

## **Coronavirus (Scotland) Act 2020 – Guidance on looked-after children and children’s hearings provisions**

### **General principles**

Like all public services, local authorities and the children’s hearings system are significantly affected by the coronavirus pandemic. The children’s hearings system must continue to support the rights, protection and welfare of children and young people, whilst protecting the rights of their families. Ensuring their safety, reducing their exposure to infection, and reducing the risk of infection to others, is essential. All non-urgent children’s hearings have been cancelled. These will be rescheduled at a later date where necessary, and where conditions permit. Some hearings remain essential and must proceed either to protect an existing order, or where there is an urgent need to act to protect the welfare of a child or young person. Alternative arrangements are being made to enable essential hearings to take place and to ensure that participants do not have to attend hearings centres in person. Children’s hearings arranged at the time of writing are taking place virtually, with all participants taking part by video or telephone conferencing from remote locations.

The Coronavirus (Scotland) Act 2020 (“the 2020 Act”)– [https://www.parliament.scot/S5\\_Bills/Coronavirus%20\(Scotland\)%20Bill/SPBill66AS052020.pdf](https://www.parliament.scot/S5_Bills/Coronavirus%20(Scotland)%20Bill/SPBill66AS052020.pdf)- contains provisions which allow changes to current arrangements for children’s hearings and in relation to the placement of children who are looked after by local authorities. The changes are outlined in schedules 3 and 4 of the 2020 Act.

Among a range of measures, these changes relax existing requirements for the composition of children’s hearings, and the administration and conduct of children’s hearings. There are extensions to the timescales for when certain legal orders must be reviewed and appeals against legal orders lodged. The timescales for review of children’s cases when they are placed in different forms of accommodation are extended and local authorities are enabled to use foster carers more flexibly to look after additional children when necessary.

In the context of this emergency, these provisions are designed to enable best use of very limited resources in local authorities, and the children’s hearings system, so that efforts can be focused on safeguarding the welfare of Scotland’s most vulnerable children and on supporting families and carers who need it most. The provisions are also time-limited and will automatically expire within six months, unless the Scottish Parliament extends them for a further period of six months. This could only be done by the Scottish Parliament twice, which means that the provisions will have a maximum duration of 18 months.

During the coronavirus pandemic, the Scottish Government seeks to empower professional staff and volunteer tribunal members to exercise sound judgment and make decisions to protect and support children and young people based on available information, in partnership with families. The measures in the 2020 Act are limited to

those considered necessary to support and protect children's rights and promote their welfare and well-being in accordance with our obligations under UNCRC. The powers contained in the 2020 Act should be used only when circumstances arise in practice which makes their exercise necessary.

The exercise of emergency powers should :

- be underpinned by a focus on children and young people's, and families', human rights when making decisions to implement powers affecting their legal rights;
- be proportionate - limited to the extent necessary, in response to clearly identified circumstances;
- last for only as long as required;
- be subject to regular monitoring and reviewed at the earliest opportunity;
- facilitate effective participation, including legal representation and advocacy for children, young people and family members, wherever possible and appropriate, and
- be discharged in consultation with partner agencies.

## **Requirements as to members of children's hearings**

### ***Current law***

Section 5 of the Children's Hearings (Scotland) Act 2011 Act ('the 2011 Act') provides that a children's hearing must consist of three members of the Children's Panel. Section 6 provides that the National Convener of Children's Hearings Scotland must ensure that the children's hearing includes both male and female members. Section 79 requires a pre-hearing panel to consist of three members.

### ***Changes made by the 2020 Act***

Paragraph 1(2) of schedule 3 of the Act amends section 5 of the 2011 Act to provide that a children's hearing can consist of fewer than three members where it is not practicable for a hearing to consist of three members Paragraph 1(3) of schedule 3 amends section 6 of the 2011 Act to provide that the duty to include both male and female members applies only so far as practicable. The remainder of the paragraph makes consequential amendments to other legislation on children's panel members.

The National Convener of the Children's Panel is responsible for selecting Children's Panel Members to sit on children's hearings held across Scotland. The National Convener uses his powers under paragraph 10 of Schedule 1 of the 2011 Act to authorise members of local Area Support Teams (ASTs) to carry out that function on his behalf.

Over 30,000 children's hearings and pre-hearing panels take place across Scotland each year, involving approximately 2,500 volunteer Children's Panel Members. If, as a result of coronavirus, there are not enough Panel Members of a particular gender to enable a hearing to include male and female members, urgent hearings may have to be delayed or rescheduled which could leave children vulnerable. Moreover, as a result of illness, self-isolation or caring responsibilities, there may not be enough Panel

Members available to form hearings of three Panel Members to conduct essential and urgent children's hearings required to make decisions to protect children.

The National Convener and all ASTs acting on his behalf will continue, wherever possible, to select three Panel Members to sit on each virtual children's hearing in line with existing provisions in the 2011 Act. Provisions in the 2020 Act which amend the requirement to include male and female Panel Members on every hearing and enable a hearing to proceed with fewer than three Panel Members will enable essential hearings to take place if those requirements cannot be met. If failure of the technology or sudden illness means that a Panel Member can no longer participate in a scheduled children's hearing, the hearing will be able to proceed with two Panel Members. The National Convener will issue guidance on decision-making in a children's hearing with two Panel Members where their decisions do not coincide.

The National Convener does not intend to routinely convene children's hearings with only two Panel Members. If during the coronavirus pandemic, the number of available Panel Members falls below that required to sustain even the reduced numbers of hearings now taking place, the National Convener will in the first instance seek to co-opt Panel Members assigned to a particular local authority area to sit on children's hearings in neighbouring areas. Former Panel Members who have experience of sitting on children's hearings within five years may also be retrained and co-opted to maintain three Panel Member hearings. If those options do not resolve the problem, the National Convener will review the position in consultation with SCRA and local authorities.

The 2020 Act permits a hearing to proceed with one Panel Member. The National Convener will convene a hearing with a single Panel Member only where no other option is available. A hearing with a single Panel Member should make administrative and procedural decisions regarding excusal and certain pre-hearing panel decisions subject to early review. The National Convener will consult with Area Support Teams, SCRA and other interested organisations before introducing hearings with one Panel Member.

## **Child assessment and Child protection orders**

### ***Child assessment orders***

Section 35 of the 2011 Act provides for the local authority to apply to the sheriff for a child assessment order authorising the local authority to carry out - or arrange for another person to carry out - an assessment to be made of a child's health or development, or of the way in which the child has been or is being treated or neglected. Section 35(5) provides that the period during which the order has effect must begin no later than 24 hours after the order is granted, and must not exceed three days.

Paragraph 2(2) of schedule 3 of the 2020 Act amends section 35(5) of the 2011 Act to extend these periods. This means that the period during which the order has effect must begin no later than 48 hours after the order is granted. The maximum period for which the order can have effect is also extended to five, rather than three, days. Whilst these periods remain short, this provides additional flexibility when staffing problems

mean that emergency assessments may be more difficult to arrange. The changes in the 2020 Act enable local authorities to ensure that they have sufficient capacity to execute the order and arrange and conduct the relevant assessments.

Child assessment orders can contain specific requirements such as taking the child to any place within 24 hours of the order being granted, and keeping them in that place for a specified period within the duration of the order.

The potential impact of coronavirus on staffing levels in local authorities may mean that an assessment cannot be carried out before an order expires. At present, local authorities rarely apply for child assessment orders. Nevertheless, the closure of schools and nurseries for significant periods may mean that authorisation to assess a child's well-being is needed more often. Children may not be seen by education and health professionals for long periods. The extensions to the timescales for child assessment orders ensure that social workers have enough time to undertake or arrange assessment of children at potential risk of harm, when the availability of professionals is limited.

### ***Child protection orders ('CPOs')***

A CPO is an emergency order granted by a sheriff on the application of a local authority or other person, where there are reasonable grounds to suspect that a child may experience significant harm due to neglect or other treatment. The order authorises a number of options including keeping a child in a safe place or removing a child to such a place. Where a CPO is granted, it will expire after 24 hours if the authorised person has made no attempt to implement it within that period. Furthermore, sections 45 and 46 of the 2011 Act provide that a review of the CPO, by a children's hearing, must take place on the second working day after the day on which the CPO is made. Section 47 of the 2011 Act enables the children's hearing to continue, vary or terminate the CPO. The coronavirus pandemic may mean that limited numbers of volunteer Panel Members, Reporters and local authority staff are available to arrange and administer these early hearings generated by a CPO. By their nature, CPOs are deployed to protect the most vulnerable children. The second working day hearing prevents the lapse of orders, but protects the right of the child, and others, to challenge the CPO within a reasonable period.

Section 48 of the 2011 Act provides that certain persons may apply to the sheriff to vary or terminate a CPO if the children's hearing arranged under section 45 or 46 has continued the CPO, within 2 working days of the second working day hearing. The sheriff must hear representations and decide whether to confirm, vary or terminate the CPO.

The Principal Reporter has power to terminate the CPO or a direction in the CPO throughout the period unless an application to the sheriff to vary or terminate the CPO has been made.

Section 54 provides that a CPO will cease to have effect after a maximum period of 8 working days.

### ***Changes made by the 2020 Act to CPO provisions***

Paragraph 2(3) of schedule 3 of the 2020 Act repeals sections 45 to 47 of the 2011 Act and the requirement to hold a second working day hearing.

The 2020 Act also amends sections 48 and 51 of the 2011 Act to enable those with existing rights to apply to the sheriff to vary or terminate the order at any time after the CPO is first granted, up to and including the seventh working day after the day the order was made. This provides those whose rights are affected by a CPO with the right to challenge the order, without requiring an additional, early children's hearing when that may be impossible to arrange. As is currently the case, the Principal Reporter will decide whether to arrange a grounds hearing for the child, which must take place no later than the 8th working day after the CPO was implemented. As at present, if the Principal Reporter decides not to arrange a grounds hearing, the CPO will cease to have effect.

#### **Maximum period for which a compulsory supervision order has effect**

If, as a result of the coronavirus pandemic, the children's hearings system is unable to meet existing standard timescales for review of a child's case, that child may be at risk if review hearings cannot take place and their compulsory supervision order lapses. That would mean they are no longer subject to compulsory supervision and the local authority will no longer have power to implement the measures in the order designed to protect and support the child.

The Principal Reporter will convene a hearing within the standard timescale where practicable and, if not, as soon as reasonably practicable after the expiry date identified when the order was made. The Principal Reporter will consult with local authorities and have regard to children's views and representations by family members to ensure that all cases are prioritised in accordance with need and risk and review hearings are scheduled promptly and fairly when emergency measures in place are relaxed and public authorities, including the children's hearings system are able to resume normal operation.

#### ***Current Law***

Section 83(7) of the 2011 Act provides that a compulsory supervision order (CSO) ceases to have effect, if it has not been continued, the day one year after the day on which the order is made, or the day on which the child turns 18. Where a CSO has been continued, it ceases to have effect at the end of the period for which it was last continued, or the day on which the child turns 18. Section 133 requires the Principal Reporter to initiate a review of a compulsory supervision order where the order will expire within 3 months. This means a child's order could lapse if an order was not able to be reviewed and continued within the one year period, or before the child turns 18.

### ***Changes made by the 2020 Act***

The Act provides that if a hearing has not taken place to review a compulsory supervision order in place before it expires, the order will not expire, unless six months have passed since the expiry date or the child has attained the age of 18 years.

The Principal Reporter still has a statutory responsibility to arrange a review within the normal timescale (i.e. before the original expiry date) but the changes mean that if that review does not take place for any reason, the order will remain in place for a further period of up to six months. Even where this occurs, the Reporter must still arrange a review as soon as is practicable after the date on which the order was originally due to lapse. The provisions in the Act to save CSOs from lapsing are intended to be a “failsafe” - they are not intended to be a blanket extension of CSOs for a further 6 months. The Principal Reporter must continue to try to arrange hearings before the original expiry date, but if, in the current context, should an administrative error occur or it is not possible to arrange a hearing on time, the CSO must be reviewed as soon as practicable after the original expiry date.

It is important to emphasise that the right to request a children’s hearing review for the child, relevant person and implementation authority remains in place throughout the period of the order.

### **Maximum period for which interim compulsory supervision order or interim variation of compulsory supervision order has effect**

#### ***Current law***

Sections 86(3) and 140(4) of the 2011 Act stipulate the maximum period for which respectively an interim compulsory supervision order or an interim variation of compulsory supervision order has effect, whether made by a children’s hearing or by a sheriff. In relation to both, this is currently for a maximum period of 22 days beginning on the day the order is made.

This means that a children’s hearing or court can issue an interim order for 22 days which will lapse if it is not renewed within that timescale.

Children may require to be subject to a 22-day interim order specifying measures for their protection pending either a grounds hearing, court referral proceedings to consider the grounds of referral, or a deferred hearing as a result of an urgent change to their circumstances which requires further assessment.

During the Coronavirus pandemic, the existing time limits for relevant interim orders may limit the ability of those affected to contribute to decisions about their welfare, or for suitable assessments to be made for supporting the child. Flexibility is therefore required to ensure that there are not unnecessary hearings due to the restrictions imposed by these time limits.

The court in determining an application may also be affected by the coronavirus pandemic and be unable to deal with cases expeditiously due to lack of court capacity.

This may increase the need for short term orders every 22 days, which would not necessarily be in the interest of a child. There is a concern about the continuing capacity of the children's hearings system to be able to respond to the administrative requirements for dealing with 22 day repeat hearings and there is a risk that relevant interim orders may lapse leaving a child unprotected. The increased time period being available will allow each child's case to be considered appropriately, particularly where illness has affected them or their families.

### ***Changes made by the 2020 Act***

To allow more flexibility to agencies seeking to respond in a prioritised way to the challenges posed by the coronavirus pandemic, paragraph 4(2) and (3) of schedule 3 of the 2020 Act amend sections 86(3) and 140(4) of the 2011 Act. This provides that the maximum period for which an interim compulsory supervision order or an interim variation of compulsory supervision order has effect is:

- where the order is made by a children's hearing, 44 days, or
- where the order is made by a sheriff, such other period as the sheriff may specify.

The Principal Reporter, local authority and other parties should note these extended timescales and plan accordingly. Existing ICSOs and IVCSOs in place at the time of commencement will not be extended by the change, and will still need to be considered at the end of their current periods. Panel members will need to take into account the extended maximum timescale in their decision-making. As with the existing legislation, a hearing may make an ICSO or interim variation for a shorter period than the maximum.

### **Period within which children's hearing must be heard in certain cases**

#### ***Current law – secure care and other place of safety placements***

Section 109(7) of the 2011 Act provides that where a sheriff makes an interim compulsory supervision order (ICSO) under section 109(3) or (5), specifying that the child is to reside at a place of safety, a children's hearing must be arranged to take place no later than the third day after the day on which the child is in the place of safety.

Section 143 of the 2011 Act provides that where a child is residing at a particular place, because of a requirement for them to do so in a CSO, the relevant chief social work officer may transfer the child to another place if it is in the interests of the child, or in the interests another child in the place that the subject child is being moved from. Section 137(3) of the 2011 Act provides that where a child is transferred in this way, a children's hearing must be arranged to take place before the expiry of 3 working days, beginning with the day on which the child was transferred.

When a court makes an order under section 109(7) of the 2011 Act, there is a timescale of three days in place for a children's hearing to be held. This may simply

not be possible. When a children's hearing order requires a child to stay in a specified place, section 143 of the 2011 Act provides the relevant chief social work officer with the power to transfer the child out of that place where such a transfer is required as a matter of urgent necessity. This would apply where the best interests of that child (or another child) cannot wait until a children's hearing has been arranged.

Section 137(3) of the 2011 Act requires a hearing to be held to review the child's case following an emergency transfer within three working days. Due to the coronavirus pandemic there may be a higher number of children who need to be moved from their current kinship, foster or residential home in an unplanned way due to illness. The resilience and availability of alternative out-of-authority emergency placements will therefore be impacted and authorities may have more difficulty in sourcing them.

### ***Changes made by the 2020 Act***

The 2020 Act provides for situations where it will not be practicable for there to be a hearing within three working days, due to the likely shortage of social work, reporter, decision-makers, children and families to attend an urgent hearing in the new area. Paragraph 5 of Schedule 3 of the Act amends the time limit for sheriff-made ICSSOs to 7 days, instead of 3 days.

Paragraph 5(3) of the 2020 Act's Schedule 3 extends the time limit for extends the time limit for the Principal Reporter to arrange a children's hearing under section 137(3) to 7 working days instead of 3 working days in respect of placements made by chief social work officers - without authority from a sheriff or children's hearing.

Chief social work officers, the Principal Reporter and the National Convener and the heads of secure units should note these extended timescales, and prepare accordingly. These new timescales only apply if the interim compulsory supervision order made under section 109 or the transfer under section 143 is made after the provisions are commenced. Placements in force at the time of commencement will need to be serviced according to the previous 2011 Act provisions and timescales.

***Tables A and B at the foot of this section contain summary information about the changes to duration of orders and other timescales***

### **Secure accommodation**

#### ***Current law***

Regulation 5(1) of the Secure Accommodation (Scotland) Regulations 2013 ("the 2013 Regulations") provides that the maximum time in which a child may be kept in secure accommodation without the authority of the children's hearing or the sheriff is an aggregate of 72 hours (whether or not consecutive) in any period of 28 consecutive days.

Regulations 7(5) and 8(6) of the 2013 Regulations provide a timescale of 72 hours for the Principal Reporter to arrange a children's hearing where a child has been placed in secure accommodation.



There may be significant challenges affecting agencies' and families' capacity to arrange a children's hearing within 72 hours, even remotely. The coronavirus pandemic may affect the secure accommodation residents and staff, preventing the child being able to be involved in a hearing even remotely in an emergency. The child, family and professionals could be put at risk if there is a requirement to maintain existing practice. These placements are vital to safeguard a child's immediate welfare.

### ***Changes made by the 2020 Act***

Paragraph 6 of Schedule 3 of the 2020 Act amends the 2013 Regulations to provide that the maximum time in which a child may be kept in secure accommodation without the authority of the children's hearing or the sheriff is to be increased to an aggregate of 96 hours (whether or not consecutive) in any period of 28 consecutive days.

Where the Principal Reporter considers that it would not be reasonably practicable to arrange a children's hearing within 72 hours, the Principal Reporter will have an additional 24 hours to arrange such a hearing. This will provide extra flexibility without disproportionately affecting the child's rights. The views of children and young people should be taken into account when emergency placements are first made.

This decision must take into account the best interests of the child. Local authorities should provide pertinent information to inform this decision. The child must be at the centre of all decision making, which includes the social work team listening to the child's views.

The Principal Reporter, chief social work officers, the National Convener and heads of secure care units should note the additional flexibility and prepare accordingly. Emergency kinship placements in force at the time the Act comes into force will need to adhere to the requirements in the 2013 regulations. The flexibilities will only apply to emergency placements after commencement.

### **Modification of certain time limits for making and determination of appeals etc.**

As a result of the coronavirus outbreak there is a risk of reduced accessibility to courts due to illness or self-isolation and also from social distancing by children, relevant persons, or legal representatives. These factors will impact on their ability to meet existing appeal timescales or to challenge decisions effectively. In addition, the capacity of the Principal Reporter to meet a seven day deadline to lodge an application for proof could be impossible.

Courts may also not be able to arrange an application or dispose of an appeal in short timescales, due to the lack of available judiciary or court staff. This could mean that an authorisation or order will expire and place a child at risk.

Only applications and appeals beginning after commencement will benefit from the extended time limits stipulated in the 2020 Act. All applications and appeals lodged before commencement should adhere to the current time limits. The chairing member

of the children's hearing must explain the new rights of appeal to the child, relevant persons, any appointed Safeguarder and any other individual with specific appeal rights from the date of commencement.

### ***Current law***

There are specified time limits for the lodging of court applications, making of and disposal of appeals under the 2011 Act and associated enactments. These are set out in table C.

### ***Changes made by the 2020 Act***

Paragraph 7 of Schedule 3 of the 2020 Act extends the time limits for the making, disposal or determination of appeals or the making or lodging of applications as follows. These are summarised in table C.

### **Attendance at children's hearings etc.**

#### ***Current law***

Children and young people and relevant persons have both an obligation and a right to attend a children's hearing which affects them directly. The 2011 Act requires attendance of specified persons at children's hearings and pre-hearing panels. There is limited scope for excusing the attendance of children and young people in that legislation – this includes where there is a risk of harm to the child's physical, mental or moral welfare. Relevant persons may be excused from attending hearings if requiring their attendance is unnecessary or would be unreasonable.

More generally, a range of other people also have a legal right to attend hearings. The chairing member may permit other people to attend if they have a contribution to make to the proper consideration of the matters before the hearing, or if the child and relevant persons do not object.

Rule 19 of the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 places a duty on the Reporter to facilitate remote attendance at a pre-hearing panel or certain hearings for the child, relevant person or an individual who wishes to be deemed to be a relevant person. The duty is limited in scope.

This requires the Reporter to facilitate remote attendance at a hearing or pre-hearing panel for the child, relevant person or an individual who wishes to be deemed to be a relevant person. The Reporter may do so if Panel Members have already excused their attendance in person or the person asks to attend a hearing to consider specific preliminary matters by telephone, video link or other means of communication. The Reporter must be satisfied that the person has a good excuse for not attending in person.

A strict insistence on personal attendance is unlikely to be feasible during the Coronavirus pandemic, and may contravene current health guidance, putting both families and others required to attend at unacceptable risk. There are also wider risks to all personnel involved in the children's hearing which must be taken into account. The number of children's hearings scheduled to take place during the Coronavirus pandemic have been reduced to only those required to ensure essential and immediate protection of children or to consider orders relating to restriction of liberty. So long as restrictions regarding social distancing remain in place, all children's hearings will be conducted remotely and digital facilities are being put in place to enable a wide range of people to participate in virtual children's hearing remotely, using video conferencing technology as the preferred method.

### ***Changes made by the 2020 Act***

The Act amends rule 19 of the 2013 Rules to facilitate the remote attendance of other persons ( including children, relevant persons and a safeguarder) who have the right to attend a pre-hearing panel or a children's hearing by virtue of section 78(1) of the 2011 Act. These provisions relaxing both the rights and duties of attendance are further reinforced by Paragraphs 2, 3, 4 and 6 of schedule 4 of the 2020 Act.

This provision means that there is no longer any obligation on a child or relevant person to attend a children's hearing unless a children's hearing specifically directs that personal attendance is required.

Additionally, the 2020 Act also makes general provision in subparagraphs (2) – (5) of schedule 4 for courts and tribunals (which includes a children's hearing, as set out in the definition in subparagraph (6)). This includes provision on physical attendance.

The Principal Reporter, National Convener and other parties will wish to note these options although they simply provide additional flexibility if required and do not prevent continuing reliance on Rule 19.

Separate practice guidance will be made available from Children's Hearings Scotland and the Scottish Children's Reporter Administration to anyone involved in hearings conducted virtually. The Principal Reporter and National Convener, along with local authorities, children's advocacy providers, the Scottish Legal Aid Board and members of the Children's Legal Assistance Scheme and the managing contractor of the national Safeguarders Panel will wish to note these changes, and keep themselves updated with the joint statement on children's hearings and COVID-19 - hosted on SCRA and CHS websites.

### **Authentication of children's hearings documentation**

#### ***Current law***

The chairing member of a hearing must currently add a wet signature to any decision made or order issued. Rule 98(1) of the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 ("the 2013 Rules") states that any order, warrant to secure the attendance of a child, notice, report, record or other writing required to be made, granted, given or kept by the children's hearing or pre-

hearing panel or chairing member of that hearing is sufficiently authenticated if it is signed by the chairing member.

There is no provision which allows this to be done in any other way. In a virtual hearing Panel Members will be participating remotely in a different place from the children's reporter. It will not be possible for the chair of the children's hearing to provide the Reporter with a personal signature for the record of the hearing's proceedings.

The children's reporter must send notification of the decision and reasons, copies of orders issued etc. to the affected child and their relevant persons. The safety of children could be compromised if those affected by a decision are not notified of it promptly, or a procedural challenge was upheld because a decision that had not been properly authenticated.

### ***Changes made by the 2020 Act***

Paragraph 9, schedule 3 of the 2020 Act amends rule 98(1) of the 2013 Rules to enable the Reporter to authenticate documents electronically. Paragraphs 1 and 6 of Schedule 4 reinforces the chairing member's ability to electronically authenticate documents where that is possible.

Additionally, the 2020 Act also makes general provision in subparagraph (1) of schedule 4 for courts and tribunals (which includes a children's hearing, as set out in the definition in subparagraph (6)). This includes provision on electronic signatures and transmission of documents. Although the chairing member will still require to sign hearing documentation, they will now be able to do so by means of an electronic signature e.g. a typewritten name or scanned copy of a "wet" signature

The Principal Reporter, National Convener and other parties will wish to note these options.

### **Looked after children**

The Looked After Children (Scotland) Regulations 2009 ("the 2009 Regulations") make provision for the placing of children with kinship carers and with foster carers. Paragraph 10 makes a number of amendments to the 2009 Regulations.

### ***Current Law – foster care***

Regulation 27A of the Looked After Children (Scotland) Regulations 2009 ("the 2009 Regulations") specifies that a Local Authority should not place more than three children with a foster carer at any one time, with the exception of sibling groups or in an emergency of no more than 4 weeks.

In this emergency period, local authorities will be under increasing pressure to prioritise their resources. Restricted availability of social workers means that there is a risk that they will not be able to comply with existing statutory time limits. The Act ensures that all looked after children can be safely cared for, and to allow local authorities to prioritise their resources effectively to help the most vulnerable children.

## ***Changes made by the 2020 Act***

### ***Foster Care***

Paragraph 10(1) to (8) of Schedule 3 of the Act amend regulation 20(2)(c) to the 2009 Regulations to remove the requirement placed on Fostering Panels to recommend approval of foster carers with the maximum number of children a particular foster carer may have in their care at any one time. It also allows local authorities to place more than the current maximum of three children with a foster carer, and to allow a foster carer to look after more children than their current approval allows. Local authorities can only do this if they consider that it is necessary to do so for a reason relating to coronavirus.

Local authorities and foster carers need to note and prepare for this additional flexibility. The 2020 Act's changes do not apply where a child is placed before the changes come into force.

### ***Current Law - Kinship Care***

Under regulation 36(1) of the Looked After Children (Scotland) Regulations 2009, a local authority can, in an emergency, place a child in kinship care. A review for such a placement must take place within three working days, as set out in regulation 38(2).

Once the placement has been reviewed under regulation 38(2), a local authority may allow the placement to continue for a further period, not exceeding 12 weeks, beginning with the expiry of the three day period in regulation 36(1). Regulation 39(2) also sets out circumstances in which the local authority can allow the child to remain in the extended placement beyond the 12 week period. There is also a requirement, under regulation 39(3), that where the local authority allows the placement to continue beyond the initial three day period, the placement is reviewed before the expiry of 6 weeks beginning with the expiry of the three day period.

### ***Changes Made by the 2020 Act – Kinship Care***

Paragraph 10(6) of the 2020 Act amends regulation 36(1) of the 2009 Regulations so that a local authority may place a child with a kinship carer, in an emergency, for a period not exceeding 5 working days, instead of 3 working days.

A local authority is not required to carry out a review within five days of an emergency placement where the chief social work officer is satisfied that the placement is in the best interests of the child, that the placement of the child with that carer is in the best interests of the child and it is not reasonably practicable for the authority to carry out the review within the 5 working day period. It also provides that where a review has not been carried out in the 5 working day period, the local authority still has a duty to carry out a review as soon as is reasonably practicable after the end of that period.

Paragraph 10(8), schedule 3 of the 2020 Act amends regulation 39 of the 2009 Regulations to allow a local authority to extend placements in certain circumstances for a period not exceeding 24 weeks.

Paragraph 10(9), schedule 3 of the 2020 Act amends regulation 45 of the 2009 Regulations so that where a child is placed in kinship care under regulation 11, the first review must be carried out within 3 months of the placement, instead of six weeks, and so that the subsequent reviews must then be carried out within six months of the date of the previous review.

### Coronavirus (Scotland) Act 2020 – Duration of orders – Table A

Amendments to the duration of certain hearings' and sheriff's orders as set out in the table below.

<b>Order</b>	<b>Section amended</b>	<b>Duration or maximum duration as amended</b>	<b>Orders affected</b>
Compulsory Supervision Order	Addition of new s83(7)(c) & 83(7A) to 2011 Act	Where the expiry review hearing has not been arranged, or not made a decision, the order will not expire until sooner of: <ul style="list-style-type: none"> <li>• 6 months after date on which the order would otherwise have expired, or</li> <li>• the child's 18<sup>th</sup> birthday</li> </ul>	All CSOs, whether they were made before or after the coming into force of the 2020 Act
Interim Compulsory Supervision order (made by hearing)	s.86(3)(d) of 2011 Act	<ul style="list-style-type: none"> <li>• Maximum relevant period is 44 days (instead of 22 days)</li> </ul> <p>The other existing provisions of s 86(3) continue to apply, so orders will continue to expire upon whichever event specified there takes place first.</p>	Only applies to ICSOs made after the coming into force of the 2020 Act
Interim Compulsory Supervision order (extended, extended and varied or made by Sheriff)	s.86(3)(d) & (e) of 2011 Act	Maximum relevant period is whichever is longer of: <ul style="list-style-type: none"> <li>• the expiry of 44 days from the making of the order; or</li> <li>• such other period as is specified by the sheriff</li> </ul>	Applies to ICSOs made, and to ICSOs extended or extended and varied after the coming into force of the 2020 Act

		The other existing provisions of s 86(3) continue to apply, so orders will continue to expire upon whichever event specified there takes place first.	
Interim variation of Compulsory Supervision Order (made by hearing)	s. 140(4)(d) of 2011 Act	<ul style="list-style-type: none"> <li>• Maximum relevant period is 44 days (instead of 22 days)</li> </ul> <p>The other existing provisions of s 140(4) continue to apply, so orders will continue to expire upon whichever event specified there takes place first.</p>	Only applies to interim variations made after the coming into force of the 2020 Act
Interim variation of Compulsory Supervision Order (made by sheriff)	s. 140(4)(d) of 2011 Act	<p>Maximum relevant period is whichever is longer of:</p> <ul style="list-style-type: none"> <li>• the expiry of 44 days from the making of the order; or</li> <li>• such other period as is specified by the sheriff</li> </ul>	Only applies to interim variations made after the coming into force of the 2020 Act

### Timescales for arranging hearings – Table B

Paragraph 5 of Schedule 3 makes amendments to the duration of certain hearing and sheriff's orders as set out in the table below.

Type of Hearing	Section amended	Amended timescale	Hearings affected
Expiry review hearing	s.133	Review hearing must still be arranged where the original expiry falls within 3 months but if it is not, the order will not expire for a further six months and the review must be arranged as soon as practicable	All expiry review hearings, whether the CSO was made before or after the coming into force of the 2020 Act

		after the original expiry date.	
Hearing to consider making a CSO following the making of an ICSO by the Sheriff including a measure requiring child to reside in a place of safety	s.109 (7) of 2011 Act	Hearing to take place no later than the 7 <sup>th</sup> day after the day on which the child begins to reside at the place of safety.	Where the ICSO is made after the coming into force of the 2020 Act
Emergency transfer	s. 137(3) of 2011 Act	Hearing to take place within 7 working days beginning with the date of the transfer	Where the transfer takes place after the coming into force of the 2020 Act
Hearing following the placement of a child in secure accommodation by the chief social worker (child already subject to a CSO, ICSO or MEO not including secure authorisation) <sup>1</sup>	Regs 7 & 8 of Secure Accommodation (S) Regs 2013 (additional regs 7(6) and 8(7) added)	<ul style="list-style-type: none"> <li>• Hearing is to be held (as usual) within 72 hours beginning with the placement of the child in secure accommodation;</li> <li>• But if the Principal Reporter considers it not to be reasonably practicable to hold the hearing within this timescale, the reporter has a further 24 hours within which to hold the hearing</li> </ul>	Where the placement in secure accommodation takes place after the coming into force of the 2020 Act

### Further provision in relation to secure accommodation

Regulation 5(1) of the Secure Accommodation (Scotland) Regulations 2013 is amended to extend the maximum period for which a child may be held in secure accommodation without the authority of a children's hearing or sheriff is extended from an aggregate of 72 hours to an aggregate of 96 hours in any 28 day period.

### Table C Appeals

<sup>1</sup> There is no change to the timescales applicable under regulation 10 for the arrangement of a hearing where a child who is subject to a permanence order or being provided with accommodation under section 25 of the Children (Scotland) Act 1995 has been placed in secure accommodation under regulation 9.



Paragraph 7 of Schedule 3 sets out the modifications of various time limits for appeals, as set out in the table below.

All of these amended timescales apply only in relation to decisions and determinations made after the coming into force of the 2020 Act.

<b>Decision appealed against</b>	<b>Amended timescale for lodging</b>	<b>Amended timescale for determination</b>
Make, vary or continue a CSO (not including an MRC or secure accommodation authorisation)	42 days beginning from the date the children’s hearing decision was made (amended s.154(5))	No change: no timescale, but a hearing must be fixed within 28 days of the lodging of the appeal.
Discharge a referral	42 days beginning from the date the children’s hearing decision was made (amended s. 154(5))	No change: no timescale, but a hearing must be fixed within 28 days of the lodging of the appeal.
Terminate a CSO	42 days beginning from the date the children’s hearing decision was made (amended s. 154(5))	No change: no timescale, but a hearing must be fixed within 28 days of the lodging of the appeal.
Make a CSO including a secure authorisation	42 days beginning from the date the children’s hearing decision was made (amended s. 154(5))	<ul style="list-style-type: none"> <li>• 7 days beginning from the day <b>after</b> the date on which the appeal was made (amended s.157(2)).</li> <li>• There is no consequence in terms of the lapse of the secure authorisation if the appeal is not determined within the timescale (repeal of s.157(3)).</li> </ul>
Make a CSO including an MRC	42 days beginning from the date the children’s hearing decision was made (amended s. 154(5))	<ul style="list-style-type: none"> <li>• 7 days beginning from the day <b>after</b> the date on which the appeal was made (amended s.157(2)).</li> <li>• There is no consequence in terms of the lapse of the MRC if the appeal is not determined within the</li> </ul>

		timescale (repeal of s.157(3)).
Make an ICSO	42 days beginning from the date the children's hearing decision was made (amended s. 154(5))	<ul style="list-style-type: none"> <li>• 7 days beginning from the day <b>after</b> the date on which the appeal was made (amended s.157(2)).</li> <li>• There is no consequence in terms of the lapse of the ICSO if the appeal is not determined within the timescale (repeal of s.157(3)).</li> </ul>
Make an interim variation of a CSO	42 days beginning from the date the children's hearing decision was made (amended s. 154(5))	<ul style="list-style-type: none"> <li>• 7 days beginning from the day <b>after</b> the date on which the appeal was made (amended s.157(2)).</li> <li>• There is no consequence in terms of the lapse of the interim variation if the appeal is not determined within the timescale (repeal of s.157(3)).</li> </ul>
Make an MEO	42 days beginning from the date the children's hearing decision was made (amended s. 154(5))	<ul style="list-style-type: none"> <li>• 7 days beginning from the day <b>after</b> the date on which the appeal was made (amended s.157(2)).</li> <li>• There is no consequence in terms of the lapse of the MEO if the appeal is not determined within the timescale (repeal of s.157(3)).</li> </ul>
Grant warrant to secure attendance	42 days beginning from the date the children's hearing decision was made (amended s. 154(5))	<ul style="list-style-type: none"> <li>• 7 days beginning from the day <b>after</b> the date on which the appeal was made (amended s.157(2)).</li> <li>• There is no consequence in terms of the lapse of the warrant if</li> </ul>

		the appeal is not determined within the timescale (repeal of s.157(3)).
Determination of relevant person status	21 days beginning with the date the children's hearing decision was made (amended s.160(6)(a))	7 days beginning with the day on which the appeal is made (amended s.160(6)(b))
Decision affecting a contact order/permanence order	42 days beginning with the date the children's hearing decision was made (amended s.161(6)(a))	7 days beginning with the day on which the appeal is made (amended s.161(6)(b))
Appeal against decision of chief social work officer's decision to implement / not implement secure authorisation	42 days beginning with the date the children's hearing decision was made <sup>2</sup>	7 days beginning with the day on which the appeal is made

### Further Information

- [Parent Club Website](#) and [Parentzone Scotland](#) websites (advice for parents and carers)
- [Care Inspectorate](#) guidance (advice for childcare settings)
- [Education Scotland](#) guidance (advice for practitioners)
- [Health Protection Scotland](#) guidance (advice for non-healthcare settings)
- [Letter from Chief Social Work Adviser to CSWOs](#) (business continuity and service prioritisation – 18.03.20).
- [School Closure Guidance for Key Workers](#). 26.03.20
- [Public Health Information and Guidance for Social or Community Care & Residential Settings](#) 26.03.20
- [Advice for Unpaid Carers](#) 27.03.20

<sup>2</sup> Amendment to the Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013, reg 11(2)(a).

- [Statement on Coronavirus and the Children's Hearings System from CHS and SCRA 27.03.20](#)
- [Guidance for education and childcare settings on implementing social distancing during the coronavirus \(COVID-19\) outbreak](#)  
30.03.20
- Supplementary National Child Protection Guidance – 30.03.20  
<https://www.gov.scot/publications/coronavirus-covid-19-supplementary-national-child-protection-guidance/>
- If there is additional advice that you feel is not covered by the current guidance please contact [SGCoronavirusEducation@gov.scot](mailto:SGCoronavirusEducation@gov.scot) for further advice.