

## Coronavirus (Scotland) Act 2020 - Supplementary Data on use of provisions in Schedule 3 of the Act

This report provides data on the use of children’s provisions within schedule 3 of the Coronavirus (Scotland) Act 2020. They 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. Wider contextual data on children’s hearings has also been included under the children hearing section of the report.

All the data in this report covers the period 7 April to 20 May 2020. Information on where data has been gathered has been included in the report along with any caveats about the data provided. Within this report there will be double counting as a hearing can be arranged for more than one purpose or multiple review requests can be received from different sources. The totals in each table always provide a unique count whether that applies to hearings or children.

### 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 Orders<sup>1</sup>. 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.

	2019	2020
<b>Total CPOs</b>	54	82

As of 21<sup>st</sup> May 2020 there had been no recorded applications to recall / vary a CPO – but this figure is dependent on SCTS intimating such applications on the Reporter as a party – and this intimation may not have occurred.

There has been an increase in the no. of child protection orders issued across Scotland in comparison to the same period last year (although this will be subject to local variation).

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<sup>1</sup> This data was provided by Scottish Children’s Reporter Administration

With 82 CPO's in 2020 the Emergency Legislation has meant that SCRA did not have to hold 82 2<sup>nd</sup> working day children's hearings<sup>2</sup>.

### **Amendment of timescales in relation to the issuing of Child Assessment**

**Orders:** There were no Child Assessment Orders during the reporting period<sup>3</sup>.

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.

### **Children's hearings provisions**

The Coronavirus (Scotland) Act 2020 came into force on 7 April 2020. By then, Scotland (and the United Kingdom) had been subject to movement restrictions and social distancing measures since 23 March 2020. For the children's hearing this meant that the way the hearing operated to make decisions had to alter overnight – Hearings could not just be cancelled as there were Compulsory Supervision Orders, Interim Orders and other decisions which had to be made urgently.

Consequently Children's Hearings have had to be prioritised and subject to the following consideration:

Those Hearings required for the urgent and immediate protection of a child/young person are taking place or those which required to protect an expiring order. Many non-essential Hearings have been rescheduled and will take place at the earliest date possible due to restrictions on the capacity of the system to have digital hearings.

The Coronavirus Act provisions have provided some flexibility to the way in which the Children's Hearing System operates, and has allowed it to focus on immediate or urgent protection – whilst keeping safe other children and young people whose situations are not currently urgent.

These provisions 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.

### **Background data on children's hearings during the reporting period**

All the children's hearings which have taken place in Scotland since 23 March 2020 have been 'virtual children's hearings'. Children, family members, professionals, reporters and the decision makers (panel members) have been unable to attend the public spaces in children's hearings centres. Since May 4 2020 effort has been made to try and facilitate the virtual attendance of all of those with a right to attend the children's hearing under the Children's Hearings (Scotland) Act 2011.

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<sup>2</sup> 1 2<sup>nd</sup> working day children's hearing was held.

<sup>3</sup> This data was provided by the Scottish Courts and Tribunals Service.

Children’s hearings have continued to sit for a variety of reasons and where the urgent and immediate protection of a young person was required (including where a young person required to be returned home from a care placement).

Priority is given to hearings with fixed statutory timescales, or to prevent an order from lapsing. These include:

- Hearings to consider further ICSOs or interim variations
- CPO grounds Hearings
- Custody grounds Hearings
- Reviews of CSOs containing secure accommodation authorisations
- Any other Hearing with a restricted timescale (eg emergency transfer, emergency placement in secure accommodation or a contact direction review)
- Advice to a criminal court
- Reviews requested by a child relevant person or local authority to meet urgent need

Other Hearings, including other review and grounds Hearings, are assessed for priority taking into account the likely impact of any delay on the welfare of child and fairness to the child and relevant persons and taking into account the views of the child or relevant person where possible. Allocated social workers will be consulted about the timing of such Hearings.

The background data in this section was collected by SCRA in partnership with CHS. It covers the period of 7 April to 20 May 2020 with the equivalent from the prior year (9 April to 22 May 2019). SCRA’s Case Management System (CMS) was not set up to record the detail of the 2020 emergency legislation so generating figures has not been straightforward. There is also going to be some latency with recording as not all outcomes may have been processed yet.

### Children’s Hearings

	2019	2020
<b>Total Hearings</b>	3,921	797

Fewer children’s hearings have been held this year than last year.

**Reasons for Children’s Hearings** (a hearing may have more than one reason; the totals count each hearing once)

Hearing Reason	2019	2020
<b>Continue ICSO</b>	397	158
<b>Deferred Hearing</b>	819	199
<b>New Grounds</b>	570	117 <sup>4</sup>
<b>Review – due to expire</b>	841	113
<b>Review local authority</b>	429	108

<sup>4</sup> The figure of 117 will include all the children with CPO’s where grounds were put at the 8<sup>th</sup> working day children’s hearing.

<b>Other</b>	1,105	175
<b>Total</b>	<b>3,921</b>	<b>797</b>

All of these categories are lower than last year at the same time.

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. Within the reporting period there have been 462 CSOs where orders have been extended beyond their expiry date, but only following dialogue with social workers and families, and when those involved indicated they would prefer to come back at a later date to a face to face children's hearing in a hearing centre. In 2019 there were 841 review children's hearings when orders were due to expire – in 2020 there have been 113 children's hearings when orders were due to expire. The number of hearings held has been increasing since the 4 May as the system has adapted.

SCRA's data management system has recorded 860 children's hearings as 'Covid19' hearings – these are hearings where elements of the emergency legislation have been applied (to prevent an order due to expire from lapsing for up to 6 additional months; to add time onto an interim compulsory supervision order (ICSO) up to 44 days or to take a CPO straight to the 8<sup>th</sup> working day children's hearing).

Far fewer review children's hearings have been held:

### Review Children's Hearings

Hearing reason	2019	2020
<b>Review – child</b>	5	1
<b>Review – local authority</b>	429	108
<b>Review – panel members</b>	275	12
<b>Review – relevant person</b>	202	7
<b>Total</b>	<b>892</b>	<b>124</b>

And requests for reviews as captured in correspondence received by SCRA has almost halved:

### Review requests for Children's Hearings

Review Request	2019		2020	
	Requests	Children	Requests	Children
<b>child</b>	7	7	3	3
<b>local authority</b>	474	441	258	242
<b>other</b>	28	28	25	24
<b>relevant person</b>	213	202	79	77
<b>Total</b>	<b>722</b>	<b>668</b>	<b>365</b>	<b>343</b>

Of the review requests there were 27 emergency transfer requests made, for 25 children across Scotland between 7 April 2020 and 20 May 2020.

## Compulsory Supervision Orders (CSO's)

**Total CSO's / ICCSO's<sup>5</sup> made** (including orders where emergency legislation was used)

	2019	2020
<b>Total CSO</b>	<b>1,747</b>	<b>654</b>
<b>Total ICCSO</b>	<b>201</b>	<b>61</b>

In 2019 there were 20 CSO's made which authorised the use of secure accommodation and in 2020, 24 CSO's were made in the same period which authorised the use of secure accommodation.

In 2020 there have been 462 CSOs where orders have been extended beyond their expiry date.

## Interim Compulsory Supervision Orders

As the children's hearing system has prioritised the urgent and immediate protection of children and young people during the Covid19 response the key order that allows this protection is the interim compulsory supervision order (ICSO). Under the Children's Hearing's (Scotland) Act 2011 an ICSO can only last for 22 days, if issued by the children's hearing or by a Sheriff at Court. Under the 2020 Act an ICSO from a children's hearing can last up to 44 days (but does not have to last for that long) and an ICSO issued at court can last for a period determined by the court.

SCRA's case management system is set up to record 22 day orders, the workaround for the emergency legislation means that additional orders have to be added on to the system to process 44 day orders. For example, a child has a 44 day order issued running from 29<sup>th</sup> April to 11<sup>th</sup> June:

Order 1 is booked from 29<sup>th</sup> April to 20<sup>th</sup> May

Order 2 runs from 21<sup>st</sup> May to 11<sup>th</sup> June

To try and capture the extension of the order, SCRA have looked at interim orders created after the reporting period which are linked to orders within the reporting period and have included them here but not all extensions to orders under emergency legislation may have been recorded yet. This means that emergency extensions may be undercounted within this report, but will be captured in future reporting cycles.

**Interim orders** (some children will have had more than one interim order issued in the period & this count includes orders which authorised secure accommodation)

Interim Order Type	2019	2020
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<sup>5</sup> CSO – Compulsory Supervision Order; ICCSO – Interim Continuation of a Compulsory Supervision Order

<b>ICSO</b>	584	314
<b>IVCSO</b>	250	178
<b>Court ICSO / IVCSO (including following appeal)</b>	471	337
<b>Total</b>	<b>1,305</b>	<b>829</b>
<b>Children</b>	<b>678</b>	<b>656</b>

**Interim orders which authorised secure accommodation** (some children will have had more than one interim order issued in the period and includes orders issued under 2020 Act emergency legislation)

<b>Interim Order Type</b>	<b>2019</b>	<b>2020</b>
<b>ICSO</b>	9	5
<b>IVCSO</b>	13	10
<b>Court ICSO / IVCSO (including following appeal)</b>	7	1
<b>Total</b>	<b>29</b>	<b>16</b>
<b>Total children</b>	<b>20</b>	<b>12</b>

Of the 16 interim orders authorising the use of secure accommodation between 7<sup>th</sup> April and 21<sup>st</sup> May 2020, 9 of them used the extended timescales of the Coronavirus (Scotland) Act 2020<sup>6</sup>.

**Interim orders where the 2020 Act emergency legislation was applied** (some children will have had more than one interim order issued in the period & this count includes orders which authorised secure accommodation)

<b>Interim Order Type</b>	<b>2020</b>
<b>ICSO</b>	284
<b>IVCSO</b>	152
<b>Court ICSO / IVCSO (including following appeal)</b>	244
<b>Total</b>	<b>680</b>

#### **Extended timescale following emergency transfer of a child or young person to secure accommodation**

The 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. SCRA 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.

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<sup>6</sup> Information on the use of the emergency powers and secure accommodation authorisation will be more accurate when gathered retrospectively – at the moment some of the orders granted between 7<sup>th</sup> April and 20<sup>th</sup> May are still in force so it is difficult to draw conclusions.

## Data on use of 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 members<sup>7</sup>.

**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 date<sup>8</sup>. 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

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<sup>7</sup> 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.

<sup>8</sup> 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

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.

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 (IVSCO) 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

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

**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 data is 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.

