

# Guidance on Local Authority Accountability



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SCOTTISH EXECUTIVE

# Guidance on Local Authority Accountability

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## **CONTENTS**

<b>INTRODUCTION</b>	<b>1</b>
Purpose of Guidance	
<b>IMPLEMENTATION OF SUPERVISION REQUIREMENTS</b>	<b>3</b>
Context and background	
New Legislative Framework	
Managing the process	
The role of the local authority	
The role of the Children’s Hearing	
The role of the Reporter	
The role of the Sheriff Court	
The role of the voluntary sector	
Involvement of young people and their families	
Resources	
<b>FAILURE TO PROVIDE EDUCATION FOR EXCLUDED CHILDREN</b>	<b>14</b>
Context and background	
New Legislative Framework	
New procedures involving the Children’s Hearings and Reporter	
The Education (Additional Support for Learning) (Scotland) Act 2004	
<b>ANNEX A</b>	<b>19</b>
Extract from Antisocial Behaviour etc (Scotland) Act 2004	



## INTRODUCTION

1. In the Executive's consultation on its Antisocial Behaviour Strategy, Putting our communities first, Ministers signalled their intention to look at two specific areas where a failure by a local authority in its duties can have a critical impact on children who are referred to a Children's Hearing:

- ◆ The duty of a local authority to give effect to a supervision requirement in terms of section 71 of the Children (Scotland) Act 1995 (the "1995 Act"); and
- ◆ The duty of a local authority to provide education without undue delay for pupils excluded from school, in terms of section 14(3) of the Education (Scotland) Act 1980 (the "1980 Act").

2. Views were sought on the desirability of requiring local authorities to comply with supervision requirements made by Children's Hearings, of giving a Reporter the power (at the direction of a Hearing) to ask a Sheriff to make an order to enforce implementation of supervision requirements and of giving Children's Hearings and Reporters a specific role in alerting Ministers to failure by an authority to ensure a child receives appropriate education.

3. Consultation responses showed universal support for the desirability of local authorities ensuring that supervision requirements are carried out and that adequate education provision is offered to all excluded children. There were, however, some concerns expressed about the resources required and the need to ensure that the new measures did not lead to deterioration in the working relationship between agencies.

4. Following consultation, provision was made in the Antisocial Behaviour etc (Scotland) Act 2004 (the "2004 Act") to introduce a new legislative framework. The Executive's aim was to ensure that children receive the service they need and introduce mechanisms to follow up poor or inadequate action.

5. Section 136 of the 2004 Act deals with the statutory duties of local authorities in relation to supervision requirements. In addition to the existing duty to give effect to a supervision requirement an obligation is imposed on local authorities to perform such duties as may be specified in the supervision requirement. This duty is in respect of all supervision requirements, those imposed for care and protection reasons and for offending. Provision is made empowering the Children's Hearing to authorise the Principal Reporter ("the Reporter") to raise proceedings before the Sheriff Principal against a local authority, with the purpose of requiring it to perform its statutory obligations where the Hearing considers that the authority is failing in its responsibilities in respect of a specific supervision requirement.

6. Local authorities have specific duties in respect of children who have been excluded from school (section 14 of the 1980 Act). These include requirements to provide education. Section 137 of the 2004 Act provides a power for the Reporter where it appears to him or her that an authority has not complied with its duty under section 14 of the 1980 Act, to refer the matter to Scottish Ministers. Section 137 also provides that a Hearing may, as appropriate, require the Reporter to make such a referral. Section 70 of the 1980 Act sets out certain enforcement measures Scottish Ministers may take where there has been a failure to discharge any statutory duty relating to education.

7. The relevant sections of the 2004 Act are attached at Annex A.

### **Purpose of Guidance**

8. This guidance offers information and advice to those who will be working with the new measures, primarily children's panel members, Children's Reporters and local authorities. It describes the new legislative framework and covers the kind of detail that will be needed in supervision requirements to enable the new provisions to work, such as what action the child is expected to take and what the local authority is expected to deliver. It also covers the role of the Reporter in applying to the court, the role of the court and guidance for local authorities on meeting the new requirement, including the need for them to account for meeting their "corporate responsibilities".

9. The guidance also offers good practice advice, for example on the steps that could be taken to avoid the need to use the new legislation. It is however the responsibility of "users" to satisfy themselves that they are operating within the legislation. Interpretation of the legislation will ultimately be a matter for the courts.

10. As part of the wider programme of support for the implementation of the Antisocial Behaviour etc (Scotland) Act 2004, the Executive has set up an advice line for practitioners on 0800 850 500. The service provides telephone advice and support on a wide variety of technical issues, such as when the measures in sections 136 and 137 might be used. If you want to find out more information about the advice line, you can contact the Executive's Antisocial Behaviour Unit by email at [advice@scotland.gsi.gov.uk](mailto:advice@scotland.gsi.gov.uk)

11. The guidance will be kept under review as practice develops and changes to the system (eg as a result of the Hearings review) come on stream. We would also welcome feedback from those working with the new measures and using the guidance. Please send any comments you may have to [youth.justice@scotland.gsi.gov.uk](mailto:youth.justice@scotland.gsi.gov.uk).

## IMPLEMENTATION OF SUPERVISION REQUIREMENTS

### Context and background

12. Where a Children's Hearing considers that compulsory measures of supervision are needed in respect of a child referred to it, the Hearing will determine what the child's needs are and what action should be taken to address those needs. The supervision requirement may require the child to reside at any place specified in the requirement, including secure accommodation and may require the child to comply with one or more conditions as appropriate.

13. The local authority already has a statutory duty to give effect to supervision requirements (section 71 of the 1995 Act). In addition, a child subject to a supervision requirement is a "looked after child" for the purposes of section 17 of the 1995 Act which places statutory obligations on local authorities. While a supervision requirement places obligations on the child, local authorities are expected to make such arrangements as are necessary to enable the child subject to supervision to meet those obligations. This could involve a range of professionals working with the young person in a range of settings. Most commonly, it will involve organising the allocation of a social worker and supervision by a social worker or other service provider.

14. The Audit Scotland report on youth justice (*Dealing with offending by young people: December 2002*) identified shortcomings in the supervision of children referred to a Hearing on offence grounds (paragraphs 147-149) and highlighted that a significant number of these children subject to a supervision requirement did not receive a suitable service. Over twice as many children are under supervision in relation to grounds which do not involve offending and there is a significant gap in service provision for them too. This was evidenced by Home Supervision research in 2002 which found that: 39% of cases had insufficient contact with social work; a further 22% had no social worker attached to the family for a period of several months; and, from a review of case files some key statutory requirements were not being implemented. There are therefore potentially a large number of children not being provided with a service to enable the supervision requirement to be put into effect.

15. The effectiveness of the measures in the 1995 Act is dependent upon local authorities working with their partners to ensure they can comply with their statutory obligations. Where these have not been met, there has until now been no specific statutory mechanism which allows early action to be taken to remedy that failure. The measures in the 2004 Act are designed to provide a means for the Children's Hearing and the Reporter to take the necessary action to hold local authorities to account and ensure young people get the service they need.

16. It is expected that in the vast majority of cases informal contact and discussion between local authorities and their partners and agreement on the way forward will ensure that an appropriate service is provided to young people. The Executive considers this good practice in both ensuring the needs of the young person are met as quickly as possible and that resources are used efficiently. Nor should the introduction of these new measures lead to services necessarily being prioritised for those children subject to a supervision requirement. It is important to ensure that the "minimum intervention principle" of the 1995 Act is maintained in practice and that when voluntary interventions are considered appropriate the services are made available on that basis.

## **New Legislative Framework**

17. Section 136 of the 2004 Act inserts new provisions into Part II of the 1995 Act. It deals with the duties on local authorities to implement supervision requirements. It also enables a Hearing (new subsection 70(7A) of the 1995 Act), when it appears that a supervision requirement is not being implemented, to direct the Reporter to give notice of the intention to make an application to the Sheriff Principal. Notice must set out the matters in which the local authority is in breach of the duty on it to give effect to a supervision requirement. To ensure that the new provision operates successfully, where concern exists about implementation of a supervision requirement, that requirement will need to be specific about what action the child is expected to undertake and when, and what the local authority is expected to deliver and when.

18. Section 136 of the 2004 Act inserts new subsection 70(7B) of the 1995 Act which specifies the procedure to be followed by the Reporter in giving notice of intended application to the court. The Reporter must send written notice of the intention to apply to the local authority and copy it to the child, and also to the 'relevant person' as defined in the 1995 Act, and to any safeguarder appointed under section 41 of the 1995 Act. The written notice must set out (new subsection 70(7C)) what aspects of the supervision requirement are not being implemented. It will also confirm that the local authority has 21 days from the date of receipt of the notice to comply with its duty under the 1995 Act failing which the Reporter may make an application to the court.

19. New subsection 70(7D) of the 1995 Act provides that a Children's Hearing, which directs the Reporter to give notice of an intended application, requires to meet as soon as possible after 28 days of the notice being given, to review the case. If, after that period, (new subsection 70(7E)) the Hearing considers that the local authority is still in breach of its duties, the Hearing may authorise the Reporter to make an application to the court.

20. Section 136(3) of the 2004 Act inserts new section 71A into the 1995 Act, which provides that a Sheriff Principal may on an application from the Reporter, make an order requiring the local authority to comply with its duty under the 1995 Act to give effect to supervision requirements. Applications will only be competent if the appropriate notice has been given to the local authority and it has still failed to comply (71A (3)). In considering whether to apply (71A(4)) the Reporter must not take into account the resources available to the authority, only whether it has failed to comply with its duty. An application by the Reporter requires to be by way of summary application (71A(5)) and is made to the Sheriff Principal within whose jurisdiction the principal office of the local authority in question is located (71A(6)).

21. Any order which is made by the Sheriff Principal, requiring an authority to perform its duty, is final (71A(7)). Failure to comply with the Sheriff Principal's order might therefore be dealt with as a contempt of court.

## **Managing the process**

22. The principal aim of the new measures is to ensure that all young people get the service they need and deserve – preferably without recourse to the new legislative provision. For this to become a reality, it will be crucial for local authorities and their partners, in

particular panel members, Reporters and the voluntary sector to have a clear understanding of how things should work and of their role in the process. All local partners will also need to have regular and open dialogue to be clear about local priorities, issues and resources. They will need to undertake those sometimes difficult discussions to agree a strategy for ensuring that all supervision requirements are implemented and to raise awareness of the resources that are (or are not) available and how they can be used most effectively.

## **The role of the local authority**

### *Service Planning*

23. It is the local authority as a whole that has “corporate responsibility” for implementing supervision requirements. This includes education, housing, leisure etc as appropriate. It is not, as is sometimes perceived, the responsibility of the Social Work Department (or equivalent) alone. Local authorities will want to work with partners locally to consider how best they can meet their duty. As part of their children’s services planning process they might, for example wish to think about identifying and sharing good practice (both within and across authorities), carry out service reviews to help identify and eliminate difficulties and blockages in the system and to address any gaps in existing service provision. They will also want to ensure that appropriate links are made with other local strategy groups such as Community Safety, Antisocial Behaviour and Youth Justice.

24. On occasion, there may be tensions between local authority departments on how to proceed with a case, for example where the best interests of the child and those of the community differ. Some local authorities have found it useful to put in place a protocol for dealing with these situations if and when they arise.

25. Local authorities and partner agencies should provide information and advice about services and supports that are available for young people including those provided by other agencies such as voluntary organisations and health. Information about the criteria, access and availability of these services should also be provided. In putting together that information, authorities and their partners will want to take account of local resources, needs and priorities. The information should include:

- ◆ The location of the service;
- ◆ The provider;
- ◆ Criteria for access;
- ◆ The age range recommended for the service;
- ◆ The issues covered and the needs addressed;
- ◆ The kind of techniques and activities employed by the service;
- ◆ The recommended duration of the service;
- ◆ The numbers of young people accessing the service at any one time;
- ◆ Staff: young person ratios;
- ◆ Ensure that a diverse range of young people can use the service (sex, mobility, language etc); and
- ◆ Reported outcomes from the service.

26. The information should be appropriate for families and young people as well as panel members and other agencies.

27. A range of approaches to meeting children's needs will be required. Services should be used on the basis of need and best interest. We would expect that the services on offer would be likely to include:

- ◆ Diversionary projects;
- ◆ Restorative justice approaches;
- ◆ Health services;
- ◆ Family/parent support;
- ◆ Anger management;
- ◆ Cognitive skills;
- ◆ Alcohol, drugs, and mental health programmes;
- ◆ Services for young people with disabilities, eg autistic spectrum disorders;
- ◆ Psychiatric and education services;
- ◆ Holistic packages of services designed to remove barriers to a young person's development, for example, independent living skills; personal and interpersonal skills, employability skills and overcoming difficulties with literacy and numeracy;
- ◆ Services designed to tackle persistent and/or serious offending behaviour;
- ◆ Intensive community based support and supervision (eg services provided as part of Intensive Support and Monitoring Services).

### *Assessment*

28. Every young person who is referred to a Children's Hearing should have a plan to meet their needs and reduce risk. The plan should derive from an assessment consistent with the national framework for assessment for young people. The plan should be provided to the Reporter in time for them to pass papers to panel members no later than 3 days before the date of the Hearing, in keeping with their legal duty. It should identify the needs of the young person, assess the risks associated with those needs, set out a plan that will reduce needs and risks and achieve desired outcomes. Where the ideal service cannot be provided, realistic alternatives should be provided. The plan should set out the action to be taken, proposed case management arrangements (including monitoring and review) and the intensity of contact and supervision required.

29. All those involved in the delivery of the plan (eg social work, education, health etc) should be involved in drawing it up in partnership with the young person. It should be written in straightforward, accessible language.

30. To help local authorities draw up a detailed plan the Executive commissioned the Social Work Services Inspectorate to draw up a draft national standard for contact with children on supervision. A contact time standard will be included in an updated version of the national standards for Scotland's youth justice services that the Executive is preparing, which will also include more practical guidance on making the standards a reality on the ground. The updated standards will be published in 2005.

31. Where intensive supervision is part of the child's plan, the local authority and partners to the plan should have in place arrangements to ensure it is implemented from the date of the supervision requirement being made. Once a Hearing has decided that a supervision requirement is required, the local authority should implement that requirement within 5

working days of the date of being advised of the decision of the Children's Hearing. The 5 day deadline is part of the national standards for Scotland's youth justice services, but as a matter of good practice should be observed for all supervision requirements.

32. When a young person is subject to a supervision requirement, their plan should be reviewed by the case manager (ie the person within the local authority with overall responsibility for the young person's case) as frequently as is necessary and not less than, within 2 months of the initial Hearing. It should be further updated and reviewed within not less than 3 months of this first review and at agreed intervals between the case manager, the young person, and others as appropriate, thereafter – endorsed by a further Children's Hearing where necessary.

#### *LA response to complaint*

33. In practice it is envisaged that when a local authority is made aware by a Children's Hearing or the Reporter (either informally or through the issuing of formal notice) that there is concern that a supervision requirement is not being fully implemented the authority will wish to consider the circumstances of the case and respond. This response will offer the authority the opportunity to explain any elements which it appears are not being implemented and, where necessary, propose how the missing elements might be put in place. Subsequent Hearings might wish to take the authority's response into account when considering the way forward.

34. If ultimately an application for an order is made the authority should prepare to set out its position to the Sheriff. The new legislation clarifies that local authorities have corporate responsibility for implementing supervision requirements. So far as the handling of the legal process is concerned, local authorities will require to have regard to the summary legislation procedure under which matters will be dealt with. Senior management or other officers who have the necessary overview of the authority's practice and service delivery are however likely to be closely involved in that process.

#### *Monitoring*

35. SCRA will have a key role in collating an overview on the use of the new measures (see paragraph 55 below). Local authorities should have their own systems in place to know how well they are performing and to be alert to any problems and ensure an appropriate management response.

#### **The role of the Children's Hearing**

36. It is the role of the Children's Hearing to take an independent, proportionate and informed decision about what is best for a young person bearing in mind the minimum intervention principle enshrined in the 1995 Act. Panel members should reflect on the individual needs identified in the plan and during the Hearing discussion before reaching their decision on how to proceed.

#### *Making a Supervision Requirement*

37. A supervision requirement may require a child to comply with any conditions contained in that requirement. If the Hearing decides to make, continue or vary a supervision

requirement panel members must provide a clear rationale in writing for the decisions they have taken and why. Panel members should consider the plan or review report and decide whether this will meet the child's needs. They might also wish to consider the range of services available locally (with which they should be familiar) and identify whether any other services might be appropriate. In considering the content of a supervision requirement, panel members should maintain a balance between what is ideal for the young person and what it is practicable to deliver. Where appropriate, the Hearing can determine when the supervision requirement shall be reviewed.

38. On making, continuing or varying a supervision requirement, the Hearing should set out in detail the reasons for the decision and the duties that the local authority is expected to carry out to implement the supervision requirement. It should also set out the services that the local authority is expected to deliver and who will be providing the services (eg named local authority departments) or other agencies such as voluntary organisations or health, when provision of these services should begin and the intensity and duration of the intervention. In some cases it may also be necessary to set out clearly the length of time and frequency of social worker involvement with the young person (whether that is a local authority worker or a social worker employed by a voluntary organisation) and identify clearly the responsibilities on the child and their parents. Written reports outlining the decision of a Hearing should be written in plain English so they are clear and understandable to all parties.

39. Where appropriate, when setting out the duties in the supervision requirement the Hearing should recommend a review date. It has to be borne in mind that every review Hearing requires the circumstances of the child's case to be considered fully and that the child and relevant persons have a legal right and obligation to attend. It is important that the child's welfare remains the paramount consideration at every Hearing.

40. If a review is purely for procedural grounds to address an implementation issue the Reporter should consider whether it would be more appropriate to call a business meeting (rule 4 of the Children's Hearings (Scotland) Rules 1996) and seek advice from the panel members on whether the presence of the child (rule 4(2)(b)) and/or relevant person (rule 4(2)(8)) could be dispensed with. The Reporter must give notice to the child and relevant person that the business meeting is to go ahead and explain why. The child and relevant person must also be given the opportunity to express a view which will be taken into account by the business meeting.

41. In the small number of cases where a Hearing favours a different course of action to that recommended by the local authority there should be full discussion of the different options between the panel members and the social worker present. If this discussion takes place before young people and their families, special attention should be paid to the possible impact on them of this discussion. Ultimately, if the decision of a Hearing differs from that recommended by the local authority the differences and the reason should be recorded in the formal decision. The local authority will still be expected to take the necessary steps to implement the supervision requirement in these circumstances.

#### *Reviewing a Supervision Requirement*

42. Where on reviewing a supervision requirement it appears to the Children's Hearing that the local authority is in breach of a duty specified in the supervision requirement they

should consider whether to issue a direction to the Reporter. They should discuss their concerns with the Reporter and the local authority representative present at the Hearing. This discussion should not focus on concerns that the measures imposed had not worked, only that they had not been implemented.

43. Panel members will be expected to use their judgement about what constitutes a failure to implement that is serious enough to warrant a direction to the Reporter. It should be a specific failure that, if left unchecked, will have a serious impact on the young person. For example, failures such as the non-appointment of a case manager or the non-delivery of key services or support measures might be considered serious enough to warrant a direction. A direction is probably not appropriate if the failure to provide is in respect of less integral services or minor elements of a service. Where the Hearing directs the Reporter to issue a notice they should record this and the reasons behind that direction clearly in their reasons for decision. This information will be of assistance in relation to any application made subsequently to the Sheriff Principal.

44. Where the Hearing has not been arranged under section 70(7) they should proceed to make the most appropriate substantive decision for the child and if necessary set a date for review where the decision to issue a direction to the Reporter can be considered.

45. When the Reporter gives notice to a local authority of the intention to apply to the court for an order, a further review should be arranged as soon as possible after 28 days of the notice being given. If that review concludes that the local authority is still in breach of its duty to implement the supervision requirement the Hearing may authorise the Reporter to make an application to the court. The Reporter therefore has discretion over whether to take matters forward in that manner.

### **The role of the Reporter**

46. At the request of Scottish Ministers, SCRA have accepted a central influencing and leadership role within the Children's Hearing system. This involves local Reporters assisting those involved in Hearings cases, suggesting different approaches to dealing with young people, promoting good practice and ensuring consistency of practice.

47. This role is crucial in dealing with young people in the Hearings system. It is incumbent on Reporters to be fully involved in joint-agency working and information exchange between all relevant local partner agencies. On receipt of a referral in respect of a child the Reporter will investigate the child's case by evaluating information provided from a range of sources, social work, police, schools etc. They will decide whether there may be a need for compulsory measures of supervision (ie a supervision requirement) to be put in place – in which case they will refer the child to a Hearing. SCRA has a corporate objective to lead a strategic planning process for the Children's Hearings system and to bring to every children's services planning process a clear and consistent contribution to ensure that local plans result in improved delivery of services for Scotland's most vulnerable children. In that light, all Reporters should be well aware of local children's services plans, key issues and priorities and have a knowledge and understanding of the services that are available locally.

48. Reporters attend Children's Hearings and will know whether a supervision requirement has been imposed and what it contains. They will be aware of those cases where a Children's Hearing has expressed concern that the local authority have not or may not carry

out their legal duty in respect of the supervision requirement and whether a review date has been set. In such circumstances, around 2-3 weeks before a review Hearing is due to take place a Reporter, as part of their central influencing role, should contact the case manager (or other notified contact within the local authority) to discuss the case, in particular whether all elements of the supervision requirement have been implemented. This informal contact will offer the local authority the opportunity to explain any elements which it appears are not being implemented and, where necessary, discuss proposals for putting the missing elements in place. The Reporter should inform Hearings of the outcome of these discussions to help inform their consideration.

49. If it does not prove possible to resolve any issues on an informal basis and a Hearing identifies key, specific areas of a supervision requirement that are not being implemented, it may consider that it is necessary to direct the Reporter to give the authority formal notice of their intention to apply for a court order. The Reporter must send written notice of the intention to apply for an order to the Chief Executive of the local authority. Paragraphs 17-21 above set out the formal legal process, including the role of the Reporter – both in giving notice to a local authority and in making an application to the court. Following the issue of the formal notice it is envisaged that the Reporter, local authority and, where relevant, other partners will discuss whether it is possible to resolve the matter without referral to court.

50. A further Hearing to review the child's case will take place soon after the notice period expires. Where it appears to that Hearing that, notwithstanding the issue of formal notice a local authority is not complying with its duty, they can authorise a Reporter to apply to the court for an order. Reporters should continue to monitor the progress of cases once formal notice has been sent to an authority, so that they are well placed to respond if and when they receive authorisation from a Hearing. On receipt of authorisation, it is anticipated that Reporters would proceed with an application, unless it appears to them that to do so would be unreasonable, eg they believe that the authority has or will shortly implement the supervision requirement. The legislation specifically prohibits a Reporter, in deciding whether to apply, from taking into account any factor relating to the adequacy of the means available to the authority to enable it to comply with the duty.

51. Applications for orders will be made to the Sheriff Principal. Applications should be made on the standard summary application form, Form 1. Rules of court are likely to require the application to be made to the Sheriff Court where the Sheriff Principal has his "seat" or where he normally carries out his business. In making an application, the Reporter will need to consider the evidence required to make a case for the court to grant the order. As a minimum, the application should include the notice given to the local authority, details of the initial decisions taken by the Hearing and the subsequent Hearing that concluded the local authority was still in breach.

52. When a Sheriff Principal makes an order the sheriff clerk will issue a copy of the Sheriff Principal's judgement to all parties. The Reporter will also be responsible for having the court order served on the local authority. This will be needed in case a contempt of court issue should arise.

53. When an order is made, the Reporter should maintain regular dialogue with the authority and any subsequent Hearings as to whether the authority has complied with that order. Where it is apparent that the authority is not complying with the order and discussions do not identify a way forward, the Reporter should enrol a Minute in the original court

process asking the court to find that the local authority is in contempt of court in that it has failed to comply with the court's order.

54. Throughout the process the Reporter should keep the child and their family fully informed of proceedings. In particular they should, within 5 working days of the Hearing, send the young person and their family written notification of the decision of the Hearing and the reasons for it. When a supervision requirement is imposed, this written notification should make clear the roles and responsibilities of the young person and service providers and set out what will happen if that service is not provided.

55. Reporters, and through them SCRA, should record data on the use of the new legislative powers. Including: the number of occasions when discussions are held with local authorities; the number of formal notices issued; the number of applications made to the court and orders granted; outcomes when orders are granted; which aspects of supervision requirements are not being implemented and the reasons for non-implementation. Data should be broken down by ground for referral and local authority area.

### **The role of the Sheriff Court**

56. Applications will be to the Sheriff Principal within whose jurisdiction the principal office of the local authority in question is located. On receipt of a competent application from a Reporter, a Sheriff Principal may grant a warrant for intimation to any person who appears to have an interest in the application, and appoint a date for a preliminary procedural hearing, followed, possibly, by a hearing on any arguments about the relevancy and competency of the application, and/or a hearing on the merits of the case. Parties may be asked to lodge answers to the application, and the application and the answers thereto may be adjusted prior to the date of the hearing. Following consideration of the merits of the application the Sheriff Principal will determine whether or not to make an order requiring the local authority to comply.

57. In the event of non-compliance, the Sheriff Principal would consider an application from the Reporter to find that the local authority is in contempt of court in that it has failed to comply with the court's order.

### **The role of the voluntary sector**

58. Voluntary sector service providers should be fully involved in local joint-agency working and information exchange between all local partners. They will provide many of the services and support that will make up each authority's menu of services. Local authorities will contract with voluntary partners to provide services as appropriate. These services should be good quality, be based on research about what works and what is needed locally and provide appropriate feedback on progress to review Hearings.

59. Failure of a voluntary organisation to provide a service set out in a supervision requirement should not by itself be enough for a Hearing to consider action against a local authority. An authority will however be expected to take all reasonable steps to work with the organisation to identify why the service is not being provided and what can be done to make the service, or an alternative, available as quickly as possible.

## **Involvement of young people and their families**

60. As a matter of best practice young people and their families will be fully informed about the Hearings process, including what will happen during and after the Hearing itself. Children over 12 also have a general right of access to the same reports on the case that are given to panel members and relevant persons. Children between 8 and 12 may receive reports if they wish to see them. The young person should have access to the reports and where appropriate have them read to/explained to them prior to the Hearing. There may however be occasions when the child needs to be protected from some information about themselves or their family that the child is not aware of (eg adoption, terminal illness etc). Caution may also be needed because on occasion, possession of reports can be used inappropriately by young people. The Hearing should ensure that the child understands what is in the reports and has an opportunity to express their views.

61. At the end of the Hearing the Chair will inform the young person and their family of the Hearing's decision and what the reasons for that decision are. The Hearing should ensure that the young person (and their family) fully understand the supervision requirement and in particular what is expected of the young person and what support they should receive. The Reporter will send written notification of the decision, a copy of the reasons for the decision and a copy of the supervision requirement to the child and their family (and the local authority) usually within 5 working days of the Hearing. When a supervision requirement is imposed, this written notification should make clear that it is compulsory and that it is not the choice of the child whether or not to comply with it. It should also set out the roles and responsibilities of the young person and service providers and set out what will happen if that service is not provided or if the young person fails to comply.

## **Resources**

62. There is widespread agreement that full implementation of supervision requirements is crucial to successful intervention with many young people. The Executive has taken considerable steps to ensure the necessary resources are available to facilitate this. Since 1997 there has been a rising trend in the amount invested and this has gathered pace since the creation of the Scottish Parliament in 1999. Overall Grant Aided Expenditure for local authorities in 1999-00 was £5.6bn, in 2003-04 it was £7bn - an increase of 25%. Resources to children and families teams within authorities has increased by 62% since 1997 to over £350m a year; resources to education have increased by 65% since 1997 to over £3.8bn a year. Funding for SCRA was £10.6m in 1996-97, £12.2m in 1999-00 and was £21.1m in 03-04 – an increase of almost 100% since 1996-97. Funding for recruitment, awareness and training of children's panels was £550k in 1996-97, £650k in 1999-00 and rose to £1.4m in 03-04.

63. On the youth justice side, funding for local authorities has risen from £3.5m in 2000-01 to £13m in 2004-05 and £15m in 2005-06. Further funding has been made available to local authorities to help them implement the measures in the 2004 Act including monies for the provision of services such as diversionary activity, restorative justice and intensive support. Funding and external consultancy support has also been made available to help authorities meet the national standards for youth justice which come on stream in 2006. The Executive is also providing direct support to the voluntary sector to help it develop and provide services for young people, including those who will be under supervision.

64. The Executive is aware of the concerns over recruitment and retention of social workers (in particular in children and families) and already has a number of initiatives underway to address them. Ministers recognise that there are no quick fixes for the sector and that there is a need for sustained support. Progress is already being made:

- ◆ 25% more graduates entering the workforce this year over last;
- ◆ An increase of 51 in the current year in the number of qualified social workers in Scotland. The Scottish Executive contributed towards the costs of a fast-tracking scheme for graduates, in partnership with local authorities. This assisted 120 trainees to attain the professional qualification in social work within 15–18 months;
- ◆ March 2004 saw 615 local authority social work vacancies in Scotland down from 666 in December 2003 – a step in the right direction;
- ◆ £3 million in additional specific grant provided for training this year and equal additional investment over the next two years to implement the national education and training strategy that the National Workforce Group will oversee;
- ◆ £1 million for a new leadership training initiative.

65. But effective intervention is not just about resources. Existing failure to implement supervision requirements can also be a result of poor management and/or operational practice. The Executive has provided external consultancy support to help local authorities look at the way they deliver youth justice services and how they can improve. A lot of the outcomes from this work will have read-across to the provision of services for all young people subject to supervision. In order to comply with the new legislation and the requirement to implement youth justice national standards by 2006, local authorities will want to consider these issues in the round and decide upon an effective way forward.

## FAILURE TO PROVIDE EDUCATION FOR EXCLUDED CHILDREN

### Context and background

66. Local authorities have a statutory duty to secure the provision of education for children in their area. If a pupil has been excluded from school the authority has responsibility for making arrangements for the pupil to receive education in another school or to make alternative provision (section 14(3) of the 1980 Act. Children's Hearings have however from time to time discovered that children who have been excluded have not then received education. Reasons for this vary. For example, some local authorities may have offered services which have not been taken up; the child may have been excluded from several schools or may have been moved around between foster and family carers. Where pupils or parents fail to cooperate with arrangements the parents may be deemed to be failing in their duties to ensure their child attends school.

67. This guidance focuses primarily on situations where a child has been formally excluded from school and the responsible authority has not made appropriate education provision for them. However, Reporters and Hearings may encounter children who are not receiving education for other reasons:

- ◆ On occasion, families may move from one area to another, and may not leave a forwarding address with the previous authority nor register their child for education in their new authority area. At times, families may attempt to change their identity, for example by changing names. In these circumstances, the parent is failing in their duty to ensure their child receives education. The Reporter may make the education authority aware of the child's residence in its area in order for arrangements to be made for registration at a school.
- ◆ Some parents may opt to home educate. Where the child has already attended an education authority school the parent must inform the authority of this decision. Education authorities are not obliged to monitor home educated children, nor to require any notification from parents whose children have never attended school at all or whose children have previously attended an independent school. However, in either case the education authority may intervene if it is not satisfied that the parent is providing an efficient education for their child (section 37 of the 1980 Act). Where a home educated child attends a Hearing, the Reporter may discuss with the education authority whether a parent's failure to provide education is cause for an attendance order to be made under section 37.
- ◆ Some children may have been excluded from, or stopped attending an independent school arranged by their parents. In these circumstances an education authority only has a duty to educate a child where the parent subsequently registers the child with an education authority school. Again, if the parent fails to register their child in these circumstances then it is the parent failing in their duty to provide education.

68. On occasion, however, local authorities may have been slow in undertaking their statutory responsibilities to provide education for an excluded child and this may only come to light at a Hearing. The existing statutory powers of Reporters and Hearings relate to their functions under the 1995 Act to ensure the protection of children. Section 137 of the 2004 Act enables Reporters, in attending to their responsibilities, to make a referral to Scottish

Ministers where it appears to them that there has been a failure on the part of a local authority to fulfil its statutory obligations to provide education to excluded children, and also provides that Hearings may require the Reporter to take such action. Ministers may then require action to be taken if they decide that there has been a failure on the part of the local authority.

69. At present, while Ministers have the power to take enforcement action in respect of an authority's failure to discharge a statutory duty under section 70 of the 1980 Act, they often lack hard information about individual cases. Other than the circumstances outlined in paragraph 66, education authorities should be aware of all children of school age in their area. Schools are required to consult with education authorities before taking the decision to remove the child from their roll, and education authorities then have the duty to make alternative provision. Where a child otherwise leaves a school and does not register with another school, arrangements will be in place from 2006/07 to transfer the pupil's record to a database which will alert authorities and require them to locate the child in their own or another authority. HMIE inspection may consider that education authorities take appropriate steps to ensure children cannot 'disappear from view' of their education system.

70. The new measures also allow the Hearings system to ensure that children do not "disappear" by opening a formal channel of information from the Hearings system to Ministers about excluded children who are not receiving alternative educational provision. This should result in quick, effective action to ensure that young people get the service they require. Indeed, giving a specific role in the process to Reporters as well as Hearings ensures that when an absence of education is apparent during initial investigations a quick referral to Ministers can be made without the need to convene a Hearing first.

71. It is expected that in the vast majority of cases informal contact and discussion between local authorities and their partners will ensure that an appropriate service is provided to young people. The Executive considers this good practice in both ensuring the needs of the young person are met as quickly as possible and that resources are used efficiently. The first time that an authority is made aware of a case where the Reporter knows of a child not receiving education, should not be through the courts.

72. This guidance sets out the reasonable steps that local authorities will be expected to have taken to provide education for a child who is excluded. Where it appears to a Reporter or a Hearing that these steps have not been taken, and that an authority is not complying with its statutory duty they may then refer the case to Scottish Ministers for a fuller investigation to be undertaken.

### **New Legislative Framework**

73. Section 137 of the 2004 Act enables Reporters to make a referral to Ministers if it appears to them that there has been a failure on behalf of the authority to meet its statutory obligations under section 14(3) of the Education (Scotland) Act 1980 to provide education to a pupil excluded from school. Section 137 also provides that Hearings may require the Reporter to take such action.

74. Subsection (2) amends section 56(4) of the 1995 Act. It provides that when the Reporter has carried out an initial investigation into a child's circumstances and it appears that an authority is not complying with its duty under section 14(3) of the 1980 Act he or she can refer the matter to Scottish Ministers. Any reference must be in writing and must be copied to the education authority in respect of which the reference is made.

75. Subsection (3) inserts new section 75B into the 1995 Act. Similarly, it provides that if it appears to a Hearing that a local authority is not meeting its duty under section 14(3) of the 1980 Act the Hearing can require the Reporter to refer the case to Scottish Ministers. Again, any reference must be in writing and copied to the relevant education authority.

76. There are no specific provisions in the 1995 Act (or elsewhere) which give the Hearing or the Reporter a duty or power to make such a complaint in the event that a child who comes to their attention is not receiving educational provision in breach of section 14(3) of the 1980 Act. Ministers wanted to clarify and emphasise the role of the Hearing and Reporter, and existing section 70 provisions, by conferring express powers in this regard. The new measures make explicit provision for this.

### **New procedures involving the Children's Hearings and Reporter**

77. Section 14(3) of the 1980 Act requires that an authority should provide education for an excluded pupil without "undue delay". Although the duty to provide education for an excluded pupil arises immediately, appropriate alternative provision may take time to arrange. It is therefore expected that in most cases education authorities will put effective arrangements in place within 10 school days of the exclusion taking place. In the absence of education provision the young person will spend large amounts of time unsupervised and could get drawn into further troublesome behaviour. Their educational progress and possibly their long-term development are likely to be adversely affected. The new powers are designed to ensure that swift action can be taken to resolve matters when children are at risk because of a prolonged absence from education.

78. Local authorities should take all reasonable steps to provide quickly the education required by children when they become excluded from school. Excluded pupils should receive a range and quality of learning appropriate to their needs and which should enable them to reintegrate into full-time school education without adversely affecting their learning. However, arrangements for education provision may vary according to the needs and circumstances of the child. Local authorities will, for example need to consider whether the child has any additional support needs or a disability and the impact or influence this should have on the education to be provided.

79. Where a place in an alternative school or full-time provision is not possible, other involvement in structured programmes which include a specific educational aspect may be arranged to address the behaviour or needs of the pupil. Services could be provided within the statutory sector or by voluntary organisations where they have developed alternative education provision in that area.

80. Hearings and Reporters when considering cases involving excluded children (including those with additional support needs) will want to look at whether appropriate learning opportunities are being provided to secure the desired outcomes for the child to help them achieve their potential, whether or not the young person in question is currently subject to supervision. They will need to take account of planning already undertaken by the school and local authority to address the needs of the child. School related problems often indicate the start of a wider picture of exclusion for young people who become "looked after" and

schools should have structures of pastoral care, learning support and behaviour support in place to deal with those emerging issues within the school before exclusion is considered.

81. Hearings and Reporters might consider action if a child is receiving no educational provision at all or they are receiving an inadequate level of provision, ie the amount of education being provided is insufficient, or its level, standard, form or content is not appropriate.

82. Concerns about the appropriateness of the education being provided should be discussed fully at a Hearing with the local authority having the opportunity to outline its education plan for the child. A range of professionals may have been involved in preparing a co-ordinated support plan or other support plans for the child, whose views may be sought or represented.

83. Where it appears that appropriate provision is not being made and the authority has no immediate plans to provide it, Hearings and Reporters will need to consider whether “undue delay” has occurred. That term is not defined although it is expected that ordinarily the delay should be no more than 10 schooldays. Circumstances are however likely to differ from case to case requiring an assessment of whether such delay has arisen to be made by Hearings and Reporters. They will need to take account of all relevant facts and circumstances, including the circumstances of the child and the services available locally, before reaching a decision. The disposition of the pupil and the degree of co-operation by the parent or carer will be important considerations, not only in resolving exclusion, but also in arranging for interim arrangements for learning.

84. It will also be important to consider previous patterns of exclusion and the attendance of the child, the efforts made by the education authority and school to fully engage the child in education and the willingness of the child and family to co-operate with these efforts. Schools make decisions on exclusion which balance the rights of the majority of pupils and staff to learn and teach in safety and free from disruption with the rights of the excluded pupil to education. Education authorities may consider the most appropriate programme of learning will be to address the behaviour of the pupil. Effective liaison between Hearings and Reporters and the education authority mechanisms for assessing and reviewing children’s educational and behavioural support needs will be essential (such as School Liaison Groups, Pupil Support Groups or other multi-agency groups).

85. It is not anticipated that Reporters will refer a case to Ministers until a full discussion has been held and the local authority has had the chance to explain its plans for providing a service. Where, following that discussion, it appears to the Reporter that the authority has no clear plans apparent to comply with its duty to provide education it is likely that he or she will wish to refer the case to Scottish Ministers. This should be done within 10 working days. In making a written referral, Reporters should ensure they identify the child and authority involved, set out the circumstances of the case and indicate why they consider that a breach of the duty imposed under s14 of the 1980 Act has occurred.

86. Where it appears to a Children’s Hearing that, following a full discussion of the matter, an authority has failed to comply with its duty to provide education they have two options. If the provision of education is part of an existing supervision requirement they can refer the case to the Reporter requiring them to take matters forward under the new arrangements for failure to implement a supervision requirement set out above. They could

also require the Reporter to refer the case to Scottish Ministers for investigation. If a young person is not subject to supervision, or an existing supervision requirement does not include specific education provision, only the latter route will be open to a Hearing. If the Hearing direct a Reporter to refer a case to Ministers, the Hearing should set out clearly the reasons for the decision, the circumstances of the case and why they think a referral is appropriate. The Reporter would then be required to make a written referral to Ministers and should do so within 10 working days as set out in paragraph 85 above.

87. On receipt of a referral from a Reporter, Ministers will wish to take a view as to whether the authority in question has a case to answer. If they conclude that it does they will inform the authority of that decision and will arrange for the matter to be investigated as appropriate with the authority in question. The level and timescale for investigation should be appropriate to the individual case and circumstances thereof.

88. Following that investigation the Executive will inform the local authority of the outcome. If it appears to Ministers that the local authority has failed in that duty, Ministers may make an order under section 70 of the 1980 Act declaring them to be in default of the duty and requiring them by a date set out in the order to carry out that duty. If by the appointed date the authority has not complied, Ministers could make such arrangements as they think fit for the provision of education for the child and charge the cost of that provision to the authority (section 70(a) of the 1980 Act) or, on the application of the Lord Advocate, the Court of Session may order the authority to carry out its duty (section 70(b)). Any alternative provision being arranged will be on the basis of an assessment of the needs of the child.

#### **The Education (Additional Support for Learning) (Scotland) Act 2004**

89. The ASL Act, once commenced in 2005, will introduce a new framework for providing support for children and young people who require some additional help with their learning. The Act places a specific duty on education authorities to make adequate and efficient provision for each child or young person with additional support needs for whose education they are responsible. There is a wide range of factors which may lead to some children and young people having a need for additional support. These factors fall broadly into the following overlapping themes: family circumstances; social and emotional factors; disability or health needs; the impact of the learning environment and children in need of care and protection. Some young people appearing before a Hearing may have additional support needs and will therefore subject to this wider legislation and also have rights under it. The Act also places duties on education authorities to provide independent mediation services and dispute resolution services. Dealing with a young person's case through these routes should help reduce the need for the Reporter to refer cases to Ministers for investigation under section 70 of the 1980 Act.

**Scottish Executive  
February 2005**

## EXTRACT FROM ANTISOCIAL BEHAVIOUR ETC (SCOTLAND) ACT 2004

**136 Supervision requirements: duties of local authorities**

- (1) In section 70 of the Children (Scotland) Act 1995 (c. 36) (supervision requirements)—
- (a) after subsection (3) there shall be inserted—
    - “(3B) A Children’s Hearing may, for the purpose of enabling a child to comply with a supervision requirement, impose such duties on the relevant local authority as may be specified in the supervision requirement.
    - (3C) The duties imposed under subsection (3B) above may include that of securing or facilitating the provision for the child of services of a kind other than that provided by the relevant local authority.”; and
  - (b) after subsection (7) there shall be inserted—
    - “(7A) Where, on a review under subsection (7) above, it appears to the Children’s Hearing that the relevant local authority are in breach of a duty imposed on them under section 71 of this Act, the Hearing may direct the Principal Reporter to give the authority notice of an intended application under section 71A(2) of this Act.
    - (7B) The Principal Reporter shall, at the same time as giving the notice of an intended application under section 71A(2) of this Act, send a copy of the notice to—
      - (a) the child to whom the duty referred to in subsection (7A) above relates;
      - (b) any person who, in relation to the child, is a relevant person;
      - (c) any person appointed under section 41 of this Act to safeguard the interests of the child in any proceedings which are taking place when the notice is given.
    - (7C) Notice of an intended application under section 71A(2) of this Act is a written notice—
      - (a) setting out the respects in which the relevant local authority are in breach of the duty imposed on them under section 71 of this Act; and
      - (b) stating that if the authority do not comply with that duty within the period of 21 days beginning with the day on which they received the notice, the Principal Reporter may make an application under section 71A(2) of this Act.
    - (7D) Where a Children’s Hearing have made a direction under subsection (7A) above, they shall determine that a further review under subsection (7) above take place on or as soon as is reasonably practicable after the expiry of the period of 28 days beginning with the day on which notice was given in pursuance of that direction.

- (7E) Where on a further review under subsection (7) above which takes place by virtue of subsection (7D) above, it appears to the Children’s Hearing that the relevant local authority continues to be in breach of the duty referred to in subsection (7A) above, the Hearing may authorise the Principal Reporter to make an application under section 71A(2) of this Act.”.
- (2) In section 71 of that Act (duties of local authority with respect to supervision requirements), after subsection (1) there shall be inserted—
- “(1A) Where a supervision requirement imposes, under section 70(3B) of this Act, duties on the relevant local authority, the authority shall perform those duties.”.
- (3) After that section, there shall be inserted—

**“71A Enforcement of local authorities’ duties under section 71**

- (1) The sheriff principal may, on an application under subsection (2) below, make an order requiring a relevant local authority in breach of a duty imposed on them under section 71 of this Act to perform that duty.
- (2) The Principal Reporter, having been so authorised by a Children’s Hearing under section 70(7E) of this Act, may apply for an order under subsection (1) above.
- (3) No such application shall be competent unless—
- (a) the Principal Reporter has, on a direction of the Children’s Hearing made under section 70(7A) of this Act, given the relevant local authority the notice referred to in that provision; and
- (b) the authority have failed to comply, within the period stipulated in the notice, with the duty there referred to.
- (4) In deciding whether to apply under subsection (2) above, the Principal Reporter shall not take into account any factor relating to the adequacy of the means available to the relevant local authority to enable it to comply with the duty.
- (5) An application under subsection (2) above shall be made by summary application.
- (6) The sheriff principal having jurisdiction under this section is the sheriff principal of the sheriffdom in which is situated the principal office of the relevant local authority in breach of the duty referred to in subsection (1) above.
- (7) An order under subsection (1) above shall be final.”.

*Failure to provide education for excluded pupils*

**137 Failure to provide education for excluded pupils: reference**

- (1) The Children (Scotland) Act 1995 (c.36) shall be amended as follows.
- (2) In subsection (4) of section 56 (steps where no reference to Children’s Hearing)—
- (a) the word “and” where it occurs immediately after paragraph (a) is repealed; and
- (b) after paragraph (b) there shall be inserted “; and
- (c) he may, where it appears to him that—

(i) an education authority have a duty under section 14(3) of the Education (Scotland) Act 1980 (c.44) in relation to the child; and

(ii) the authority are not complying with that duty,

refer the matter to the Scottish Ministers.

(4A) A reference made under subsection (4)(c) above shall be in writing.

(4B) A copy of a reference made under subsection (4)(c) above shall be sent by the Principal Reporter to the education authority in respect of which the reference is made.”.

(3) After section 75 there shall be inserted—

*“Failure to provide education for excluded pupils*

**75B Failure to provide education for excluded pupils: reference to Scottish Ministers**

(1) Where it appears to the Children’s Hearing to whom a child’s case has been referred under section 65(1) of this Act that—

(a) an education authority have a duty under section 14(3) of the Education (Scotland) Act 1980 (c.44) in relation to the child; and

(b) the authority are not complying with that duty,

they may require the Principal Reporter to refer the matter to the Scottish Ministers.

(2) The Principal Reporter shall comply with any requirement made under subsection (1) above.

(3) A reference made by virtue of subsection (1) above shall be in writing.

(4) A copy of a reference made by virtue of subsection (1) above shall be sent by the Principal Reporter to the education authority in respect of which the reference is made.”.

(4) In subsection (1) of section 93 (interpretation of Part II), after the definition of “disabled” there shall be inserted—

““education authority” has the meaning given by section 135(1) of the Education (Scotland) Act 1980 (c.44);”.

