Good Practice in Action 053
Legal Resource

Understanding the Children's Hearing System in Scotland

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Good Practice in Action 053
Legal Resources

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T: 01455 883300 **E:** bacp@bacp.co.uk **www.bacp.co.uk**

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Context

This resource is one of a suite prepared by BACP to enable members to engage with BACP's *Ethical Framework* in respect of working with children and young people who are or have been subject to compulsory supervision through the children's hearings system in Scotland.

Purpose

The purpose of this resource is to provide a resource of information for BACP members who may work with children, parents, carers or families who are going through the children's hearing system. There is no equivalent to the Scottish children's hearing system in other parts of the United Kingdom with the exception of Guernsey, which has a system which was derived from the Scottish system but which is unique to that area. The intent of this resource is to provide practitioners with an understanding of the children's hearing system, the orders made by a children's hearing, the rights and duties of children and relevant persons with regard to children's hearings, and the role played by professionals at hearings. This resource should be read together with GPiA 052 Legal Resource: *Understanding child protection in Scotland*.

Using the Legal Resources

The membership agreement with BACP establishes a contractual commitment by members to abide by the *Ethical Framework for the Counselling Professions*, which includes a responsibility for members to keep the skills and knowledge relevant to their work up to date.

The Legal Resources cannot constitute legal advice or guidance in specific cases, nor are they sufficient on their own to resolve legal issues arising in practice. The Legal Resources do not give a full statement of the law. They are solely intended to support good practice by offering general information on legal principles and policy applicable at the time of writing.

The Legal Resources are intended for information purposes only and are not a substitute for professional advice. BACP and the author accept no responsibility for and accept no liability as a result of any person acting or refraining from acting on the basis of the Legal Resources.

Practice issues and dilemmas are often complex, and may vary depending on clients, particular models of working, the context of the work and the therapeutic interventions provided. We therefore strongly recommend consulting your supervisor, and also, wherever necessary, a suitably qualified practitioner or lawyer. Some professional insurers will provide legal advice as part of their service.

BACP and the author make no representation or warranty as to the completeness or accuracy of the information contained in the Legal Resources. References in this resource were up to date at the time of writing but there may be changes in particular to the law, government departments, government policies and guidance, websites and web addresses. Organisations and agencies may also change their practice or policies, so please be alert for any changes that may affect your therapy practice.

In this resource, the word 'therapist' is used to mean specifically counsellors and psychotherapists and 'therapy' to mean specifically counselling and psychotherapy.

The terms 'practitioner' and 'counselling related services' are used generically in a wider sense, to include the practice of counselling, psychotherapy, coaching and pastoral care.

1 Introduction

It is not our intention in this resource to turn practitioners into lawyers, but to provide practitioners with sufficient information and signposts to see where boundaries and responsibilities lie, and to decide when it is necessary to seek further legal help. All therapists have a contractual duty of care to their clients and a professional duty of care under the law of negligence (delict). They are also subject to the ethical standards of their professional organisation and may be contractually bound to organisations with which they work, to comply with any relevant employment, child protection or data protection policies and procedures. Breach of contract may lead to disciplinary or legal proceedings. It is best practice for any self-employed counsellor working with children and young people to have a clear idea of how the child protection procedures in their region operate and also to have access to appropriate legal and practice advice and support. Some useful resources are listed at the end of this resource.

Scottish Government policies with regard to children are extensive, and practitioners need to be familiar with them. The number of relevant guidance documents is considerable, and the Scottish Government continues to develop and publish more. These are all available on the Scottish Government website at www.gov.scot/Topics/People/Young-People (see also the section on 'Resources, information, guidance and reference works' at the end of this resource).

1.1 Status of law and guidance

Scottish child law is derived from a considerable body of statute law and subsidiary legislation (both Westminster and Scottish) and case law. This law must be compliant with international conventions, including the European Convention for the Protection of Human Rights and Freedoms (ECHR), and with the United Nations Conventions ratified by the UK, such as those on the rights of children (United Nations Convention on the Rights of Children (CRC)) and disabled persons (United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)).

It should be understood that the ECHR is an international convention not European Law and therefore compliance is still required and is not affected by the departure of the UK from the EU. Readers will understand the particular importance of the UNCRC and ECHR in the children's hearing system. (See Appendix 1 for CRC articles 1-42.)

Case law comprises the decisions of the courts as they interpret and apply the statutory legislation to issues in individual cases. It works on a hierarchical basis: the decisions of the higher courts bind those of the lower courts, which should in general obey the higher courts' rulings on specific legal issues. Thus, the decision of a sheriff is not as influential as a decision by the Court of Session; or the UK Supreme Court. Decisions by higher courts are binding on the courts below them.

The hierarchy of courts in Scotland with regard to Children's Hearings matters is:

- Court of Session Inner House
- Court of Session Outer House
- Sheriff Appeal Court
- Sheriff Court.

In children's hearings matters there is no appeal to the Supreme Court. The appeals which have been considered by the court have been brought under human rights legislation rather than children's hearings law. The most important statute with regard to children's hearings is, of course, the Children's Hearings (Scotland) Act 2011.

The principle rules and regulations are: the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 (SSI 2013/194); and the Act of Sederunt (Child Care and Maintenance Rules) 1997 (SI 1997/291) as amended by the Act of Sederunt (Children's Hearings (Scotland) Act 2011) (Miscellaneous Amendments) 2013 (SSI 2013/172).

In addition to law, there is a body of guidance, some of which is made under statutory powers and therefore carries a limited legal force.

Sources of guidance in force in Scotland at the time of writing are listed at the end of this resource under the heading 'Useful links'.

However, as mentioned earlier, the law is always evolving and so, as a matter of good practice, do watch for changes. Good sources of information to help you keep updated are local authority lawyers, local authority child protection or safeguarding committees, Children's Hearings Scotland (CHS) and the Scottish Children's Reporter Administration (SCRA).

Local authority or education authority training may also be available. Further information about child protection in Scotland is available in GPiA 052 Legal Resource: *Understanding child protection in Scotland*.

1.2 The origins and ethos of the Children's Hearing System

The children's hearing system is unique to Scotland. It was introduced as a result of the Kilbrandon Report in 1964. Lord Kilbrandon was asked to head a review into how 'juvenile delinquents and juveniles in need of care and protection and beyond parental control' should best be dealt with in the Scottish criminal law system. The report that his committee produced has stood the test of time remarkably well. It found that the children who offend against the criminal law are very often the same children who are also known to social services as being at risk. The children's hearing system grew from the recommendations in the report and has been at the heart of child protection since its inception.

The original statute was the Social Work (Scotland) Act 1968, then further developments to the system were made under the Children (Scotland) Act 1995 and now further updating and developments have been made in the Children's Hearings (Scotland) Act 2011 and subsequent legislation.

The ethos of the hearing system is a focus on the needs of the child ('needs not deeds'). It is assumed that a child who is offending is just as much in need of care and support as a child who is neglected or offended against.

The child is the focus and the centre of the process and of the system and great emphasis is placed on the participation of the child and their parents or carers. The system is emphatically not meant to be adversarial, and legal representation for child and/or relevant persons at children's hearings is not usually needed. Legal representation for the child is mandatory:

- where the child has been arrested and has been detained in a place of safety
- at a children's hearing following the making of a child protection order
- at a hearing where secure accommodation is to be considered Children's legal aid (the name given to legal representation in Children's Hearings cases by the Scottish Legal Aid Board) is automatically available in these circumstances.

In addition children's legal aid may be available for a solicitor to accompany the child or relevant person where they would not be able to participate without such support

It is important to understand that a children's hearing is a quasi-judicial body. This means that the decisions taken by a children's hearing have the force of a court decision and must be followed by the local authority with responsibility for the child (the Implementation Authority) and may be appealed to a sheriff by the child and relevant persons. This last point ensures compliance with the provisions of the UNCRC.

The role of legal representation in hearings cases is discussed at 10.4.

2 The overarching principles

Professor Kenneth McK Norrie gave the three principles of the hearings system (and indeed much of child law in Scotland) the name the 'overarching' principles and it should be understood that they are essential to the system. They are: the 'paramountcy principle', the 'views of the child' principle and the 'minimum intervention' principle.

2.1 The 'paramountcy' principle

The UNCRC Art. 3.1 states:

> *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.*

Our law goes beyond that and in matters to do with the child in court and hearings we make the welfare of the child the **paramount** consideration. There are exceptions to this, which will be mentioned where relevant.

Section 25 of the 2011 Act states:

> *(1) This section applies where by virtue of this Act a children's hearing, pre-hearing panel or court is coming to a decision about a matter relating to a child.*
>
> *(2) The children's hearing, pre-hearing panel or court is to regard the need to safeguard and promote the welfare of the child throughout the child's childhood as the* ***paramount*** *consideration.*

It should be noted that it is not just the welfare of the child at the time of the hearing, but also to the welfare of the child *throughout their childhood* that is to be safeguarded and promoted. This requires a hearing to consider not only what the child's welfare requires now, but also in the long term.

2.2 The 'views of the child' principle

A hearing makes decisions which will impact not only upon the life of the child in the weeks and months after the hearing, but throughout their life.

What happens in childhood affects adulthood, so it is profoundly important that the child participates in the system and where they are capable of forming a view, that that view is heard and understood and taken into account. The child's view will inform decision making.

Article 12 of the UNCRC states:

> *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.*
>
> *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.*

Thus, in order to be compliant with Art. 12, the hearing system must accord children the right to be heard. Section 27 (3) & (4) of the 2011 Act state:

> *(3) The children's hearing, pre-hearing panel or the sheriff must, so far as practicable and taking account of the age and maturity of the child:*
>
> *(a) give the child an opportunity to indicate whether the child wishes to express the child's views,*
>
> *(b) if the child wishes to do so, give the child an opportunity to express them, and*

(c) have regard to any views expressed by the child.

(4) Without prejudice to the generality of subsection (3), a child who is aged 12 or over is presumed to be of sufficient age and maturity to form a view for the purposes of that subsection. Again, there are exceptions which will be mentioned as they arise. To ensure that where the child can form a view and wishes to express it that they have the opportunity to do so the Act contains a number of measures.

It should be noted that this section is in the process of being amended but the date of finalisation is not yet known. The amendments will change the presumption of the ability to express a view from a child aged over 12 and give it to all children unless the sheriff or hearing are satisfied that the child is not capable of forming a view. It will also impose a requirement that a sheriff, pre-hearing panel or hearing give the child the opportunity to express their view in a manner that the child prefers unless the child has not indicated a preference or that preference would not be reasonable in the circumstances.

These include a duty on the child to attend hearings and court unless excused (see 6.1), a right to advocacy at hearings, the right to have a supporter at hearings, and requirements that the child be notified of: court hearings; children's hearings and pre-hearing panels; decisions made by courts and hearings and pre-hearing panels; and once over the age of 12, an automatic right to see the papers that are presented to the hearing unless a non-disclosure order has been made, and a right to have legal representation in certain circumstances (see 10.4). Children under 12 may request to see the papers. As routine, SCRA sends children a form 'Hearing about me' in age-appropriate format to assist them in expressing a view. No child is restricted to using the form and they have the same right as a relevant person (see 11) to submit any documentation to the hearing. Further information on the rights of children in child protection is available in the GPiA 052 Legal Resource: *Understanding child protection in Scotland.*

2.3 The 'minimum intervention' principle

(Also known as the 'no non-beneficial order' principle)

It has long been part of Scottish child law that a court or hearing should not make a decision about a child unless it is better that the decision be made than not. Thus if an order is not necessary, it should not be made. If it is made it can, of course, be appealed. This is enshrined in ss.28 and 29 of the 2011 Act (the full contents of these sections of the Act are contained in Appendix 2):

> *28. Children's hearing: pre-condition for making certain orders and warrants*
>
> *(2) The children's hearing may make, vary or continue the order or interim variation or grant the warrant, only if the children's hearing considers that it would be better for the child if the order, interim variation or warrant were in force than not.*
>
> *29. Sheriff: pre-condition for making certain orders and warrants*
>
> *(2) The sheriff may make, vary, continue or extend the order or interim variation or grant the warrant, only if the sheriff considers that it would be better for the child if the order, interim variation or warrant were in force than not.*

There are exceptions which will be mentioned as they arise.

3 The agencies and the people in the hearings system

3.1 Scottish Children's Reporter Administration (SCRA)

The Scottish Children's Reporter Administration (SCRA) is the organisation which provides the children's reporter service. The head office is in Stirling. SCRA has a statutory basis (2011 Act s.21) and the primary responsibility is given to the Principal Reporter (2011 Act s.14) who has the power to delegate their responsibilities (2011 Act, schedule 3 (para 10(1)).

SCRA provides the premises where children's hearings take place (2011 Act s.17). For administrative purposes SCRA has divided Scotland into nine geographical areas: Ayrshire; Central; Glasgow; Grampian; Highland and Islands; Lanarkshire and Dumfries & Galloway; North Strathclyde; South East; and Tayside and Fife. Each has a number of hearings centres and is led by one or more Locality Reporter Managers. There is considerable information about the organisation on its website, including contact details at www.scra.gov.uk.

3.2 The Children's Reporter

The powers and responsibilities of the children's reporter are considerable. Although the children's hearing system is not a criminal court, being focused on the needs of the child, the powers of the reporter to decide to bring a child to a hearing are somewhat analogous with the powers of the procurator fiscal or the crown office. The duties and powers of the reporter include:

- To make investigations into the cases of children referred to them and decisions regarding the disposal of the case (s.66 (3)).

To decide:

- who to call to a hearing as a relevant person
- whether to refer matters to a pre-hearing panel
- who should be invited to a children's hearing
- whether a child or relevant person who has been excused from attendance at a hearing should be permitted to attend by remote means, (see below for more details)
- to ensure that any assistance or provision for disabled attendance is provided or for professional interpretation services where the child or relevant person is not fluent or in English or is deaf
- to represent the hearing in the sheriff court where grounds have been referred for determination by the sheriff
- to represent the hearing in the sheriff court where the child or relevant person has appealed a decision by a pre-hearing panel or hearing
- to represent the hearing in the sheriff court where a decision about deemed relevant person status has been made by a pre-hearing panel or hearing
- to identify and ensure the provision of any reasonable adjustments for or at the hearing for persons with disabilities

- to identify and arrange any special measures required by a child or relevant person at a hearing or pre-hearing panel including arranging a police presence where the reporter has concerns about the behaviour of any person attending the hearing
- to require reports from professionals or agencies either for their own decision-making purposes or for a hearing or pre-hearing panel. (Ss.66 (3) and (4))
- to arrange hearings, invite relevant professionals and to provide the papers to the members of the hearing, the child and any relevant persons
- to ensure that any non-disclosure requirements are complied with
- to notify decisions, hearings or pre-hearing panels, and to provide information to children, relevant persons and others who are required to attend hearings or prehearing panels. (Ss.68 (3))
- to facilitate remote attendance and to decide whether video or telephone attendance is more appropriate for those relevant persons who are required to attend a hearing or pre-hearing panel by remote means, and
- to provide the required information to a person who has been afforded an opportunity to participate in a children's hearing (The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Amendment Rules 2021 r.20C).

During the pandemic (Coronavirus (Scotland) Act 2020 and Coronavirus (Extension and Expiry) (Scotland) Act 2021) allowed all hearings to take place remotely. Attendance by remote means was found to be useful and is still common. This is discussed at 6.2.

Note: the sections referred to above are all from the 2011 Act.

3.3 Children's Hearings Scotland

The decisions considering children who are referred by the reporter to a children's hearing is the responsibility of the children's hearing members (in common parlance 'the panel' or 'the hearing').

The organisation that recruits, and manages the members of the hearing is Children's Hearings Scotland (CHS). CHS is established by s.2 of the Children's Hearings Scotland Act 2011 and is led by the official known as the 'National Convener' (2011 Act s.1) www.chscotland.gov.uk.

3.4 The Children's Hearing

The persons eligible to be members of the hearing are commonly referred to as members of the 'children's panel' (2011 Act s.4). They are all volunteers and are unpaid apart from expenses. They are appointed under arrangements made by the National Convener and their independence is protected by the provision that they can only be removed from office with the consent of the Lord President of the Court of Session. They are organised regionally but can be asked to sit in other areas if there is need. The hearing members are recruited from a wide range of backgrounds and go through a demanding selection process and training. Ongoing training is also provided.

Performance of hearings' members is monitored by the Area Support teams. A hearing or pre-hearing panel consists of three members (2011 Act s.5), one of whom sits as the chairing member. It should be noted that where there are difficulties in attendance for hearings members it is possible, and not uncommon for one to attend remotely, even from a different hearings area of Scotland.

Those sitting as chairing members must have served at least one year as a hearing member and have undergone further specific training.

The chairing member is to be appointed by the Area Support Team or, if this has not been done, by the hearing members themselves on the day of the hearing. It was always the case that the members of a hearing should consist of both males and females (2011 Act s.6). The pandemic made this more difficult and this section has been amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022 Pt 3 s.42(2) to read that a children's hearing must include male and female members 'so far is as practicable'. We understand that in practice this has meant that it is common for hearings to have panel members of the same sex.

It is important to know that while the National Convener appoints members of the hearing and may provide advice if requested by a children's hearing (2011 Act s.8), the members of the hearing are totally independent when it comes to decision making. Neither the National Convener nor the Principal Reporter may 'direct or guide' the hearing members in carrying out their function (2011 Act s.9).

3.5 The Safeguarders Panel

Safeguarders were formalised by the 2011 Act and their role is limited to children's hearings and the Sheriff Court in hearings cases. The safeguarders are overseen by the Safeguarders Panel (2011 Act s.32); currently it is run by Children 1st. The Safeguarders Panel recruits, trains, monitors and pays the fees and expenses of safeguarders. Safeguarders are not employees of Children 1st.

3.6 The Safeguarders

Safeguarders are paid for their work and come from a wide range of backgrounds including law, education, social work and others. A safeguarder will be asked, rather than told, to do a report and will always have the opportunity to ensure that he or she does not have a conflict of interest.

Practitioners interested in undertaking this role should look at the website: www.children1st.org.uk/safeguarders.

3.6.1 How safeguarders are appointed in cases

Children's hearings

Section 30(1) of the 2011 Act requires a children's hearing to consider appointing a safeguarder, thus this must be done at each hearing unless a safeguarder has already been appointed (s.30 (5)). A safeguarder may also be appointed by a pre-hearing panel (s.82). The duration of the safeguarder's appointment in a particular case will be for as long as the hearing considers it necessary. The continuation of the appointment will be considered at each subsequent hearing until a decision is made that such an appointment is no longer necessary. Where a hearing has decided to appoint a safeguarder SCRA will contact Children 1st. Children 1st will identify a safeguarder and provide the reporter with their details. The safeguarder will deal directly with SCRA. Children 1st will not see their reports. Safeguarders are not appointed for the duration of a case. They may only be required to provide a single report and will attend the hearing at which the report is considered. A safeguarder's appointment is considered at each hearing. The number of reappointments is not limited, and it is normal practice for the same safeguarder to be appointed in the interests of continuity.

Sheriff Court

In children's hearings cases Sheriffs are required by s.31 of the 2011 Act to consider appointing a safeguarder unless the case is not proceeding, but are not required to appoint one. Sheriffs may also be asked to consider the appointment of a safeguarder by the reporter or any of the other parties in a hearings case (child and relevant persons). If the hearing has already appointed a safeguarder they will attend any subsequent court proceedings. A sheriff may decide to appoint a curator ad litem rather than a safeguarder. Curators serve much the same function but are lawyers, are not managed by the Safeguarders Panel.

They are only appointed for the duration of the particular court proceeding and will attend a subsequent children's hearing only if the sheriff so decides. This is normally the case if their report is to be made available to that hearing. (See also list of definitions.)

The appointment will end after that hearing unless the panel decides to continue it. As safeguarder rather than curator, they must be on the safeguarders' list. Where a report has been prepared for the Sheriff by a Curator ad litem or a safeguarder the sheriff may be requested by one or both of the parties to make it available to the subsequent children's hearing. This is quite common.

3.6.2 The role of the safeguarder

The role of the safeguarder is statutory and is contained in s.33 of the 2011 Act (see Appendix 3, point 1) and is to prepare a report for the court and hearing, which will contain recommendations. Safeguarders' recommendations are not binding on either court or hearing. What the report is to address in the individual case will be decided by the hearing or court. A typical example is to consider the issue of contact between the child and a relevant person.

The safeguarder is not limited to that issue. Should other issues arise during their investigation, it is entirely correct for them to be addressed in the report. The safeguarder will have access to all of the papers available to the hearing (see 14.1), and will speak to the child (where practicable), relevant persons, carers, wider family, and professionals working with the child. Who they speak to is up to the safeguarder.

It should be clearly understood that the safeguarder does not represent the child, although he or she may be instrumental in bringing the views of the child to the hearing. Because the safeguarder does not represent the child they are free to make recommendations to the hearing which do not accord with the views of the child, or indeed, those of the relevant person(s).

The safeguarder will attend the children's hearing/pre-hearing panel or the court hearing if the case is referred to the Sheriff for proof (see below). A safeguarder has considerable powers. These are listed in Appendix 3, point 2 and are discussed in the body of this resource as they arise.

3.6.3 What if I am contacted by the safeguarder?

It is not particularly common that a safeguarder would contact a therapist, counsellor or psychologist.

Other professionals may well have been asked by the reporter to submit a report and that report will be made available to the safeguarder. Any practitioner who is contacted by a safeguarder is certainly entitled to check they are bona fide (the simplest way is to contact the nearest SCRA office and to ask to speak to the reporter in the case). You should discuss with the safeguarder what their remit is in the case. You are entitled to ask:

- does the child/relevant person (your client) know yet that you have been approached and will be providing information?
- what have they been told about the role of the safeguarder?
- what particular information does the safeguarder want from you or want to discuss?
- does the safeguarder have any concerns about you contacting your client before speaking to them?

Remember that the hearing is a quasi-judicial forum and that reports are provided by a number of professionals who deal in very confidential matters including GPs and paediatricians, CAHMS services, drug and alcohol counsellors and so on. The safeguarder will not want the details of your work with your client, but will want information relevant to the decision that the hearing is required to make.

Thus, they may be more interested in whether you feel that there are issues of concern to you with regard to the child, than the work you are doing with the child and/or parent(s)/carers. They will want to know if the child/family are engaging with therapeutic work, and whether the parents/ carers are supportive of the therapeutic work that you are undertaking with the child.

Any observations you have about the relationship between the child and relevant persons are also likely to be of interest. (See also section 7.4 on reports for further information.)

3.7 Children

3.7.1 Who is a 'child' in Scottish law?

The age of majority in Scotland is 18, but, for most purposes, persons cease to be 'children' at the age of 16. Between 16 and 18 years of age they are considered to be 'young people'.

A young person does not need parental permission to make most decisions. The law governing this comes from a number of statutes, both Scottish and UK, is complex, inconsistent and sometimes contradictory. Although there are some limitations, young people who are resident in Scotland are, for most practical purposes able to make adult decisions including: to marry or enter into a civil partnership, where to live, consent to sex, work full time (after school leaving date) and enter into a contract (with some limitations and protections).

It should be noted that we are not 'persons' until we are born. Thus 'child protection' largely refers to the protection of those aged between birth and 16 years. Some measures such as the role of the 'named person' apply to those up until the age of 18, and help is available for former 'looked after children' until they turn 26. (See also GPiA 052 Legal Resource: *Understanding child protection in Scotland* for further information.)

3.7.2 Who is a child for the purposes of a children's hearing?

One of the exceptions to the rule that the status of 'child' ends at the age of 16 is for children's hearings. A person who is under the age of 16 may be referred to the children's reporter by any individual (see section 4). (There is an exception for the ground for referral 67(2)(o) – failure to attend school without reasonable excuse which may apply until the school leaving date.

In Scotland the school leaving date is dependent on the date of a child's birthday and thus many pupils turn 16 before reaching their leaving date.) If the child is subject to a compulsory supervision order before turning 16, he or she may remain in the hearings system until his or her 18th birthday (a hearing must be held three months before their birthday to end the CSO). The young person will be entitled to through care/after care and the hearing will want to satisfy themselves that proper arrangements are in place.

After the age of 16, the only way a young person may be referred to the hearing system is by a court when the young person has either pleaded guilty or been found guilty of a criminal offence. (See section 4.)

It should be noted that in Scottish criminal law, if a person over the age of 16 is alleged to have committed an offence, the case will be heard in the adult court. If that young person is already subject to a compulsory supervision order, the reporter and procurator fiscal will discuss whether the court or hearing is the more appropriate forum. In reality the procurator fiscal has the final say.

The age of criminal responsibility in Scotland was changed from eight to 12 by the Age of Criminal Responsibility Scotland (Act) 2019. A child who is under the age of criminal responsibility cannot be held to have committed an offence and cannot be prosecuted in any court or referred to a children's hearing on the 'offence by the child ground'. They will be referred on other grounds such as (m) (out of control) or (n) putting themselves or others at serious risk (see Appendix 7).

Over the age of 12, depending on the nature of the alleged offence it may be reported to the reporter or the Procurator Fiscal/Crown Office. Offences may be jointly reported to the Procurator Fiscal and the Reporter. The Lord Advocate has issued guidelines of offences committed by children which clarifies which offence should be jointly reported (Lord Advocate's guidelines on offences committed by children | COPFS).

The behaviour, which would have constituted a criminal offence if committed by a young person over 16 may, however, lead to them being brought to a hearing on other grounds for referral. This will depend upon the nature of the alleged offence and the circumstances.

In the hearing system a young person is considered to be a child 'for the purposes of the hearing'. This does not mean that they are a child for all purposes. In all other aspects of life, they have the same legal status as other young people.

It merely allows the hearing to make decisions about them and keeps their relevant persons part of the process which could not be the case otherwise. (The definition of 'child' for the purposes of the hearing is contained in s.199 of the 2011 Act see Appendix 3.)

3.7.3 Who is a child for the purposes of Disclosure Certificates: Protecting Vulnerable Groups – changes to the system

Members will be aware that children are considered a vulnerable group and professionals working with them are required to have disclosure certificates.

The Disclosure (Scotland) Act 2020 introduced changes to the system of disclosure certificates which came into force on 1 April 2025. One of the more important ones is that for the purposes of the Act 'child' includes any person under the age of 18 years. Useful information on the changes is available at: Types of work covered by PVG – mygov.scot. This change does not affect the meaning of child in other legislation. (See also appendix 15.)

3.8 Relevant persons

A 'relevant person' is the term that has been used in current and previous legislation to refer to a person whose role in the child's life is such that they should have rights within the system. These are usually parents, but there are other people who have care and control of children who may also be relevant persons.

Relevant person status gives an individual considerable rights and duties in the hearing system, for example: the right and the duty to attend at children's hearings (2011 Act, s.74); the right to have the ground(s) for referral explained to them at the children's hearing and to accept or not accept the ground(s) (2011 Act, s.90) to appeal the decision of a hearing or Sheriff, to request a new hearing once three months have passed since the last one, and to have copies of all of the papers (subject to non-disclosure – see 14.1). There are two routes to relevant person status: automatic relevant persons and deemed relevant persons. ('Relevant person' is defined in s.200 of the 2011 Act as amended see Appendix 4.)

3.8.1 Automatic relevant persons

Automatic relevant persons are defined in s.200(1) as amended by art. 3 of the Children's Hearings (Scotland) Act 2011 (Review of Contact Directions and Definition of Relevant Person (Order SSI 193 2013)), (the text of s.200 and art. 3 are contained in Appendix 4) and that status cannot be removed by a hearing. Even the court does not have the power to remove automatic relevant person status as such, but if a court makes an order depriving a person of parental responsibilities and rights (Children (Scotland) Act 1995, s.11(2)(a)), this will have the effect of removing relevant person status.

Such decisions are vanishingly rare unless part of a permanence order or adoption order. It is important to understand that where a person qualifies as an automatic relevant person there is no discretion.

Whether it is in the interests of the child that the person be a relevant person is irrelevant, the test is a factual one and the welfare principle does not apply (see introduction). There is no need for such persons to ask a pre-hearing panel or hearing to consider their status. (See also section 3.8.2 on deemed relevant persons.)

While in general, automatic relevant persons are most commonly the biological parents of the child, the list of potential relevant persons is actually quite considerable and includes:

- mothers always have full parental responsibilities and rights (unless removed by a court)
- biological fathers whether they have PRR or not. If the father is on the birth certificate he will have PRRs unless they have been removed by a court
- adoptive parents
- persons who have been granted parental responsibilities and rights by a court under s.11 of the Children (Scotland) Act 1995
- persons in relationships where a child has been born due to artificial insemination and who qualify under s.37, 43, 44 or 54 of the Human Fertilisation Act 2008. These persons are most usually same sex partners or spouses.

This list is not exhaustive by any means, as there are complexities that are beyond the remit of this resource, but practitioners should be aware that the question of relevant person status is an important one, and the range of persons who may qualify is potentially wider than might be expected from a mere reading of s.200.

3.8.2 Deemed relevant persons

There is another class of persons who, while not automatically considered to be relevant persons, may qualify as relevant persons. The test is contained in s.81(3) of the 2011 Act and is simply whether the person 'has (or has recently had) significant involvement in the upbringing of the child'.

In the case of T v Locality Reporter (also known as MT v Gerry) [2014] CSIH 108, 2015 SC 359, 2015 Fam LR 2 the Inner House stated:

> *it appears to us that the focus of the provision should be on whether the individual in question has had an involvement in the upbringing of the child of such significance as to give rise to a relationship between the individual and the child which calls for the procedural protection of constituting the individual as a party to the proceedings, with all the procedural obligations and rights which that status entails. ... it is not every involvement in the life of the child which calls for such procedural protection.*

Time is not the deciding factor, thus a long foster placement might not be enough, and in the unreported case of MF and GF (also known as F and F, Appellants), at Glasgow sheriff court in 2014, the sheriff found that the grandparents of a baby, who was only a few days old on being taken into care, should have been deemed to be relevant persons.

As with automatic relevant persons, the test is factual, the welfare principle does not apply (see introduction). Each case is to be judged on the individual circumstances of the child.

Apart from those who qualify under the Act, other persons who should be considered to be relevant persons are those who 'have or appear to have established family life with the child with which the decision of a children's hearing may interfere'. This is from the decision of the UK Supreme Court in the case of Principal Reporter v K [2010] UKSC 56, 2011 SC (UKSC) 91, 2011 SLT 271, 2011 1 WLR 18. (This case was taken to the UKSC under human rights' legislation.)

Unlike automatic deemed relevant person status, a hearing or pre-hearing panel, or a sheriff may remove the status if it appears that the individual no longer has an involvement in the life of the child that justifies deemed relevant person status.

Where a hearing has decided that there should be no contact between a deemed relevant person and the child, the interruption to the relationship so caused is not normally sufficient to justify removal of deemed relevant person status (C v Manns (unreported) 25 November 2016).

While deemed relevant person status subsists there is no difference between the status and rights of the deemed relevant person and an automatic relevant person. (See Point 11, on the rights of the relevant person also Appendix 6.)

Readers may find of interest the cases: In the Matter of XY (AP) (Appellant) (Scotland) and ABC (AP) Appellant v Principal Reporter and another (Respondents) (Scotland) on the Supreme Court website or in legal sources at: [2020] UKSC 26 | [2020] 1 W.L.R. 2703 | [2020] 4 All E.R. 917 | 2020 S.C. (U.K.S.C.) 47 | 2020 S.L.T. 679 | 2020 S.C.L.R. 602 | [2020] 6 WLUK 221 | 2020 Fam. L.R. 86 | 2020 G.W.D. 21-284 | Times, July 16, 2020.

3.9 Siblings and children of the same household

There are particular challenges for children who wish to have rights in respect of their siblings. This may simply be because the child wishes to have contact with the sibling. It should be understood that siblings may not reside together, or may not all be subject to a CSO. It is also not uncommon where siblings are subject to CSOs the grounds may differ and that different hearings are held for every child so that they will not attend each other's hearings and therefore will not be able to speak to the panel.

Relevant person status requires substantial involvement in the upbringing of the child – a difficult hurdle for a child. Adults may seek an order from the sheriff regarding contact with a child under s.11 of the Children (Scotland) Act 1995. This has no relationship to hearings, but those who have a contact order will have rights at a hearing which are limited to decisions by a hearing regulating that contact with the child.

A child may not seek an order regarding another child (unless their own) under s.11, as those concern 'parental responsibilities and rights' which case law has decided are limited to adults. In unconnected cases two siblings of young children brought actions seeking relevant person status.

The cases were heard together in the Supreme Court.

The Court held that unless the sibling had or had recently had significant involvement in the upbringing of the child (the definition of deemed relevant person in the 2011 Act) there was no violation of the siblings' ECHR art. 8 rights if they were not to be deemed as relevant persons because there were other legislative measures by which siblings could be involved in the decision-making process.

In response to this the 2011 Act has been amended by the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Amendment Rules 2021. The criteria are contained in Rule 2 and they amend s.69(2) of the 2011 Act:

(a) the individual is living or has lived with the child,

(b) the individual and the child have an ongoing relationship with the character of a relationship between siblings (whether or not they have a parent in common),

(c) the children's hearing is likely to make a decision significantly affecting contact or the possibility of contact between the individual and the child, and

(d) the individual is capable of forming a view on the matter of contact between the individual and the child.

It is clear from the wording that this is not only available to blood siblings but also to children who have lived in a sibling relationship as members of the same household. It allows that child (or young person) to participate in the hearing. That participation will be limited to the question of contact between the individual and the child who is the subject of the hearing. The chairing member has the power to decide how much of the hearing the individual will be present for and the wording of r.19 makes it clear that the attendance should only be during the consideration of contact between them and the child.

It is the responsibility of the reporter to ensure that the individual is notified of the hearing or pre-hearing panel, and to provide them with the information necessary to allow them to participate. The individual will not have full access to the papers for the hearing, but the reporter will provide copies of hearings' material directly related to any orders regulating their contact with the child, and any parts of reports which relate to their contact.

The individual also has the right to have a supporter with them at the hearing. The individual will have a right of appeal concerning the decision of a hearing with regard to contact between the child and the individual. This will depend upon the capacity of the child to instruct a solicitor.

4 Referrals to the children's reporter

Referrals to the reporter come from a number of different sources, only the local authority (which includes education) and the police have a duty to refer a child, but other agencies and individuals can and do make referrals.

4.1 Legal duty to refer a child to the reporter

- a local authority has a duty to refer a child who they consider may be in need of 'protection, guidance, treatment or control' (2011 Act, s.60). The actual referral may come from social work, education or housing. All child protection case conferences must consider whether to refer the child to the reporter

- the police have the same duty (s.61). While children accused of criminal offences are referred to the reporter (unless jointly referred to the reporter and procurator fiscal/Crown Office) (see Appendix 7 Grounds for Referral), the majority of referrals from the police are actually on welfare grounds rather than offending by the child. Typical examples being domestic abuse or the child behaving in a way that puts them or others at risk such as by absconding or abusing alcohol or drugs.

No other persons or agencies have a legal duty, but many individuals may have a professional duty (lawyers, medical professionals), or it may be part of the duties in a contract of employment. (See Appendix 11 for SCRA statistics on the source of referrals to the reporter.)

For information on referrals from child protection case conferences see GPiA 052 Legal Resource: *Understanding child protection in Scotland*.

4.2 Referrals in the course of relevant proceedings

The court may refer a child to the reporter in the course of relevant proceedings (s.62). The section includes the list of 'relevant proceedings' which includes family law actions, proceeding relating to offences under the Education (Scotland) Act 1980 including failure by the parent to ensure regular school attendance (s.35), failure to comply with an attendance order (s.41), failure to permit examination of a child (s.42(3)), forced marriage protection order or interim order and other civil proceedings.

It is the reporter who will decide, after investigation, whether to bring the child to a children's hearing, and if so, under which of the grounds in s.67(2) (for information on the grounds for referral see part 6 and Appendix 7). Child protection orders are not a 'referral from court'. Further information on child protection orders is contained in GPiA 052 Legal Resource: *Understanding child protection in Scotland*, in this resource, Appendix 9 contains a flowchart of the process.

4.3 Criminal cases where child or young person pleads guilty or is found guilty in the criminal court

Where a person who is under the age of 17 years and six months is found guilty or has pleaded guilty to a criminal offence in the sheriff court, and they are not subject to a compulsory supervision order (CSO), the court may deal with the matter itself or have the case referred to a children's hearing for advice from the hearing as to whether the court or the hearing is more appropriate for disposal of the case. No grounds for referral are needed as offence grounds are held to be established.

If in this situation the children's hearing advises disposal by a children's hearing the court may accept this advice and remit to a children's hearing for disposal or, even if the advice was to remit to a hearing, deal with the matter themself. Where a child who is subject to a CSO has pleaded guilty to, or been found guilty of an offence, the High Court may, and the sheriff court must, have the case remitted to a children's hearing for advice as to disposal. The advice is not binding on the court. The advice hearing has the advantage that the child is, of course, present and will tell the hearing what their views on the matter are. This will form part of the report the hearing will provide to the court. The hearing is a less intimidating forum and children are more likely to be open about their views than in the court setting.

It is not necessary for the child to have legal representation at an advice hearing as the purpose of such hearings is simply to explore the child's situation and views and to consider whether the child would be better to be under a compulsory supervision order. The view of the child will be very influential.

See Appendix 7 Grounds for referral for further information on the criminal offence grounds for referral.

4.4 Provision of evidence from certain criminal cases

Section 63 of the 2011 Act allows the Lord Advocate to direct that 'any specified case or class of case evidence lawfully obtained in the investigation of a crime or suspected crime must be given to the Principal Reporter'.

These may be cases where there is an investigation concerning harm to the child, but it may also be evidence that the child has committed an offence, (see Appendix 11). It should be noted that it is evidence from investigations so that it is not necessary for the person to have been found guilty. For statistics on referrals to the reporter see Appendix 1.

5 The reporter's decision making

Scottish Children's Reporter Administration (SCRA) internal guidance says that the final decision about a referral is supposed to be made within 50 working days from receipt. This is a challenging target as reporters are dependent on receiving the reports requested within that deadline. (Statistics relating to the timescales are available on the SCRA website at www.scra.gov.uk.) The process is as follows:

5.1 Initial decision

The reporter will make an immediate decision based on the information in the referral, as to whether there is sufficient information to make a final decision, or whether further information is needed. The final decisions can include – to take no further action because:

- the child does not require compulsory measures for their protection, guidance, treatment or control
- there is insufficient evidence
- the child is already subject to a compulsory supervision order and no further measures are necessary
- the child is to be brought to a hearing
- the child is to be referred to the local authority for voluntary measures. The local authority is obliged to offer help, but the child and family are not required to take it

- the child is to be diverted to other measures. This includes agencies and charities which work with children such as victim awareness, anti-bullying support, fire safety and other such resources. The child is not obliged to engage.

The reporter can also require the local authority to offer the child and family voluntary support. There is no obligation for the child or family to accept that support.

5.2 If further information is needed

If the decision is that further information is needed, the reporter will decide from whom to request reports.

This always includes social work, education, and any professionals working with the child or relevant persons such as health, named person, drug/alcohol counselling, CAHMS, adult psychological services.

5.3 Final decision

Once all information is available the reporter will then make a final decision. The options available are the same as the initial decisions. Final decisions are notified to the child, relevant persons and the person or agency who/which was the source of the referral. Where a final decision has been made the matter cannot be used in any future referrals of the child to a hearing except in specific circumstances.

Note: See Appendix 9 for flowchart of the progress of a referral.

6 Attendance at hearing

There are four sorts of persons at hearings (apart from the hearing members):

- those with a legal right and legal duty to attend:
  - child (ss.73 and 78 (1))
  - relevant person (including deemed relevant person) (ss.74 and 78(1)).

It should be noted that the right to attend extends to pre-hearing panels, but there is no duty to attend pre-hearing panels

- those with a legal right to attend but no legal duty to attend (s.78(1))
  - child's representative (who may be a supporter or a lawyer)
  - relevant person's representative (who may be a supporter or a lawyer)
  - the reporter
  - the safeguarder
  - member of the area support team
  - representative of a newspaper or news agency – they may not publish any information about a hearing which may make it possible to identify the child subject to a decision by the hearing see 6.3.1 and 6.3.2. We are not aware of any member of the press ever seeking to attend a children's hearing.
- those with neither legal right nor legal duty to attend (see s.78(2), which empowers the chairing member to permit the attendance of various persons and, specifically, of any person considered necessary for the proper consideration of the child's case). This includes the child's or the family's social worker and the professionals whom the reporter has decided should be invited to the hearing. They may include: professionals working with the child, those providing interpretation services, and carers or family members who are not relevant persons but who may have information relevant to the matters before the hearing.
- A person who has been given an opportunity to participate (see 3.9 siblings and children of the family). Note that it may be necessary for the participation of the child or a relevant person to have the assistance of an interpreter. This will be arranged by the reporter/assistant reporter.

  They do not have a right of attendance but as their presence will be necessary for the understanding and participation of the person who is in receipt of their assistance they will remain throughout the hearing.

  Such assistance is normally arranged by the reporter who will be alerted to the need by the social worker. There is no charge for such services to the child or relevant person.
- a single observer may ask to attend. This is usually a person such as a student social worker, trainee solicitor, trainee panel member and so on. It is the chairing member who will decide whether or not the person may attend, but they will seek the views of the child and relevant persons. Observers may not take notes. If the child, or a relevant person, objects to the presence of the observer they will be asked to leave. If you are likely to undertake work which will include the possibility of providing reports to the reporter and feel that it would be helpful to have observed a hearing you should contact the reporter.
- some hearings can have a considerable number of people in attendance. This can be intimidating for the child and the chairing member has a duty to minimise the number of persons present (s.78(4)). The test (apart from observers) is simply whether the person's attendance is necessary for the proper consideration of the matter before the hearing. It may be sufficient for the individual to attend just for a portion of the hearing.

- those with authorisation under the Rules to attend (s.177 and Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 (SSI 2013/194), r.20). These are usually prison officers accompanying relevant persons (who may be handcuffed throughout the hearing), secure unit staff accompanying children and, where there are concerns about the behaviour of individuals, the police (this last item will be decided on and arranged by the reporter). If there are concerns about the behaviour of a prisoner it is likely that they will be excluded or required to attend remotely normally decided by a pre-hearing panel.

- The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Amendment Rules 2021 R.

No formal procedure has been enacted in relation to the exclusion of a person who has no right to attend: the chairing member will simply ask them to withdraw for part of the hearing.

This contrasts with the procedures surrounding the exclusion of persons having a right to attend – see discussion at 4.3. The presence of a representative of the press at hearings is permitted. This is to ensure 'open justice', but no report can be made that in any way identifies a child. We have never heard of a case where a journalist attended. (Sections quoted above are all from the 2011 Act.)

6.1 Excusing

The only persons with a legal duty to attend are the child and the relevant person/s. If they are unable to attend, or it is considered unsuitable for the child to attend a formal excusal is required. The criteria for excusing a child who is capable of understanding are quite strict. They may only be excused where attending would place the child's physical, mental or moral welfare at risk (s.73(3)(b)). There is an exception for hearings where the grounds for referral concern schedule 1 offences (s.73(3)(a)). If the attendance of the child is not necessary for a fair hearing, then they may be excused. This is done ideally at a pre-hearing panel, but if that is impracticable it may be done at the start of the hearing. Even where the child's attendance has been excused, this does not take away the child's right to attend. Where information is to be discussed which may cause distress to the child, or where a relevant person is to attend part of a hearing and their presence would cause distress to the child, the chairing member may ask the child to leave (excuse their attendance) for that portion of the hearing but they cannot require the child to leave as that would amount to exclusion and a child may not be excluded. It is usually the case that the child will happily leave the hearing for the duration of that part of the discussion. The child may also ask to be excused from that part of a hearing which may be distressing. The child will leave and wait in the company of an adult (usually in a waiting room) until that portion of the hearing is over. Where the child is attending remotely this is much easier to manage. Information on the excusing of the child and relevant person is contained in Appendix 8, points 1 and 2.

6.2 Remote attendance

A child or relevant person who has been excused from attending the whole of a hearing may ask the reporter to arrange for attendance by remote means.

In pre-pandemic times remote attendance was mainly used where distance was a factor, but where a hearing was likely to be particularly fractious, distressing, or where a child/relevant person has a chronic condition it can be particularly helpful. The reader is directed to 10.5 for a discussion on the duty of a hearing to have due regard to the effects of trauma on the child. Hearings may be entirely in person, entirely virtual or a mixture. It will depend upon the circumstances of the case and the practicalities. We understand that many such relevant persons actually prefer virtual attendance, and it can be much safer in cases of domestic abuse. After some years of failure by the prison estate to transport prisoners who are relevant persons to hearings this is now happening regularly.

The reporter will decide whether it is practicable to allow remote attendance. In practice it is common for the reporter to discuss the relevant person and child's preferences with the social worker. They will have to be satisfied that the location used for remote attendance is safe. Typical concerns would be that the child is in the presence of a person who may be likely to influence or intimidate the child. (See Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 (SSI 2013/194), r.19(2).) Where a person with a right to attend is considered to be a risk if they were to attend in person, a pre-hearing panel will be arranged to make the decision (see 9).

When remote attendance may be imposed

There are cases where a person with a right to attend may cause problems if they attend a hearing or pre-hearing panel in person. To avoid exclusion the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Amendment Rules 2021 r.20C now allow for such a person to be restricted to remote attendance only.

The persons who may be required to attend remotely are: a relevant person; a relevant person's representative; a person authorised to attend a hearing (sibling or child of the family); that person's representative; a member of the press. Where a person is to attend remotely it is the reporter who will decide whether video or telephone attendance is more appropriate. In practice this will depend on whether the individual has access to video conferencing.

In the event that such a person attending by remote means is speaking in a way that is disruptive or threatening or likely to cause distress to the child or another person, the chairing member has control of the sound and may simply switch their mic/and or/visual off. That person will still be able to listen to the hearing unless the child has requested to speak without others present.

6.3 Excluding individuals from all or part of a hearing

If you have a right to attend a hearing then that right may only be interfered with through a formal decision by a hearing. It is interesting that the ONLY reasons for excluding these individuals are to do with the needs of the child.

Some persons who have a right to attend cannot be excluded:

- the child
- the child's representative (this means advocacy worker, supporter or legal representative – a child may have both at the same time)
- while the statutes do not give the relevant person's representative a right not to be excluded there is a single case on the subject which is discussed below in 6.3.1.
- the reporter or an assistant reporter
- the safeguarder
- a member of the area support team
- a member of the Administrative Justice and Tribunals Council or the Scottish Committee of that Council (acting in that person's capacity as such)
- Custody officer(s), this includes officers from adult prisons, young person's detention and secure units, who will transport the person to and from the hearing and remain in the hearing throughout. They do not participate. In the case of adult prisoners they are normally handcuffed to one or both prison officers during the hearing.

As noted above there are no formal procedures enacted for the exclusion of persons with no right to attend, these persons may simply be asked to leave the hearing and there is no requirement to provide them with an explanation as to what happened.

It is one of the means by which the chairing member can manage the numbers of persons at the hearing or make it easier for a child or relevant person to express their views to the hearing. It is interesting that a child may be excused from a hearing, but not excluded. Thus, if the child has been excused at the request of others – usually social workers – but wishes to attend, they may do so.

In some instances when a hearing is wholly 'in person' and there are concerns for the safety of a person or persons, the reporter may make arrangements for a police presence. The officers may be in the room or outside the door.

They are not custody officers but will attend if they feel it necessary for the safety of those attending. This is usually where there are concerns about a relevant person, but may also be required where there are concerns about the potential behaviour of the child. The permission of the child and/or relevant persons is not necessary. Police presence is decided upon and arranged by the reporter. Each hearing room has a 'panic button' which is linked to the nearest police station in case of need. It is the reporter/assistant reporter who will act to use the button.

6.3.1 Excluding the relevant person, the relevant person's representative or the press representative

The test for the exclusion of a relevant person, their representative or a member of the press from all or part of the hearing is whether the presence of the person is preventing the hearing from obtaining the views of the child, or will or is likely to cause **significant** distress to the child (2011 Act s.76).

There has been one case where the parent's legal representative was excluded. In that case the sheriff found that she should not have been excluded.

Where the relationship between the parents is difficult (particularly where there has been domestic abuse), it is common for them both to be present in the hearing centre, but for them to take turns to be in the hearing. This is commonly referred to as a 'split' hearing. This is, of course, much more easily managed where the hearing is conducted wholly or in part by remote attendance.

The chairing member is required to provide that relevant person and/or their representative with an explanation of what happened during their absence. For information concerning non-disclosure requests (see 14.2).

7 Reports

7.1 Who are the reports for?

It is the reporter who asks for reports. This may be because:

1. They are considering a new referral –

   The report will help the reporter make their decision whether the child should be referred to a children's hearing. The reporter must have sufficient information to consider whether there is sufficient evidence for the formal grounds for referral (see 8). It should be understood that new grounds for referral may be drawn up even if the child is already subject to a compulsory supervision order. If the reporter decides that no referral is needed the report will remain on file. If the child is to be referred to a hearing reports will be made available to the hearing and others (see 7.4)

2. If a review hearing is to be arranged –

   The reporter will make all reports available to those entitled to receive them if they consider that the information will be useful for the hearing in consideration of the matters before them and, depending on circumstances, may ask for some or all of the reports to be updated.

   Any local authority asked for a report is required to provide it (s.66(4)). This applies to any department of the local authority including social work, education and housing.

7.2 Do I have to provide a report if requested?

There is nothing in the law that says that you are required to provide a report, unless your employer is a local authority, but before refusing, think carefully and if you are considering refusing you could phone the reporter to explain why. If you are employed by the local authority or local education authority you will likely have a duty to comply. You can thereby find out just what the reporter is interested in.

Remember that if you have child protection concerns Data Protection law allows you to breach the protections accorded to sensitive information. You may also discuss with the reporter whether you could make a non-disclosure request (see 14.1). See Appendix 9 for the text to the relevant sections of the Data Protection Act 2018.

7.3 What about practitioner/client confidentiality?

The reporter is not interested in the details of the work that you are doing with your client. What they want is information that is relevant to the child. If you are working with a parent the reporter will want to know if you consider that the parents' difficulties will, or are likely to impact, their care of the child. If you are working with the child there may be information you have about the impact of the child's home life, or the abuse they have suffered that will help the reporter or hearing. If you work with the child, you may be able to help the child put forward their view of things.

It is not uncommon for professionals to go over the report first with a client where they consider it appropriate.

If there is information contained in your report that you feel should not be seen by the child or another person you should consider discussing a non-disclosure request with the reporter. (See 14.2.)

7.4 Who will see the report?

The report will be seen by:

- the reporter
- the hearings members
- the child if aged over 12 years (or would be able to understand and has requested the reports), [CH Rules r.18(2)]
- all relevant persons
- the child and/or relevant persons who may share it with their representative, they are not supposed to share it with anyone who will not be involved in the hearing – but there is no effective way to prevent this (subject to any non-disclosure order). It is, however, a criminal offence
- the social work department
- The sheriff in any court action subsequent to the hearing.

Reports are not made available to the professionals and others attending the hearing although the reports will be discussed at the hearing. If you are present at the hearing you will be asked to contribute.

The report will remain on the file at SCRA. Remember, if you consider that there is information in the report which should be withheld from the child and/or relevant person/s you should discuss this with the reporter. (See 14.2 non-disclosure.)

You should be aware that SCRA will not destroy the records until the child reaches the age of 21. This is to comply with their right to see all records about themselves.

The court is unlikely to ask for a report from you, but there is potential that if the case goes to court either because the grounds are denied, or a decision by a hearing is appealed, your report would be submitted to the court by the reporter. (See also section 13.) If a court asks for a report you are obliged to provide one. Any concerns you have should be raised with the sheriff clerk.

The Scottish Children's Reporter Administration does not pay for reports.

8 The grounds for referral

The grounds for referral are the formal reasons by which a child may be brought to a children's hearing. They are contained in s.67(2) of the 2011 Act. Where there is more than one child in the family, and more than one is being referred to a children's hearing, the reporter will draw up individual grounds for referral for each child. The children of one family may be brought on different grounds, but it is more usual that the same grounds are used but the supporting statements will be specific to each child. If the child is being brought on more than one ground there will be separate documents for each ground. (For the list of formal grounds of referral and a brief explanation of each, see Appendix 7.)

The reporter decides which of the grounds are applicable and draws up the formal grounds in the required form. This consists of the formal ground and the supporting statements, which are the facts that the reporter relies upon as evidence. In deciding which of the grounds are applicable, the reporter is dependent on the information provided to them in the reports that they have obtained from the various professionals or agencies. Most important of these will be the report from social work. This is normally a social background report (SBR), which is lengthy (more than 60 pages). SBRs are very detailed reports drawing together the information that has been gathered by the social worker and also the proposals for the supports to be offered. We understand that a shorter and simpler child-friendly report for the child is being piloted in some areas of Scotland.

(See the SCRA website for detailed statistics concerning the use of the grounds for referral and the children referred to the hearing; www.scra.gov.uk.)

9 Pre-hearing panels

Where there are preliminary matters to be dealt with, the reporter will arrange a pre-hearing panel. The pre-hearing panel is exactly what its name suggests – a panel meeting prior to a hearing. Thus, it can only take place when a children's hearing has been arranged. It exists to consider only certain matters (2011 Act s.79) and must take place on a day prior to that on which the hearing takes place. If that proves impracticable, the matters may be considered at the start of the hearing. The members of the pre-hearing panel that takes place on a day prior to the hearing are seldom if ever the same as those who will sit at the hearing. There are detailed provisions for pre-hearing panels which may be read in s.79, and the rules contained in Part 12 of the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules (SSI 2013/194).

The matters which a pre-hearing panel considers are:

- the excusing of the child
- the excusing or excluding of a relevant person
- whether a person should be deemed to be a relevant person
- whether a person should cease to be deemed to be a relevant person
- whether it is likely that a hearing will consider making a compulsory supervision order which includes authorisation for secure accommodation. The reason for this is so that legal representation may be arranged for the child. This is important because if the PHP so decides this will generally result in the child's being entitled to automatic Legal Aid which inserts s.28C into the Legal Aid (Scotland) Act 1986)
- a non-disclosure request. (See 14.2)
- whether, for the purpose of enabling a child or relevant person effectively to participate in the proceedings, it may be necessary for them to be legally represented and it is unlikely that the child or relevant person will arrange this themselves. This is important because if the PHP so decides this will affect the granting or not of Legal Aid (see 2011 Act s.191, which inserts s.28D into the Legal Aid (Scotland) Act 1986)
- a pre-hearing panel may also appoint a safeguarder
- to restrict the attendance of a relevant person to remote attendance only. The reporter will decide whether attendance will be by video or telephone (discussed in detail above).

The right of attendance of the child and relevant person extends to pre-hearing panels but there is no duty of attendance at a pre-hearing panel. The only decisions of a pre-hearing panel, which may be appealed to the sheriff, are those relating to relevant person status. Attendance at pre-hearing panels tends to be very small being: the hearing members, the reporter (or assistant reporter) and occasionally the child, relevant person or would-be relevant person (who may attend by remote means). In practice few PHPs are attended by anyone except the hearings members and the reporter/assistant reporter and thus decisions are usually made on the basis of the paperwork in contrast to children's hearings.

10 The roles of the people at the children's hearing

Although a children's hearing is a quasi-judicial body, the procedure and atmosphere are as informal as possible. The hearing members, the child and family, professionals and all attendees sit in an informal room with comfortable seating and with toys. The reporter or an assistant is always present, (although it is now more commonly an assistant reporter). It is one of the duties of the chair to keep those present to a minimum to ensure the participation of the child.

10.1 The reporter at the hearing

The reporter/assistant reporter does not take an active role in the hearing. They will be present to ensure that the hearing members have all that they need. They may give procedural advice to the hearing if requested. The reporter/assistant reporter will do all that they can to ensure the smooth running of the hearing, particularly if some persons are excluded or excused for part of the hearing. Any special requirements such as for disability, or an interpreter will be arranged by SCRA.

10.2 The chairing member

The chairing member has the considerable responsibility of controlling the procedure at a hearing. Included in their responsibilities are:

- introducing the hearing members and explaining the purpose of the hearing
- welcoming those attending to the hearing
- ensuring that the child is identified and their age is ascertained

- ensuring that the child is aware that they have a right to advocacy services
- 'putting the grounds for referral' which means reading the grounds for referral and the supporting statements and providing an explanation to the child and/or relevant person and asking whether each of them agrees with the grounds and each of the supporting facts. (s.90) (where the grounds of referral are that the child has suffered sexual abuse, it is usual for the child to be excused for all at or for that part of the grounds hearing)
- The chairing member must be satisfied that the relevant persons and the child (if of sufficient age) have understood the grounds. This is of particular importance where the grounds are being accepted
- ensuring that the child and relevant person/s are able to participate, including ensuring that the views of the child, where the child is of sufficient age and maturity, are given to the hearing (2011 Act s.121)
- deciding on the attendance of those who do not have a right to attend
- informing those present of the substance of reports (CH Rules 60(2)(a)) (subject to the point about not revealing something which might seriously harm the child – see discussion above at 6.3.1)
- where a report contains the views of the child, checking with the child that those views are accurately reported
- providing an explanation at the end of the hearing to the child and relevant person as to the decision/s of the hearing, their right of appeal, and to require a review at any time once three months has passed
- to provide an explanation to any person with a right to attend who had been temporarily excluded or excused from a portion of the hearing upon their return to the hearing. This is, of course, subject to any non-disclosure (see 14.2)
- to write the formal reasons for the decisions of the hearing (in consultation with the other members of the hearing).

10.3 The representative

The child and each relevant person has the right to have a representative with them at the hearing (s.104.1). The representative need not be legally qualified, and most are not. The representative can be an advocacy worker, friend, relative or trusted professional. If a practitioner who is working with the child is asked to fulfil this role by the child there would be no obvious conflict of interest and a practitioner would be well placed to assist the child in putting their view to the hearing. Section 122 of the 2011 Act provides that the child has the right to access to children's advocacy services (www.gov.scot/publications/childrens-advocacy-guidance).

Under the previous statute the representative was called a supporter, and that is what the role largely is, even if the representative is legally qualified.

The hearing is not an adversarial environment and the representative is there to 'assist the accompanied person to discuss any issues arising for discussion before the children's hearing or pre-hearing panel' (Rule 11 (1) of the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules (SSI 2013/194)).

10.4 Attending as a professional

As has been said elsewhere a children's hearing, although a quasi-judicial forum is not a place for legal argument. Thus there is no need for legal representation at most hearings although the child or relevant person may be receiving legal advice about the process. The role of the lawyer at a children's hearing is not one of formal legal argument as in a court, although they may put legal points to the hearing when relevant to the discussion to support their client's stance. The solicitor will act very much in the same way as any other supporter. Legal aid for hearings cases (Children's Legal Aid is discussed at 15.4).

Where a child or relevant person is legally represented they may also have a non-legally qualified supporter. Each will have a legal right to attend the hearing.

10.5 Attending as a professional

If you are invited to a hearing, it will be because you have provided a report, have been asked to be a representative/supporter for the child or a relevant person, or have been invited because the reporter considers that you may have relevant information. If you are attending as a representative/supporter, please read 8.3 above. If you are not a representative/supporter your attendance will be fairly straightforward. The hearing members can ask you questions, it is not formal as in court and there is no cross-examination. The child and relevant person/s will be asked if they have anything to say in response to your views. If you feel during the discussion that you have something you can add you can indicate that you wish to speak. The child will be present unless excused so do keep your language such that they (and the relevant persons) can understand. Children often complain that the language used in hearings is beyond them and they are frustrated by it.

If you feel that what you have to say needs to be said without the child or a relevant person present you can mention it to the reporter before the day of the hearing or on the day, preferably before the start of the hearing. (See information non-disclosure at 14.2.)

Remember that you may be asked to leave the hearing at any time if the chairing member feels that there are too many people present, or the child has asked to see the hearing with few, or no other persons present.

You will not be given any explanation of what happened on your return. Do not expect to see any of the papers before attending and you will not receive any papers when the hearing is over. You may ask for remote attendance as it is not necessary for you to attend the whole of the hearing. If you feel that this would be appropriate discuss it with the reporter. SCRA uses the platform Teams.

10.6 Duty to have due regard to the effects of trauma on the child

A new subsection of the 2011 Act (s.7(a)) is pending. This will require a hearing to have regard to the effects of trauma experienced by the child in their conduct of a hearing (which includes a pre-hearing panel). The section reads:

(2) The children's hearing must, in carrying out its functions, have due regard to the need to treat the child to whom the hearing relates in a way that –

(a) takes account of the effects of trauma which the child may have experienced, and

(b) seeks to avoid, or minimise the risk of, exposing the child to –

(i) any recurrence of past trauma, or

(ii) further trauma.

This will require that the relevant information is provided to the hearing by professionals, and this should be kept in mind by practitioners who are likely to be in a better position than other professionals to provide guidance and information to the hearing. In practice this is no different from what has been happening for many years.

11 The rights of children and relevant persons with regard to the hearings system

11.1 The rights of the child

The rights of the child are extensive and actually greater than those of the relevant persons. The child's rights include, to:

a) attend hearings and pre-hearing panels to:

b) receive notification of pre-hearing panels, hearings and court hearings

c) receive the papers (once over the age of 12), unless the child unable to understand them [CH Rules r.18(2)]

d) submit any reports or other material to the hearing (r. 53(1))

e) express a view either directly or through another person either verbally or in a report. Those who provide reports to the hearing are under a duty to include any views expressed to them by the child

f) appeal decisions of the hearing and pre-hearing panel (but only, in the case of decisions of a pre-hearing panel, decision on deemed relevant person status)

g) have a representative at the hearing

h) have legal representation paid for under the Scottish Legal Aid Fund if the circumstances merit it

i) require the reporter to arrange a review hearing once three months have passed since the last hearing (s.132).

It should be noted that where a child has sufficient understanding in terms of s.2(4) of the Age of Legal Capacity (Scotland) Act 1991, to consent or not to any medical examination or treatment then their consent is necessary before any treatment or examination ordered by a children's hearing may take place (2011 Act, s.186).

11.2 The rights of the relevant person

The rights of the relevant person include to:

a) attend hearings and pre-hearing panels

b) receive notification of pre-hearing panels, hearings and court hearings

c) receive the papers and reports

d) submit any reports or other material to the hearing (r. 53 (1))

e) express a view

f) appeal decisions of the children's hearing and pre-hearing panel (but only, in the case of decisions of a pre-hearing panel, decisions on deemed relevant person status)

g) have a representative at the hearing

h) require the reporter to arrange a review hearing once three months have passed since the last hearing (s.132).

12 The orders and decisions that a hearing may make

The decisions of the children's hearing focus on what is in the interests of the child at the time of the hearing and throughout their childhood. The overarching principles (see introduction) apply. The decisions are made by the three hearing members and where they do not all agree, a majority will prevail. The decisions (with a few exceptions) are made at the end of the hearing and each hearing member will give their decision together with their reasons for each decision. These will be put into the formal report which is written by the chairing member after the hearing. This is usually done in collaboration and with the assistance of the other hearing members.

The orders and decisions that a hearing can make include:

- to defer a decision to a subsequent hearing (2011 Act, s.91(3)(a) as further information is needed, a safeguarder is necessary, or because the child or a relevant person was unable to attend and their presence is necessary

- to make an interim order (see also 12.1) (2011 Act, s.92(2)

- to make a compulsory supervision order (see also 12.2) (2011 Act, s.91(3)(a)
- to include measures in an order (see also 12.2.3 and 2011 Act, s.83(2)). One of the measures which may be included is a secure accommodation authorisation (s.83(2)(e) – see discussion at 16.5)
- to make a medical examination order (2011 Act, s.87)
- to issue a warrant to secure attendance (see 12.3) (2011 Act, s.88)
- discharge the grounds for referral (sections 91(3)(b), 93(2(b), 94(2)(b), 114(3)(b) and 119(3)(b))
- to bring a CSO to an end or continue or vary it (2011 Act s.138(3))
- to continue, vary or terminate a child protection order (2nd working day hearing only) (2011 Act s.47(1))
- exclusion of relevant person or their representative (see part 4)
- excusing child or relevant person/s (2011 Act s.73(3) and 74(3); this can also be effected by pre-hearing panel – s.79(3))
- to grant or end deemed relevant person status
- to grant or refuse an information-non-disclosure request. (See 14.2 CH rules r. 84) (NB this can also be effected by a pre-hearing panel – CH Rules r.884(4))
- to decide that no order is necessary
- to excuse the child or relevant person/s (this may primarily be effected by a prehearing panel under s.79(3)(a) and (b) but if this has not been practicable the children's hearing may do so under s.80(3))
- non-disclosure request (see 14.2 – 2011 Act s.178).

All decisions may be appealed except those about excusing and excluding, although those decisions may lead to an appeal for other reasons. (See 15.1.)

12.1 Interim orders and compulsory supervision orders

12.1.1 Interim orders

Where a hearing has deferred making a decision, or the grounds have been referred to the sheriff for proof, the hearing may make an interim order. There are two types:

- Interim Compulsory Supervision Order (ICSO) – made where the child is not already subject to a compulsory supervision order (ss.86, 118)
- Interim Variation of Compulsory Supervision Order (IVCSO) made where the child is already subject to a compulsory supervision order (ss.118,138,140).

The test is the same for both: that the order is necessary as a matter of urgency for the protection, guidance, treatment or control of the child.

Unlike the old place of safety warrants that they replace, the interim orders do not require that the child be removed from home, and they can contain any of the measures that may be included in a compulsory supervision order, including authorisation for secure accommodation. The length of time the orders last differs: an ICSO may last for a maximum of 22 days. It a further ICSO is needed a new hearing will be arranged but the total may not pass 66 days. If a further order is needed it can only be made by a sheriff. A sheriff does not have a time limit imposed by the Act, but sheriffs tend to use the 22-day limit. There is the same time limit for an IVCSO.

Another hearing will be held before that deadline, where necessary the hearing may issue another IVCSO but there is a limit of three. Normally the reissuing is due to the necessary information for a decision not yet being available. The making of an interim order and the inclusion of any measures may be appealed to the sheriff. (See 15.1 on appeals.)

12.2 Compulsory Supervision Order (CSO)

This is the decision that is at the heart of a referral to a children's hearing, the question for the hearing is: does this child need compulsory measures to address the issues in their life? A CSO is a considerable interference in the child's life and in their parent's right to parent, so it is entirely appropriate that the decision be taken in a legal forum (which the hearing, as a quasi-judicial body is) and which can therefore be appealed to the Sheriff Court and beyond.

12.2.1 The test for imposing a CSO

The test for imposing a CSO is that the hearing is 'satisfied that it is necessary to impose a CSO for the protection, guidance, treatment or control of the child (s.91(3))'. The hearing may attach measures to the CSO (see 10.2.3 below) as are considered necessary and appropriate. The hearing may attach measures to the CSO (see 10.2.3) as are considered necessary and appropriate. The section of the 2011 Act which defines a CSO and details the possible measures to be included is s.83(2).

Where the child is already subject to a CSO, the hearing must always consider at any review hearing whether a CSO is still necessary – it is current conditions that matter, not history.

12.2.2 The duration of a CSO

A CSO has a lifespan of no more than 365 days. A young person may remain subject to a CSO until their 18th birthday, but it must be reviewed at least every year. This is to prevent drift and to ensure that it is: a) still necessary, and b) still addresses the current needs of the child. In making a CSO a hearing can specify an early review and it is not at all unusual for that to happen.

The implementation authority (see glossary of terms) is under a duty to require a review if it is felt that the CSO is no longer necessary, or that it is not answering current needs. The child or a relevant person may request a review after three months has passed since the last hearing. If they do so the reporter must arrange it.

12.2.3 The measures which can be included in a CSO

These are listed in 2011 Act s.83(2) as:

- a requirement that the child reside at a specified place (this could be with a relative, at a residential establishment or in a foster placement)
- a direction authorising the person who is in charge of that place to restrict the child's liberty to an extent that the person considers appropriate having regard to the measures included in the order
- prohibition on disclosing the address to a specified person/s directly or indirectly
- a movement restriction condition (usually this involves 'tagging')
- secure accommodation authorisation*
- any other measure that the hearing feels is necessary

- an order requiring the implementation authority (see glossary of terms) is required to arrange a specified medical examination or treatment for the child (this is subject to the child's capacity to consent to such medical examination or treatment. (See 9.1 paragraph 10.)

- a direction regulating contact between the child and a specified person or class of persons

- a requirement that the implementation authority carry out any other specified condition in relation to the child (such as placing them in a particular school)

- a requirement that the implementation authority carry out specified duties in relation to the child (such as procuring specialist services).

*further information about secure accommodation is available in appendix 14 and GPiA 052 *Understanding child protection in Scotland*.

12.3 Warrant to secure attendance

Where a child has failed to attend or indicated that he or she has no intention of attending and has not been excused, a hearing or a sheriff can issue a warrant to secure attendance (s.88). It may also be used where a child has been prevented from the hearing by an adult (usually a relevant person).

The warrant allows the police to look for the child, enter locked premises, and remove the child and even to take and hold them in a residential establishment or secure accommodation and then bring them to the children's hearing or court hearing. This is a draconian measure and warrants are not issued lightly. A warrant has a short lifespan. There are no warrants to enforce attendance by a relevant person.

Where issued by a hearing, or by a sheriff in respect of a children's hearing it ends either at the start of the relevant proceedings or at the end of seven days after the child has been detained, whichever is the earlier. If it has been issued by a sheriff in respect of a court hearing it ends either at the start of the relevant proceedings or at the end of 14 days, whichever is the earlier. Warrants are severe measures and are only issued when there is no other effective option. Failure to attend a children's hearing is not a criminal offence.

13 The legal force of a decision by a children's hearing

As has been said above, a children's hearing is a quasi-judicial body and, as such, the decisions have legal force. The implementation authority (IA) (see glossary) has a legal duty to carry out the terms of an order made by a hearing and that includes any measures included in an order (s.144). If the IA fails to do so it may find that it is facing court action. The National Convener (see 3.3 and 3.4) may be directed by the hearing to give the local authority notice of an intended application to enforce the duty. The National Convener will then give the IA the notice and the IA has 21 days to perform the duty (s.146). Should they fail to do so then CHS will raise an action in the Sheriff Court. In practice there will be some negotiation and most instances settle.

If a child or relevant person does not comply with an order it is not a criminal offence. The likely result is that the IA will ask the reporter to arrange another hearing at which the order will be looked at and may be adjusted. The child and relevant persons will then have an opportunity to give the hearing their view about why things are not working. The hearing will consider what further measures may be necessary.

14 Confidentiality and children's hearings

14.1 Confidentiality of the process

Although children's hearings' matters are private, they are not secret justice. This applies to both hearing and court. The press may attend but may not publish anything that identifies a child. This also applies to family members. There have been cases where angry family members have published identifying material on social media. This has not been helpful and is a criminal offence (s.182(1)). Information relating to a hearing, a pre-hearing panel, an appeal or information given to the reporter are considered to be 'protected information' and to 'publish' it is a criminal offence. 'Publish' is likely to mean 'to act in any way that makes it likely that the information will fall into the public domain'. (See Prof K. McK. Norrie, *Children's Hearings in Scotland 4th Edition* (2022).) This prohibition applies to all who attend hearings in whatever capacity.

It does not apply to professionals' meetings, such as those held to review the child's plan (further information is available in GPiA 052 Legal Resource: *Understanding child protection in Scotland*), although discussions are usually fairly circumspect about what actually was said at the hearing.

14.2 Non-disclosure

S.178 of the 2011 Act permits a hearing to withhold specified information from specified person or persons if disclosure would be likely to cause **significant** harm to the child. The information not to be disclosed may be contained in a document or a report or may be verbal information given to a hearing (such as the views of the child). (See 12.2.) This is a strong provision, which can present difficulty in practice and it is worth quoting in full:

> (1) A children's hearing need not disclose to a person any information about the child to whom the hearing relates or about the child's case if disclosure of that information to that person would be likely to cause significant harm to the child.
>
> (2) Subsection (1) applies despite any requirement under an enactment (including this Act and subordinate legislation made under it) or rule of law for the children' hearing:
>
> (a) to give the person an explanation of what has taken place at proceedings before the hearing, or
>
> (b) to provide the person with:
>
> (i) information about the child or the child's case, or
>
> (ii) reasons for a decision made by the hearing.

These provisions mean that if the panel thinks that something, which has been said in the excluded person's absence, would, if revealed to the excluded person, be likely to cause real harm to the child, then that 'something' should not be included in the explanation, which the chairing member has to give to the excluded person, or indeed included in the reasons, which the hearing must give for its decision, under, for example Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 (SSI 2013/194) r.59(3)(ii) and r.62(3)(b). It is one of the fundamental principles of fairness and justice that all the information relied on by the decision-maker should be openly acknowledged to the parties concerned and s.178 runs contrary to this. This section is nevertheless what the Scottish Parliament has enacted in its provisions and must therefore be carried out. It is, of course, based upon the interests of the child being the paramount consideration. The chairing member will need to be satisfied that the information being withheld would, if revealed, 'be likely to cause serious harm to the child'. The intent is to ensure that nothing done or said during the hearing or information contained in the hearings papers should put the child at risk. The risk can arise from another person having the information (such as the address of the child) or from information being given to a child who is not yet ready for it, or to a relevant person which is about the child. This can allow the views of the child to be redacted if provided to the hearing in writing. Where the child wishes to speak directly to the panel, the relevant person will be excluded from that part of the hearing. The views will not be given in detail upon the person's return, and the panel's reasons will be carefully spoken/written to avoid going into detail.

Typical examples of information that may be withheld

- where there is an ongoing police investigation into sexual or physical abuse
- where there is domestic abuse and the child is living in new accommodation with the parent who is at risk, any details of the child's address, school and sporting activities will be withheld from the abuser in case they may use them to find the parent/child
- where the child is being cared for by foster parents and there is a risk that a relevant person may take the child away from the placement
- information may be withheld from a child that they are not yet ready to hear
- information about the child they wish withheld from a relevant person because of the likely reaction. Examples are; the child receiving therapy or treatment opposed by the relevant person (the child will need sufficient capacity to consent to such therapy/treatment; the child is gay.

The test is a high one and not easy to meet. A hearing has to balance the interests of the child with the need to provide reasons for a decision. Where the information had a significant role in the decision of the hearing the child or a relevant person may challenge this on the basis that they have not had a fair hearing. The challenge is, of course, that if a person is aware that information has been withheld they are likely to use it as the basis of an appeal to the sheriff, on the ground that it was not a fair process. If the sheriff disagrees with the hearing the information must be provided, this however may mean that damage may be done to the child. There is no simple answer.

SCRA information for professionals on non-disclosure is available at Information for Professionals - SCRA see Appendix 11.

A request for non-disclosure may come from the child, a relevant person or by any person. We understand that most requests for non-disclosure are actually made by social workers with reference to the social work reports. The non-disclosure request is normally made to a hearing or pre-hearing panel by or through the reporter.

If the information is contained in a report it is of the highest importance that the decision be made before the papers are sent to the relevant person or the child aged over 12 if it is they who should not see it. The usual procedure is for the reporter/assistant reporter to redact the paperwork which is to be sent to the individual/s and then arrange a pre-hearing panel. If holding a pre-hearing panel is not practical, then the decision will be made by the panel at the start of the hearing. In practice this is undertaken by an assistant reporter. If a practitioner has information for the hearing, which they feel would place the child at significant risk should it be shared with a particular individual or individuals, the best way forward is to contact the reporter in the case as soon as practicable.

15 The Sheriff Court in the hearings process

15.1 Grounds and appeals

The Sheriff Court plays a significant role in the children's hearings system. It is important to understand that the hearing does not consider questions of evidence, thus where the grounds for referral are not accepted, it is the sheriff who will hear the evidence and decide whether it is sufficient to establish the grounds. The sheriff will not decide on the disposal of the case (except on an interim basis) as that is the jurisdiction of the hearing.

The clearest statement of this was made by the Lord President Hope in 'the Orkney case' (Sloan v B 1991 SLT 530 at 548E): 'The genius of this reform, which has earned it so much praise which the misfortunes of this case should not be allowed in any way to diminish, was that the responsibility for the consideration of the measures to be applied was to lie with what was essentially a lay body while disputed questions of fact as to the allegations made were to be resolved by the sheriff sitting in chambers as a court of law'. Although children's hearings' proofs and appeals are held in court, child protection order applications are normally held in chambers (the sheriff's office in the Sheriff Court building).

The right to appeal a decision is an important one and it is the courts which hear the appeal. In the first instance the appeal is to the sheriff, but appeals can go further:

a) appeal from hearing to sheriff

b) appeal from sheriff to Sheriff Appeal Court

c) appeal from Sheriff Appeal Court to Inner House of the Court of Session

d) there is no right of appeal to the Supreme Court. (The famous case of Principal Reporter v K [2010] UKSC 56, 2011 SC (UKSC) 91, 2011 SLT 271, although about relevant person status was taken to the Supreme Court as a Human Rights case, as was ABC v Principal Reporter[2020] UKSC 26 | [2020] 1 W.L.R. 2703 | [2020] 4 All E.R. 917 | 2020 S.C. (UKSC) 47 | 2020 S.L.T. 679 | 2020 S.C.L.R. 602.)

The basis of an appeal is not merely that one did not like the decision made by the hearing. The reasons for appeal include:

- there was information, which was not made available, which would have had a significant impact on the decision making of the hearing
- information has become available since the hearing, which, if available at the time, would have had a significant impact on the decision making of the hearing
- the hearing reached a decision that a reasonable hearing would not have made
- there was a procedural irregularity significant enough to have affected the decision making of the hearing or the fairness of the hearing
- appeal on a point of law.

Hearings in the Sheriff Court are private and are much more informal than in the Ordinary Court. The sheriff and lawyers do not wear wigs or gowns, and the sheriff is able to put their own questions to the witnesses. No persons may be present in the court other than the sheriff, court staff such as the sheriff clerk and court officer, lawyers, and the child and relevant persons. No press or observers are permitted. Witnesses may only be present when questioned. The child is usually excused from attending unless the grounds are to do with their behaviour (including failure to attend school) (although it is not unusual for a baby to be present in a pram if the case is calling only briefly). Where the child does attend they are seated with their legal representation at the same table as the reporter and any other legal representation. The atmosphere in the court is kept as calm and non-adversarial as possible. Where a child is present efforts will be made to ensure that the language is as accessible as possible in a formal legal proceeding. No observers are permitted. There are special provisions for children giving evidence (see 15.3).

Note: As above there is a firm separation between the hearings and the sheriff court in that the hearing does not decide on evidence and the sheriff deals with evidence and not the disposal of the case, apart from interim decisions (these are temporary orders and intended to ensure continuity until the case returns to a children's hearing). (See 15 on Court.) An interim decision by a sheriff may be changed by a hearing.

15.2 The role of the reporter at court hearings

The reporter appears for the hearing where the grounds have been referred for proof and at the first level of appeal. The reporter has a right of audience in the sheriff court but not the higher courts. In particularly complex cases SCRA may instruct a solicitor or an advocate to argue the case. It will be remembered that only a proportion of reporters are qualified solicitors. As an appeal progresses through the higher court levels SCRA will instruct solicitor and counsel (advocate) to appear. Where an appeal is lodged (put into court by the individual making the appeal) the reporter is not obliged to defend it if they think that the appeal will succeed.

15.3 Vulnerable witnesses

Where a child (who is automatically considered a vulnerable witness) is called, all of the measures of the Vulnerable Witnesses (Scotland) Act 2004 are available.

It is SCRA policy not to call child witnesses unless absolutely necessary. Where a child must be called as a witness there are the same options available as in the adult criminal court, including having a supporter present, giving evidence in chief by recording, and giving evidence from another room in the Sheriff Court, or from a remote location. The Bairns' Hoose project is being rolled out and information is available at: bairnshoosescotland.com. SCRA guidance for vulnerable witnesses is accessed at: SCRA.gov.uk/about-SCRA/being-a-witness/at-court.

Practitioners may locate their nearest supports for victims and witnesses at: www.scotcourts.gov.uk/coming-to-court/witnesses.

15.4 Children's Legal Aid

The Scottish Legal Aid Board (SLAB) provides financial help for children and relevant persons who qualify. Rather confusingly, legal aid for children's hearings matters is termed 'Children's Legal Aid' even though adults qualify for it too. In some circumstances grant of legal aid is justified (merits of the case) and they qualify financially. The financial circumstances of a parent are not taken into account when SLAB considers a child's application for Children's Legal Aid. Legal Aid is a minefield for the unwary, and practitioners should direct a client to the Scottish Legal Aid Board's website at www.slab.org.uk.

It is easy to use and contains a list of those solicitors registered to provide Children's Legal Aid. The very complex Legal Aid provisions are contained in s.191 of the 2011 Act, which inserts sections into the Legal Aid (Scotland) Act 1986.

The child or relevant person may choose to be represented by someone who is not legally qualified. However, no Legal Aid is available to cover any expenses related to lay representation.

About the author

Content for this resource has been authored by Morag Driscoll, BA (Hons), MA, MPhil, LLB. Dip.LP, who has been a solicitor in private practice, a safeguarder, curator ad litem, and reporter to the children's hearing and Director of the Scottish Child Law Centre. She is a former member of the Council of the Law Society of Scotland and was, for 20 years, the Convenor of the Law Society of Scotland's Child and Family Law Sub-Committee. Morag is an independent consultant and trainer in Scottish Child Law. She is the author of a number of articles and publications including Scottish Government Guidance for Foster Carers. She co-authored the Annotations to the Children's Hearings (Scotland) Act 2011, (W. Green), Edinburgh 2017, and Child Abuse Child Protection and the Law. 2nd Ed., (W. Green), Edinburgh, 2021.

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Wilkinson A.B., Norrie, K. McK (2013) *The law relating to parent and child in Scotland 3rd edition*. Edinburgh: W. Green & Son.

Relevant legislation

Abusive Behaviour and Sexual Harm (Scotland) Act 2016

Age of Criminal Responsibility (Scotland) Act 2019

Children (Scotland) Act 1995

Children (Equal Protection from Abuse) (Scotland) Act 2019

Children's Hearings (Scotland) Act 1995

Children's Hearings (Scotland) Act 2011

Children and Young People (Scotland) Act 2014

Civic Government (Scotland) Act 1982 as amended by the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005

Criminal Justice and Licensing (Scotland) Act 2010

Criminal Procedure (Scotland) Act 1995

Data Protection Act 2018

Disclosure (Scotland) Act 2020

Domestic Abuse (Scotland) Act 2018

Education (Scotland) Act 1980

Forced Marriage etc. (Protection & Jurisdiction) Act 2011

Human Rights Act 1998

Matrimonial Homes (Family Protection) (Scotland) Act 1985

Mental Health (Care and Treatment) (Scotland) Act 2003

Prohibition of Female Genital Mutilation (Scotland) Act 2005

Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005

Protection of Vulnerable Groups (Scotland) Act 2007

Sexual Offences (Scotland) Act 2009 parts 4 and 5

Social Work (Scotland) Act 1968

Vulnerable Witnesses (Scotland) Act 2004

Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019

Victims and Witnesses (Scotland) Act 2014.

UNCRC (Incorporation) (Scotland) Act 2021 (not fully in force at time of writing).

In addition there is a considerable body of subsidiary legislation. There are also considerable Government regulation and guidance, including Children's Hearings (Scotland) Act 2011 (Safeguarders: Further Provision) Regulations 2012 (SSI 212/336)

Children's Hearings (Scotland) Act 2011 (Safeguarders Panel) Regulations 2012 (SSI/54)

Looked After Children (Scotland Regulations 2009

2011 Guidance on the Looked After Children (Scotland) Regulations 2009

The Public Bodies (Joint Working) (National Health and Wellbeing Outcomes) (Scotland) Regulations 2014 (SSI 2014/343)

Secure Accommodation (Scotland) Regulations 1996

Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 (Commencement no. 1 and Transitional Provisions) Regulations 2019/392 SSI

International Legislation and Conventions

The Council of Europe Convention on Action against Trafficking in Human Beings,2007, 2008

The European Convention on Human Rights 1950

European Union Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims/Directive 2011/36/EU

General Data Protection Regulation

The United Nations Convention on the Rights of the Child 1989

The United Nations Convention on the Rights of Persons with Disabilities, 2008-2010.

Resources

Practice Guide. Suicide Prevention for Looked After Children and Young People. Dundee: SCSWIS www.legislation.gov.uk/ssi/2014/343/contents/made.

Scottish Government guidance

Child's plan briefing Child's plan – Getting it right for every child (GIRFEC) – www.gov.scot/policies/girfec (www.gov.scot)

Child protection Guidance for Health Professionals www.gov.scot/search/?q=Child+protection+Guidance+for+Health+Professionals+&cat=sitesearch

Code of Practice to Facilitate the Provision of Therapeutic Support to Child Witnesses in Court Proceedings B38819 Child Wit PR/TEXT final (scie-socialcareonline.org.uk)

Crown Office Prosecution Code COPFS Prosecution Code – August 2021 www.copfs.gov.uk/publications/prosecution-code

Getting our Priorities Right www.gov.scot/Publications/2013/04/2305/0

GIRFEC: National Practice model www.gov.scot/Topics/People/Young-People/gettingitright/national-practice-model

Guidance on children's advocacy: Scottish Government

Guidance on children's advocacy: Scottish Government www.gov.scot/Topics/People/Young-People/families/advocacy

Guidance on Joint Investigative Interviewing of Child Witnesses in Scotland www.gov.scot/Resource/Doc/365398/0124263.pdf

National Guidance for Child Protection in Scotland Supporting documents - National Guidance for Child Protection in Scotland 2021 - updated 2023 (www.gov.scot)

United Nations Convention on the Rights of the Child implementation: introductory guidance – www.gov.scot/publications/implementing-united-nations-convention-rights-child-introductory-guidance (www.gov.scot)

Guidance on the provisions of the Vulnerable Witnesses (Scotland) Act. www.gov.scot/news/vulnerable-witnesses-act

Scottish Government Guidance on Victims and Witnesses Pre-recording of evidence by witnesses – Victims and witnesses – www.gov.scot/policies/victims-and-witnesses/pre-recording-of-evidence-criminal-trials (www.gov.scot)

Police Scotland: Information on Child abuse: Child abuse - Police Scotland Joint Interviewing: National Framework for Child Protection Learning and Development www.gov.scot/Topics/People/Young-People/protecting/child-protection/national-framework-cp-learning-2012

Joint protocol between Police Scotland and Crown Office and Procurator Fiscal Service: In Partnership Challenging Domestic Abuse www.scra.gov.uk/wp-content/uploads/2021/02/Decision-making-in-cases-of-children-jointly-reported-to-the-Procurator-Fiscal-and-Children%E2%80%99s-Reporter.pdf

Lord Advocate's Guidelines to the Chief Constable on the Reporting to Procurators Fiscal of offences alleged to have been committed by children Lord Advocates Guidelines to the Chief Constable on the reporting to Procurators Fiscal of Offences alleged to have been committed by children.pdf (copfs.gov.uk)

Decision making in cases of children jointly reported to the Procurator Fiscal and Children's Reporter 2019 06 13 Joint Agreement COPFS and SCRA Decision Making in Jointly Reported Cases.pdf

National Guidance for Child Protection in Scotland 2021 National guidance for child protection in Scotland 2014 – www.gov.scot/publications/national-guidance-child-protection-scotland-2021 (www.gov.scot)

National Guidance for Child Protection in Scotland 2014. Protecting disabled children from abuse and neglect Contents – National guidance for child protection in Scotland: protecting disabled children from abuse and neglect – www.pkc.gov.uk/media/39931/National-Guidance-for-Disabled-Children/pdf/National_Guidance_for_Disabled_Children (www.gov.scot)

National Guidance – Under-age Sexual Activity: Meeting the Needs of Children and Young People and Identifying Child Protection Concerns www.gov.scot/Publications/2010/12/02143509/0

National Risk Framework to Support the Assessment of Children and Young People – www.gov.scot/publications/national-risk-framework-support-assessment-children-young-people (www.gov.scot)

National Risk Assessment Framework: www.gov.scot/Resource/0040/00408604.pdf

Protecting Children and Young People: The Charter Explanatory Booklet https://lx.iriss.org.uk/content/protecting-children-and-young-people-charter-explanatory-booklet (iriss.org.uk)

Safeguarding Children in Scotland who may have been trafficked https://lx.iriss.org.uk/content/safeguarding-children-scotland-who-may-have-been-trafficked (iriss.org.uk)

Safeguarding Disabled Children: Practice Guidance www.gov.uk/government/publications/safeguarding-disabled-children-practice-guidance

Working with Children and Adults Who May be at Risk of Self-harm: Practice Guidance on Information Sharing, Protection and Confidentiality www.gov.scot/Resource/0040/00406619.pdf

Many local authorities have made their procedures in child protection available online and are easily found.

Appendices

Appendix 1
UNCRC: Articles 1–41

Article 1
For the purposes of the present Convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 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.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4
States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5
States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention..

Article 6
1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7
1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8
1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

3. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child.

4. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contact with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 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.

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.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

   (a) For respect of the rights or reputations of others; or

   (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21
States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organizations.

Article 22
1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations cooperating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25
States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. S1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

I. The inducement or coercion of a child to engage in any unlawful sexual activity;

II. The exploitative use of children in prostitution or other unlawful sexual practices;

III. The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36
States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37
States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39
States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

I. To be presumed innocent until proven guilty according to law;

II. To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

III. To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

IV. Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

V. If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

VI. To have the free assistance of an interpreter if the child cannot understand or speak the language used;

VII. To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41
Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

a. The law of a State Party; or

b. International law in force for that State.

Appendix 2
Children's Hearings (Scotland) Act 2011

28 Children's hearing: pre-condition for making certain orders and warrants

(1) Subsection (2) applies where a children's hearing is:

(a) considering whether to make a compulsory supervision order,

(b) considering whether to vary or continue a compulsory supervision order,

(c) considering whether to make an interim compulsory superv57ision order,

(d) considering whether to make an interim variation of a compulsory supervision order,

(e) considering whether to make a medical examination order, or

(f) considering whether to grant a warrant to secure attendance.

2. The children's hearing may make, vary or continue the order or interim variation or grant the warrant, only if the children's hearing considers that it would be better for the child if the order, interim variation or warrant were in force than not.

29 Sheriff: pre-condition for making certain orders and warrants

(1) Subsection (2) applies where:

(a) the sheriff is considering making a child assessment order,

(b) the sheriff is considering making or varying a child protection order,

(c) by virtue of section 156(1)(b) or (2)(b), the sheriff is considering:

(i) varying or continuing a compulsory supervision order,

(ii) making or varying an interim compulsory supervision order or an interim variation of a compulsory supervision order,

(iii) varying a medical examination order, or

(iv) granting a warrant to secure attendance,

(d) the sheriff is otherwise considering:

(i) making an interim compulsory supervision order or an interim variation of a compulsory supervision order, or

(ii) granting a warrant to secure attendance, or

(e) the sheriff is considering extending or varying an interim compulsory supervision order under section 98 or 99.

(2) The sheriff may make, vary, continue or extend the order or interim variation or grant the warrant, only if the sheriff considers that it would be better for the child if the order, interim variation or warrant were in force than not.

Appendix 3
Children's Hearings (Scotland) Act 2011 s.33

(1) A safeguarder appointed in relation to a child by virtue of section 30 must:

(a) except where subsection (2) [or (3)] 1 applies, on being so appointed, prepare a report setting out anything that, in the opinion of the safeguarder, is relevant to the consideration of the matter before the children's hearing,

(b) so far as reasonably practicable, attend the children's hearing, and

(c) prepare any report that the safeguarder is required to prepare by a children's hearing.

(2) This subsection applies where the children's hearing directs the Principal Reporter under section 93(2)(a) or 94(2)(a) to make an application to the sheriff.

(3) This subsection applies where the children's hearing was arranged under section 45, 46, 50, 96, 126 or 158.

Appendix 4
Parental responsibilities and rights

This is a large subject which it is beyond the scope of this resource to explore fully.

What follows is an outline. For full discussion the reader is referred to the standard work on this area of law, viz., A.B. Wilkinson and K. McK. Norrie The Law Relating to Parent and Child in Scotland 3rd Ed. W Green, 2013. The index of that work at pp 876, 877 contains references running across some four columns.

Who has parental responsibilities and rights and how they are acquired?

1. Mothers – A mother always has automatic PRRs with respect to any child she gives birth to.

2. Married fathers – If the biological father is married to the child's mother at the time of (or subsequent to) the conception of their child, he automatically has PRRs for their child.

3. Unmarried fathers of children whose birth was registered or the birth record amended in Scotland AFTER 4 May 2006 – where the child's parents were unmarried and the child's birth was registered outside of Scotland there are complexities and advice should be taken.

In Scotland, an unmarried father automatically acquires parental responsibility for his child if, with his consent, he is named as the child's father on the registration of the child's birth. This law does not operate retrospectively and does not give PRRs to unmarried fathers whose child was born before 4 May 2006.

4. An unmarried father who does not qualify under C above may acquire parental responsibility for their biological child if he:

- Signs and registers an agreement with the mother of the child under s.4 of the 1995 Act

- Is awarded PRR by a court under section 11 of the 95 Act.

5. Second female parents:

Section 4A of the 95 Act provides that where a child has a parent by virtue of s 43 of the Human Fertilisation and Embryology Act 2008 the biological mother and the other parent (who may be a woman) may sign an agreement whereby the other parent is to be treated as a parent by virtue of s.42 of the 2008 Act. [Practitioners who encounter this type of situation should direct the client towards legal advice rather than try to give firm advice themselves.]

Other persons: persons other than biological parents can acquire PRRs by:

a) An order of a court under s.11 of the 95 Act.

b) A person who is granted a residence order under s.11 of the 95 Act has parental responsibilities and rights for as long as the child continues to reside with them and the order is in existence.

c) A person who has been made guardian under the will by a person who has since died has full PRR.

d) A person who adopts a child.

Parental responsibilities and rights: what are they?

The 95 Act is clear that these must be exercised for the benefit of the child, so parents have a duty to carry out their PRRs in the best interests of their child.

Parental responsibilities:

1. to safeguard and promote the child's health, development and welfare.

This gives parents a duty to care for their child properly and refers to the day-by-day care of the child that they need to grow and develop. It would include ensuring that the child is appropriately fed, clothed and housed, is educated, and receives necessary treatments such as medical and dental care and so on.

2. to provide, in a manner appropriate to the stage of development of the child: (i) direction; (ii) guidance, to the child.

This is the responsibility to provide boundaries and guidance.

3. if the child is not living with the parent, to maintain personal relations and direct contact with the child on a regular basis.

Where a child is not resident with a parent, that parent has a duty to maintain that relationship with the child for the benefit of the child.

4. to act as the child's legal representative.

This means acting for the child's interests by making decisions that have legal consequences on behalf of a child who cannot make decisions for him or herself.

Examples include; managing the child's money or obtaining services for the child including counselling.

Parental rights:

1. to have the child living with him or otherwise to regulate the child's residence.

This is an important right and may only be interfered with by the state if it is necessary for the protection of the child, or where there is a dispute between persons with PRRs. In Scotland only a court or a children's hearing can make the decision to remove a child from the care of a person with PRR. Removing a child from parental care does not necessarily remove the right to determine the residence of the child, and removal of parental rights is a decision only a court can make.

Parents can only decide where their child lives until the child's 16th birthday. Beware the myth that children can decide from the age of 12. Note that this right also allows a parent to decide that the child will live with someone other than themselves.

2. to control, direct or guide, in a manner appropriate to the stage of development of the child, the child's upbringing.

This parallels the responsibility above and gives parents the power to carry out their responsibility.

If the child is not living with him, to maintain personal relations and direct contact with the child on a regular basis.

This parallels the responsibility above and gives parents the power to carry out their responsibility, but the interests of the child trump the right of the parent. This right is protected in law and is the reason that regulation of contact requires a children's hearing or court decision.

3. to act as legal representative for the child.

This parallels the responsibility above and gives parents the power to carry out their responsibility.

Appendix 5
Children

Children's Hearings (Scotland) Act 2011 s.199 Meaning of "child"

(1) In this Act, "child" means a person who is under 16 years of age (but subject to subsections (2) to (9)).

(2) In paragraph (o) of section 67(2) and the other provisions of this Act in their application in relation to that paragraph, "child" means a person who is of school age.

(3) Subsection (4) applies where a person becomes 16 years of age:

(a) after section 66 applies in relation to the person, but

(b) before a relevant event.

(4) For the purposes of the application of this Act to the person, references in this Act to a child include references to the person until a relevant event occurs.

(5) A relevant event is:

(a) the making of a compulsory supervision order in relation to the person,

(b) the notification of the person under section 68(3) that the question of whether a compulsory supervision order should be made in respect of the person will not be referred to a children's hearing, or

(c) the discharge of the referral.

(6) Subsection (7) applies if:

(a) a compulsory supervision order is in force in respect of a person on the person's becoming 16 years of age, or

(b) a compulsory supervision order is made in respect of a person on or after the person becomes 16 years of age.

(7) For the purposes of the application of the provisions of this Act relating to that order, references in this Act to a child include references to the person until whichever of the following first occurs:

(a) the order is terminated, or

(b) the person becomes 18 years of age.

(8) Subsection (9) applies where a case is remitted to the Principal Reporter under section 49(7)(b) of the Criminal Procedure (Scotland) Act 1995.

(1) For the purposes of the application of this Act to the person whose case is remitted, references in this Act to a child include references to the person until whichever of the following first occurs:

(a) a children's hearing or the sheriff discharges the referral,

(b) a compulsory supervision order made in respect of the person is terminated, or

(c) the person becomes 18 years of age.

Appendix 6
Relevant persons

1. Children's Hearings (Scotland) act 2011 s.200

(1) *In this Act, "relevant person", in relation to a child, means:*

(a) *a parent or guardian having parental responsibilities or parental rights in relation to the child under Part 1 of the 1995 Act,*

(b) *a person in whom parental responsibilities or parental rights are vested by virtue of section 11(2)(b) of the 1995 Act,*

(c) *a person having parental responsibilities or parental rights by virtue of section 11(12) of the 1995 Act,*

(d) *a parent having parental responsibility for the child under Part 1 of the Children Act 1989 (c.41) ("the 1989 Act"),*

(e) *a person having parental responsibility for the child by virtue of:*

(i) *section 12(2) of the 1989 Act,*

(ii) *section 14C of the 1989 Act, or*

(iii) *section 25(3) of the Adoption and Children Act 2002 (c.38),*

(f) *a person in whom parental responsibilities or parental rights are vested by virtue of a permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007 (asp 4)),*

(g) *any other person specified by order made by the Scottish Ministers.*

(2) *For the purposes of subsection (1)(a), a parent does not have parental responsibilities or rights merely by virtue of an order under section 11(2)(d) or of the 1995 Act.*

(3) *An order made under subsection (1)(g) is subject to the affirmative procedure.*

2. Children's Hearings (Scotland) Act 2011 (review of contact directions and definition of relevant person) order ssi 193/2013 art 3

Article 3 Meaning of "relevant person"

(1) *A person falling within paragraph (2) is specified for the purposes of section 200(1)(g) of the Children's Hearings (Scotland) Act 2011 (meaning of "relevant person").*

(2) *A person falls within this paragraph if the person is:*

(a) *a parent of the child other than:*

(i) *a parent falling within paragraph (a) or (d) of section 200(1) of the Children's Hearings (Scotland) Act 2011;*

(ii) *a parent who had parental responsibilities and rights (or in England and Wales or Northern Ireland, parental responsibility) in relation to the child but, by virtue of an order of court, no longer has them;*

(b) *a person, having parental responsibilities for the child by virtue of article 12(2) of the Children (Northern Ireland) Order 1995 1.*

3. List of possible automatic relevant persons

This list is taken from the Annotations to s.200 of the Children's Hearings (Scotland) Act 2011, K. Macfarlane, M. Driscoll, B. Kearney, L. Anderson, currently published in the volume of Green's Social Work Legislation (loose-leaf)*:

1. *The genetic mother (Children's Hearings (Scotland) Act 2011 (Review of Contact Directions and Definition of Relevant Person) Order 2013 (SSI 2013/193) art. (2) (a)(i) (except where the child is adopted (Adoption and Children (Scotland) Act 2007 ss.28 and 29, and 35(2)) or the subject of a permanence order (Adoption and Children (Scotland) Act 2007 ss.80(2) and 87).*

2. *The genetic father (Children's Hearings (Scotland) Act 2011 (Review of Contact Directions and Definition of Relevant Person) Order 2013 (SSI 2013/193) art. (2) (a)(i) (except where the child is adopted (Adoption and Children (Scotland) Act 2007 ss.28 and 29, and 35(2)) or the subject of a permanence order (Adoption and Children (Scotland) Act 2007 ss.80(2) and 87).*

3. *Any person who appears to have established family life with the child with which the decision of a children's hearing may interfere (see discussion above).*

4. *Where the child has been adopted, the adoptive mother (Adoption and Children (Scotland) Act 2002 s.80(2)).*

5. *Where the child has been adopted, the adoptive father (Adoption and Children (Scotland) Act 2002 s.80(2)).*

6. *Any parent in right of a parental responsibilities and rights order by virtue of Children (Scotland) Act 1995, s.11(2).*

7. *The woman in a same-sex partnership who is the partner of a woman who gave birth by artificial insemination unless she did not consent to her partner being artificially inseminated (Human Fertilisation and Embryology Act 2008 s.42 hereinafter referred to as the 'Human Fertilisation Act').*

8. *In the case of two women in respect of whom no civil partnership is in place and one gives birth by artificial insemination, then the other woman may be a parent, and therefore a relevant person, provided no man is treated as the father and no woman is treated as the mother of the child (under ss.35 or 42 of the Human Fertilisation Act) and provided the "agreed female parenthood conditions" set out in s.44 of that Act are satisfied (Human Fertilisation Act, s.43).*

9. *Where the genetic mother of a child and a parent of the child by virtue of s.4 of the 1995 Act (father) or s.4A of the 1995 Act (female parent by virtue of Human Fertilisation Act, s.43, discussed above) the father, or as the case may be, the other woman may agree that they shall each have parental responsibilities and rights – thus acquiring relevant person status.*

10. *A man who may be presumed to be the father of a child if married to the mother at any time between the child's conception and the child's birth or has been registered as the child's father.*

11. *A man married to a woman who has given birth to a child by artificial insemination by another (ie by "AID") unless the man did not consent to the artificial insemination. (Human Fertilisation Act, s.35.)*

12. *A man not married to a woman who has given birth by AID, provided the "agreed fatherhood conditions" enacted in s.37 of the Human Fertilisation Act were satisfied. (Human Fertilisation Act s.36.)*

13. *Any two persons who have been granted an order under the Human Fertilisation Act, s.54(1). (Such an order is only to be granted where the two persons are married, in a civil partnership, or, not being within the forbidden degrees, are living together in an enduring family relationship.)*

14. *A person qualifying under the English Acts listed in subsections (d) and (e).*

15. *A person qualifying under art. 12(2) of the Children (Northern Ireland) Order 1995 (SI 1995/755 (N 12). (Children's Hearings (Scotland) Act 2011. (Review of Contact Directions and Definition of Relevant Person) Order 2013 (SSI 2013/193) art. (2)(b)(i).)*

4 Acquiring or losing deemed relevant person status

The process for deeming (or indeed, 'undeeming') an individual to be a relevant person is fairly simple. If a children's hearing is to be held the individual seeking relevant person status, the child, or a relevant person (s.79 (1) (a)) may ask the children's reporter to refer the question of deemed relevant person status to a pre-hearing panel. The reporter has no discretion and must do so. A safeguarder appointed in the case may also request the reporter to refer a question about relevant person status to a hearing, but in that case the reporter has discretion whether to arrange the pre-hearing panel (2011 Act s.79 (1) (c)). In addition, the reporter may refer the matter on their own initiative to a pre-hearing panel (2011 Act s.79 (1) (b)). If the request has not been made in time for a pre-hearing panel to be held before the hearing, then it can be considered at the hearing but must be the first matter dealt with (2011 Act s.80 (3)). There is no reason why, if the matter of relevant person status arises without notice during a hearing, that that hearing cannot consider and make a decision there and then (CH Rules, r.55). Where an individual has deemed relevant person status, any hearing should consider whether that status should be continued, or whether circumstances and the relationship with the child have changed, and relevant person status is no longer justified.

Appendix 7
The grounds for referral

The explanation provided here, is of necessity, very brief. For a more detailed explanation the reader is directed to the annotations to the Children's Hearings (Scotland) Act, eds. K. Macfarlane, M. Driscoll, B. Kearney, L. Anderson – see recommended reading below.

(a) *the child is 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.*

This is one of the most commonly used grounds for referral. It refers to the neglect of a child's needs such that the effect upon the child is a serious one. Thus, a parent having a mental illness is not sufficient reason to conclude that the child is in need of protection, guidance, treatment or control; it is the effect of the parent's illness on their ability to parent the child and the consequent impact on the child that would give rise to the child being brought on this ground.

(b) *a schedule 1 offence has been committed in respect of the child.*

The offences listed in Schedule One to the Criminal Procedure (Scotland) Act 1995 as amended are listed in Appendix 7. It is not necessary that the perpetrator of the offence has been convicted of the offence in the criminal court and having been found not guilty in the criminal court does not preclude this ground being held established. If the ground for referral is denied, a proof hearing will take place in the Sheriff Court. If the ground is found established by the sheriff, it does not mean that the perpetrator has been found guilty of a criminal offence as the proof hearing will be on the civil standard of proof (the balance of probability) rather than the criminal standard (beyond reasonable doubt).

(c) *the child has, or is likely to have, a close connection with a person who has committed a schedule 1 offence.*

The offence in this ground is used where the person the child has a close connection with has committed the offence against another child, and not one necessarily who is a member of the same household. (For meaning of close connection and same household see glossary.)

(d) *the child is, or is likely to become, a member of the same household as a child in respect of whom a schedule 1 offence has been committed.*

This ground is most commonly used where one child in a family where there are other children has been the victim of a schedule one offence. It is a means of protecting the children who have not been offended against.

(e) *the child is being, or is 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.*

This ground applies where a child is being exposed to persons who pose a risk but who are not necessarily members of the same household or do not have a close connection. It may be that there is one person who is a regular visitor, or it may be a class of persons. An example: parent has friends who visit who are drug users or drug dealers. It need not be that adults who are exposing the child to persons who pose a risk, it may be that the child's own contacts who pose the risk – an example may be that the child is becoming involved with gang members.

(f) *the child has, or is likely to have, a close connection with a person who has carried out domestic abuse.*

Under the previous law a person who was the victim of domestic abuse could find themselves at a hearing facing a ground for referral worded very similarly to ground (a) above, such that in being abused themselves they had failed to protect the child.

This ground focuses on the impact of the child of domestic abuse.

It should be noted that it is not necessary that the parent or carer of the child has been the victim of domestic abuse – it may be a new partner who has a history of domestic abuse or a close relative – perhaps a grandparent who has a history of domestic abuse. The meaning of domestic abuse is not defined in the Act, but the widest possible meaning is likely to be given to it: behaviour including controlling behaviour, manipulation and intimidation as well as actual violence. It is not necessary that the person has been convicted of a crime relating to domestic abuse. The standard of proof will be the balance of probabilities.

(g) *the child has, or is likely to have, a close connection with a person who has committed an offence under Part 1, 4 or 5 of the Sexual Offences (Scotland) Act 2009 (asp 9).*

Where (b) protects children from those who have offended against children, this section protects children from sexual offenders who have offended against adults.

Again, it is not necessary that the person has been convicted of an offence (although many are likely to have been) because the standard of proof is the balance of probabilities. The scope of the offences created by the Sexual Offences (Scotland) Act 2009 is extensive and complicated. It is far beyond the scope of this resource to analyse them in full. The reader is referred to J Chalmers New Law on Sexual Offences in Scotland, being Supplement 1 to Volume 2 of Gordon's Criminal Law, 2010, Edinburgh, W. Green & Son.

(h) *the child is being provided with accommodation by a local authority under section 25 of the 1995 Act and special measures are needed to support the child.*

This ground applies to a child who is in voluntary care (under 16 a person with PRR will have signed a s.25 agreement) and there are concerns that this is not sufficient for the protection, guidance, treatment or control. It may come from concerns that the parent intends to remove the child from care, or it may be that the child's own behaviour is the concern.

(i) *a permanence order is in force in respect of the child and special measures are needed to support the child.*

Most children who are subject to permanence orders were referred to a children's hearing and were subject to compulsory supervision orders. This ground is therefore useful when, post-permanence order, the measures of support are either not working or not considered appropriate.

(j) *the child has committed an offence.*

The age of criminal responsibility in Scotland is 12. Any behaviour by a child under 12 that could amount to criminal behaviour cannot be brought to a hearing under these grounds or to a criminal court. Such behaviour may be brought to a hearing under other grounds if the concerns justify it. Thus only children aged over 12 may be brought on this ground.

The police will have to decide whether to refer the case to the Procurator Fiscal or to the children's reporter, or to both. The Lord Advocate has provided guidelines as to which cases should be jointly reported to the Procurator Fiscal and the Children's reporter taken by the adult court and these are the more serious offences. These may be viewed at Lord Advocate's guidelines on offences committed by children | COPFS. This is the only ground to which the criminal standard of proof applies if the grounds are remitted to the sheriff for proof.

(k) *the child has misused alcohol.*

Children under 16 are permitted limited access to alcohol with parental consent, and this ground does not refer simply to a child 'using' alcohol. The key is that the child is 'misusing' alcohol, therefore putting him or herself at risk.

(l) *the child has misused a drug (whether or not a controlled drug).*

Article 33 of the UNCRC requires States Parties to protect children from the misuse of drugs.

This ground may apply to prescribed drugs or even to drugs which can be bought over the counter without prescription (if improperly administered), and to any psychotropic substance whether or not it is included in the lists in the Misuse of Drugs Act 1971.

(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.*

This ground focuses on the impact of the child's behaviour on themself or others. The behaviour must result or be likely to result in a severe impact, not a minor one. The types of conduct that could give rise to this ground include: serious risk-taking, self-harm, bullying, being involved in the supply of drugs or alcohol.

(n) *the child is beyond the control of a relevant person.*

It will be remembered that a relevant person is usually a person with parental responsibilities and rights, or someone whose involvement in the child's life is such that they are carrying out the responsibilities of a person with PRR at least part of the time. One of the responsibilities is to guide and direct the child until the age of 16. This means providing age-appropriate control. Where the control fails and the child is thereby at risk this ground applies. The reasons for the parental failure are irrelevant; it is the impact on the child that matters. 'Relevant person' here does not include deemed relevant person – 2011 Act s 81(4). (See 3.8 (relevant persons) and appendix 4 (parental responsibilities and rights).)

(o) *the child has failed without reasonable excuse to attend regularly at school.*

Section 30 of the Education (Scotland) Act 1980 places a duty on parents to ensure that their child receives an education until the school leaving date (see 3.7.2 on school leaving age).

It does not require that the child be sent to a state school. Where, however, a child does attend a state school, they are required to attend regularly.

The parent may commit an offence if the child does not attend, but the child does not (s.35 of the 1980 Act). 'Reasonable excuse' is defined in s.42 of that Act as including there being no school place available, the child would have to walk more than the accepted distance, is too ill or there are other circumstances which 'in the opinion of the education authority or the court afford a reasonable excuse.'

(p) *the child:*

(i) *has been, is being or is likely to be, subjected to physical, emotional or other pressure to enter into a civil partnership, or*

(ii) *is, or is likely to become, a member of the same household as such a child.*

This ground has never been used.

(q) *the child:*

(i) *has been, is being or is likely to be forced into a marriage (that expression being construed in accordance with section 1 of the Forced Marriage etc. (Protection and Jurisdiction (Scotland) Act 2011 (asp 15)) or,*

(ii) *is, or is likely to become, a member of the same household as such a child.*

This is self-explanatory, and has been used in small numbers each year since the 2011 Act came into force in 2012.

Appendix 8
Excusing and excluding

1 Excusing the child

There is great emphasis in the 2011 Act on the presence of the child in the hearing, hence the duty to attend in s.73. If the child cannot or should not attend, then they must be formally excused. If a child does not turn up and has not been excused the hearing may excuse their attendance or issue a warrant to ensure attendance which will be executed by the police (s.88) (for further information on warrants, see 12.3). It should be noted that the child has the same duty to attend court hearings and the sheriff too can issue a warrant. It should be remembered that there is no duty to attend pre-hearing panels.

The child may be excused from all or part of a hearing if:

- the hearing relates to grounds in s.67(b) and (c) (schedule one offences) AND the attendance of the child at the hearing or that part of the hearing is not necessary for a fair hearing.

- attendance at all or part of the hearing would place the child's physical, mental or moral welfare at risk.

- taking account of the age and maturity of the child they would not be able to understand what happens at the hearing or that part of the hearing.

The child CANNOT be excused from that part of a grounds hearing where the grounds are put to them if they are capable of understanding the explanation of the grounds for referral. (See 8 above for what happens at a hearing.)

Even if a child has been excused from attendance, they have the right to attend and should not be prevented from doing so.

2 Excusing a relevant person

The test for excusing a relevant person is much simpler: it would be unreasonable to require them to attend or attendance by the relevant person is unnecessary for the proper consideration of the matter before the hearing (2011 Act s.74 (3)).

If a relevant person fails to attend there is no provision for the issuance of a warrant as there is with the child, but they will have committed an offence and could be fined by a sheriff (s.74 (4)). We are unaware of any relevant person being charged with this offence or appearing in court. If the hearing feels that it is appropriate to do so they can decide to proceed in the absence of a relevant person (s.75(2)). The focus is on the needs of the child and unnecessary delays are to be avoided. It should be remembered that there is no duty to attend pre-hearing panels.

Appendix 9

Flowchart 1: Progress of a referral to the reporter

THE REFERRAL IS RECEIVED

AN INITIAL DECISION IS MADE BY REPORTER

There are six possible decisions:

1. No action-decision due to:

- insufficient evidence
- no action needed
- family action sufficient
- already on CSO no further measures needed

2. Diversion

The reporter can require the child to be offered supportive measures such as victim awareness or other specialised programmes. It does not require the child to accept such support.

3. Refer child and family to local authority for voluntary measures

This requires the local authority to offer the child and family support but does not require the child or family to accept that support.

4. No action due to:

- insufficient evidence
- no action needed
- family action sufficient
- already on CSO no further measures needed

Decisions 1 – 5 are final decisions. In each case the reporter will notify the child, all parents/carers, and the agency or individual who made the referral.

Once this decision is made the same circumstances may not be used to bring the child to a hearing unless the reporter decides in the future that new circumstances justify grounds for referral and the early circumstances may be used as well.

5. Further investigation required

Reporter will request reports from any professional or agency who is likely to have relevant information about the child/family.

After the reports have been received the reporter will make a final decision. The options are the same as 1-5 above and 6 below.

6. To bring the child to a children's hearing

Flowchart 2: Procedure at a grounds hearing*

*Note: This procedure is the same at the 8th working day hearing after a child protection order has been granted

Grounds understood and accepted

Grounds and supporting statements read to relevant persons and child if capable of understanding explanation of grounds

Grounds accepted by relevant person/s and child

Hearing may proceed to decision

Grounds accepted by relevant persons but not understood by child
Grounds and supporting statements read to relevant persons and child if capable of understanding explanation of grounds

Grounds accepted by relevant person/s but child unable to understand explanation

Hearing has two options:

Dismiss grounds – case ends or remit to sheriff for proof and consider if interim compulsory supervision order or interim variation of compulsory supervision order is needed

Grounds accepted by relevant persons but child unable to understand explanation evidence is not ordinarily led and sheriff will find established and remit to hearing for disposal or

Grounds denied by relevant person/s or child – evidence will be led before sheriff

Sheriff finds grounds not established – case ends

Sheriff finds grounds established and remits back to hearing.

Grounds denied by child and or relevant persons

Hearing has two options:

Dismiss grounds – case ends or remit to sheriff for proof and consider if interim compulsory supervision order or

Interim variation of compulsory supervision order is needed

Court

Grounds accepted by relevant persons but child unable to understand explanation evidence is not ordinarily led and sheriff will find established and remit to hearing for disposal or

Grounds denied by relevant person/s or child – evidence will be led before sheriff

Sheriff finds grounds not established – case ends

Sheriff finds grounds established and remits back to hearing.

Appendix 10
Schedule 1 To the Criminal Law (Consolidation) (Scotland) Act 1995 (The 'Schedule One' Offences)

Schedule 1 offences against children under the age of 17 years to which special provisions apply

1. Any offence under Part I of the Criminal Law (Consolidation) (Scotland) Act 1995. (These include incest, intercourse with step-child, procuring, abduction and unlawful detention, permitting girl to use premises for intercourse, seduction, prostitution, etc., of girl under 16, trading prostitution and brothel-keeping, allowing child to be in brothel, living on earnings of another from male prostitution, exposing children under seven to risk of burning from an open fire grate not sufficiently protected, prohibition of person under 16 taking part in performances endangering life or limb.)

1A Any offence under section 18 (rape of a young child) or 28 (having intercourse with an older child) of the Sexual Offences (Scotland) Act 2009

1B Any offence under section 19 (sexual assault on a young child by penetration) or 29 (engaging in penetrative sexual activity with or towards an older child) of that Act.

1C Any offence under section 20 (sexual assault on a young child) or section 30 (engaging in sexual activity with or towards an older child) of that Act.

1D Any offence under section 42 of that Act (sexual abuse of trust) towards a child under the age of 17 years but only if the condition set out in section 43(6) of that Act is fulfilled.

2. Any offence under sections 12, 15, 22 or 33 of the Children and Young Persons (Scotland) Act 1937 (these include: cruelty to persons under 16, causing or allowing persons under 16 to be used for begging).

2A Any offence under the Prohibition of Female Genital Mutilation (Scotland) Act 2005 where the person mutilated or, as the case may be, proposed to be mutilated, is a child under the age of 17 years.

2A Any offence under section 52 or 52A of the Civic Government (Scotland) Act 1982 in relation to an indecent photograph or pseudo-photograph of a child under the age of 17 years.

2A Any offence under sections 1, 9, 10, 11 or 12 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 in respect of a child under the age of 17 years.

3. Any other offence involving bodily injury to a child under the age of 17 years.

4. Any offence involving the use of lewd, indecent or libidinous practice or behaviour towards a child under the age of 17 years:

4A Any offence under section 5 (coercing a person into being present during a sexual activity), s.6 (coercing a person into looking at a sexual image), s.7 (communicating indecently etc.), s.8 (sexual exposure) or s.9 (voyeurism) of the Sexual Offences (Scotland) Act 2009 (asp 9) towards a child under the age of 17 years.

4B Any offence under any of sections 21 to 26 or 31 to 37 of that Act (certain sexual offences relating to children).

Appendix 11
SCRA Statistics

The website of the SCRA contains detailed and useful statistics. Those interested in the statistics are directed to the annual report at: www.scra.gov.uk

Appendix 12
Data Protection Act 2018

s.11(1)

C(1) For the purposes of Article 9(2)(h) of the [UK GDPR] 1 (processing for health or social care purposes etc), the circumstances in which the processing of personal data is carried out subject to the conditions and safeguards referred to in Article 9(3) of the [UK GDPR] 1 (obligation of secrecy) include circumstances in which it is carried out— (a) by or under the responsibility of a health professional or a social work professional, or (b) by another person who in the circumstances owes a duty of confidentiality under an enactment or rule of law.

Sched 1.(18)

18 Safeguarding of children and of individuals at risk (1) This condition is met if— (a) the processing is necessary for the purposes of— (i) protecting an individual from neglect or physical, mental or emotional harm, or (ii) protecting the physical, mental or emotional well-being of an individual, (b) the individual is— (i) aged under 18, or (ii) aged 18 or over and at risk, (c) the processing is carried out without the consent of the data subject for one of the reasons listed in sub-paragraph (2), and (d) the processing is necessary for reasons of substantial public interest. (2) The reasons mentioned in sub-paragraph (1)(c) are— (a) in the circumstances, consent to the processing cannot be given by the data subject; (b) in the circumstances, the controller cannot reasonably be expected to obtain the consent of the data subject to the processing; (c) the processing must be carried out without the consent of the data subject because obtaining the consent of the data subject would prejudice the provision of the protection mentioned in sub-paragraph (1)(a). (3) For the purposes of this paragraph, an individual aged 18 or over is "at risk" if the controller has reasonable cause to suspect that the individual— (a) has needs for care and support, (b) is experiencing, or at risk of, neglect or physical, mental or emotional harm, and (c) as a result of those needs is unable to protect himself or herself against the neglect or harm or the risk of it.

(4) In sub-paragraph (1)(a), the reference to the protection of an individual or of the well-being of an individual includes both protection relating to a particular individual and protection relating to a type of individual.

The sharing of personal information where there is concern that a child may be at substantial risk of harm is permitted by the law. Put simply, if a practitioner has reason to believe that a child (or other person) is at serious risk of harm they are entitled to share:

- The relevant information
- With the appropriate person.

All practitioners should have child protection procedures in place whether as sole practitioners or provided by the employer if an employed practitioner.

Data Protection Act 2018

s. 208

1. Subsections (2) and (3) apply where a question falls to be determined in Scotland as to the legal capacity of a person aged under 16 to—

a) exercise a right conferred by the data protection legislation, or

b) give consent for the purposes of the data protection legislation.

2. The person is to be taken to have that capacity where the person has a general understanding of what it means to exercise the right or give such consent.

3. A person aged 12 or over is to be presumed to be of sufficient age and maturity to have such understanding, unless the contrary is shown.

General Data Protection Regulation

Practitioners are directed to BACP resource GPiA 105 on UKGDPR for information.

With regard to children consenting with regard to the sharing of information, the applicable article is Article 8. The UK has taken the option to reduce the age of consent to 12 years.

Art. 8 GDPR Conditions applicable to child's consent in relation to information society services

1. [1]Where point (a) of Article 6(1) applies, in relation to the offer of information society services directly to a child, the processing of the personal data of a child shall be lawful where the child is at least 16 years old. 2W2Where the child is below the age of 16 years, such processing shall be lawful only if and to the extent that consent is given or authorised by the holder of parental responsibility over the child. 3Member States may provide by law for a lower age for those purposes provided that such lower age is not below 13 years.

2. The controller shall make reasonable efforts to verify in such cases that consent is given or authorised by the holder of parental responsibility over the child, taking into consideration available technology.

3. Paragraph 1 shall not affect the general contract law of Member States such as the rules on the validity, formation or effect of a contract in relation to a child.

Special protection is given to children by Recital 38:

Special protection of children's personal data*

[1]Children merit specific protection with regard to their personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data.[2] Such specific protection should, in particular, apply to the use of personal data of children for the purposes of marketing or creating personality or user profiles and the collection of personal data with regard to children when using services offered directly to a child.[3] The consent of the holder of parental responsibility should not be necessary in the context of preventive or counselling services offered directly to a child.

Registration with the Information Commissioner

Most therapists now use some form of digital processing for making appointments, keeping records and other communications with clients, colleagues and employers in the provision of their therapy services. Communications within a counselling or psychotherapy service (in whatever context it takes place), particularly appointments or other data related to providing and receiving services, constitute 'sensitive personal data'. Failure to register with the Information Commissioner when required to do so is an offence of strict liability, punishable with fines.

Counsellors deciding whether or not to register should consult the Scottish Information Commissioner's Office for assistance.

Appendix 13
The different types of children's hearing

1 Advice hearings

When a child or young person appears in the adult criminal court and either pleads guilty or is found guilty of a criminal offence, it is possible for the case to be sent to the hearing for disposal rather than the individual being sentenced by the court. Where the child or young person is already subject to a compulsory supervision order (CSO) the sheriff MUST and the High Court MAY ask a children's hearing for advice as to which is the more suitable forum for disposal. (Criminal Procedure (Scotland) Act 1995, s.49(3).) Where the child or young person is not subject to a CSO the court may still decide to ask a hearing for advice. The advice of the hearing is not binding upon the court.

Asking a hearing for advice under said s.49(3) requires that the reporter arrange a hearing under s.130(2) of the 2011 Act in order to review the existing CSO. The child or young person has a right and duty (unless excused) to attend the hearing (see Criminal Procedure (Scotland) Act 1995 ss.78(1)(a) and 73) as does their parent or carer (see s.74 on relevant persons). The reporter will also invite the person's social worker (if they have one) and any other known relevant professionals such as education. The hearing simply looks at whether the hearing or the court is the more appropriate place to deal with the person. The value of the system is the person concerned is able to give their view, which is often the decisive factor. The advice of the hearing is relayed to the relevant court by the reporter and the court will take that into account in deciding whether to sentence the person or to refer it to the hearing. The child or young person will have a criminal record with all that that entails. The advantage of the giving of advice to the sheriff is that the views of the child or young person are available to the hearing. The sheriff or court will be bound by: 'the paramountcy of the welfare of the child principle (except where the need to protect the public or the child from serious harm (ss.25 and 26)); the views of the child principle (s.27); the minimum intervention principle (s.29(1)(c)(i) and (ii)); and the European Convention principle of proportionality.'

2 2nd working day hearings and 8th working day hearings

See also 4.2 regarding child protection orders further information is also available in GPiA 052 Legal Resource: *Understanding child protection in Scotland*.

Anti-social behaviour orders

Before a sheriff may make an ASBO he or she must ask a hearing for advice. It is irrelevant whether the child is already subject to a compulsory supervision order. The advice is not binding upon the sheriff. The relevant statutory provision is s.4 of the Anti-Social Behaviour etc. (Scotland) Act 2004. Government statistics reveal that very few ASBOs are issued against children in Scotland. (See: www.gov.scot/publications/antisocial-behaviour-etc-scotland-act-2004-guidance-antisocial-behaviour-orders.)

Adoption

Other hearings are held to provide advice where an adoption order is being considered for a child who is subject to a CSO. The consideration of the hearing is whether or not the proposed order is in the child's best interests. The hearing will produce a report to the court (2011 Act s.131). There are complexities in this process which are beyond the scope of this resource. For information about working with children who are in the process of adoption or permanence, readers are directed to the resource on the BACP website. Professor K. McK. Norrie's book on Children's Hearings in Scotland (see suggested reading) contains a clear and useful analysis of this at 12.16 – 12.18. There is also provision for advice to be sought from a hearing in the context of permanence orders, but this too is complex and outwith the scope of this resource. The reader is directed to Professor Norrie's book. (www.strath.ac.uk/staff/norriekennethprof).

3 Grounds hearings

These hearings are usually the first hearing in the process although the reporter may decide to bring a child already subject to a CSO on new grounds. An example might be a child who was brought originally on neglect grounds has now, some years later, been accused of committing a criminal offence.

As compulsory supervision requirements are supposed to reflect the needs of the child in the current situation, where new circumstances arise which would justify a CSO, the reporter will, as a matter of good practice, bring new grounds of referral. Unless the grounds of referral are admitted these hearings are short. The children's hearing can only decide whether to refer the grounds to the sheriff for proof or to dismiss the grounds. If the grounds are referred to the sheriff the hearing will consider whether an interim order is needed. This will only exceedingly rarely come as a surprise to the family, as the social work report will normally contain a recommendation to this effect and the family will have had sight of the report or will have been told by social workers. Where a pre-hearing panel has taken place it may have been decided that it is likely that the children's hearing will make a CSO with a secure accommodation authorisation, which would warn the family that an interim compulsory supervision order (ICSO) was likely at this stage.

4 Review hearings

Once a child is subject to a CSO, the order has a maximum life of 365 days (s.83(7)(a)(i)). If it is not reviewed before that time it falls and the child may not be brought to a hearing on the same facts. Review hearings are frequently held before the approach of the year at the request of the local authority (s.131(10)) the child (s.132(2)), a relevant person (s.132(3)) or an early review may be ordered by the hearing that made the CSO (s.125). It should be understood that a review hearing does not continue a CSO; it makes a new one so that the need for the CSO must be considered as well as any measures.

5 Contact direction review hearings s.126

A person who is not a relevant person but who has an order for contact made by a court under s.11 of the Children (Scotland) Act 1995 may require a hearing to review a contact direction between themself and the child. (S.126, esp s.126(3)(a).) The hearing ONLY considers that issue and nothing else.

Appendix 14
Decisions and orders which can be made by a hearing

1 Deferral

WWhere it is felt appropriate at a hearing, they may defer making a decision (s.91(2)). This may be because it is felt necessary to obtain a report, particularly one from a safeguarder, or because the child or a relevant person was unable to attend. Where a hearing has been deferred it is unlikely that the same hearing members will sit. This is due to the challenges of scheduling volunteer panel members. Sometimes the hearing members will ask for continuity, which means that efforts will be made by CHS to ensure that at least one of the same members sits. The period of deferral is kept as short as possible, being ideally only a matter of weeks. When a hearing is deferred the need for an interim order is considered.

2 Medical examination order

This order authorises that a child undergo (subject to the child's capacity to consent) a medical examination (including psychological) (s.87). The order can include a requirement that a child attend or reside at a specified clinic, hospital or other establishment, it can regulate contact between the child and a person or persons and can even include authorisation for secure accommodation (subject to the usual test (s.87(4))).

3 Authorisation for secure accommodation

It should be understood that the decision to place the child in secure accommodation (that is into a secure unit) is not actually made by the hearing. The final decision is taken between the chief social work officer for the implementation authority and the head of the establishment containing the secure unit (s.151(3)). The hearing authorises the placing of the child in such an establishment. The deprivation of liberty is considerable and the test for so placing a child is a high one. It is contained in s.83(6) and is repeated in the various sections of the Act which apply secure accommodation authorisation by the hearing or a sheriff. At least one of the following conditions apply:

S.83 (6) *The conditions are:*

(a) *that the child has previously absconded and is likely to abscond again and, if the child were to abscond, it is likely that the child's physical, mental or moral welfare would be at risk,*

(b) *that the child is likely to engage in self-harming conduct,*

(c) *that the child is likely to cause injury to another person.*

The risks posed by the behaviour of the child must be of serious harm. It is normally the local authority that recognises the need for secure accommodation and recommends it to the hearing. A place in a unit will have been identified and discussions will have taken place between the social workers and the head of the unit.

The child must have legal representation at the hearing because of the deprivation of liberty, and it is one of the instances where children's legal aid is automatically available (s.90). This is one of the rare instances where the 'no non-beneficial order' does not apply. It may be that secure accommodation is not in the best interests of the child, but because of the serious risk the child poses to another the public interest may over-ride the child's interests.

Authorisation for secure accommodation is not binding on either the local authority or the head of the unit, and there is no breach of the duty of the local authority if it is not implemented.

The authorisation must be reviewed after three months to prevent the child being held longer than is necessary. If the Implementation Authority comes to believe that it is no longer necessary for the child to be held in secure accommodation it is authorised to remove the child (s.151(4)(a)), but notice should be given to the reporter and a review hearing held. The decision to implement or not implement the order may be appealed by the child and/or relevant person/s.

Make no order

Following the 'minimum intervention' or 'no non-beneficial order' principle (see introduction para 3) the hearing will not make an order unless it is necessary for the protection, guidance, treatment or control of the child. Thus, even though grounds of referral are agreed, the hearing is not required to make a CSO. If the child is subject to a CSO the hearing must consider at each hearing whether such an order is still necessary and if is felt that it is not necessary, it must be brought to an end.

Appendix 15
Who is a child for the purposes of Disclosure Certificates? Protecting Vulnerable Groups – changes to the system

Members will be aware that children are considered a vulnerable group and professionals working with them are required to have disclosure certificates. The Disclosure (Scotland) Act 2020, which is only partially in force at time of writing will be introducing changes to the system of disclosure certificates. Some of these changes came into force on 1 April 2025. One of the more important is that for the purposes of the Act 'child' includes any person under the age of 18 years. Useful information on the changes is available at: Types of work covered by PVG – mygov.scot. This change does not affect the meaning of 'child' in other legislation.

Redefined Disclosure Levels: The existing four disclosure levels (basic, standard, enhanced, and PVG scheme) will be replaced by two streamlined levels: www.disclosure.gov.scot/new-disclosure-levels

- **Level 1:** Replaces basic disclosures, showing unspent convictions and any notification requirements
- **Level 2:** Replaces most standard disclosures, displaying unspent convictions, certain spent convictions, and other relevant information held by the police.

1. **Trustee Roles Inclusion:** Individuals holding positions of responsibility in organisations primarily benefiting children or protected adults, such as trustees, will now require PVG scheme membership. This encompasses committee and board members of relevant organisations, regardless of charitable status.

2. **Updated Definitions:**
   - **Child:** Now defined as anyone under the age of 18.OSCR
   - **Protected Adult:** Defined as someone aged 18 or over who meets specific criteria related to receiving certain services.

3. **Applicant Control Over Information:** Applicants will have increased control over their disclosure information. They must share a copy of their disclosure results with the recruiting organisation or notify Disclosure Scotland if they intend to seek a review of the content.

4. **Notification Obligations:**

    - **Personal Detail Changes:** PVG scheme members are legally required to inform Disclosure Scotland of any changes to their personal details.

    - **Cessation of Regulated Work:** Organisations must notify Disclosure Scotland when a PVG scheme member stops undertaking a regulated role within their organisation.

5. **New Offences and Enforcement:** From 1 July 2025, it will be an offence for individuals to perform regulated roles without PVG scheme membership and for organisations to offer such roles without confirming the individual's membership. Penalties include imprisonment, fines, or both.OSCR

Glossary of terms and acronyms

CHS –– Children's Hearings Scotland

Close connection – having significant contact with; being member of the same household as (s.67(3))

COPFS – Crown Office and Procurator Fiscal Service

CPCC – child protection case conference

CPO – child protection order

CRC – The UNCRC's preferred abbreviation for the United Nations Convention on the Rights of the Child

CSO – compulsory supervision order

ECHR – European Convention on Human Rights

GDPR – General Data Protection Regulation (often referred to as UKGDPR)

ICSO – interim compulsory supervision order

IVCSO – interim variation of a compulsory supervision order

Implementation authority – the local authority which has responsibility for carrying out the CSO and any measures included. The IA is the authority which has closest connection with the child. Where the child is accommodated away from their home in another local authority area, the original authority will be the implementation authority.

Member of the same household – member of the same family unit, it does not necessarily require that these be persons who live under the same roof

Procurator fiscal – responsible for prosecution of crime in the Sheriff Court see www.crownoffice.gov.uk

SCRA – Scottish Children's Reporter Administration

SLAB – Scottish Legal Aid Board

UNCRC – United Nations Committee on the Rights of the Child also used to mean the United Nations Convention on the Rights of the Child

UNCRPD – United Nations Convention on the Rights of Persons with Disabilities.

Useful links

Children's Hearings Scotland: www.chscotland.gov.uk

Law Society of Scotland: www.lawscot.org.uk

Scottish women's aid: www.scottishwomensaid.org.uk

Support for victims and witnesses: practitioners may locate their nearest supports for victims and witnesses at: www.scotcourts.gov.uk/coming-to-court/witnesses

Scottish Children's Reporter Administration: www.scra.org.uk

Scottish Independent Advocacy Alliance: www.siaa.org.uk/find-an-advocate

Scottish Legal Aid Board: www.slab.org.uk

Victim Support Scotland: www.victimsupportsco.org.uk.