision and a statement in writing of the reasons for the decision, and shall sign the report and statement.

PART III

GENERAL PROVISIONS AS TO CHILDREN'S HEARINGS

Representation for the purposes of assisting children and relevant persons at children's hearing

11.—(1) Any child whose case comes before a children's hearing and any relevant person who attends that children's hearing may each be accompanied by one person for the purpose of assisting the child, or as the case may be, the relevant person at the hearing.

(2) Any representative attending any children's hearing may assist the person whom he represents in the discussion of the case of the child with the children's hearing.

(3) In these Rules any reference to a representative is a reference to a person who under this rule assists a child or a relevant person or both, and includes, unless the context otherwise requires, a reference both to any representative of a child and any representative of a relevant person.

General attendance at hearings of certain parents of the child (not relevant persons) and specific limited right of duly authorised officials etc.

12.—(1) A father of the child as described in rule 5(3)(b) shall be entitled to attend at all stages of the children's hearing while the hearing are considering the case of the child but shall be subject to the same provisions as those contained in section 46 of the Act as if those provisions apply to him.

(2) A constable, prison officer or other person duly authorised who has in his lawful custody a person who has to attend a children's hearing shall be entitled to be present at the hearing for the purposes of escorting that person.

Persons who may attend children's hearings at chairman's discretion

13. Without prejudice to the right of a child and of a relevant person under rule 11 above to be accompanied at a children's hearing by a representative, and subject to subsections (1) to (3) of section 43 of the Act (provisions as to privacy of children's hearings), the persons whose presence at the children's hearing may be permitted by the chairman under the said subsection (1) shall be—

- (a) the chairman and members of the Children's Panel Advisory Committee for the local authority area of the children's hearing and the clerk to the Children's Panel Advisory Committee of the local authority;
- (b) any members or possible members of children's panels whose attendance is required at children's hearings for the purpose of their training as members of children's hearings, and their instructors;
- (c) any student engaged in formal education or training in social work or any person engaged in research relating to children who may be in need of compulsory measures of supervision; and
- (d) any other person whose presence at the hearing may in the opinion of the chairman be justified by special circumstances.

Safeguarders

14.—(1) Where a children's hearing appoint a safeguarder under section 41(1) of the Act, the chairman shall state in writing the reasons for their decision to make that appointment.

(2) The Principal Reporter shall give the safeguarder a copy of such statement and also give notice of the date, time and place of the hearing at the same time and in the same manner as giving notice to a relevant person under rule 7.

(3) Any safeguarder appointed by a children's hearing shall be entitled to be present throughout the duration of any hearing of the case until the disposal of that case.

(4) Where a safeguarder is appointed by a children's hearing, he shall—

- (a) prepare a report in writing on the case of the child; and
- (b) prepare any further report in writing on the case as the hearing may require,

and give the report or, as the case may be, the further report to the Principal Reporter.

(5) Any information or document which the Principal Reporter makes available in compliance with rule 5 (under exception of rule (5)(1)(e)) or otherwise to the chairman and members of any children's hearing shall also be made available to any safeguarder regardless of the date of his appointment in the proceedings.

(6) A safeguarder—

- (a) shall keep securely in his custody any documents made available to him under paragraph (4);
- (b) shall not cause or permit any information contained in the documents or otherwise disclosed during the hearing to be made known to any person, other than may be necessary for the performance of his own duties; and
- (c) shall return to the Principal Reporter any document which has been made available to him under paragraph (4) above when he has completed the performance of all duties associated with his appointment.

Views of the Child

15.—(1) The children's hearing, taking account of the age and maturity of the child whose case has been referred to the hearing for a purpose mentioned in paragraph (2) shall so far as practicable give the child an opportunity to indicate whether he wishes to express his views.

(2) This rule shall apply where the children's hearing—

- (a) are considering whether to make, or are reviewing a supervision requirement;
- (b) are considering whether to grant a warrant under subsections (4) or (5) of section 45, subsection (5) of section 63, subsection (1) of section 66, or subsection (4) or (7) of section 69, of the Act or to provide under subsection (5) of the said section 66 for the continuation of a warrant;
- (c) are considering whether to continue a child protection order under section 59(4) of the Act;
- (d) are engaged in providing advice under section 60(10) of the Act; or
- (e) are considering whether to make a requirement under section 69(3) of the Act;
- (f) are drawing up a report under section 73(13) of the Act; and
- (g) are considering whether to issue a warrant under the 1996 Regulations.

(3) Where he has indicated his wish to express his views—

- (a) the children's hearing and the chairman of the hearing may exercise any of their powers under the Act or these Rules as they or, as the case may be, he considers appropriate in order to ascertain the views of the child; and
- (b) the children's hearing shall not make any decision or take any action mentioned in paragraph (2) unless an opportunity has been given for the views of the child to be obtained or heard and in terms of section 16(2)(c) of the Act they have had regard to such views as he may have expressed.

(4) Without prejudice to the generality of the powers mentioned in paragraph (3)(a), the views of the child may be conveyed to the children's hearing—

- (a) by the child, or by his representative, individually or together in person;
- (b) by the child in writing, on audio or video tape or through an interpreter; or
- (c) by any safeguarder appointed by the hearing.

(5) For the purposes of this rule, a child of twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view.

PART IV

CHILDREN'S HEARINGS ON REFERRAL AND AT REVIEW OF SUPERVISION REQUIREMENTS, ETC

Application of Part IV

16. This Part shall, subject to the provisions thereof, apply to (a) any children's hearing arranged under Part II of the Act or under the 1996 Regulations either for the purposes of considering and determining on referral the case of any child or for the review of a supervision requirement or a condition imposed by section 70(9) of the Act with respect to residence in secure accommodation; and (b) any children's hearing to which a case is stood referred under section 49(4) of the 1995 Act.

Statement of grounds of referral

17.—(1) The statement of the grounds for the referral of a case to a children's hearing shall be signed by the Principal Reporter and shall specify which one or more of the conditions mentioned in section 52(2) of the Act is or are considered by the Principal Reporter to be satisfied with respect to the child, and the statement shall state the facts on the basis of which it is sought to show that any condition is satisfied.

(2) In the case of a condition mentioned in section 52(2)(i) of the Act, the statement of the facts constituting the offence shall have the same degree of specification as is required by section 138(4) of the 1995 Act in a charge in a complaint and the statement shall also specify the nature of the offence in question.

Notification of statement of grounds for referral

18.—(1) Subject to paragraphs (2) and (3), where the Principal Reporter arranges a children's hearing under section 65(1) of the Act, he shall—

- (a) prepare a statement of the grounds for the referral of the case to the children's hearing; and
- (b) not less than seven days before the date of the hearing give a copy of the statement to the child and to each relevant person whose whereabouts are known.

(2) Notwithstanding paragraph (1), where before the children's hearing the child is kept in a safe place under the Act, or so kept by virtue of the 1996 Regulations, the provisions of paragraphs (1) (a) and (b) shall apply except that in paragraph (1) (b) the words "as soon as reasonably practicable" shall be substituted for the words "not less than seven days".

(3) Notwithstanding paragraph (1), where the Principal Reporter arranges a children's hearing under section 65(2) of the Act, the provisions of paragraphs (1)(a) and (b) shall apply except that in paragraph (1)(b) the words "not less than three days" shall be substituted for the words "not less than seven days".

(4) Notwithstanding that a children's hearing proceeds in accordance with section 65 of the Act to more than one hearing, nothing in this rule shall require a copy of the statement to be given to any person more than once.

Notification of application to sheriff for finding as to grounds if they consider it appropriate to do so for referral

19. Where a children's hearing have given a direction to the Principal Reporter under section 65 of the Act to apply to the sheriff for a finding as to whether or not any grounds for the referral of any case to them are satisfied, the Principal Reporter shall give notice of this in writing to the child and to any relevant person.

Conduct of children's hearing considering case on referral or at review of supervision requirement

20.—(1) This rule applies to a children's hearing considering under section 65 of the Act a case on referral or at a review under section 73(8) of the Act of a supervision requirement.

(2) Unless a children's hearing consider the case of a child in the absence of the child, any relevant person and any representative, the chairman shall, before the children's hearing proceeds to consider the case, explain the purpose of the hearing to such persons as are present.

(3) In proceeding with the case the children's hearing shall—

- (a) consider a report of a local authority on the child and his social background, and any judicial remit or other relevant document and any relevant information available to them;
- (b) consider any report submitted by the manager of any residential establishment in which the child is required to reside;
- (c) discuss the case with the child, any relevant person, any safeguarder and representative if attending the hearing;
- (d) take steps under rule 15 to obtain the views of the child, and endeavour to obtain the views of any relevant person and of any safeguarder, if attending the hearing, on what arrangements would be in the best interests of the child.

(4) The chairman shall inform the child and any relevant person of the substance of any reports, documents and information mentioned in paragraph (3)(a) and (b) if it appears to him that this is material to the manner in which the case of the child should be disposed of and that its disclosure would not be detrimental to the interests of the child.

(5) After the children's hearing have considered the case of the child and made a decision disposing of the case, but before the conclusion of the hearing at which the decision is made, the chairman shall inform the child, any relevant person, any safeguarder, and any representative, if attending the hearing, of—

- (a) the decision of the hearing;
- (b) the reasons for the decision;
- (c) the right of the child and of the relevant person under section 51(1) of the Act to appeal to the sheriff against the decision and, where the appeal is against a decision relating to a supervision requirement, to apply to the children's hearing for suspension of the requirement appealed against.

(6) The children's hearing shall not dispose of the case by making a supervision requirement under section 70(1) of the Act requiring the child to reside at any place or places specified in the requirement (which for the purposes of this rule is a place or places where he is to be under the charge or control of a person who is not a relevant person) unless—

- (a) they have received and considered a report from the local authority for the purposes of paragraph (3)(a), together with recommendations from that authority on—
 - (i) the needs of a child;

- (ii) the suitability to meet those needs of the place or places in which the child is to reside by virtue of the supervision requirement, and of the person or persons who is or are to have charge of or control over the child, and
- (b) the local authority have confirmed to the hearing that in compiling the report they have carried out the procedures and gathered the information described in regulation 15 of the Fostering of Children (Scotland) Regulations 1996(6).

Notification of decisions, etc on referral or at review of supervision requirement

21.—(1) Subject to sections 70(6) and 73(11) of the Act, as soon as reasonably practicable after a children’s hearing have made a decision disposing of the case of a child under this Part of the Rules, the Principal Reporter shall send to the child, any relevant person, any safeguarder and the local authority—

- (a) notice of the decision and a copy of any supervision requirement or, as the case may be, any continuation of a supervision requirement;
- (b) a copy of the statement of reasons for the decision; and
- (c) except in the case of a review which continues a supervision requirement, being a review in relation to which an order under section 51(7) of the Act is in force, notice of the right of the child or, as the case may be, a relevant person under section 51 of the Act to appeal to the sheriff against the decision,

and such notice shall be given in writing.

(2) Where a children’s hearing have made a decision disposing of the case of a child, the Principal Reporter shall as soon as reasonably practicable give notice of the decision—

- (a) to any person with whom the child is residing; and
- (b) where the information leading to the investigation of the case of the child was given by an officer of a police force, to the chief constable of the police area.

(3) Where the decision was—

- (a) to make a supervision requirement in relation to a child who has attained the age of 16 years; or
- (b) to terminate a supervision requirement relating to such a child,

the Principal Reporter shall as soon as reasonably practicable give notice of the decision to the chief constable of the police area and if the child resides outwith the police area, to the chief constable of the police area in which the child resides.

PART V

REFERENCES FOR ADVICE AND SUSPENSION OF SUPERVISION REQUIREMENTS

Conduct of children’s hearing on reference for advice by court, the local authority or approved adoption society

22.—(1) This rule shall apply to any children’s hearing arranged in order to consider the case of a child for the purpose of giving advice to the court, the local authority or the approved adoption society under any of the following provisions:—

section 73(13) of the Act (advice in relation to placing for adoption, application for adoption order, freeing for adoption order or parental responsibilities order);

subsection (1)(b) or (6) of section 49 of the 1995 Act (reference by court for advice in case of child not subject to supervision requirement);

section 49(3) of the 1995 Act (reference by court for advice in case of child subject to supervision requirement);

section 22A(2) of the 1978 Act (advice in relation to placing a child for adoption).

(2) Unless the children's hearing consider the case of a child in the absence of the child, a relevant person and any representative, the chairman shall, before the children's hearing proceed to consider the case, explain the purpose of the hearing to such persons as are present.

(3) The children's hearing shall proceed to consider the case of the child and during such consideration shall—

- (a) consider the reference by the court, the local authority or the approved adoption society, any supervision requirement to which the child is subject, a report of a local authority on the child and his social background, and any other relevant document or any relevant information available to them;
- (b) discuss the case of the child and afford to the child, any relevant person, any safeguarder and any representative, if attending the hearing, an opportunity of participating in the discussion and of being heard on the case;
- (c) take steps on rule 15 to obtain the views of the child, and endeavour to obtain the views of any relevant person, and of any safeguarder if attending the hearing, on what arrangements with respect to the child would be in the best interests of the child; and

the children's hearing shall thereafter determine what advice they will give to the court, the local authority or, as the case may be, the approved adoption society.

(4) The chairman shall inform the child and each relevant person whose whereabouts are known of the substance of any reports, documents and information mentioned in paragraph (3)(a) if it appears to him that this is material to the advice that will be given and that its disclosure would not be detrimental to the interests of the child.

(5) After the children's hearing have considered the case of the child and determined the advice they shall provide, the hearing shall inform the child, any relevant person, any safeguarder and any representative, if attending the hearing of that advice.

(6) As soon as reasonably practicable after the children's hearing determine the advice they shall provide, the chairman shall make or cause to be made a report in writing providing that advice, including a statement of the reasons for that advice, and the chairman of the hearing shall sign the report and statement.

(7) Within 7 days following a determination by the children's hearing, the Principal Reporter shall send a copy of the report prepared under paragraph (6) to the court, the local authority or the approved adoption society, as the case may be, and the child, any relevant person and any safeguarder appointed in the proceedings.

(8) Where the Principal Reporter is obliged under section 73(8)(a)(iv) of the Act to arrange a children's hearing and he is advised by the adoption agency that it has determined that agreement to an application under section 16 or 18 of the 1978 Act is unlikely to be forthcoming, he shall be under an obligation to arrange a hearing to sit within 21 days of that notification from the local authority under section 73(4)(c) of the Act.

Application for suspension of supervision requirements pending hearing of appeals

23.—(1) An application to a children’s hearing by a child or relevant person under section 51(9) of the Act for the suspension of a supervision requirement pending an appeal under section 51(1) of the Act shall be made in writing to the Principal Reporter.

(2) The Principal Reporter shall give notice in writing separately to the child and relevant person of the date, time and place of the children’s hearing at which the application will be considered.

(3) The children’s hearing shall afford the applicant, and his representative, and any safeguarder if attending the hearing, an opportunity of being heard.

(4) The chairman of the children’s hearing shall inform the applicant at the conclusion of the hearing of the decision of the hearing and the reasons for it.

(5) If the applicant fails to attend the hearing, the application shall be treated as abandoned.

(6) An application under this rule shall not be valid unless an appeal under section 51(1) of the Act has already been lodged.

PART VI

MISCELLANEOUS AND SUPPLEMENTAL

Social background report where child in a place of safety

24. Subject to the 1996 Regulations, where a children’s hearing is arranged under section 65(2) of the Act, the children’s hearing shall not proceed in relation to the case of the child in accordance with section 70(1) of the Act unless the Principal Reporter has made available to them a report of local authority on the child and his social background.

Form of supervision requirement

25.—(1) Subject to paragraph (2) below, a supervision requirement under section 70(1) of the Act shall be in the form of Form 1.

(2) A supervision requirement under section 70(1) of the Act with a specification under section 70(9) of the Act (residence in secure accommodation) shall be in the form of Form 2.

(3) Subject to paragraph (4) below, a continuation under section 73(9)(e) of the Act of a supervision requirement (with any variation of the requirement or insertion in the requirement mentioned in paragraph (9)(c) and (d) of that subsection) shall be in the form of Form 3.

(4) A continuation under section 73(9)(e) of the Act of a supervision requirement (with a variation of the requirement or insertion in the requirement as mentioned in relation to a specification as to secure accommodation as described in section 70(9) of the Act) shall be in the form of Form 4.

Procedure relating to warrants, orders, and to requirements under section 69(3) of the Act

26.—(1) Where a children’s hearing consider in relation to a child the question whether they should—

- (a) issue or continue a warrant or order under any of the following provisions of the Act:—
 - section 45(4) and (5) (warrants to find child, keep in a place of safety and bring before a hearing);
 - section 59(4) (continuation of child protection order);
 - section 63(5) (warrant to keep child in place of safety following arrest);

section 66(1) and (5) (warrants where children’s hearing unable to dispose of case);
 section 69(4) (warrant for fulfilment of requirement to attend or reside at clinic, hospital, etc); and

section 69(7) (warrant to take child to and keep in place of safety while case continued under section 59(4) of the Act).

(b) continue under section 59(4) of the Act any direction given under section 58 (direction as to parental responsibilities or parental rights when child protection order made); or

(c) issue a warrant under the 1996 Regulations;

(d) make a requirement under section 69(3) of the Act (requirement to reside at clinic, etc.),

the children’s hearing shall, before they make a decision to issue that warrant or as the case may be that requirement, take steps under rule 15 to obtain the views of the child, and endeavour to obtain the views of any relevant person and of any safeguarder, if attending the hearing, on what arrangements would be in the best interests of the child.

(2) Where a children’s hearing have issued or, as the case may be, continued such a warrant, order, discretion or requirement as is mentioned in paragraph (1), the Principal Reporter shall send as soon as reasonably practicable to the child, any relevant person and any safeguarder appointed in the proceedings–

(a) a copy of the warrant, continuation of the warrant, continuation of the order, or requirement and a copy of the statement of the reasons for the decision; and

(b) notice of the right of the child, or, as the case may be, the relevant person under section 51 of the Act to appeal to the sheriff against the decision.

Forms of warrants and orders for finding and keeping a child in a place of safety

27. The orders or warrants listed and described in the left hand column of the chart below shall be in the form of the Forms (as defined in rule 2(2)(b)) opposite in the right hand column which are in the Schedule to these Rules and references to sections shall be to sections in the Act. The description in the left hand column is for ease of reference and does not reproduce the provisions of the Act in full.

LEFT HAND COLUMN	RIGHT HAND COLUMN
S45(4) & (5)	Warrant under section 45(4) or 45(5) to find a child, keep him in a place of safety and bring him before a children’s hearing Form 5
S59(4)	Continuation under section 59(4) of a child protection order Form 6
	Continuation under section 59(4) of a child protection order with first authorisation to remove child and to keep child in place of safety with/without order of non-disclosure of place of safety Form 7
S63(5)	Warrant under section 63(5) to keep a child in place of safety Form 8

LEFT HAND COLUMN	RIGHT HAND COLUMN
	with/without order of non-disclosure of place of safety
	Warrant under section 63(5) with order that child liable to be kept in secure accommodation with/without order of non-disclosure of place of safety
	Continuation under section 63(5) of warrant to keep a child in place of safety
	Continuation under section 63(5) of warrant to keep a child in a place of safety with first authorisation that child liable to be kept in secure accommodation with/without order of non-disclosure of place of safety
S66(1)	Warrant under section 66(1) to keep a child in a place of safety when hearing unable to dispose of case
	Warrant under 66(1) to keep a child in a place of safety when hearing unable to dispose of case with order that child liable to be kept in secure accommodation with/without order of non-disclosure of place of safety
S66(5)	Continuation under section 66(5) of warrant granted under section 66(1) to keep a child in a place of safety
	Continuation under section 66(5) of warrant granted under section 66(1) to keep a child in a place of safety with first order that child liable to be kept in secure accommodation with/without order of non-disclosure of place of safety
S69(4)	Warrant under section 69(4) to find a child and remove to a place of safety when requirement under section 69(3) not

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

LEFT HAND COLUMN	RIGHT HAND COLUMN
	<p>fulfilled (where continuation of case)</p> <p>Warrant under section 69(4) to find child and remove to place of safety when requirement under section 69(3) not fulfilled with first order that child liable to be kept in secure accommodation with/without order of non- disclosure of place of safety (where continuation of case)</p>
S69(7)	<p>Form 17</p> <p>Warrant under section 69(7) to keep a child in a place of safety (where continuation of case)</p>
	<p>Form 18</p> <p>Form 19</p> <p>Warrant under section 69(7) to keep a child in a place of safety when there is a continuation of the case by the children's hearing with order to keep child in secure accommodation with/without order of non-disclosure of place of safety (where continuation of case)</p>

Miscellaneous Forms

- 28.**—(1) A requirement under section 69(3) of the Act shall be in the form of Form 20.
- (2) A notification by a Principal Reporter under section 60(3) of the Act shall be in the form of Form 21.
- (3) A notification by a Principal Reporter under section 60(5) of the Act shall be in the form of Form 22.
- (4) A report of a children's hearing of advice under section 60(10) of the Act shall be in the form of Form 23.
- (5) A report of a children's hearing order section 73(13) of the Act shall be in the form of Form 24.

Authentication of documents

- 29.**—(1) A report of any decision, a statement of reasons for a decision or of advice, a warrant or continuation of warrants for finding and keeping a child in a place of safety, or any other writing, authorised or required by Chapter 2 or 3 of the Act or these Rules to be made, given, issued or granted by a children's hearing or by the chairman of a children's hearing shall be sufficiently authenticated if it is signed by the chairman, or, if he is unavailable, by a member of that hearing.
- (2) Any document authorised or required by these Rules to be made or executed by the Principal Reporter shall be sufficiently authenticated if it is signed by the Principal Reporter or by a person duly authorised by him.

(3) Any copy of any document authorised or required by these Rules to be given or issued by the Principal Reporter may be certified as a true copy by the Principal Reporter or by a person duly authorised by him.

Service of notification and other documents

30.—(1) Any notice in writing or other document and any oral notification authorised or required under these Rules to be given or issued by the Principal Reporter may be given or issued by the Principal Reporter or by a person duly authorised by him or by any constable.

(2) Any notice in writing or other document authorised or required by these Rules to be given or issued to a child or to a relevant person may be—

- (a) delivered to him in person; or
- (b) left for him at his dwellinghouse or place of business or where he has no known dwellinghouse or place of business, at any other place in which he may at the time be resident; or
- (c) where he is the master of, or a seaman or other person employed in, a vessel, left with a person on board thereof and connected therewith; or
- (d) sent by post in a registered or first class service recorded delivery letter to his dwellinghouse or place of business.

(3) Where the Principal Reporter or a person duly authorised by him gives to any relevant person a notification in writing under paragraph (1) of rule 7 above, or an oral notification under that paragraph as read with paragraph (4) of that rule, he shall execute a certificate of notification in the form of Form 25.

(4) Where a notice under rule 6 or 7 or a copy of such a statement as is mentioned in rule 18 is sent by post in accordance with paragraph (2)(d) of this rule, the notification or copy shall be deemed, for the purpose of rule 6, 7 or 18, as the case may be, to have been given the day following the date of posting.

Reports of proceedings of children's hearing

31.—(1) In relation to the case of any child which comes before a children's hearing, it shall be the duty of the Principal Reporter to keep a report of the proceedings of that hearing and the report—

- (a) shall include the information specified in paragraph (2) below; and
- (b) may include such other information about the proceedings as the Principal Reporter thinks appropriate.

(2) The information referred to in paragraph (1)(a) above is as follows—

- (a) particulars of the place and date of the hearing;
- (b) the full name and address of the child and his sex and date of birth;
- (c) the full name and address (so far as these can be obtained) of the father, the mother and any other relevant person in relation to the child;
- (d) a record as to which (if any) of the persons mentioned in sub-paragraphs (b) and (c) above was present;
- (e) the full name and address of any representative attending the hearing;
- (f) the full name and address of any safeguarder;
- (g) the terms of any decision disposing the case of the child, or of any decision to issue a warrant, made by the children's hearing or any other course of action taken by them with respect to the child; and

- (h) in any case where the children’s hearing proceed in accordance with section 65 of the Act—
 - (i) particulars of the grounds of referral which are accepted or, as the case may be, not accepted, and by whom;
 - (ii) a record of any direction under subsection (7) or (9) of section 65 to make application to the sheriff for a finding under that section; and
 - (iii) a record of whether the children’s hearing proceeded to consider that the case at a hearing.

Travelling and subsistence expenses

32.—(1) Subject to paragraph (2), the local authority for the area of a children’s hearing shall, if a claim is made to them, pay to or in respect of any child, or to any relevant person, or to any one representative of either attending any children’s hearing, a sum equal to such travelling expenses and such expenses or subsistence as have, in the opinion of the local authority, been reasonably incurred by or in respect of the child or, as the case may be, by the relevant person or by any representative of either for the purpose of enabling the said child, relevant person or representative to attend that hearing.

(2) A claim under this rule shall be in writing and shall be made before the expiry of the period of one month commencing with the date of the children’s hearing to which the claim relates.

Notification of 16th birthday of child subject to supervision requirement

33. When a child subject to a supervision requirement attains the age of 16 years, the Principal Reporter shall as soon as reasonably practicable give notice of that fact to the chief constable of the police area.

St Andrew’s House,
Edinburgh
18th December 1996

James Douglas-Hamilton
Minister of State, Scottish Office