EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

AGENDA

8th Meeting, 2010 (Session 3)

Wednesday 17 March 2010

The Committee will meet at 10.00 am in Committee Room 4.

1. **Children's Hearings (Scotland) Bill**: The Committee will take evidence on the Bill at Stage 1 from—

   Shirley Laing, Deputy Director for Workforce and Capacity Issues Division, Denise Swanson, Senior Policy and Programme Manager, Children's Hearings System Reforms Branch, Gaynor Davenport, Bill Team Leader and Policy Officer, Children's Hearings System Reforms Branch, Daniel Kleinberg, Team Leader, Youth Justice Branch, Laurence Sullivan, Senior Principal Legal Officer, Solicitors (Children, Education, Enterprise and Pensions) Branch, and Claire McGill, Principal Legal Officer, Solicitors (Children, Education, Enterprise and Pensions) Branch, Scottish Government.

2. **Subordinate legislation**: The Committee will consider the following negative instrument—

   the Refuges for Children (Scotland) Amendment Regulations 2010 (SSI 2010/59).

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The papers for this meeting are as follows—

**Agenda item 1**

Paper by the clerk

SPICE briefing

**Agenda item 2**

Paper by the clerk
Introduction

1. This paper introduces members to the Committee’s first evidence session as part of its consideration of the Children’s Hearings (Scotland) Bill.

Background

2. The Bill was introduced on 23 February 2010 by Michael Russell MSP, Cabinet Secretary for Education and Lifelong Learning.

3. The Bill was referred to the Education, Lifelong Learning and Culture Committee for Stage 1 consideration by the Parliamentary Bureau at its meeting on 2 March 2010. The Parliamentary Bureau subsequently agreed a deadline of 2 July 2010 for Stage 1.

4. The Committee considered and agreed its approach to consideration of the Bill on 24 February 2010.

The Bill

5. Paragraph 17 of the Bill’s policy memorandum sets out the policy objectives of the Bill—

   “in bringing forward a Bill and wider reforms to strengthen and modernise the Hearings system and secure better outcomes for children we are looking to put in place a system which provides:

   • children’s rights at the heart of the system – by giving them the right to see relevant papers and information about their case and ensuring they have the support they need to participate effectively in the Hearings system and have a voice during hearings;

   • more modern grounds for referral – that will ensure that only those children who need compulsory measures of supervision will be referred to a hearing;

   • improved consistency – by introducing a single national Children’s Panel with national recruitment and training, better support for panel members and a clearer statutory framework around the work of the Principal Reporter;

   • a stronger system – by supporting the independence of panel members, ensuring they have the training, support and advice they need to take decisions in the best interests of the child and giving panel members reassurance that their decisions will be acted upon;
improved efficiency and protection – through the introduction of procedural changes such as interim compulsory supervision orders.

Written evidence

6. The Committee’s call for written evidence is due to close on 26 March 2010. This deadline was agreed at the Committee’s meeting on 24 February 2010 in order to give stakeholders as long as possible to provide a submission. Submissions will be circulated in advance of the first evidence session with stakeholders on 14 April 2010 (see below).

Oral evidence

7. The Committee agreed the following timetable for oral evidence—

- **17 March** Scottish Government officials
- **14 April** Families – Scotland’s Commissioner for Children and Young People; Scottish Children’s Law Centre; other children’s organisations
  - Local authorities – COSLA, ADES, ADSW – and ACPOS.
- **21 April** Panel members – Representatives of Children’s Hearings Training Officers and panel members
  - Scottish Children’s Reporters Administration.
- **28 April** Supporters – legal representatives, Scottish Safeguarders’ Association and Scottish Human Rights Commission
  - The Sheriffs’ Association.
- **5 May** Adam Ingram MSP, Minister for Children and Early Years.

Action

8. Members are invited to take evidence from Scottish Government officials.

Emma Berry
Assistant Clerk
Education, Lifelong Learning and Culture Committee
SPICe Briefing

Children’s Hearings (Scotland) Bill

10 March 2010

Briefing to ELLC Committee

Camilla Kidner

The Children’s Hearings (Scotland) Bill (the Bill) was introduced to the Parliament on 23 February 2010 by Michael Russell. The Bill restates much of the existing law relating to children’s hearings but it also creates a new NDPB, Children’s Hearings Scotland to take on functions of the Children’s Panel Advisory Committees, local authority functions relating to training and paying expenses and functions of Ministers in relation to recruitment, appointment and training panel members. Instead of 32 separate children’s panels, there will be a single panel, with members appointed by the National Convener of Children’s Hearings Scotland. In addition, there are various changes to the hearing process including rationalisation of warrants and orders, modernising the grounds for referral and providing for a national scheme through the civil legal aid system for the provision of state-funded legal representation in children’s hearings and associated court proceedings. A key driver for the reforms is the need to ensure the requirements of human rights law are met and the need to improve consistency across the system.

This briefing has been produced for the Education, Lifelong Learning and Culture Committee. It will be updated to reflect written evidence received by the Committee by 26 March and published as a SPICe briefing in April.
## CONTENTS

### EXECUTIVE SUMMARY

Executive Summary............................................................................................................................................................................ 4

### INTRODUCTION TO THE CURRENT SYSTEM

Introduction to the current system......................................................................................................................................................... 6

**Current Structure** ........................................................................................................................................................................... 6

**Overview of General Procedure** .................................................................................................................................................. 6

**Statistics** ....................................................................................................................................................................................... 7

### POLICY DEVELOPMENT

Policy Development.................................................................................................................................................................................. 8

**Consultations 2004 to 2009** ......................................................................................................................................................... 8

**Wider Reforms** .............................................................................................................................................................................. 10

### STRUCTURAL CHANGES

Structural Changes.................................................................................................................................................................................. 11

**The National Convener** ............................................................................................................................................................... 11

**Area Support Teams** ................................................................................................................................................................. 11

**The Children’s Panel** ................................................................................................................................................................. 12

**Scottish Children’s Reporter Administration (SCRA)** .............................................................................................................. 12

**Remaining Functions of Scottish Ministers and Local Authorities** ........................................................................................ 12

  - Implementation of hearing decisions by local authorities ........................................................................................................ 13

**Financial Memorandum** ............................................................................................................................................................. 13

**The Need for Change and Previous Proposals** ........................................................................................................................ 14

### HUMAN RIGHTS AND CHILDREN’S HEARINGS

Human Rights and Children’s Hearings .......................................................................................................................................... 15

**UNCRC** ....................................................................................................................................................................................... 16

**ECHR Article 6** .............................................................................................................................................................................. 16

**ECHR Article 8** .............................................................................................................................................................................. 17

**ECHR Article 5** .............................................................................................................................................................................. 17

**How these rights are reflected in the Bill**........................................................................................................................................ 17

  - Enabling children to express their views ................................................................................................................................. 17

  - Right to attend a pre-hearing panel .......................................................................................................................................... 18

  - Deciding who is a relevant person ........................................................................................................................................... 18

  - Provision of documents ............................................................................................................................................................. 18

  - Reporter giving advice to hearings ........................................................................................................................................ 18

  - Withholding information .......................................................................................................................................................... 19

  - Secure care authorisations ...................................................................................................................................................... 20

  - Legal representation ............................................................................................................................................................... 20

### HEARING PROCEDURE

Hearing Procedure.................................................................................................................................................................................. 23

**Changes to Grounds** ................................................................................................................................................................. 23

**Proof of Grounds** ........................................................................................................................................................................ 25

  - Expedited procedure ............................................................................................................................................................... 25

  - Character or sexual behaviour evidence ............................................................................................................................... 25

  - Provision for vulnerable witnesses ......................................................................................................................................... 26

**Warrants and Orders** ................................................................................................................................................................. 26

  - Child Protection Orders .......................................................................................................................................................... 26

  - Child Assessment Orders ........................................................................................................................................................ 27

  - Child arrested by police .......................................................................................................................................................... 27

  - Warrants ..................................................................................................................................................................................... 27

  - Interim Compulsory Supervision Orders .............................................................................................................................. 28

  - Medical Examination Orders ................................................................................................................................................. 29

  - Compulsory Supervision Orders ....................................................................................................................................... 29

**Appeals** .................................................................................................................................................................................... 29

  - Part 15 of the Bill provides for appeals and the policy intention, with a few exceptions, is to clarify rather than change existing provision .......................................................................................................................... 29

  - Scope of appeal ........................................................................................................................................................................ 29

  - Safeguards right to appeal ...................................................................................................................................................... 30
Frivolous appeals
EXECUTIVE SUMMARY

Children’s Hearings (Scotland) Bill

Camilla Kidner

The main proposal in the Bill is to enable a single, national children’s panel to be created instead of the existing 32 local panels and the establishment of a new NDPB, Children’s Hearings Scotland to support panel members. As a result, some functions of Scottish Ministers local authorities and panel chairs are moving to the new body. Children’s Panel Advisory Committee’s will no longer exist, with their functions taken up by the new body. Substantial parts of this Bill re-drafts existing legislation with no policy change. The main elements of the new policy are listed below. These mainly relate to organising the structure of the system, reflecting human rights issues and simplifying other processes.

Structural changes

1. Creating a new non-departmental public body (NDPB), Children’s Hearings Scotland headed by a National Convener, to take on the functions of Children’s Panels Advisory Committees (CPACs), and some functions of local authorities and Ministers. (Part 1, schedules 1 and 2)

2. Some minor changes to the governance arrangements of the SCRA. (Schedule 3)

Reflecting human rights issues

3. Enabling a person to seek a determination of whether they are a relevant person from the pre-hearing panel and to appeal that decision. (s.78)

4. Enabling information provided by the child to the hearing to be withheld from the relevant person where its release could harm the child. (s.171)

5. Introducing a permanent scheme of state funded legal representation for children and relevant persons and transferring the administration of this to the Scottish Legal Aid Board. (Part 19)

6. To allow for an appeal against a Chief Social Worker’s decision to implement an authorisation for secure care (s.156).

7. The Bill also provides for rules to be made to: give the child and relevant person a right to attend a pre-hearing panel (the new name for business meetings) and which could provide a right for children to receive documents (s.170). Regulations are provided for to specify more clearly the process of secure accommodation decisions. (s.145).

Other changes to processes and implementation

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^ Generally the relevant person is the parent. See p.17 for changes made in the Bill.
8. Modernising the drafting of the grounds for referral and introducing a new ground related to domestic abuse. (s.65)

9. Simplifying the provisions for place of safety warrants and introducing a new order: an interim compulsory supervision order. (Parts 5, 9, 10 and 11).

10. Giving safeguarders a right to appeal. (s.148)

11. Extending restrictions on to the admissibility of evidence relating to a person’s sexual character and behaviour. (s.166-68)

12. Allowing prior statements to be used as evidence in hearings on offence grounds and allowing the reporter to lodge child witness notices or vulnerable witness applications in these hearings or apply for a review of arrangements. (s.169)

13. Requiring the reporter to share information with Crown Office and Procurator Fiscal Service (COPFS) in relation to criminal proceedings which are in any way connected with a child at a hearing. (s.172)

14. Introducing a ‘feedback loop’ to provide information to panel members, via the National Convener, with general information on how the local authority implements its compulsory supervision orders. (s.173)

Since 2004 there have been three consultations and two draft bills leading up to the current Bill. Key drivers for reform have been the need to introduce greater consistency across the system and to ensure that the system is robust in terms of the European Convention on Human Rights (ECHR).

While there has always been support for the Kilbrandon principles underpinning the system, the particular proposals for reform have changed considerably over the years. This is especially true of the type of restructuring suggested. In 2008 it was proposed that all the various components of the system (reporters, panel, safeguarders, CPACs, ministers and local authority role) be merged into one organisation but this was rejected as were proposals in the 2009 draft Bill to change the role of the reporter. Consistent themes in responses to all the consultations have been the need to preserve the Kilbrandon principles, the need to get the right balance between local and national control and the need to place the child’s rights at the centre of the process.

In parallel to the Bill’s development there have been moves to reduce the number of NDPBs and make it easier to change their functions through the Public Services Reform (Scotland) Bill (currently just completed stage 2). There has also been the development of a major policy of cultural change across all children’s services – Getting it Right for Every Child (GIRFEC). This emphasises the need to organise services around the needs of the child, to improve planning and to reduce bureaucracy with the aim of ‘ensuring that every child gets the help they need when they need it.’

The Bill is in 20 Parts with 6 Schedules. Part 1 and schedule 1 provide for the establishment of Children’s Hearings Scotland and the National Convener. The remaining structure of the Bill is intended to reflect the order in which processes happen. So, Child Protection Orders, as an emergency procedure are in Part 5, investigation and decisions to hold a hearing are in Part 6, the hearing on the grounds is in Part 9 and application to the sheriff for proof of grounds in Part 10. Reviews, implementation, appeals and enforcement are in Parts 13 to 16 respectively. Provision for a permanent scheme for legal representation is in Part 19.

Safeguarders can be appointed to protect the child’s interests.
INTRODUCTION TO THE CURRENT SYSTEM
The children’s hearings system was introduced in 1971 following the Kilbrandon Report of 1964 and the Social Work (Scotland) Act 1968. Kilbrandon recommended a welfare based system to provide an integrated approach to children who had committed offences and children in need of care and protection. It assumes that the child who has committed an offence is just as much in need of protection as the child who has been offended against. It is a lay tribunal which does not have the formality of the normal courts. The legislation was substantially revised in the Children (Scotland) Act 1995 but the key principles have remained constant.

CURRENT STRUCTURE
Currently, each local authority has to establish a Children’s Panel, a Children’s Panel Advisory Committee 3 (CPAC) and a Safeguarders’ Panel. CPACs advise Ministers on panel member appointment and support general administration. Safeguarders can be appointed by a hearing or by the sheriff to safeguard a child’s interests. Each local authority area also has a reporter – although they are employed by the Scottish Children’s Reporter Administration (an NDPB established under the Local Government etc. (Scotland) Act 1994). The reporter investigates referrals and arranges a hearing if necessary. He or she takes a record of the hearing decision and conducts proceedings before the sheriff. Local authorities appoint and manage CPACs and safeguarders’ panels and provide training, expenses and allowances to panel members. Crucially, it is the local authority which implements the decision of a hearing. Scottish Ministers appoint panel members, run a national recruitment campaign and organise national training for panel members.

OUTLINE OF GENERAL PROCEDURE
The following gives a very brief overview of the main stages of a hearing. Throughout, the procedures are informed by the key principles of the system which are:

- the welfare of the child is the paramount consideration
- an order will only be made if it is necessary (i.e the state should not interfere in a child’s life any more than is strictly necessary), and
- the views of the child will be considered, with due regard for age and maturity

The hearing should have the character of a discussion about the child’s needs. The sheriff is generally only involved if: grounds of referral are in dispute or not understood, a child protection or child assessment order is required or there is an appeal against a decision of a hearing. It is necessary to balance the ‘lay’ character of the system with the guarantees of individual rights afforded by a court system.

Anyone can make a referral to the reporter, but in practice most referrals are made by the police (SCRA 2009). The reporter investigates and decides whether a hearing is required. This decision is based on whether there is sufficient evidence that a statutory ground for referral has been met and if so, whether compulsory measures of supervision are needed. If a hearing is required, then the reporter arranges one and three members of the local children’s panel are selected to form the hearing (the Bill proposes that they will only have to be from the local area ‘as far as practicable’).

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3 Local Authorities can establish joint CPACs
The child and relevant persons have a duty to attend a hearing unless they are excused. They also have a right to attend\(^4\). Relevant persons are those with parental responsibilities and rights and those who, other than by reason of employment, ordinarily have charge or control of a child. At the hearing, the grounds for the referral must either be accepted by the relevant persons and child or established by the sheriff in order to proceed.

In considering the case, everyone should have the opportunity to participate freely. If necessary, a relevant person can be temporarily excluded if this is needed to allow the child to express his or her views or to prevent distress to the child. A safeguarder, whose role is to protect the child’s interests, can be appointed at any time during the hearings process. A child or relevant person can be represented at a hearing and there is state funding available in particular circumstances for legal representation. A scheme for children has been available since 2002 and this was extended to relevant persons in June 2009.

Once the case has been considered the hearing can either; continue the case (i.e. defer decision to a later hearing), discharge the referral, refer to Restorative Justice (if child aged 8 to 17 and referred on an offence ground) or make a supervision requirement (re-named ‘compulsory supervision orders’ in the Bill). A supervision requirement can set out where the child is to live and with whom he or she will have contact. It can have any condition attached to it including, authorising placement in secure accommodation, requiring a medical examination or a ‘movement restriction condition’ (electronic tagging) and imposes duties on the relevant local authority. It can be reviewed at any time and will cease to have effect unless it is reviewed within a year.

The local authority must implement a supervision requirement. If it does not do so, the hearing can ask the reporter to apply to the sheriff principal for an enforcement order.

Appeals can be made by the child (where considered to have the capacity) or relevant person to the sheriff and then to sheriff principal or Court of Session. (The Bill adds a right of appeal for the safeguarder).

Although the above gives an outline, the detail of the hearings system is quite complex. For example, in addition to the above, it provides for the emergency protection of children through consideration of child protection orders and for various warrants and orders for the removal of children to a place of safety or for a medical assessment. There are strict time limits with regard to the detention of children which vary according to the circumstances in which the order is sought. Part of the complexity is a result of the need to ensure that emergency protection or any detention of the child is followed up timeously with full consideration of the child’s needs.

**STATISTICS**

Around 5% of all children were referred to the reporter in 2008/09, most of them on non-offence grounds. Of the 47,178 children referred, 39,105 (4.3% of all children) were referred on non-offence grounds and 11,805 (2.5% of children aged between 8 and 16 years) on offence grounds.

There were 83,742 individual referrals to the reporter in respect of those 47,178 children (88% of them from the police). While the number of children referred has declined since 2006/07, this follows a dramatic rise in the previous 10 years. In 1997/98 the number of children referred on offence and non-offence grounds had been similar at around 15,000 each. The number of children referred on offence grounds reached a peak of 17,641 in 2005/06 but this has since declined to 11,805 children in 2008/09. Children referred on non-offence grounds reached a peak of 44,629 in 2006 although this too has started to decline in the last two reporting years, to 39,105 in 2008/09 (SCRA 2009 and on-line).

\(^4\) although the relevant person can be excluded temporarily from a hearing
In the majority of cases the reporter decides that a hearing is not necessary. In these situations the reporter can refer the child to the local authority so that assistance can be given on a voluntary basis. Of cases decided in 2008/09, only 14.2% of children referred to the reporter had a hearing arranged. The four most common grounds for referrals in 2008/09 are set out in the table below:

Table 1: Most common grounds of referral to the reporter 2008/09

<table>
<thead>
<tr>
<th>Number of children</th>
<th>Ground</th>
<th>Further breakdown</th>
</tr>
</thead>
<tbody>
<tr>
<td>18,621</td>
<td>victim of schedule 1 offence</td>
<td>of which, 17,234 are under s.12 of 1937 Act - child victim of ill treatment, abandonment, neglect and exposure</td>
</tr>
<tr>
<td>15,320</td>
<td>lack of parental care</td>
<td>particularly younger children – 19.4% under two years</td>
</tr>
<tr>
<td>11,805</td>
<td>allegedly committed an offence</td>
<td>of the 42,146 offences alleged</td>
</tr>
<tr>
<td></td>
<td></td>
<td>8,963 were breach of the peace</td>
</tr>
<tr>
<td></td>
<td></td>
<td>8,864 were vandalism/malicious mischief, and</td>
</tr>
<tr>
<td></td>
<td></td>
<td>7,582 were assault</td>
</tr>
<tr>
<td>4,433</td>
<td>beyond the control of any relevant person</td>
<td>particularly 13 to 16 year olds</td>
</tr>
</tbody>
</table>

Source: Tables 5, 6 and 7, figs 9, 10 SCRA 2009

Although the number of referrals is falling, the number of hearings is increasing – from 38,734 in 2005/06 to 42,866 in 2008/09. Most hearings (63%) are actually review hearings. Only 16% of hearings (6,803) relate to new grounds.

Referrals on non-offence grounds take twice as long to deal with as referrals on offence grounds. The average time taken from receipt of referral to hearing decision in 2008/09 was 64 days for referrals on offence grounds and 120 days for referrals on non-offence grounds.

Where grounds are not accepted or understood the hearing applies to the sheriff for proof. In 2008/09, there were around 4,000 such applications. Nearly two thirds (64% or 2,584 applications) occurred because the child didn’t understand the grounds and they were also denied by the relevant person. There were 581 applications when the child didn’t understand the grounds but they were accepted by the relevant person. The Bill proposes a quicker procedure in this latter situation.

Hearings can make a number of decisions, the main one being whether or not to impose a supervision requirement. Other decisions include authorising the child to be detained in a place of safety, reviewing a child protection order and authorising the placing of the child in secure accommodation. The following lists the main decisions made in 2008/09:

- new supervision requirements 4,471 (most often 14 and 15 year olds)
- place of safety warrants 2,078 (most often children under one year of age)
- child protection orders considered 661
- secure authorisations 347

While very few hearing decisions are appealed, the number has been increasing in recent years. In 2008/09 there were 592 appeals to the sheriff about children’s hearings, with the hearing decision upheld in 65% of cases (SCRA 2009).

**POLICY DEVELOPMENT**

**CONSULTATIONS 2004 TO 2009**

This is done as a condition on a supervision requirement or a warrant
The Bill follows a number of different sets of proposals starting with the review of the children’s hearings system in 2004 and culminating in the draft Children’s Hearings (Scotland) Bill published in June 2009. Proposals have been made in:

- **2004 Review of Children’s Hearings, Phase 1.** This requested views on broad themes and key principles (Scottish Executive 2004).
- **2005 Getting it Right for Every Child: Proposals for Action.** This linked children’s hearings to the broader agenda of Getting it Right for Every Child (GIRFEC) and invited views on whether there should be a national or regional structure for panel support (Scottish Executive 2005).
- **2006 Children’s Services (Scotland) Draft Bill.** This was based on Proposals for Action and was much broader than just reforming the children’s hearings system. Part 1 sought to place a duty on a wide range of public agencies to collaborate in addressing children’s needs. Part 2 proposed changes to the children’s hearings system. There was an analysis of responses but due to the 2007 election, a Bill was never introduced (Scottish Executive 2006a).
- **2008 Strengthening for the Future.** The main proposal was for a national body to co-ordinate the hearings system – bringing together the SCRA, CPACs, the 32 children’s panels, the safeguarders’ panel and the functions of Scottish Ministers and local authorities with regard to training and recruitment of panel members (Scottish Government, 2008).
- **2009 Children’s Hearings (Scotland) Draft Bill.** The main proposal was a new national body to take on the function of recruiting and training panel members and arranging hearings. This Bill also re-stated the legislation on children’s hearings (Scottish Government 2009a).

The following sets out the main proposals in consultations and draft legislation since 2006 and indicates in bold whether the changes are also proposed in the current Bill.

The main proposals in part 2 of the draft Children’s Services Bill 2006 were:

- panel members would not be restricted to their own local authority area
- a statutory scheme for children’s legal representation
- to enable the reporter to liberate the child from detention in the place of safety while continuing to investigate and decide whether to arrange a hearing
- hearing to have a power to withhold information, if its disclosure would be harmful to the child
- proposals for changing the grounds and to be referred, a child had to have unmet needs with respect to well-being
- provision for a quicker process for establishing grounds where it has to go to the sheriff because the child does not understand the grounds
- introduction of interim supervision requirements
- power for the hearing to impose duties on agencies other than the local authority relating to the implementation of a supervision requirement
- removal of the discretion of the manager of secure accommodation and the Chief Social Worker in the decision whether to place a child in secure accommodation
- some simplification of warrants and orders

The main new proposals in Strengthening for the Future in 2008 were:
• establish an NDPB, ‘The Children’s Hearings Agency’, to bring together into a single body, the functions of the 32 children’s panels, the SCRA, the safeguarders’ panels, CPACs, the relevant functions of local authorities and Scottish Ministers.

• views were invited on how to take forward the interim scheme for children’s legal representation.

• general proposal to streamline the grounds for referral. Specific changes were not suggested

• child to be given the hearing papers unless this would cause them harm (current provision is not statutory)

The main new proposals in the draft Children’s Hearings (Scotland) Bill 2009 were:

• complete re-statement of the legislation on children’s hearings

• establish an NDPB, the Scottish Children’s Hearings Tribunal to bring together the 32 children’s panels and deal with the administration of hearings. This included transferring many of the reporter’s functions to the new body.

• re-wording and re-ordering of grounds

• revision of orders and warrants

Following the publication of the 2009 draft Bill the Scottish Government held meetings and events to discuss it and established five stakeholder working groups to recommend further changes and prepare for implementation. The group on organisational support considered changes to the structure of the system. The ‘child at the centre’ group considered how best to ensure that children’s rights were reflected in the Bill and a ‘virtual’ working group looked at the detail of the Bill. The other two groups were on training and implementation.

There is also stakeholder representation on the strategic project board including COSLA, SCRA, Children’s Panel Chairmen’s Group, (CPCG), Children’s Panel Advisory Group (CPAG), Scottish Association of Children’s Panels (SACP), Association of the Directors of Social Work (ADSW), Association of Chief Police Officers in Scotland (ACPOS), Administrative Justice and Tribunals Council (AJTC), and NHS Grampian (Scottish Government 2009b).

WIDER REFORMS

The proposals for change are made in the context of a range of other policy initiatives. In particular, a key focus in Getting it Right for Every Child is to reduce the number of unnecessary referrals to the reporter. The recent evaluation of the Highland GIRFEC pathfinder pointed to changes in practice relating to children’s hearings. For example a new screening process was introduced so that children were not automatically referred by the police to the reporter. The evaluation found that:

“Over a relatively short period of time the proportion of potential referrals that were not subsequently referred to the reporter after screening was reduced by 70%.” (Scottish Government, 2009c)

In January 2008, Alex Salmond set out his intention to reduce the 199 national public service organisations by at least 25 per cent with the aim reducing duplication and bureaucracy (Scottish Parliament 2008a). In part, this is to be achieved through replacing 32 children’s panels with a single national panel. In addition, the Public Services Reform (Scotland) Bill has recently completed stage 2 in the parliament. This seeks to merge the functions of certain NDPBs into new organisations and would give Ministers powers to change NDPBs by regulation rather than primary legislation. The SCRA is included in this list.
STRUCTURAL CHANGES

Part 1 of the Bill provides for the major change proposed - the establishment of a new NDPB 'Children’s Hearings Scotland' with five to eight board members headed by a National Convener. As mentioned above, there have been various different proposals for the establishment of a national body over the past few years. These and the reaction to them are set out below, together with arrangements proposed in the current Bill.

THE NATIONAL CONVENER

The National Convener is to be appointed by members of Children’s Hearings Scotland, with the approval of Scottish Ministers (sch 1 para 8), although the first appointment will be by Ministers (s.1). The post’s functions will be:

- to recruit and appoint panel members (sch 2, para 1 and s.4), publish a list of panel members (sch 2 para 2) and select members for hearings (s.6), who between them must be from all 32 local authority areas (s.4). These functions are currently shared between local authorities, CPACs and Scottish Ministers.
- to train, monitor the performance of and pay allowances to panel members (sch 2 para 3 and 4). Training is currently organised both nationally and locally and expenses are paid by local authorities. The National Convener will take responsibility for quality assurance of panel member performance (Policy Memorandum para 58).
- to appoint committees known as Area Support Teams (sch 1, para 12). Their functions are very similar to CPACs.
- to give advice at hearings (s.9). The potential conflict of interest in the provision of advice to hearings has been much debated and is discussed further at p.17.

The National Convener can delegate some functions to some other people. However, some functions cannot be delegated. These relate to selection of members for a hearing, appointment of panel members and the annual report (sch 1 para 10 (2)). The National Convener cannot delegate any functions to the Principal Reporter, the SCRA or a local authority. In particular, the provision of advice cannot be delegated to an employee of the SCRA or a local authority (sch 1 para 10 (4)). Some functions cannot be delegated to Area Support teams. These are provision of advice and functions relating to appointment of panel members. Functions which can be delegated to area support teams include the selection of members for a hearing and recruitment (sch 1 para 13). The explanatory notes suggest that functions might be delegated to employees of Children’s Hearings Scotland, volunteers or other members of local area support teams such as local authority representatives (Ex Notes para 324). This suggests that it is expected that there will be local authority representation on Area Support Teams.

The Bill provides at s.12 that no person can direct or guide the National Convener in the carrying out of his or her functions. This is however subject to regulations under s.10 by which Scottish Ministers can specify the manner in which, or period within which a function is to be carried out. The policy memorandum notes the importance of independence and states that this power: “will not be used to influence individual decision-making.” (PM para 66).

AREA SUPPORT TEAMS

The National Convener must appoint committees known as Area Support Teams (sch 1 para 12). These will take on the functions currently provided by CPACs and local panel chairs (PM

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6 although this can be delegated to Area Support Teams under para 13(1)(a)
para 88). The geographical areas to be covered by each team will be decided in consultation with local authorities who can also nominate members (sch 1 para 12). Committee members can, but don’t have to be employees or members of Children’s Hearings Scotland. This leaves scope for the recruitment of volunteers. The Explanatory Notes suggest at para 324 that Area Support Teams will include local authority representation, but this isn’t specified in the Bill. Following consultation with local authorities, the National Convener can delegate some functions to the Area Support Teams including recruitment and selection of panel members for a hearing and can issue directions about how these functions are to be carried out (sch 1 para 13). However the National Convener cannot delegate the provision of advice to hearings or the appointment and removal of panel members to area support teams (sch 1 para 13).

THE CHILDREN’S PANEL

There are currently 2,422 children’s panel members in Scotland (PM para 143). At present, each local authority area must establish a children’s panel from which to select the members of a children’s hearing. The Bill proposes that a single children’s panel is established by the National Convener (s.4). Panel members will no longer be appointed by Ministers on the advice of CPACs but by the National Convener (Sch 2 para 1). As at present, a Children’s Hearing will have to include both male and female panel members and one member will be appointed Chair (s.6). However, whereas at present all members are required to be from the relevant local authority area, the Bill introduces a degree of flexibility to this, requiring that: “so far as practicable, [a hearing] consists only of members” who live and work in the relevant local authority area (s6(2)(b)).

SCOTTISH CHILDREN’S REPORTER ADMINISTRATION (SCRA)

Unlike in previous proposals, the functions of the SCRA and the Principal Reporter do not change much although the Bill does provide power for Ministers to change the functions of the Principal Reporter by affirmative regulation (s.17). While the Bill does not change the reporter’s role, their practice has been altered recently in order to ensure compliance with ECHR (see discussion below).

Although the SCRA is legally separate from CHS, the policy memorandum indicates that shared services will be considered where this would not result in a conflict of interest. Discussions are ongoing with SCRA about services such as human resources, ICT and finance services (FM para 424). The Bill also makes some small changes to the governance of SCRA – such as no longer requiring the Principal Reporter to be the chief officer of the SCRA (by not replicating s.128(2) Local Government (Scotland) Act 1994)).

It also introduces a new duty at s.173 for the reporter to share information with the Crown Office and Procurator Fiscal Service (COPFS) when there are criminal proceedings underway which have some connection to a child in a hearing.

REMAINING FUNCTIONS OF SCOTTISH MINISTERS AND LOCAL AUTHORITIES

Scottish Ministers will no longer run the national recruitment campaign, arrange national training or appoint panel members. This leaves them with a general oversight of the whole system, including providing directions, and power to change the functions of the National Convener via affirmative regulations.

Local authorities will no longer be required to establish children’s panels or CPACs. This leaves them with the statutory functions of appointing a panel of safeguarders (s.30) and implementing hearing decisions and gives them the new statutory functions of: nominating members of Area
Support Teams, being consulted by the National Convener on the establishment of Area Support Teams and delegation of functions to them (sch 1 para 12 and 13) and providing information to the National Convener about the implementation of hearing decisions (s.173).

It is expected that local authorities will continue to provide “accommodation, administrative support and support for recruitment of panel members” (FM para 445). These functions are not specified in the Bill. They aren’t specified in the 1995 Act either, but might be considered to flow from the duties to establish panels and CPACs which the current Bill removes.

COSLA has suggested that, instead of Area Support Teams, there should be committees appointed by local authorities comprised of volunteers and elected members. These would be responsible for the appointment, support and management of panel members. The Scottish Government rejected this on grounds of conflict of interest (particularly with regard to appointment) and lack of accountability to the National Convener (PM paras 94 – 99).

Implementation of hearing decisions by local authorities

Under s. 70 of the 1995 Act, local authorities must implement a supervision requirement and this duty is replicated in s.138 of the Bill. A common concern of panel members is that they do not know whether or how local authorities comply with this. At s.173, the Bill enables the National Convener to require information from local authorities about the implementation of these orders which can then be passed on to panel members. This will not be specific information on each case but generalised information such as policy statements, statistics and general information about how the local authority goes about implementing compulsory supervision orders (PM para 426-7).

In addition, the Bill makes a slight change to existing powers for enforcing local authority implementation of supervision requirements. Since 2004 hearings have been able to request that the reporter seek enforcement from the sheriff principal. The reporter therefore has discretion whether to comply with the hearing’s request. The reporter must first give notice to the local authority and can only proceed if they continue to fail to implement the duty. If they do fail to implement it, then the sheriff principal can require the local authority to perform the duty in question. (s.71A 1995 Act). It seems that these provisions have been little used. There have been 10 cases of serving a notice and all have been complied with without the need to apply to the sheriff principal (PM para 307).

Sections 140-42 restate these provisions but transfer the function of the reporter to the National Convener and remove the discretionary element. There have been mixed responses to this. While some thought it is not the best way to resolve issues between hearings and local authorities others thought the provisions should be strengthened (PM para 310).

FINANCIAL MEMORANDUM

The cost of the system is currently around £32m and the Bill will add £2.51m to this. The main expense of the system is the SCRA which receives grant in aid of £26.19m and this will not change. Nor will there be any change to the £3m estimated spend by local authorities on supporting hearings. Nearly all the costs of the Bill relate to the provisions for changed structure.

The main funding implication is Children’s Hearings Scotland which will cost around £4.5m a year to run. The main increases in costs created through its establishment are the provision of expenses to panel members and area support teams at a total of nearly £1m and the provision of staff and corporate services for Children’s Hearings Scotland also around £1m (table 2, financial memorandum). This will be partially offset by a reduction in Government staff costs.

As discussed above, local authorities will lose some functions but will gain a requirement to provide information. This cost will be met by savings in expenses payments and the cost of training which will pass to the National Convener. On the understanding that local authorities
will continue to provide local support to the hearings system, they will retain the £3m which they currently spend on matters such as CPACs, expenses and local training. However, the financial memorandum notes that if they do not continue to support the hearings system, this cost will need to be met by Scottish Government (FM para 402).

The other main cost in the Bill is the increased budget for legal representation from £300,000 to £441,000 (see below p.19). However, it is not clear whether this increase is directly a result of the Bill or would have been required anyway if the current scheme continued.

THE NEED FOR CHANGE AND PREVIOUS PROPOSALS

Changes in structure are primarily intended to improve consistency. The policy memorandum refers to a lack of clear accountability (para 80) and an ‘unacceptable variety of practice’ in paying expenses (para 81). Previous attempts to standardised training have proved ineffective (para 79) and “the quality of training is crucial in moving forward with this reform agenda.” (PM para 61) The number of appeals is small but increasing. There were less than 500 appeals in 06/07 but 592 in 2008/09. While the need to make structural changes was identified early in the reform process, the actual proposals have altered considerably as they have developed. Key issues of contention have been the balance between local and national organisation and the role of the reporter.

In 2004, Phase 1 of the children’s hearings consultation showed that: “the system was under strain as panel members were often poorly supported and were frustrated when their decisions were not always acted upon.” (Scottish Executive 2004) In 2008, Strengthening for the Future stated that: “support for panel members varies enormously between the 32 local areas” which can: “adversely affect the quality of panel member practice.” (Scottish Government 2008). While the local link is valued, this 2008 consultation referred to: “the behaviours generated by an over-dependence on local support and the absence of underpinning standards.” It also stated that the current system is overly complex and has unclear accountabilities.

In 2005, the Scottish Executive consulted on whether there should be regional bodies or a national system for standards and administration (Scottish Executive 2005). It proposed that children’s panel boundaries would not be linked to local authority boundaries, that panel members and CPACs would not be Ministerial appointments and that there would be new arrangements to oversee standards and procedures.

Nearly a third (32%) of respondents to the 2005 consultation opposed allowing panel members to sit in other local authority areas. The strongest opposition was from CPACs and panel members (Scottish Executive 2006b para 5.40). There was concern amongst both supporters and opposers that any change should not diminish the link between panel members and their local community and local authority. While many acknowledged the need for greater flexibility, national standards and improved training many felt this could be achieved through improving the way the current structure worked rather than introducing a new structure. At that time, the proposal for a national body was supported by 40% of respondents.

Strengthening for the Future (2008) proposed a national body to bring together the functions of the SCRA, the CPACs, the 32 children’s panels, 32 safeguarders’ panels and possibly legal representation into one organisation which would also take on the functions of Scottish Ministers and local authorities in relation to appointment, recruitment, training and paying expenses. Scottish Ministers would retain general policy oversight and local authorities would retain their role in implementing decisions and have a greater role in promoting the system locally. The new body would be called the Children’s Hearings Agency. The President of the Children’s Panel, Principal Reporter and Chief Executive Officer would be employed by the Board of this agency.
The consultation analysis referred to a number of concerns with these proposals, although it did not quantify these. It did however refer to ‘serious concerns’ that the SCRA should remain a separate body and reiteration of previous views that any changes must not be at the expense of local decision-making and delivery. There were ‘many’ views that the proposals to prevent conflict of interest between the different functions of the new body would not be adequate (Scottish Government 2009d).

In April 2009, the Scottish Government announced a change to the proposals. The body would now be called the Scottish Children’s Hearings Tribunal and its functions would relate to Children’s Panels. The SCRA would remain separate and local authorities would continue to manage the provision of safeguarders. Panel members would continue to be recruited, selected, trained and sit on hearings on a local basis (Scottish Parliament 2009a).

Following this announcement, a draft Children’s Hearings (Scotland) Bill was published in June 2009 (Scottish Government 2009a). As indicated in the above PQ, this proposed an NDPB, the Scottish Children’s Hearing Tribunal to take on the functions of supporting children’s panels. It also made a new proposal that this new body would take on certain functions which currently lie with reporters. These were: arranging the hearing, providing accommodation and facilities, advising the hearing on procedure, warrants and orders and taking a record of business meetings and hearings.

While there wasn’t a formal consultation process or analysis of responses to this draft Bill, the Scottish Government held events and discussions and they published a summary of this. They also established a number of working groups (Scottish Government 2009e). There were a great many comments on the changes to the reporter’s role. There were concerns that moving some reporter functions to the new body would remove the continuity of involvement which the reporter has with the child and family. (It is the reporter who investigates, arranges a hearing, is present at the hearing and represents the hearing at the Sheriff Court). The draft Bill had also proposed a new role of ‘hearing adviser’ as a way to deal with potential conflict of interest in the reporter investigating a case and advising the hearing. This was opposed as respondents thought it would only add to the number of adults attending.

The working group on ‘organisational support’ agreed that at a national level there should be: a children’s panel and NDPB to support it, a recruitment campaign and training standards. Interviewing, appointment and delivery of training should be at a local level. However, there was no consensus on how support should actually be delivered locally, for example whether it should be locally or centrally managed, how quality assurance should be arranged and where responsibility for safeguarders should lie (Scottish Government 2009f).

Subsequent to these discussions, the Bill as introduced provides for a national body with a National Convener to appoint and support panel members, does not fundamentally change the role of the reporter and leaves the appointment of safeguarder panels with local authorities.

**HUMAN RIGHTS AND CHILDREN’S HEARINGS**

Two key policy objectives of the Bill are to place children’s rights at the heart of the system and to ensure that the Bill meets ECHR requirements now and in the future. The two most relevant conventions are the United Nations Convention on the Rights of the Child (UNCRC) and the European Convention on Human Rights (ECHR). The key provisions relate to the best interests of the child (art. 3, UNCRC) the views of the child (art. 12, UNCRC), the right to a fair trial (art. 6 of ECHR), rights in relation to deprivation of liberty (art. 5, ECHR) and the protection of family life (art. 8, ECHR). Whereas the ECHR has been incorporated into UK law through the Human Rights Act 1998, UNCRC has not. Therefore, while some provisions and principles in UNCRC are reflected in domestic legislation (such as having regard to the views of the child), it is not possible to bring a case directly on breach of the UNCRC itself.
UNCRC

The UNCRC is a wide ranging convention including civil, social and economic rights. While there are specific provisions relating to juvenile justice and state protection of children, the key principles relate to the best interests of the child (article 3) and the views of the child (article 12).

3(1). In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

12(1). States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

12(2). For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

The current s.16 of the 1995 Act reflects these principles by setting out that:

- the welfare of the child is the paramount consideration
- the child will be given the opportunity to express his views and they will be taken into consideration, taking account of their age and maturity and,
- no order will be made unless it is better for the child that one be made

These same principles are provided for in the Bill at sections 24 to 28.

ECHR ARTICLE 6

Article 6 is about procedural fairness in courts, guaranteeing a right to a fair and public hearing within a reasonable time by an independent and impartial tribunal. In S v Miller 2001 SLT 531, the court found that a Children’s Hearing constituted civil proceedings which engage article 6(1) rights. The concept of a fair trial includes that:

- the system must be and appear to be independent and impartial
- cases must be progressed within a reasonable time, although what is reasonable will depend on the circumstances of the case
- in some cases there should be access to legal representation in order to ensure effective participation in the process. While generally the choice of how to ensure practical and effective access to a court is left to states, state funded legal representation has been found to be required in relation to both children and relevant persons in children’s hearings, where certain criteria are met (S v. Miller and SK v Paterson [2009] CSIH 76) (See discussion on p.19).
- parties must be able to participate effectively in proceedings. This can include access to documents and a right to be present at a hearing.
  - failure of a hearing to provide copies of expert reports to parents was found to breach article 6 (McMichael v. United Kingdom (1995) EHRR 205).
  - depending on the seriousness of the issue, there is a right to be present in civil proceedings (X v. Sweden 1959 TB 354)
- a reasoned judgement should be given so that it can be challenged (Hadjianastassiou v. Greece (1993) 16 EHRR 219)
ECHR ARTICLE 8

Article 8 gives everyone the right to respect for their private and family life. Any interference by the state must be a proportionate way of pursuing a legitimate aim (for example protecting children from harm). Children’s hearings can make life changing decisions affecting the relationship between parents and their children and so article 8 rights will almost always be relevant. Article 8 has been taken to include a need for fair proceedings when decisions can have a serious effect on family life. This includes involving parents in care proceedings, (W v United Kingdom (1987) 10 EHRR 29), the avoidance of delay (W v. United Kingdom) and provision of documents to parents (McMichael v. UK (1995) 20 EHRR 205).

ECHR ARTICLE 5

Article 5 deals with the deprivation of liberty. Provision for detention should be in accordance with a procedure prescribed by law and no-one shall be deprived of their liberty except in certain cases. These include the detention of a minor for the purposes of educational supervision or to bring him or her before a competent legal authority. Article 5 rights also include that someone who has been detained has a right to: be informed promptly of the reasons for arrest, be brought promptly before a judge or someone with judicial power and be able to bring proceedings to decide quickly whether the detention is lawful.

A secure accommodation order in England has been found to constitute a deprivation of liberty for the purposes of educational supervision under art. 5(1)(d) (W Borough council v. DK, DJK AK (A Minor) and Delahunty, unreported, November 15 2000). In Scotland, the hearing only authorises that a child be placed in secure – it is the chief social worker and manager of the secure provision who make the actual decision.

HOW THESE RIGHTS ARE REFLECTED IN THE BILL

Proposals in the Bill where human rights issues are particularly relevant include:

- providing for rules to give children and relevant persons a right to attend the pre-hearing panel
- provision for someone to seek a decision about whether they are a relevant person
- providing for regulations to provide documents to children
- providing for the National Convener to give independent advice to a hearing
- the proposal that information provided by the child will not be passed on to relevant persons if to do so might harm the child
- providing for a clearer process for decisions about secure care and new right of appeal
- provision of a permanent scheme for legal representation for relevant persons and children through legal aid

Enabling children to express their views

Responses to the 2009 draft Bill suggested that further action was required to “ensure better participation in the system by children and young people.” (Scottish Government 2009e). During the development of the Bill’s proposals the child at the centre working group’s recommendations included:

- a statutory right for children to receive advocacy support. This was not taken up by the Government. (Scottish Government 2009g).
- the ability to withhold information given by the child if its release could harm the child (see discussion below).
- the removal of the right of the press and AJTC to observe hearings. This was not taken up by the Government.

The Government has also agreed that it will develop guidance on: ensuring that legal representatives are suitable for children, that reports include the child’s views and that children attend hearings. It will also improve training materials relating to communicating with children.

Right to attend a pre-hearing panel

Part 8 of the Bill changes the name of the ‘business meeting’ to a ‘pre-hearing panel’ and secondary legislation under s.170 will be able to give the child and relevant person notification of these meetings and the opportunity to attend. This reflects the principle under Article 6 that there is a right to attend civil proceedings where serious issues are at stake and also reflects the SCRA practice guidance of September 2009 that a reporter and a hearing should not have private discussions. No consultation has taken place on this issue (PM para 238).

Deciding who is a relevant person

Part 8 of the Bill introduces at s.78 a right for a person to argue that they should be considered a relevant person. At present, this is a decision the business meeting can make, but there is no requirement for them to consider a request for them to make such a decision. The existing criteria are that someone has parental responsibilities and rights (PRR) or is “ordinarily in charge or control of a child (except through employment)”. The policy memorandum refers to some mixed opinion about whether a person with PRRs under s.11(2)(d) of the 1995 Act should automatically be considered a relevant person (PM para 472). This tends to affect unmarried fathers (unless they are named on a birth certificate dated 2006 or later). The Bill provides at s.185(1) who automatically has relevant person status. This includes: someone with PRRs under Part 1 of the 1995 Act or through a permanence order under the Adoption and Children (Scotland) Act 2007. Having a contact order under s.11(2)(d) or a specific issue order under s.11(2)(e) alone is not sufficient to qualify automatically for relevant person status (s.185(2)). However, under s.78 anyone can make a case to the pre-hearing panel that they should be considered a relevant person on the grounds that they have recently had significant involvement in the upbringing of the child. As at present, the hearing is not bound by the decisions of the pre-hearing (PM 231). This change to the relevant person decision was not consulted on (PM para 238).

Provision of documents

A key ECHR principle is the ability to participate effectively in proceedings. The right of parents to receive reports was settled in McMichael v. UK 1995. The provision of documents to children arose in S v. Miller, following which a non-statutory scheme was introduced. In the current scheme, children over 12 are sent the same documents as everyone else, although information can be taken out if it would cause distress. Children under 12 are only sent documents if the child or their representative requests them. (PM para 45).

The proposal for a statutory scheme was made in Strengthening for the Future and received almost unanimous support (96%). The current Rules provide that parents and relevant persons receive documents (Rule 5.3 1996 rules). At section 170 the Bill enables the Rules to include provision of documents to children.

Reporter giving advice to hearings
One area of concern has been the potential conflict of interest in the reporter’s role. Under article 6(1) the children’s hearing must act as an independent and impartial tribunal. Reporters had been offering legal and procedural advice to a hearing although this role is not provided for in legislation. This could risk ECHR challenge because it could be considered a conflict of interest to have the same person investigate and bring a case and then also advise those deciding a case. To address this, a recent change in practice has clarified that reporters are only offering the hearing their view. A practice note issued by the principal reporter in September 2009 states that the reporter can point out procedural irregularities, but: “a tribunal is not independent and impartial if it relies on the advice of an adversary, or party, in the proceedings.” In addition, private discussion between the panel and the hearing should be minimised:

“Any contact which does take place must not involve discussion of the substance of the case, must maintain the overall ECHR compatibility of the children’s hearing system, must be as limited as possible and must be made as transparent as possible.”

The practice note set out situations where a reporter can bring certain issues to the hearing’s attention which included:

- if the hearing has not discussed a material issue
- if a panel member has not given reasons for their decision, the decision is unclear or incompetent
- if the hearing has failed to ask for someone’s views on a material issue

While the Bill does not prohibit reporters from giving advice at hearings, the guidance issued in September makes clear how limited that role is. The Bill does however, at s.9, provide for the National Convener to advise hearings. The policy memorandum refers to advice being provided through written guidance, on-line advice, telephone discussion or in person by a legal adviser. It is expected that reference materials will be the first source of advice “and that reference to the advice service would therefore also be limited to complex cases” (FM para 442). The need for advice is “seen as an interim measure […] until such time as the improved training for all panel members has built capacity and understanding” (FM para 440). Costs are estimated at £100,000 pa (FM table 2) based on three times the cost of the SCRA helpline run for reporters (FM para 441).

Withholding information

Another provision which raises ECHR issues is the proposal at s.171 to withhold information from a relevant person if releasing it would be significantly against the interests of the child. This raises the important problem of how best to balance adult and children’s rights within the system. Currently, a person can be excluded from the hearing in order to avoid distress to the child. However, the excluded person must be told the substance of what is said in their absence, (s.46(2) 1995 Act) so nothing can be completely confidential. The policy memorandum states that: “we know that in certain circumstances this deters children from informing the hearing about events in their life (eg emotional abuse) or from giving the hearing the true reason for their behaviour.” (PM para 407).

This proposal was originally consulted on in 2005 and 90% of respondents supported it. Some qualified their support with concerns about ECHR implications. It was consulted on again in Strengthening for the Future in 2008 when 68% of respondents supported the proposal and a further 18% expressed qualified support. Thirteen per cent of respondents (27) clearly disagreed. The provision was not in the 2009 draft Bill but was reinstated at the request of children’s organisations (PM para 414).

Article 8 requires procedural fairness where important decisions affecting family life are made. Although the relevant person is not ‘on trial’, the hearing can make decisions which could lead
to their child being placed in care. The policy memorandum states that where the information is material to the hearing’s consideration, it may require to be disclosed in order to enable parties to exercise their right to appeal. (PM para 410). However, this is not provided for explicitly in the Bill.

Secure care authorisations

The more serious the consequences of a decision, the more important are the ECHR considerations. One of the most serious decisions a hearing can make is to authorise secure accommodation because this can lead to the deprivation of the child’s liberty. In 2008/09 there were 347 secure authorisations made by hearings, 164 as a condition of a supervision requirement and 183 as a condition of a warrant (SCRA 2009). Although the hearing authorises the placement, the final decision to place a child is with the Chief Social Worker and residential care manager. They are not required to give reasons and some local authorities do not keep a detailed audit trail of their decision making process (PM para 355). An estimated 60 to 70% of authorisations result in placement. (PM para 334). The policy memorandum refers to “a concern that discretion, while valuable, is not applied consistently, and not always in the best interests of the child” (PM para 338).

The Bill retains local authority discretion but provides for regulations which would introduce more transparency to the decision making process. The draft Children’s Services Bill in 2006 had proposed removing the element of discretion but the policy memorandum to the current Bill argues against this, partly because: “circumstances in children’s lives can change very quickly and practitioners feel strongly that they need to retain flexibility in order to capitalise on any positive elements and protective factors they can.” (PM para 358). Removing discretion would increase numbers in secure care and this is both costly and against government policy of reducing the use of secure (PM para 359).

The Chief Social Worker takes an administrative rather than a judicial or quasi-judicial decision. It is not the decision of a tribunal. In some cases, administrative decision making can meet article 6 requirements for a fair trial if there is a sufficient right of review or appeal (Simor and Emmerson, 2005 at para 6.106). The current provision for appeal is that any decision of a hearing can be appealed (s.51 (5) 1995 Act), which suggests that the decision to authorise secure care can be appealed. Currently, there is no right of appeal against the decision of the local authority. However, the Bill provides a right of appeal for both the hearing authorisation (s.148) and the local authority decision (s.156). (PM para 375).

Legal representation

Currently, state funded legal advice is available (under advice and assistance scheme) to the child and relevant person, if they are financially eligible both before and after the hearing. A government scheme, the Children’s Legal Representation Grant Scheme provides state funded legal representation during a hearing and representation is provided under the scheme without a means test. Legal aid may be available for proceedings before the sheriff and subsequent appeals subject to eligibility.

Part 19 of the Bill proposes to extend legal aid to cover children and relevant persons at hearings. This will replace the current government scheme and reflects the Scottish Legal Aid Board’s (SLAB) response to Strengthening for the Future which proposed: “a more rationalised single scheme to remunerate solicitors which would ensure greater consistency and clarity.” The Bill therefore at s.178, inserts a new Parts 5A and 5B into the Legal Aid (Scotland) Act 1986. SLAB would be responsible for making decisions on support and ensuring sufficient numbers of appropriately qualified solicitors are available. The Bill provides for the Board to establish a register of solicitors eligible to provide children’s legal assistance, a Code of Practice and a duty to monitor compliance with that Code (s.178 inserting new s.28N).
It has always been possible to have self-funded legal representation but it is only since 2002 (for children) and June 2009 (for relevant persons) that there has been a scheme for state funded representation. In the six months to 30 September 2009 there were 507 applications for legal representation for children and in the three months to December 2009 there were 124 applications for relevant persons. The financial memorandum therefore estimates an annual demand of 1020 legal representatives for children and 500 for relevant persons. This increases the budget from the current £300,000 to £441,000 (FM para 451).

An evaluation of the interim children’s scheme in 2009 found variation in the way the scheme was administered between local areas, some lack of clarity about when a lawyer needed to be appointed and barriers to lawyers taking on cases including: low fees, short notice and long distance to travel to rural areas. The policy memorandum refers to the current arrangements as “not ideal in terms of demonstrable fairness and independence” because local authorities have an interest in the case and are responsible for identifying solicitors and they are not “well placed to ensure good quality representation.” (PM para 440).

The government scheme was introduced in order to comply with article 6 ECHR. In 2001, S v Miller involved a 15 year old before the hearing on the offence ground. Although he had legal advice and assistance before the hearing and had legal aid for legal representation at the appeal to the sheriff, he did not have legal representation at the hearing itself. The court found that:

“the lack of free legal representation before the hearing might well significantly impair the child’s ability to affect the outcome of the hearing. In any event, the child would not receive a fair hearing within the meaning of Article 6(1) before the children’s hearing. [para 38]. It is not sufficient that legal aid would be available on appeal to the sheriff [para 39].

In 2009, SK v Paterson came to a similar conclusion with regard to a mother whose baby was placed in foster care. As the mother had the cognitive abilities of a child under 10 years of age it was found that without legal representation, she would not be able to participate effectively in the hearing. The court found that the absence of any state funded legal representation for relevant persons was “an inbuilt systematic flaw in the system”:

“We recognise that in proceedings before a children’s hearing, the rights and obligations of a child’s parent are different from those of the child who is the subject of the referral. However, the rights of a parent during any hearing where that parent’s civil rights are determined include the protection of a fair hearing afforded by Article 6. In these circumstances, we agree that the absence of any statutory provision entitling state-funded legal representation to be made available to relevant persons whose civil rights would be determined at a children’s hearing, but who would be unable, without such representation, to participate effectively during it, amounted to an inbuilt systematic flaw in the legal aid scheme as it applied to the children’s hearing.” [para 60]

Prior to the decision in SK v Paterson the Scottish Government accepted that legal representation needed to be provided to relevant persons in some circumstances and they introduced Children’s Hearings (Legal Representation) (Scotland) Amendment Rules 2009 (SSI 2009/211) which amended the 2002 Rules. Concerns were raised with MSPs particularly by the chairs of Scotland’s children’s panels. These included concern that:

- these measures would introduce a more legalistic approach
- there could be a large number of cases affected
- the criteria used in the SSI may not be the best way to deal with the issue
- it was a move away from the child centred nature of the system
- the rules were being introduced without consultation
A motion to annul these regulations was defeated in the Scottish Parliament 65 votes to 60 with one abstention.7

**Legal Aid at the hearing**

The Bill makes changes to the criteria for appointment. Legal aid will be available for certain types of hearings automatically and there is provision to extend this through regulations. The current rules are set out in Children’s Hearings (Legal Representation) (Scotland) Rules 2002 (SSI 2002/63) (as amended). These provide that a ‘business meeting’ (pre-hearing panel) can appoint a state funded legal representative for a child if:

- it is necessary to allow the child to participate effectively in the hearing, or
- it is likely that a supervision requirement with an authorisation for secure will be made

The 2009 amendments provided for legal representation for relevant persons where:

- it may be necessary to make or review a supervision requirement affecting contact, residence or parental rights, and
- such an appointment is necessary to ensure effective participation. This is to be decided with reference to; the complexity of the case, the nature of the issues involved, the person’s ability to challenge a document and the person’s ability to present their views effectively

The 2010 Bill provides for legal aid to automatically be available for children or adults for hearings:

- following a child protection order (under s.43 or 44)
- if compulsory supervision with a secure authorisation might be necessary
- following arrest and reporter referral under s.67(5)

The explanatory notes state at para 267 that legal representation will be available for the above types of hearings without a means test. The extension of legal aid to other types of hearings (and the inclusion of a means test) is left to regulations.

**Legal Aid at the sheriff, sheriff principal and Court of Session**

Currently legal aid is available under s.29 of the 1986 Act for proceedings before the sheriff and subsequent appeals. The Bill replaces these provisions with a new Part 5A. This provides that in all situations, the decision will be by the legal aid board rather than the sheriff and it also provides that financial resources will always be taken into account whereas at present they are not relevant to appeals on warrants.

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<th>Current</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>for child protection orders, grounds hearings or any other decision of a hearing, apply to the sheriff who must be satisfied that it is:</td>
<td>For proceedings at sheriff, apply to the Board who must be satisfied that it is:</td>
</tr>
<tr>
<td>- in the interests of the child</td>
<td>- in the interests of the child (for child legal aid only)</td>
</tr>
<tr>
<td>- required due to lack of financial resources</td>
<td>- reasonable in the circumstances</td>
</tr>
</tbody>
</table>

7 The SSI was made on 2 June 2009, laid in the Scottish Parliament on 3 June and came into force on 4 June. The 21 day rule was breached because the rules were used to remedy an ECHR breach. The rules came before the Education, Lifelong Learning and Culture Committee in September and a motion to annul was lodged. The motion to annul would have had the effect of suspending regulations already in operation. The motion to annul was defeated on 9 September so the rules remain in force.
for appeals on warrants, apply to the sheriff and there is no means test.

for exclusion orders\(^8\), application is to the sheriff who must be satisfied that it is:

- required due to lack of financial resources
- there are substantial grounds for appeal and
- reasonable in the circumstances

for appeals to the sheriff principal or Court of Session, apply to the Board, who must be satisfied that:

- required due to lack of financial resources
- there are substantial grounds for appeal and
- reasonable in the circumstances

- in addition, for proceedings at sheriff principal or Court of Session, there must be substantial grounds for appeal

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### HEARING PROCEDURE

A reporter receiving a referral, investigates and, if a ground is met and a reporter considers that compulsory measures are required, he or she arranges a hearing. If the grounds are not accepted or understood then they go to the sheriff for proof. At various stages, the hearing or the sheriff can make warrants for the child’s attendance and orders for their supervision or assessment. The following sets out the main changes in the Bill relating to hearing procedure not already raised in the discussion of human rights issues. These relate to changes to the grounds of referral, procedure for proof at sheriff court and provisions for warrants and orders.

### CHANGES TO GROUNDS

Section 65 of the Bill restates the grounds for referral with the intention of modernising rather than substantially changing them. There is one completely new ground relating to domestic violence and the ground relating to glue sniffing which has been removed. Although the ground relating to the Anti-Social Behaviour (Scotland) Act 2004 has also been removed, it is still a requirement under s.69 of the Bill that a child will be referred to hearing under s.12 of that Act.

Many grounds remain the same, if reworded to varying degrees and presented in a different order. For example new grounds h) and j) changes from a looked after child needing measures ‘for his adequate supervision, in his own or others’ interests’ to a looked after child needing ‘special measures of support.’ Another change is that whereas the 1995 Act referred to various offences committed by ‘a member of the same household’ as the child, the Bill refers to someone with ‘a close connection’ to the child. The most extensive re-wording is old ground b) ‘falling into bad associations or exposed to moral danger.’ This has been ‘modernised’ and replaced with new grounds e) and m) which refer to the child being abused or harmed and to conduct which has ‘a serious adverse effect’ on their health, safety or development.

A slightly different set of re-stated grounds appeared in the 2009 draft Bill and they were presented in a different order. It also included a new ground on exposure to domestic abuse. There were objections to the offence grounds being placed first and this has been changed.

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\(^8\) Exclusion of child, relevant person, named person or their partner, appropriate person.
The table below compares the grounds in the 1995 Act with those in the current Bill and changes are highlighted in bold. It also shows the number of referrals under each of the 1995 Act grounds in 2008/09 which shows that the most commonly used grounds are not changing.

Table 3: Grounds for referral, 1995 Act and 2010 Bill

<table>
<thead>
<tr>
<th>Referrals 2008/09</th>
<th>1995 Act, s.52</th>
<th>2010 Bill, s.65</th>
</tr>
</thead>
<tbody>
<tr>
<td>4,433</td>
<td>a) beyond the control of any relevant person</td>
<td>n) the child is not within the control of a relevant person</td>
</tr>
<tr>
<td>2,380</td>
<td>b) falling into bad associations or is exposed to moral danger</td>
<td>e) the child is being or likely to be, exposed to persons whose conduct is (or has been) such that it is likely that (i) the child will be abused or harmed, or (ii) the child’s health, safety or development will be seriously adversely affected.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>m) the child’s conduct has had, or is likely to have, a serious adverse effect on the health, safety or development of the child or another person.</td>
</tr>
<tr>
<td>15,320</td>
<td>c) is likely—(i) to suffer unnecessarily; or (ii) be impaired seriously in his health or development, due to a lack of parental care;</td>
<td>a) likely to suffer unnecessarily, or the health or development of the child is likely to be seriously impaired due to a lack of parental care</td>
</tr>
<tr>
<td>18,621</td>
<td>d) is a child in respect of whom any of the offences mentioned in Schedule 1 of the Criminal Procedure (Scotland) Act 1995 has been committed;</td>
<td>b) a schedule 1 offence has been committed in respect of the child</td>
</tr>
<tr>
<td>1,375</td>
<td>e) is, or is likely to become, a member of the same household as a child in respect of whom any of the offences referred to in paragraph (d) above has been committed;</td>
<td>d) child is, or likely to become a member of the same household as a child in respect of whom a schedule 1 offence has been committed</td>
</tr>
<tr>
<td>615</td>
<td>f) is, or is likely to become, a member of the same household as a person who has committed any of the offences referred in paragraph (d) above;</td>
<td>c) the child has, or is likely to have, a close connection with a person who has committed a schedule 1 offence</td>
</tr>
<tr>
<td>15</td>
<td>g) is, or is likely to become, a member of the same household as a person in respect of whom an offence under sections 1 to 3 of the</td>
<td>Child has, or is likely to have, a close connection with a person who has been convicted of an offence under Part 1, 4</td>
</tr>
</tbody>
</table>
PROOF OF GROUNDS

Expedited procedure

Currently, if a child doesn’t understand the grounds but they are accepted by the relevant person, they must go to the sheriff for proof. This situation applied to 581 cases in 2008/09. The Bill proposes at s.110 that in this situation the sheriff can dispense with a formal hearing and proceed on the basis of papers only. This change was supported in consultation by 89% of respondents to ‘Strengthening for the Future.’

Under the Bill s.113, a sheriff can issue an interim compulsory supervision order (ICSO see p.27) if he finds grounds established. In effect this is very similar to the existing power to issue a warrant to be kept in a place of safety prior to a hearing being arranged.

The remainder of the provisions for proof of grounds appear to be the same. When a ground is found proven by the sheriff there is a right to a review. On review, the sheriff can find other grounds, not mentioned in the original application are established and remit this back to a hearing. This is provided for under s.85(7)(b) of the 1995 Act and s.119 of the Bill. While this doesn’t appear to be a policy change, Norrie (2005 at p.182) notes of the existing provision to find new grounds that: “a finding to this effect would be consistent with Art. 6, it is submitted, only if the child and relevant persons were given due notice and the opportunity to challenge the allegations upon which the sheriff is making his finding.”

Character or sexual behaviour evidence

Currently, there are restrictions on the admissibility of evidence relating to a person’s character or sexual behaviour. These restrictions only apply when the child is referred on certain grounds...
which relate to the sexual behaviour of another person (s.68A of the 1995 Act, referring to grounds b, d, e and f see table 3 above) and do not currently apply where the child has committed an offence. At sections 166-9, the Bill simplifies and extends the provisions to restrict the questioning of any person where the ground relates to the sexual behaviour of any person. This will allow the sheriff to prevent the intrusive questioning of a child alleged to have committed a sexual offence. The Bill also applies these restrictions to hearsay evidence and to evidence taken by a commissioner. This is intended to prevent a person from attacking the character of someone whose statements are being used in evidence, regardless of whether the evidence is given directly at the hearing or not. The general issue of restricting the evidence that can be used in criminal cases has its origins in concerns about the treatment of witnesses in rape trials. For background on the general issue of admissibility of character and sexual history evidence in court proceedings see SPICe briefing 08/33 (McCallum, F 2008).

Provision for vulnerable witnesses
At s.169(5) the Bill amends the Vulnerable Witnesses (Scotland) Act 2004 to allow a child referred on an offence ground to record a statement prior to the sheriff hearing to avoid having to be taken through distressing material in court. This already applies to criminal proceedings (PM para.399). These provisions were not consulted on but the policy memorandum states they were “prompted by operational experience” (PM para 402).

Other amendments are proposed to the Vulnerable Witnesses (Scotland) Act 2004 as section 169(3) and (4). These make further provision regarding the timing for lodging child witness notices and vulnerable witness applications in children’s hearings related proceedings before a sheriff. They also permit the reporter to lodge these applications or to apply for a review of arrangements on behalf of the witness.

WARRANTS AND ORDERS

One aim of the Bill is to simplify the provisions for warrants and introduce a new type of order – the interim compulsory supervision order (ICSO). A hearing can make certain decisions about a child, the main one being imposing a ‘supervision requirement’ (re-named in the Bill a compulsory supervision order). This lasts for a year and can set out things like who a child has contact with and where they will live. There are also measures for emergency protection. A child protection order is granted by the sheriff and lasts for up to a week. The 1995 Act also makes various provisions for children to be detained under a warrant either in an emergency to ensure their safety or to ensure that they attend a court, hearing or medical assessment. Much of the Bill redrafts existing provision and the following focuses on where there is policy change.

Child Protection Orders
Sections 35 – 57 of the Bill provide for child protection orders (CPO). These are for the emergency protection of the child and can therefore only last up to 8 days. They can require the detention of the child in a place of safety and that the location of this place of safety is not disclosed to certain persons (1995 Act s.57(4)). The only policy change is to extend the scope of information that can be withheld and to require the sheriff to consider this (s.38). This is a response to concerns from practitioners about parents seeking out children’s whereabouts. Section 38(2) requires the sheriff to consider whether an information disclosure direction is required and 38(3)(b) provides that such a direction can specify that information relating to the child is to be withheld for the duration of the order.
There are also some drafting changes. The current criteria at s.57 1995 Act for making a CPO refer to whether the child’s current or likely future treatment result in his or her suffering significant harm. The Bill changes this slightly to specifically include past treatment of the child (s.36 and 37).

In 2008/09 there were 661 children referred to hearings following a CPO and 40% of them were under 2 years of age.

**Child Assessment Orders**

Sections 33-34 of the Bill provide for child assessment orders (CAO). A local authority can apply for a CAO where they need to establish whether a child is being neglected but are unable to do so without an order for the child to be taken for assessment of his or her health, development or treatment. CAOs are for the emergency protection of the child and currently last 7 days. The Bill reduces this to 3 days and also requires that an assessment starts no later than 24 hours after the order is granted. Child assessment orders do not, themselves, lead to a hearing. However, the outcome of an assessment could result in a referral to the reporter or an application to the sheriff for a child protection order.

The 30 Child Protection Committees and the Multi-Agency Resource Services at Stirling University were consulted on this change (PM para 181). Child assessment orders are not often used.

**Child arrested by police**

Another short term measure is the detention of a child by the police under s.43 Criminal Procedure (Scotland) Act 1995 while it is decided whether a hearing is required. When a child is detained by the police and they have decided not to proceed with charges, the police must tell the reporter who must then decide whether a hearing is required. Any hearing must start within 3 days of the reporter having being told about the child’s detention. During these three days if the reporter decides that a hearing is not required, then the child must be released, otherwise, he or she may be kept in a place of safety (s.63, 1995 Act).

Sections 63 and 71 of the Bill change these provisions slightly to make it clear that a child can be released while the reporter decides whether a hearing is required and, if it is decided to have a hearing, the child can be released before the hearing starts. This change was requested by the Principal Reporter and was also consulted on in the draft Children’s Services Bill in 2006.

**Warrants**

Warrants are available to the hearing or the sheriff to keep a child in a place of safety. Existing warrants under the 1995 Act are complex and in the Bill have been simplified into; a warrant for attendance lasting 7 or 14 days, an Interim Compulsory Supervision order lasting 22 days and medical examination order lasting 22 days. Existing provision for warrants in the 1995 Act and their nearest equivalents in the Bill are set out in the table below.

<table>
<thead>
<tr>
<th>1995 Act</th>
<th>2010 Bill</th>
</tr>
</thead>
<tbody>
<tr>
<td>section</td>
<td></td>
</tr>
<tr>
<td>situation</td>
<td></td>
</tr>
<tr>
<td>duration &amp; conditions</td>
<td></td>
</tr>
<tr>
<td>section/ title</td>
<td></td>
</tr>
<tr>
<td>situation</td>
<td></td>
</tr>
<tr>
<td>duration &amp; conditions</td>
<td></td>
</tr>
</tbody>
</table>

Table 4: Comparison of warrants in the 1995 Act and 2010 Bill

<table>
<thead>
<tr>
<th>1995 Act</th>
<th>2010 Bill</th>
</tr>
</thead>
<tbody>
<tr>
<td>section</td>
<td></td>
</tr>
<tr>
<td>hearing grants to ensure attendance at a hearing</td>
<td>warrant to secure attendance</td>
</tr>
<tr>
<td>7 days</td>
<td>s.102</td>
</tr>
<tr>
<td>hearing grants when child fails to attend hearing</td>
<td>to ensure attendance at a hearing. Granted by sheriff or hearing if they consider that a child may not attend.</td>
</tr>
<tr>
<td>7 days</td>
<td>7 days. Can include secure authorisation</td>
</tr>
</tbody>
</table>
68(6) to ensure attendance for proof hearing. Granted by sheriff.  
14 days.  
s.68(7) to ensure attendance for proof hearing. Granted by sheriff.  
14 days. Can include secure authorisation

66 granted by hearing when unable to dispose of case and, where relevant child may not attend hearing or clinic, or need to detain child in place of safety for his/her welfare.  
22 to 66 days, can include: medical examination, regulate contact, secure authorisation.  
interim compulsory supervision order (ICSO) s.100 granted by hearing when a hearing is deferred, or applies for proof, or by sheriff when hearing arranged following proof.  
22 days, (or up to 66 days if extended by a hearing or more if extended by sheriff under s.103). Conditions include place of safety, and others as CSO including: contact, medical examination or treatment, secure accommodation, movement restriction, that local authority do certain things

67 further detention granted by sheriff lasts until date specified on warrant. Conditions as above.  

69 when hearing deferred for further investigation  
22 days, can include requirement to attend hospital, have a medical examination, secure authorisation  
medical examination order s.101 when hearing is deferred, and further information or investigation is required s.83(3) and s.121(3)  
22 days, can include requirement to attend hospital, have a medical examination, regulate contact, non-disclosure of whereabouts, secure authorisation.

Under s.152, the following appeals must be decided within 3 days. Appeals against; warrants to secure attendance, interim compulsory supervision orders, medical examination orders and compulsory supervision orders if they have a secure authorisation or movement restriction condition. This reflects the current position under s.51(8) 1995 Act that appeals on warrants must be disposed of within 3 days.

**Interim Compulsory Supervision Orders**

This is a new order, defined in s.101 of the Bill which lasts 22 days but can be extended. In many respects it replaces and expands on provisions for warrants available in the 1995 Act in s.63, 66 and 69. It can be issued where a final decision whether to implement a CSO cannot be issued but “the nature of the child’s circumstances are such that for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency.”

The main difference between an ICSO and existing warrants is that it can have any condition attached to it in the same way as a CSO. This means that where a hearing defers a decision about a CSO or where grounds have not yet been proven, the hearing or sheriff can still impose similar requirements. Previously, a warrant could authorise nothing but the removal of the child to a place of safety.

It can be extended twice by a hearing (i.e up to 66 days) and any number of times by the sheriff. When it is extended by the sheriff beyond 66 days (s.103), the criteria no longer require it to be necessary ‘as a matter of urgency’ and the criteria are therefore the same as for a CSO. i.e that it is necessary for the protection, guidance, treatment or control of the child. This is because these particular ICSOs would already have had a lifespan of around 66 days extended under s.96(3). It is expected that this provision to extend will be used only rarely.  

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9 Scottish Government personal communication, 5 March 2010
Medical Examination Orders

Section 101 of the Bill defines a medical examination order which is very similar to the existing warrant under s.69 1995 Act. It is granted when a hearing needs to investigate an issue further and lasts for 22 days. The child can be required to attend a hospital or clinic, submit to medical examination, and can include a secure care authorisation and a direction regulating contact with another person. The changes are in the drafting and there do not seem to be any policy changes. The policy memorandum notes at para 287 that it is not possible to further simplify provisions by merging medical examination orders with ICSOs because it is not appropriate for MEOs to be issued before the grounds for referral have been established. Whereas an ICSO or a Compulsory Supervision Order can include a condition of medical treatment (s.97(2)(f)(ii)), a Medical Examination Order can only be used for a medical examination.10

Compulsory Supervision Orders

If compulsory measures of supervision are required a hearing must issue a Compulsory Supervision Order (CSO) after grounds of referral have been established. These can last for up to a year (although they can be extended on review) and are defined in s.97 of the Bill. They replace supervision requirements made under s70 of the 1995 Act. Other than the change of name, the requirement to issue and greater specification of conditions that can be attached, there is very little change from the current provisions. A CSO, like other orders, can have a number of conditions attached to it which are set out in s.97(2). Under 97(3) the hearing or sheriff must consider whether to impose a contact order.

Once grounds are accepted at a hearing or are proven by the sheriff a CSO must be issued by a hearing if it is “necessary for the protection, guidance, treatment or control” of the child. A hearing can, however, defer this decision. This is an expansion of the current provision, that a hearing may issue a supervision requirement if it is ‘necessary’ (s.70(1)). Conditions that can be attached include: residence, secure authorisation, movement restriction condition (tagging), contact direction and a requirement that the local authority carry out specified duties.

APPEALS

Part 15 of the Bill provides for appeals and the policy intention, with a few exceptions, is to clarify rather than change existing provision.

Scope of appeal

There appears to be a difference of opinion about the scope of the current law on appeal which has been brought to the fore by the Bill’s attempts to clarify it. The current law allows a sheriff to impose his or her own decision for that of the hearing, but many are reluctant to do so. Norrie (2005) notes that:

“Adopting this option permits the sheriff to trespass into the role which, prior to the coming into effect of the 1995 Act, rested exclusively with the children’s hearing. Perhaps because they recognise that the children’s hearing is always the most appropriate forum for determining what compulsory measures of supervision will best meet the child’s needs and that it is in every child’s interests to have their case determined by the most appropriate forum, sheriffs have since acquiring this power been

10 Scottish Government, personal communication, 5 March 2010
slow to use it. It is suggested that they are right to show reticence and that the power under this provision should be exercised only when it is clear that there is only one possible option that will serve the child’s interests and when, therefore, it would be a procedural waste of time to send the matter back to the children’s hearing for disposal.”

The 2009 draft Bill had sought to make it explicit that the scope was very wide by renaming ‘appeals’ as ‘reviews’. Respondents disagreed with this and asked the Government to ensure that the Bill continues existing practice, that a sheriff does not re-consider the whole case or impose a different disposal (Scottish Government 2009h). The Bill as introduced uses the current terminology of ‘appeal’, but the policy memorandum interprets this widely. It states that the Bill “makes it clear that the sheriff has available to him the power to conduct a wide review of the issues that a hearing considered” (PM para 380) and that: “the Bill seeks to remedy current ambiguity of current powers and allow for consistent application of the power for a wide review, if the sheriff considers it justifiable in all the circumstances.” (PM para 388).

Safeguarders right to appeal

Section 148 of the Bill introduces a statutory right for safeguarders to appeal in their own right. This was introduced at the request of the Scottish Safeguarders’ Association and has not been widely consulted on [PM 172]. In their submission on Strengthening for the Future the safeguarders association explained their reasoning as: “where a hearing has got a disposal wrong it seems at best unfair and at worst absurd that the only persons authorised to lodge an appeal under Section 51 are the child or the very person the child may have to be protected against”.

Frivolous appeals

Currently a person who has brought a frivolous appeal can be banned for up to a year from bringing another appeal – a provision which the policy memorandum describes as ‘unusual.’ The Bill at s.154 proposes substituting it with the provision that such a person would need the sheriff’s permission before bringing another appeal.
SOURCES


Scottish Children’s Reporter Administration. (Online) Statistical Dashboard Available at: http://www.scra.gov.uk/home/launch_of_online_statistical_service_dashboard.cfm Accessed 5 March 2010


UNCRC Text of convention at: http://www.unicef.org/crc/
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Introduction

1. This paper seeks to inform members’ consideration of the Refuges for Children (Scotland) Amendment Regulations 2010 (SSI 2010/59).

2. Copies of the SSI, explanatory notes and Executive Note are provided to members in hard copy only.¹

The Refuges for Children (Scotland) Amendment Regulations 2010

Background

3. These Amendment Regulations were laid on 22 February 2010 and the lead committee must report by 12 April 2010. The Education, Lifelong Learning and Culture Committee was designated the lead committee.

4. This instrument is made in exercise of powers conferred in the Children (Scotland) Act 1995.

5. The instrument is subject to the negative procedure and a procedural note on this is attached at Annexe A.

Policy objectives

6. The executive note for this instrument states that “these Amendment Regulations are technical in nature and have been introduced to reflect the changes to approval arrangements for foster carers as introduced by Looked After Children (Scotland) Regulations 2009” (para. 4).

7. The Refuges for Children (Scotland) Regulations 1996 (the 1996 Regulations) make provisions concerning the designation and approval of establishments or households as refuges for children and the review and withdrawal of such designation. These provisions refer to the Social Work (Scotland) Act 1968 and Fostering of Children (Scotland) Regulations 1996.

8. The Fostering of Children (Scotland) Regulations 1996 and relevant sections of the Social Work (Scotland) Act 1968 have been replaced by the Looked After Children (Scotland) Regulations 2009 (the 2009 Regulations).


¹ Electronic copies are available on the website of the Office of Public Sector Information.  
Issues the Committee may wish to consider

10. The Executive Note states that, due to the technical nature of the instrument, no consultation was undertaken (para. 5) and that the instrument will have no financial effects (para. 6).

11. The Subordinate Legislation Committee considered the instrument at its meeting on 2 March 2010 and determined that it did not need to draw it to the attention of the Parliament.

Action

12. The Committee is invited to consider whether it has anything to report to the Parliament.

Emma Berry
Assistant Clerk
Education, Lifelong Learning and Culture Committee
Procedural note

Standing Orders
1. The procedures for dealing with Scottish Statutory Instruments (SSIs) are covered by Chapter 10 of Standing Orders. SSIs are laid by being lodged with the chamber clerks and are published in the Business Bulletin. They are referred to the Subordinate Legislation Committee, the appropriate subject committee (the ‘lead committee’) and, where relevant, any other committee.

SSIs subject to annulment: ‘negative instruments’
2. Where an SSI is subject to annulment, it comes into force on a specified date and then remains in force unless it is annulled by the Parliament. Any MSP may by motion propose to the lead committee that the committee recommends that nothing further is to be done under the instrument. Such motions are lodged with the chamber clerks.

3. The lead committee debates such a motion for no more than 90 minutes.

4. The lead committee reports to the Parliament, setting out its recommendations. If it recommends annulment, the Bureau will propose to the Parliament a motion that nothing further is to be done under the instrument.

5. All the above must take place within 40 days of the instrument being laid, excluding recesses of more than 4 days.