

Section 4 and schedule 3 – Children and vulnerable adults – Part One – Children
Description of Child protection provisions: The provisions remove the requirement for a second working day hearing to be held following the issuing of a Child Protection Order, and to amend timescales in relation to the issuing of Child Assessment Orders.
Description of Children’s hearings provisions: The provisions relax existing requirements for the composition of children’s hearings, and the administration and conduct of children’s hearings and there are extensions to the timescales for when certain legal orders must be reviewed and appeals against legal orders lodged.
Description of Looked after children provisions: The provisions extend the timescales for review of children’s cases when they are placed in different forms of accommodation and enable local authorities to use foster carers more flexibly to look after additional children when necessary.

Operation of Provision in Reporting Period

This section provides supplementary information on the use of children’s provisions within Part 1 of schedule 3 of the Scottish Act. Guidance¹ on the use of provisions has been published. The provisions have been separated into three groups: child protection provisions, children’s hearings provisions and looked after children provisions, as data comes from different sources and there are separate decision making structures to assess continued necessity of the provisions within each group.

The data in relation to the use of the powers under section 4 and schedule 3 , Part 1 covers the period 7 April to 20 May 2020, unless specified otherwise below. Information on where data has been gathered has been included along with any caveats about the data provided.

Child protection provisions

No requirement for a second working day hearing to be held following the issuing of a Child Protection Order: Under the Scottish Act, the working day children’s hearing is not required. Instead a children’s hearing to consider grounds for referral will sit on or before the 8th working day. Until the 8th working day, a child or relevant person can make an application for the Child Protection Order to be recalled or varied (ordinarily this would have been available until the 2nd working day children’s hearing under the 2011 Act) and for 2 working days following the 2nd working day children’s hearing (if the order is continued or varied by that hearing).

In the reporting period, there have been 82 Child Protection Orders². The use of this provision has meant that Scottish Children’s Reporter Administration did not have to hold 2nd working day children’s hearings in these cases.

Amendment of timescales in relation to the issuing of Child Assessment Orders: There were no Child Assessment Orders during the reporting period³. Although there were no orders during the reporting period, the provisions continue to be useful and necessary, particularly in light of the need to ensure that services can assess vulnerable children who are not visible to services during Covid-19, when necessary.

¹ <https://www.chip-partnership.co.uk/wp-content/uploads/2020/04/Coronavirus-Scotland-Act-2020.pdf>

² This data was provided by Scottish Children’s Reporter Administration

³ This data was provided by the Scottish Courts and Tribunals Service.

Children's hearings provisions

Relaxation of requirement for children's panel to consist of three members and Relaxation of requirement to have a gender mix on each children's hearing: The provisions include relaxation of the requirement for children's hearings to consist of three members and to have a gender mix. In the reporting period 797 hearings were held, of which 5 had fewer than 3 panel members in attendance, and 1 which did not have both male and female members⁴.

Maximum period for which a Compulsory Supervision Order has effect:

The Scottish 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. However, alongside this, there is a duty on the Principal Reporter to arrange a hearing before the original expiry date, and if not, to arrange the hearing as soon as practicable thereafter.

Within the reporting period there have been 462 Compulsory Supervision Orders, where orders have been extended beyond their expiry date⁵. This provision has only been used to the extent necessary driven by the practicalities of holding children's hearings in the current context, and the extent of their use will vary as the safety and operational contexts develop. Due to the severe restriction in the number of children's hearings which could be held, this provision has had the effect of extending a number of orders. Prioritisation of work has been essential to ensure continuity of protections for children and young people and putting in place appropriate legal measures to keep children and young people safe. The Scottish Children's Reporter Administration have been unable to operate at anywhere near normal capacity as a result of social distancing and virus prevention measures put in place and enforced. The Scottish Children's Reporter Administration is seeking to increase the number of hearings which can be held through the use of technology to allow "virtual" attendance. The Principal Reporter is applying a prioritisation framework to enable the timely consideration of individual cases to the maximum extent possible, in consultation with referring authorities and with children/relevant persons, and is closely monitoring the situation with a view to arranging such hearings as soon as practicable. Within the reporting period there have been 462 Compulsory Supervision Orders where orders have been extended beyond their expiry date. While service user availability, views and preferences for rescheduling are only elements of 'practicability' - more significant considerations being need and risk - Scottish Children's Reporter Administration has done so following dialogue with social workers and families. Those involved indicated they would prefer to come back at a later date to a face to face children's hearing. Reporters are reviewing these arrangements on a case by case basis, and taking into consideration whether there would likely be a risk of detriment to the child's welfare if the Compulsory Supervision Order was not varied or terminated before the original expiry date.

⁴ This data is from Children's Hearings Scotland. It comes from reports from Area Support Teams from 7 April – 6 May and from 7 May onwards, data is drawn from survey of Panel Members feedback on hearings in which they participated and from AST reports. 317 responses were received, of which 276 were completed in full and 41 completed in part. It should be noted that the survey responses do not reflect reports on 100% of hearings. However, the National Convener requires Area Support Teams to report when the powers have been used.

⁵ The data on this provision and all of the children's hearings provisions that follow is from the Scottish Children's Reporters Administration. Their case management system was not set up for recording the detail of this legislation so generating figures has been complex

During the reporting period there have been 113 children’s hearings when orders were due to expire. The number of hearings being held has been increasing since 4 May 2020 as the system has adapted. As the recovery moves through particular phases, Scottish Children’s Reporter Administration will continue to review the necessity of the use of this provision and the scheduling of reviews as soon as practicable.

Maximum period for which interim compulsory supervision order (ICSO) or interim variation of compulsory supervision (IVCSO) order has effect: 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 Scottish Act amend sections 86(3) and 140(4) of the Children’s Hearings (Scotland) Act 2011. 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.

As with the existing legislation, a hearing may make an ICSO or interim variation for a shorter period than the maximum.

Table Two below sets out the interim orders where the provision has been used (some children will have had more than one interim order issued in the period and the figures include orders which authorised secure accommodation). It is not possible to calculate how much time has been added; some orders will have had the maximum time (44 days for a hearing / possibly longer for the Sheriff Court) and others will have had different times up to the maximum.

Table Two – Interim orders where the provision has been used

Interim Order Type	7 April - 20 May 2020
ICSO	284
IVCSO	152
Court ICSO / IVCSO (including following appeal)	244
Total	680

Period within which children’s hearing must be heard in certain cases - secure care and other place of safety placements: In the period 7 April 2020 and 21 May 2020 of 16 interim orders authorising the use of secure accommodation, 9 used the extended timescales which are available under the provision. The provision allows the timescales to 7 working days from 3 working days in situations that the existing permitted timescales i.e. 3 days is not practicable.

Extended timescale following emergency transfer of a child or young person to secure accommodation: The Scottish Act allows the Principal Reporter the discretion to extend the period within which a Children’s Hearing must be held by 24 hours (from 72 hours to 96 hours) where it is not practicable to meet the existing timescale. The Scottish Children’s Reporter Administration has not recorded any cases where a young person has been kept in secure accommodation for an additional 24 hours before coming to a children’s hearing.

Modification of certain time limits for making and determination of appeals: Paragraph 7 of Schedule 3 of the Scottish Act extends the time limits for the making, disposal or determination of appeals or the making or lodging of applications.

Disaggregated is data not available from Scottish Children's Reporter Administration or Scottish Courts and Tribunals Service. The Scottish Government intends to explore with Scottish Children's Reporter Administration and Scottish Courts and Tribunals Service whether it could be made available for subsequent reporting rounds.

Dispensation with physical attendance at children's hearings: The provision provides 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.

All of the 797 children's hearings that have taken place in the reporting period have been 'virtual children's hearings' as children, family members, professionals, reporters and the decision makers (panel members) have been unable to attend the public spaces in children's hearings centres.

Authentication of children's hearings documentation by electronic signature: This power has been used in all of the 797 children's hearings held in the reporting period.

Looked after children provisions

The timescales for review of children's cases when they are placed in kinship care are extended and Local Authorities are enabled to work with foster carers more flexibly to look after additional children when necessary. Data on these provisions is not available as yet. The Scottish Government is considering the most effective way to provide supporting information without adding an additional burden on Local Authorities who are already providing significant data reporting to Scottish Government. Informal feedback has indicated that the kinship provisions have allowed social work teams to focus home visits for the most vulnerable children. The fostering provisions have not been used to a great extent as existing fostering provision has coped with demand, and social work teams have tried to find longer term placements which will provide more stability for children.

Factors Considered to Determine Use and Continued Necessity

In relation to the provisions covering child protection and looked after children, the Scottish Government is aware that there is continued pressure on services in relation to vulnerable children and these provisions continues to be necessary.

The main factors which have been considered in the assessment of continued necessity of the children's hearings provisions include: prevailing Government guidance and public health advice, an assessment of the impact of the pandemic on the health and availability of staff and volunteers, and an assessment of the impacts on vulnerable and disadvantaged children and families. 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 measures in the Scottish 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 UN Convention on the Rights of the Child.

The Scottish Government is in regular dialogue with the children's services sector and children's hearings partners to monitor the impact of the pandemic on service provision and the protections afforded to children.