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The Education and Culture Committee is undertaking an inquiry into the decision making processes involved in removing a child from their parent(s). This paper gives a brief outline of the principles which govern the care and protection of children by public authorities, the main legislation and guidance in the area of children's hearings and local authority child protection systems together with some key statistics.



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EXECUTIVE SUMMARY

The legal and administrative measures for protecting children are complex – in part because children’s lives are complex, but also because they involve the interaction of different agencies and systems – mainly the local authority, courts and hearings.

Principles and considerations

The care and protection of children by public authorities is underpinned by a number of considerations such as the principle of the best interests of the child and that, in so far as is consistent with safeguarding and promoting the child's welfare, a public authority should promote the upbringing of children by their families. In applying these principles there is a need to balance the rights of children and parents and to ensure that any state interference is proportionate. The views of the child should be listened to and hearings or courts will not make a legal order affecting the child unless it is necessary to do so.

Interventions

Where a child is in need of care and protection they may be referred to one or more agencies such as the local authority social work department, the police or the children’s reporter. In an emergency a child protection order can be sought from the courts to remove the child to a ‘place of safety’. This is a very short term measure and the situation must be reviewed by a children’s hearing within strict timescales. Where it is not an emergency, there are a number of options:

- social workers could provide support to the child and the family and this might include taking the child into care (i.e accommodating the child) if the parents agree to this.
- if the child is at risk of significant harm then multi-agency child protection procedures can result in the child being added to the child protection register. This is a non-statutory register whose purpose is to ensure that actions are taken to reduce the risk to the child. This might include social work support to the family, being taken into care on a voluntary basis or, if compulsory measures are required, a referral to the children’s reporter.
- separately to the child protection process, anyone can make a referral to the children’s reporter who will arrange a hearing if one of the grounds for referral are met and compulsory measures are required. Most referrals to the reporter are on either ‘lack of parental care’ or neglect¹.

Following a hearing, a child might be placed on a supervision requirement which (among other things) sets out where a child is to live. Most last between 1 and 3 years, but an increasing proportion last for longer than this.

¹ Victim of schedule 1 offence, referring to s.12 Children and Young Person’s (Scotland) Act 1937

The purpose of any intervention should be either to allow the child to return safely to their birth family on a permanent basis or to find them a permanent placement elsewhere (This can be done through adoption or a permanence order issued in the sheriff court). However, the number of adoptions from care and permanence orders (without authority to adopt) are very low compared to the number of supervision requirements made.

Legislation and Guidance

The main legislation remains the Children (Scotland) Act 1995 (the 1995 Act) but there has been considerable change to the legislation and guidance in this area in recent years. The Adoption and Children (Scotland) Act 2007 revised adoption law and introduced permanence orders. The Looked After Children (Scotland) Regulations 2009 revised the requirements for planning, assessments and reviews and the Children's Hearings (Scotland) Act 2011 changed the administrative structure of the hearings system and made some changes to the legal processes involved (this is not yet fully in force). In addition, a review of child protection between 2003 and 2007 resulted in new child protection guidance being issued in 2010. In addition, the development of Getting it Right for Every Child (GIRFEC) has sought to change the assessment and planning process.

Trends

The number of looked after children has been increasing since the late 1990's and this has resulted in the expansion of foster and kinship care. Most of the increase appears to be due to children being looked after for longer rather than more children coming into the system. In 2011, 30% of children who ceased being 'looked after' that year had been 'looked after' for more than three years.

GENERAL PRINCIPLES

The child protection and children's hearings systems operate on the basis of legal principles derived, in the main, from children's rights under the UN Convention on the Rights of the Child, the right to protection of family life under the European Convention on Human Rights and the Children (Scotland) Act 1995. These principles are that:

- so far as is consistent with safeguarding and promoting the child's welfare, a public authority should promote the upbringing of children by their families
- any intervention by a public authority in the life of a child must be properly justified. It must be necessary and proportionate.
- the welfare of the child is the paramount consideration
- no court or hearing should make an order unless to do so would be better for the child than making no order at all
- the child's views should be taken into account where major decisions are to be made about his or her future.

Where children are removed from their family home, it is normally on the basis that this will be a temporary measure and the rights of the parents and the child must be balanced against each other. This stems from Article 8 of the European Convention on Human Rights which provides for the protection of family life from disproportionate and unnecessary state interference.

The Court considers that taking a child into care should normally be regarded as a temporary measure to be discontinued as soon as circumstances permit and that any measures of implementation of temporary care should be consistent with the ultimate aim of reuniting the natural parent and the child [...] A fair balance has to be struck between the interests of the child in remaining in public care and those of the parent in being reunited with the child [...] In carrying out this balancing exercise, the Court will attach particular importance to the best interests of the child, which, depending on their nature and seriousness, may override those of the parent. In particular, as suggested by the Government, the parent cannot be entitled under Article 8 of the Convention (art. 8) to have such measures taken as would harm the child's health and development. (Johanson v. Norway (1996) 23 EHRR 33 at para 78)

The nature of the risk to the child must be such that it justifies the level of interference proposed. Although parents may not be giving the child the best possible care, that is not enough to justify taking a child into care.

it is not enough that the social workers, the experts or the court think that a child would be better off living with another family. That would be social engineering of a kind which is not permitted in a democratic society. The jurisprudence of the European Court of Human Rights requires that there be a "pressing social need" for intervention and that the intervention be proportionate to that need ([re SB \(Children\) \(Care proceedings: standard of proof\) \[2009\] UKSC 17 para 7.](#))

Bearing in mind these principles, the following section outlines the main legal measures which enable a public authority to remove a child from the family home.

REMOVING CHILDREN FROM THE FAMILY HOME

A child might be removed from the family home using a variety of legal measures. In very general terms, these measures can be divided into:

- short term measures taken in an emergency (child protection order), or interim measures pending a decision (place of safety warrants)
- medium to long term measures following assessment and planning (supervision requirements and s.25 social work arrangements)
- very long term/permanent arrangements – (permanence orders and adoption)

EMERGENCY AND INTERIM MEASURES

Child Protection Order (CPO)

This is granted by a sheriff where the child is at risk of significant harm and such an order is considered necessary. Anyone can apply for a CPO, but they tend to be sought by local authorities where there are child protection concerns about a child. There are strict legal procedures and timescales governing their use. In particular, they can only last for eight working days and must be followed with a children's hearing on the second and eighth day after implementation. A small but increasing number of CPOs are considered each year. Hearings considered 781 CPOs in 2010 (up from 661 in 2008/09). They tend to be sought for young children – around 300 CPOs were issued for children under a year old in 2011/12 (SCRA, 2012).

Where CPO not available

If a sheriff is not available, a similar order can be granted by a Justice of the Peace² and in certain circumstances a police officer can remove a child to a place of safety before seeking a CPO.

Child Assessment Orders

Child assessment orders are granted by a sheriff where there is risk of significant harm, where the local authority wish to carry out an assessment to establish this and it is unlikely to be carried out without such an order being given (s.55, 1995 Act). They can only last seven days (although the Children's Hearings (Scotland) Act 2011 has reduced this to three days). In practice they are rarely used (Children's Hearings (Scotland) Bill: policy memorandum).

Place of safety warrants

There are a variety of warrants available under the Children (Scotland) Act 1995. Their operation is complex and they have been reworked in the Children's Hearings (Scotland) Act 2011. One such type of warrant is for keeping a child in a place of safety pending a final decision from a sheriff or a hearing about whether a supervision requirement is needed (s.66 of the 1995 Act). For example, a child might be removed in an emergency under a CPO, but then

² this must be confirmed by a sheriff within 24 hours.

as this can only last eight days, a warrant is needed to keep them in a place of safety while a decision is reached about whether they need a supervision requirement. Another reason for needing a 'place of safety' warrant is that the grounds for the hearing might need to be referred to the sheriff for proof, but in the meantime, it is necessary to keep the child in a place of safety. In 2011/12 hearings granted 'place of safety' warrants for 1,994 children. Around 400 of these were for children under a year old (SCRA, 2012). The 2011 Act introduces an interim compulsory supervision order which will have much the same function³.

MEDIUM TO LONG TERM MEASURES

Supervision Requirement

Where grounds for referral are met and compulsory measures of supervision are required then a children's hearing can issue a supervision requirement under s.70 of the 1995 Act (these become compulsory supervision orders in the 2011 Act, but their function remains the same). Among other things, this sets out where a child should live. This might be at home with their parents or away from home with friends and family, foster carers or in residential care. Most 'looked after' children are on supervision requirements (13,093 in 2011/12) and 6,580 of these were required to live away from home. In 2011/12 children's hearings issued 3,955 new supervision requirements (SCRA, 2012). A child might move from being on supervision at home to being away from home through the supervision requirement being varied at a review hearing. Unlike CPOs and place of safety warrants which are more commonly issued for very young children, the most common age of children on supervision was 14 and 15 years old. In 2011/12, seventeen per cent of children on supervision had been on that order for more than five years (SCRA, 2012).

Accommodated under s.25

Separately from the hearings system, social workers can take a child into care where a parent is unable to care for them and does not object. They have powers to accommodate (i.e take into care) a child:

if no-one has parental responsibility for them, if they are lost or abandoned or if the person who has been caring for them is prevented from providing suitable accommodation or care (s.25, 1995 Act).

If a parent does object and the local authority wish to keep the child in care, then either a CPO would be sought or the child referred to the hearings system in order that compulsory measures could be used.

Between 2000 and 2009, around 1,000 children were taken into care each year under s.25 (Scottish Government, 2008, 2010a).

Plans and reviews for looked after children

All of the above measures result in the child being 'looked after.' If a child is or is about to be 'looked after' then there are assessment and planning requirements set out in the Looked After Children (Scotland) Regulations 2009 (the 2009 regulations) and associated guidance (Scottish

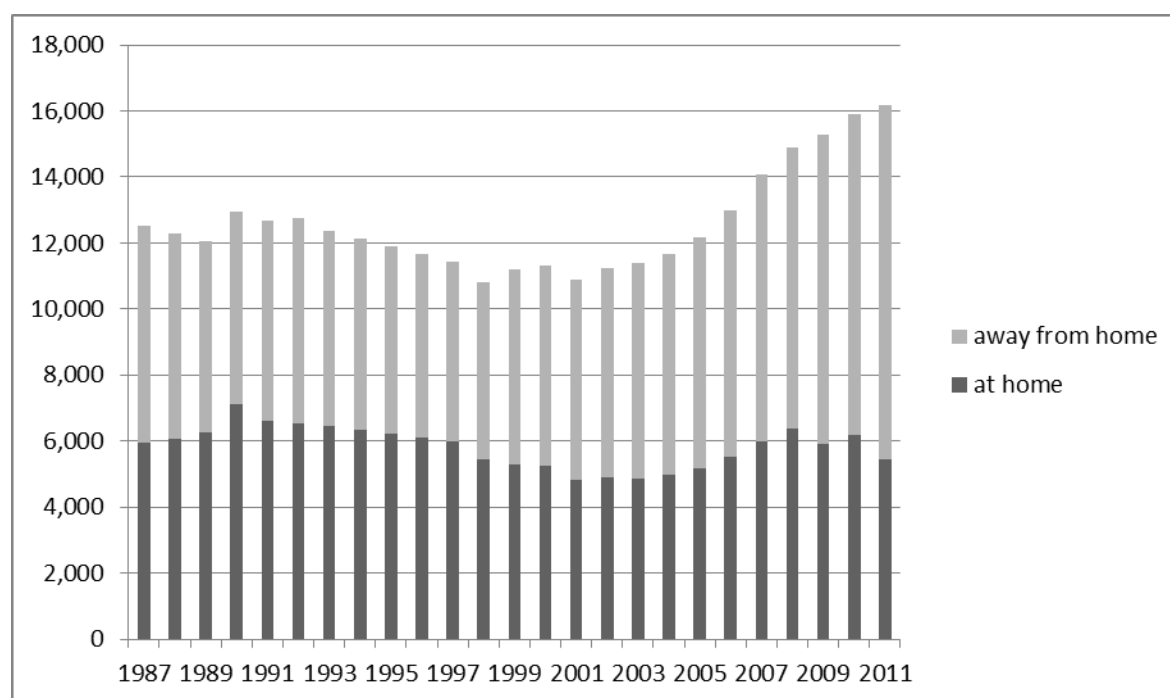
³ although it will also allow children to remain at home under supervision

Government, 2011). These regulations make provision for regular reviews where progress should be assessed and the suitability of the current placement considered. The exact frequency of reviews varies according to the child's legal status, but for example, a child on a supervision requirement away from home would need a looked after child review within 6 weeks of initial placement, then after 3 months, then after 6 months. In addition, a child under a supervision requirement whether at home or away, must have that reviewed by a children's hearing at least annually. One of the things to be considered at a review is what the permanent placement for the child should be – i.e what is the temporary status of being 'looked after' intended to achieve?

Numbers of children looked after

The number of looked after children has been increasing since 1998 (from 10,804 to 16,171 in 2011). Chart 1 below, shows the long term trend since 1987 and illustrates that, particularly since 2001, the increase has been in relation to children looked after away from home (from 6,057 to 10,734 in 2011). This is due to the increasing use of foster and kinship care.

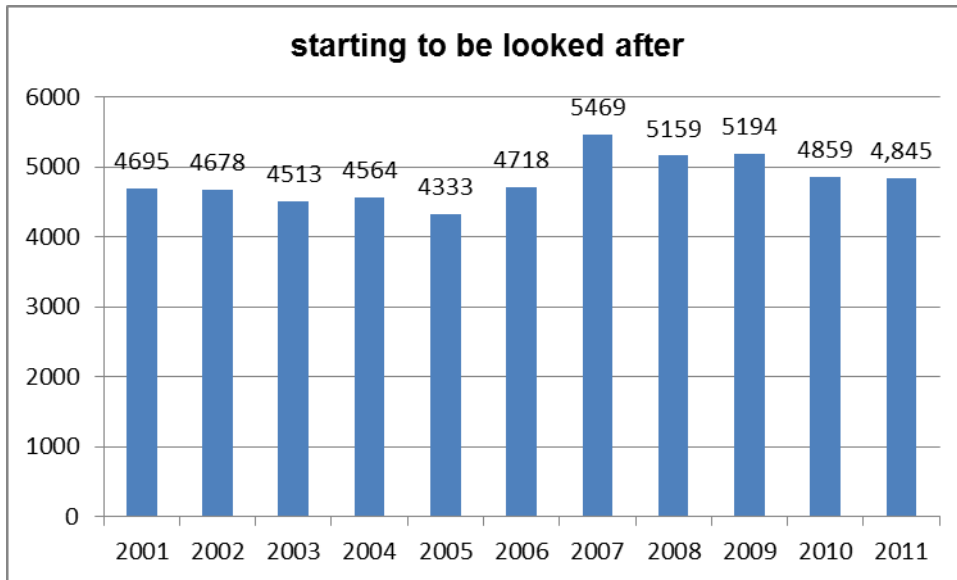
Chart 1: Children looked after 'at home' and 'away from home', 1987 to 2011



source: Scottish Government, 2012a, table 1.1

Although the total number of looked after children has increased, the chart below shows that the numbers starting to be looked after each year has remained relatively steady at between 4,500 and 5,200.

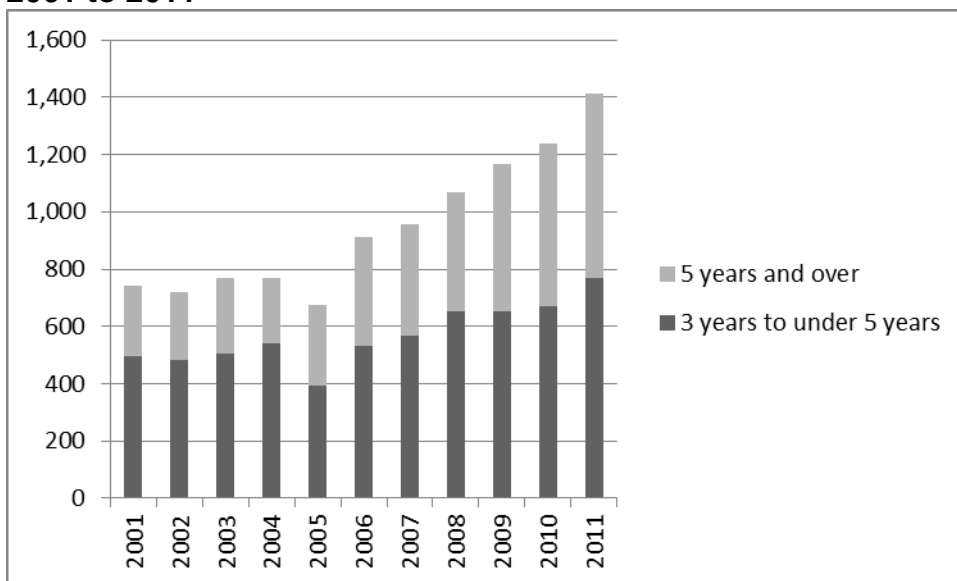
Chart 2: Numbers of children starting to be 'looked after' 2001 - 11



source: Scottish Government, 2012a table 1.3

Rather than increasing numbers of children coming into the system each year, it appears that children are being 'looked after' for longer. Legally, and in guidance, being 'looked after' is envisaged as a temporary state (unless a child is subject to a permanence order). Most children are looked after for between 1 and 3 years (Scottish Government, 2012a) but there has been an increasing proportion of looked after children being looked after for more than 3 years. In 2001, 15.6% of children were looked after for 3 or more years. By 2011, the proportion had increased to 29.7% (this includes those looked after at home). Chart 3 below shows the increasing number of children looked after for more than 3 years.

Chart 3: Number of children ceasing to be 'looked after' by length of time 'looked after', 2001 to 2011



source: Scottish Government, 2012a, table 1.4

There has also been a large increase in the number of children who are aged under one year when they start to be looked after (from 415 in 2004/5 to 717 in 2010/11).

PERMANENT/VERY LONG TERM ARRANGEMENTS

Adoption

Sometimes 'looked after' children are adopted, but this does not happen very often. In July 2011, 273 'looked after' children were living with prospective adopters – a figure which has varied little over the last ten years (Scottish Government, 2012a).

Adoptions are granted by the sheriff and permanently remove parental rights and responsibilities from the natural parents and give them to the new adoptive parents. They are regulated under the Adoption and Children (Scotland) Act 2007. In very general terms, adoption requires parental consent unless the court considers that the parent is unable to discharge their parental responsibilities and rights and are likely to continue to be unable to do so (s.31, 2007 Act). Once a child is adopted, they are no longer considered 'looked after' under the 1995 Act.

Permanence

Between 2001 and 2005 there was a substantial review of adoption law (Adoption Policy Review Group, 2005). One of its main recommendations was the need for a more flexible alternative to adoption that would enable stable, long term placements. This led to the development of permanence orders. These are granted by a sheriff under s.80 of the 2007 Act and give the local authority the right to determine where the child will live until they are 16. Other parental responsibilities and rights can be shared between the parents and the local authority as the court sees fit. The legal provisions are intended to allow the order to be 'tailor made' to suit each child. Placements could be in a long term foster care or kinship care. Permanence orders also can include authority to adopt, replacing 'freeing orders.' However, they are not intended to be only used as a prelude to adoption (Scottish Government, 2011a, ch. 21) and allow for long term foster or kinship care. A child subject to a permanence order remains 'looked after.'

In general they appear to have been used mainly as a prelude to adoption. Civil Justice statistics estimate that only around 35 permanence orders were made in 2010/11 that did not include authority to adopt (Scottish Government, 2012b).

Process for making adoption or permanence orders

If, at a looked after children review it is decided that rehabilitation with the parents is not working and a permanent placement elsewhere needs to be considered then a decision might be made to apply for a permanence order. This might be made by a senior social work manager or a permanence planning meeting. A reference is made to the adoption or permanence panel which makes a recommendation either for adoption, for a permanence order with authority to adopt, or for a permanence order without authority to adopt. That recommendation goes to the agency decision maker⁴. If the child is subject to a supervision requirement, a referral is also made to the reporter to get the advice of a children's hearing. The application is then lodged in court (Scottish Government, 2010c).

⁴ A senior member of the management of an adoption agency whose responsibility it is to make agency decisions about children's adoption plans, approval of adopters and the matching of children and adopters. Often the decision follows the recommendation of the adoption/permanence panel but an ADM does not have to follow recommendations.

THE HEARINGS SYSTEM AND THE CHILD PROTECTION REGISTER

The various legal orders described above will normally be applied in the context of either the children’s hearings system or the courts. Children can also be accommodated (i.e taken into care) on a voluntary basis under s.25 of the 1995 Act (see p.7). In addition, children at risk of significant harm can be referred to multi-agency child protection processes.⁵ The hearings and child protection are the two main systems for protecting children who are at risk of harm. While there is detailed legal regulation of the children’s hearings system, the processes surrounding the child protection register are mainly governed by guidance and local policy.

The two systems have similar general purposes of protecting children’s welfare: the main point of a child protection register is to take actions that will reduce the risk to the child. The main point of a children’s hearing is to decide whether compulsory measures of supervision are necessary (i.e whether to issue a supervision requirement). In both circumstances, these decisions can, but do not have to, result in the child being temporarily removed from the family home. The key difference is that the process around the child protection register is voluntary - only the courts or a children’s hearing can result in a child being removed without parental consent and only a court can decide that a child should be removed permanently from his or her parents. This is reflected in the greater legal regulation of the hearings and court system compared to child protection case conferences.

Table 1: Powers of local authority, hearings and courts

Local authority	Children’s Hearing	Sheriff Court
Temporary removal	Temporary removal	Temporary or permanent removal
With parental consent	With or without parental consent	With or without parental consent
(i.e voluntary measures)	i.e ‘compulsory measures’, supervision requirements, place of safety warrants, warrants to secure attendance	child protection order, warrants, permanence order, adoption, appeals from hearings

There is overlap between the criteria for the child protection register (likelihood or risk of significant harm from abuse or neglect), the criteria for a child protection order (risk of significant harm) and some of the grounds for a children’s hearing (lack of parental care, ill treatment and neglect⁶). It is possible therefore, that very similar situations could be dealt with either through child protection register or a hearing. It is also possible that the same child might move between the two systems. A child who is on the child protection register might be referred to the reporter and children already subject to a supervision requirement might be placed on the child protection register.

The following section looks at these two systems in more detail, outlining the main decision making processes, in particular where decisions can be made to remove a child from their parents.

⁵ these focus around child protection case conferences to decide whether to add the child’s name to the child protection register

⁶ ill-treatment and neglect form part of the ground of being the victim of a schedule 1 offence and refers to certain offences under s.12, Children and Young Persons (Scotland) Act 1937.

CHILDREN'S HEARINGS

The hearings system deals with children who meet one or more of the 12 grounds set out in the 1995 Act (s.52) and for whom compulsory measures of care are necessary. Many of the grounds relate to child welfare as can be seen from the table below. Concerns about neglect and lack of parental care represent about 60% of referrals. The number referred on lack of parental care has decreased by 13.9% since 2010/11 and it is generally young children who are referred on this ground (22% of references on lack of parental care were for children aged between birth and two years). Referrals on 'victim of schedule 1 offence' (which includes neglect) were more evenly spread by age (SCRA, 2012).

Table 2: Number of children referred under each ground, 2010/11 and 2011/12

(a) Beyond control of any relevant person	3,305	2,980
(b) Bad associations or moral danger	2,299	2,114
(c) Lack of parental care	13,006	11,194
(d) Victim of a Schedule 1 offence *	16,847	13,151
of which:		
<i>ill treatment, abandonment, neglect and exposure (s.12, 1937 Act)</i>	15,724	11,635
<i>other sch 1 offence (not s.12, 1937 Act)</i>	1,123	1,516
(e) Member of the same household as a victim of a Schedule 1 offender	1,243	1,083
(f) Member of the same household as a Schedule 1 offender	580	503
(g) Member of the same household as an incest victim and perpetrator	9	<5
(h) Not attending school	1,817	1,632
(i) Allegedly committed an offence	8,126	5,604
(j) Misused alcohol or drugs	744	520
(k) Misused solvents	10	8
(l) In the care of the local authority, and special measures are necessary	49	80
Total**	39,217	31,593

source: SCRA, 2012.

These are just referrals and only 16% of children referred on non-offence grounds end up at a children's hearing (SCRA, 2012).

The following sections describe the various stages of intervention from deciding to refer a child to the reporter, to deciding the need for a hearing, to deciding that there needs to be a supervision requirement. This illustrates how compulsory measures are only taken in a small minority of cases and that, although there is considerable government guidance, decisions are largely a matter of professional judgement.

A person decides to refer to the reporter

Anyone can make a referral to the reporter, but the police and social work have particular duties to do so. Most referrals come from the police. Pre-referral screening has been tried in some areas and this led to a marked reduction in unnecessary referrals (SCRA, 2009a).

For example in Edinburgh, as a result of a pre-referral screening project, referrals dropped from 1,402 to 680 per quarter, but the proportion of these requiring a hearing rose from 9% to 21%. This suggests that a much better shared understanding of when to refer to the reporter had

been developed. Instead of referring all children to the reporter, the police exercised their discretion and 'low tariff' cases were diverted directly to social work.

The reporter decides whether a hearing is required

A reporter must decide whether a referral meets the grounds for referral and whether compulsory measures are required. Reporter decisions on non-offence grounds in 2010/11 are set out in the table below. This shows that only 4,574 (16%) of referrals on non-offence grounds lead to hearings while 10,579 (37%) of referrals the reporter decided that compulsory measures were not necessary.

Table 3. Reporter decisions in 2011/12 non-offence grounds only

Arrange Children's Hearing (on new grounds)	4,574
No indication of a need for compulsory measures	10,579
No Hearing - insufficient evidence to proceed	8,229
No Hearing - measures already in place	3,908
No Hearing - refer to local authority	4,249
No Hearing - family have taken action	1,679
No Hearing - diversion to other measures	126
Total	28,617

source: SCRA 2012 n.b Data in this table relates to cases decided in 2011/12 as opposed to referrals received in 2011/12. The totals do not equal the sums as children can be referred more than once in the year and may have multiple Reporter decisions. The totals count each child once.

The reporter has a wide discretion in whether to arrange a hearing. Scottish Children's Reporter Administration (SCRA) guidance states that:

Professional judgement will always be required as to what investigation is appropriate in relation to the particular circumstances of an individual child at any given time (SCRA, online).

The reporter decides on level of investigation required, and having obtained sufficient information, makes a decision based on:

- Extent of concern regarding the child's welfare - taking into account any previous knowledge of child and the likelihood of the reason for the referral recurring
- History of co-operation with previous intervention and impact of any previous intervention
- Current motivation to change/willingness to co-operate

The guidance advises that reporters should consider the child's development, the parenting and the family and environmental factors, and in relation to all 3 areas, should consider the strengths and weaknesses. It is not intended that reporters carry out a comprehensive assessment of risk or need but instead they should take account of other professional assessments.

The local authority has a duty to provide reports requested by the reporter (Section 56(2) and (7) of the 1995 Act) for investigative purposes and for hearings when these have been arranged.

The hearing decides whether to make a supervision requirement

The main purpose of a hearing is to decide whether a child requires compulsory measures of supervision. A supervision requirement can, but does not have to, include a requirement that the child be accommodated away from home. When making their decision, panel members must give reasons and must ensure:

- the best interests of the child are paramount
- the views of the child are taken into account
- not to make an order unless it is necessary to do so

Panel members will also take into account any recommendation by the local authority. The local authority may provide a recommendation to the hearing about where the child should be placed (regulation 7, 2009 regulations). This can recommend being looked after at home or accommodated away from home (eg kinship care, foster care, residential care). The report must cover the needs of the child and the suitability of the placement recommended and the person(s) who will be providing care. It must also show how the requirements of various regulations are met. Guidance states that:

The local authority should provide information about the placement options considered and why they think the recommended one is in the best interests of the child. This should include, where appropriate, the views of the child on the recommendation(s). Information should cover the efforts made to identify a suitable placement for the child within his or her kinship network, and where this is not the recommended option, the reasons for this (Scottish Government, 2011, ch.7)

If the hearing decides to make a supervision requirement, it is implemented by the local authority. It comes back to the hearing for review at least once a year, or if there are significant changes in circumstances⁷.

In 2011/12, around a third of children who had a hearing arranged on grounds (c) and (d) (mainly lack of parental care and neglect) were taken into care (i.e supervision requirement away from home) (SCRA pers comm).

Other decisions the hearing makes

Hearings also consider cases of children removed under child protection orders, they can make place of safety warrants, and they provide advice on permanence orders and adoption. If a hearing decides that a supervision requirement is not necessary they can recommend the local authority provide certain services. Decisions of the hearing can be appealed to the sheriff.

The average time from a referral to a hearing decision⁸ on non-offence grounds was 125 days in 2011/12. This has not changed much over the last four years (SCRA, 2012)

⁷ A child or relevant person can also request a review after three months.

⁸ including any time required for grounds to be proven at the sheriff court

MULTI-AGENCY DECISION TO PLACE CHILD ON CHILD PROTECTION REGISTER

Separately to the hearings process are the procedures to protect children which have built up around the child protection register. Every local authority has such a register, but it is an administrative arrangement – it is not provided for in statute. Social work departments have a general duty to protect the welfare of children (s.12, 1968 and s.22, s25, 1995 Act) and they work with families to achieve this. Following the [Child Protection Reform programme](#) (2003 to 2006), child protection guidance was revised and issued in December 2010. The following is mainly taken from that revised guidance (Scottish Government, 2010b).

Assessing ‘risk of significant harm’

A child might warrant an inter-agency child protection plan if he or she is at risk of significant harm. Child protection procedures require that there is a significant likelihood that abuse or neglect has taken place. However, this does not mean that every child at risk of neglect or abuse will have a child protection plan, nor does it mean that they will be taken into care:

- in instances where a child may have been abused or neglected but the risk of future abuse has not been identified, the child and their family may require support and recovery services but not a child protection plan
- the child’s family may take protective action by removing the child from the source of risk
- if the abuse was from a stranger, then a child protection plan may not be required

The concept of ‘risk’ is central to the child protection assessments. The guidance states:

Only where risks cause, or are likely to cause, significant harm to a child would a response under child protection be required. Where a child has already been exposed to actual harm, assessment will mean looking at the extent to which they are at risk of repeated harm and at the potential effects of continued exposure over time.

Significant harm can result from: “a specific incident, a series of incidents or an accumulation of concerns over a period of time.” To understand and identify significant harm, the guidance states that it is necessary to consider:

- the nature of harm, either through an act of commission or omission
- the impact on the child’s health and development, taking into account their age and stage of development
- the child’s development within the context of their family and wider environment
- the context in which a harmful incident or behaviour occurred
- any particular needs, such as a medical condition, communication impairment or disability, that may affect the child’s development, make them more vulnerable to harm or influence the level and type of care provided by the family
- the capacity of parents or carers to meet adequately the child’s needs and the wider and environmental family context

The child protection guidance outlines the following categories of abuse and neglect:

- physical abuse is the causing of physical harm to a child or young person
- emotional abuse: is persistent emotional neglect or ill treatment that has severe and persistent adverse effects on a child's emotional development
- sexual abuse is any act that involves the child in any activity for the sexual gratification of another person, whether or not it is claimed that the child either consented or assented
- neglect is the persistent failure to meet a child's basic physical and/or psychological needs, likely to result in the serious impairment of the child's health or development

Child Protection Process

Where there is a concern that a child might be at risk of significant harm, then a multi-agency decision (eg social work, police and health) is taken to investigate further. An assessment should be done using the GIRFEC practice model. If this assessment finds that there may be a risk of significant harm then an initial child protection case conference is arranged. This is a multi-agency meeting whose purpose is:

to allow representatives from across services to share information about a child for whom there are child protection concerns, jointly assess that information and the risk to the child and determine whether there is a likelihood of significant harm through abuse or neglect that needs to be addressed through a multi-agency child protection plan

If it is decided that a child protection plan is required then the child's name is added to the child protection register and a 'core group' appointed to monitor the implementation of the child protection plan. Guidance sets out timescales for the convening of meetings, reviews and the notification of significant changes. The case conference and subsequent core group meetings will discuss the actions required to protect the child. The specific support to be provided is left to professional judgement and is not specified in national guidance. There were 5,234 child protection case conferences in 2011 and 3,884 children placed on the child protection register (Scottish Government, 2012a).

Being placed on a child protection register does not necessarily mean that a child will be taken into care. Rather the focus is on taking actions that will reduce the risk. Options might include:

- family support organised by the social work department
- a period of being accommodated away from home, with agreement of the parents and with a view to rehabilitation
- compulsory measures are required and so a referral is made to the reporter
- in an emergency, a child protection order could be applied for

In 2010/11 child protection statistics record that 501 children were removed from the child protection register because they had been taken into care and the risk to them had therefore reduced and another 278 children were removed from the register because were with 'other carers' (Scottish Government, 2012a).

The child protection guidance does not set out specific circumstances when it might be appropriate to remove a child. Rather, most of the advice is on risk assessment. It does however give some general guidance on the need to identify and justify strategies and to inform the family.

having identified risks to a child and their actual or potential impact, the next step will be to consider strategies and interventions for reducing those risks (para 281).

children and their families need to understand clearly what is being done to support them and why (para 282)

any interventions should be proportionate and clearly linked to a desired outcome for the child (para 283)

It may be that the child will be accommodated away from home. If the parents agree to this, then there is no need to refer to the reporter and no need for a hearing. However, all children who are or are about to be looked after through whatever route and in whatever type of placement, are subject to the 2009 regulations which set out the assessment, planning and reviews required.

CIRCUMSTANCES LEADING TO INTERVENTION

While there is no set of 'typical' circumstances leading to a child being removed from their family, there has been some work done by the SCRA on the circumstances of young children referred to the reporter. In 2009 the SCRA looked at 50 cases of children under two years of age who were referred (SCRA, 2009b). These children had difficult family backgrounds and half the children involved had been on the child protection register prior to referral:

- most parents were unemployed
- over a half of the children's parents had mental ill-health (most commonly depression or issues with anger management)
- three quarters of children had parents with histories of offending, and 10% of fathers had been charged with sexual offences
- 48% had a parent with a history of misusing alcohol. Alcohol was reported by professionals (mostly the police) as being the dominating factor in domestic abuse incidents, particularly when the father was intoxicated at the time
- 44% had at least one parent who was using drugs (mostly heroin or cannabis)
- 20% of children had a parent who had been in prison

Concerns included:

- for 20% of cases there were serious concerns about males in the child's home due to their volatile, aggressive and violent behaviour.
- despite 14% of the children being born with neo-natal abstinence syndrome from heroin, most of the 50 children in the research were healthy and meeting developmental milestones

- half of the families had housing problems, with poor or inadequate accommodation, homelessness and transient lifestyles. There was evidence that parents' chaotic lifestyles were impacting on their children. But there were positive attachments between the children and their mothers (less so for fathers), and strong support networks in place for children and their parents, particularly from grandparents.

Referrals to the reporter were mainly on grounds of lack of parental care (42/50).

Of the 50 children, 42% (n=21) were already on the child protection register. Two children who were subjects of child protection orders were also on the child protection register. 22 children were either already themselves or had a sibling subject to a supervision requirement or had a decision pending about whether to put a supervision requirement in place.

This illustrates the overlap between child protection processes, social work interventions and the children's hearings system. The majority of children had had some form of pre-birth risk assessment or case conference to discuss the resource allocations and potential risk to the child following his/her birth. The decision to refer from the child protection register to the reporter tended to follow within a couple of weeks or a couple of months. Ten of the 16 who were referred to the reporter after being placed on the child protection register were referred within one month of their names being placed on the register (most within two weeks) and the remaining six children within two to three months.

Only two of the fifty children in the sample had any form of permanency planning with a view to permanently removing the child from home.

The research concluded that:

Many services appeared to be involved with the child and their family before the referral to the reporter, demonstrating that these services do as much as they feel they can for the child and family before they make a referral or consider that compulsory measures of supervision may be required.

It also showed the difficulties in balancing positive and negative factors in these children's lives and that early intervention in itself may not always be enough:

agencies were identifying children at risk at a very early stage and often before birth, and putting in place services to support the child and their family. Most of the children are healthy and loved by the mothers with strong support networks in place from extended family. However, on-going issues about both parents' addictions and violence especially from males in the house mean that there continue to be concerns about the safety of these children. This suggests that in some cases early intervention and supports provided may not be enough to protect young children from dangers posed by the adults in their lives.

The SCRA has also looked at the circumstances of children subject to child protection orders – i.e there was a need for immediate removal of the child (SCRA, 2008). This didn't specify the reasons for removal, but did show some common characteristics amongst the families involved.

In all of the cases there was evidence of more than one problem in the family. The most common (found in over half of cases) are set out in the table below. Those found in more than 80% of cases were: physical neglect of the child, inability to provide a safe and stable environment, police involvement, estrangement between parents/family members and violence.

Table 4: Common characteristics in the living environments of children subject to CPOs

	Frequency	
evidence of risk of physical neglect	35	88%
unable to provide a safe and stable environment	34	85%
Parent(s) investigated by police	34	85%
established pattern of estrangement	32	80%
Parent(s) noted as violent	32	80%
Parent(s) substance misuse noted	31	78%
record of domestic violence	30	75%
Parent(s) history as a child in care/accommodated	29	72.5%
Parent with physical/mental health problems	28	70%
Extended family non-supportive	28	70%
lack of engagement with agencies/reluctance to do so?	27	68%
homeless/transient lifestyle	25	62.5%
consistently failed rehab/parenting assessment?	24	60%
inability to care for previous children	23	58%
history of offending/incarceration	21	52.5%

source: SCRA, 2008

In all of the cases where the parent/carer had been identified as having a substance misuse problem and recorded as not been able to provide a safe and stable environment, the child was made subject to a supervision requirement away from home.

MOVEMENT BETWEEN DIFFERENT TYPES OF INTERVENTION

Many children move from one type of placement to another, and can be involved at various times with local authority child protection, local authority social work support and the children's hearings system. There is no standard 'route' through the system – although children who start off being looked after 'at home' and who stay 'looked after' are likely to become looked after 'away from home' as time goes on. SCRA has found that while around half of children on supervision requirements are initially with their parents, those who stay on supervision for five years or more are likely to be removed from their parents. The SCRA state that: "Stability and continuity are among the key factors that lead to successful outcomes for looked after children", yet they found that it was relatively common for children to be moved between being in their parents' care and being looked after away from home over the course of their Supervision Requirements. This is illustrated in the following example:

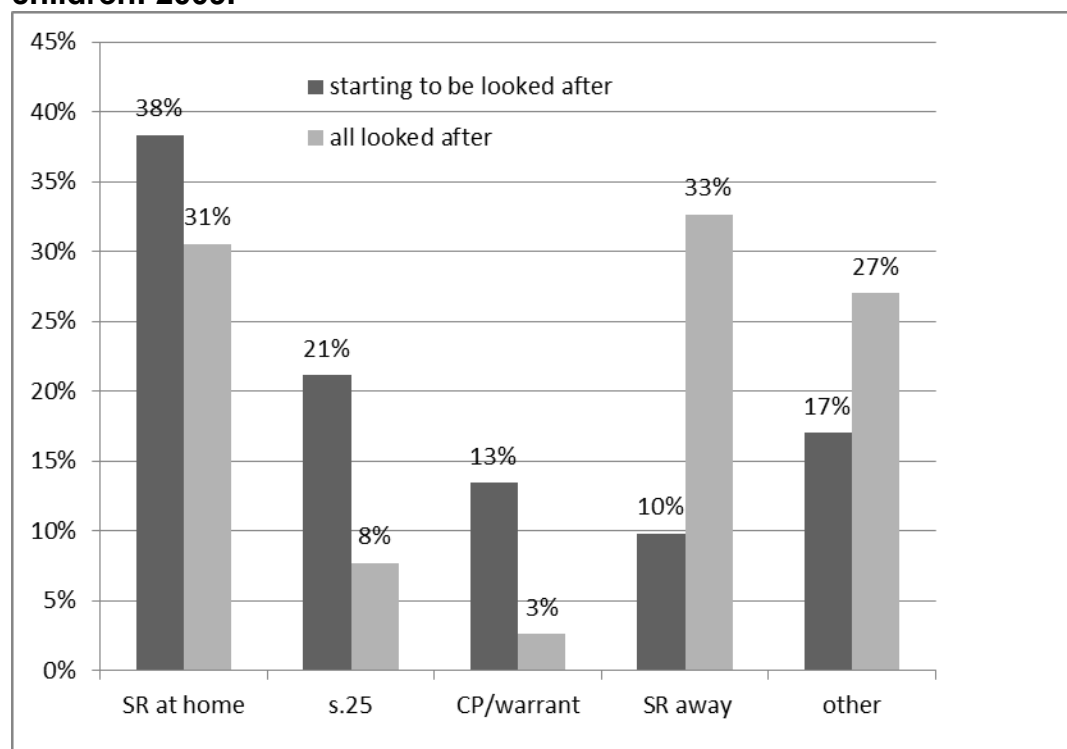
Boy now seven year old

First placed on Supervision Requirement with his parents as a baby. After a year he was moved to relative/friend (approved foster carer) for 18 months and was then returned to his parents. He was in his parents' care for eight months before being placed with foster carers (non-relatives). After three months he was returned to relative/friend (approved foster carer) for eight months before being moved again to foster carers (non-relatives). After three years with his foster carers he was returned to relative/friend (approved foster carer) (SCRA, 2011b)

Some indication of movements can be inferred from the difference between placements for those starting to be looked after and placements for all looked after children. The chart below compares the statutory reason for being looked after for initial placements and for all looked after children in 2009. This shows, for example, that while around a fifth of those starting to be

looked after are placed under 'voluntary' measures (s.25 1995 Act), only 1 in 8 of all looked after children are placed under this measure. This suggests that placements that start off on a 'voluntary' basis often end up going through the children's hearings system of compulsory measures. Similarly, only 1 in 10 'looked after' children are initially placed 'away from home' by a hearing, but eventually, a third are looked after away from home following a hearing.

Chart 4: Comparing initial placement with placement of all currently looked after children: 2009.



source: Scottish Government (2010a) Table 1.4 and 1.14. Other includes parental responsibilities order, criminal court provision, freed for adoption and permanence order.

PLANNING FOR PERMANENCE

When a child becomes 'looked after' or is subject to child protection procedures, the first consideration is to enable the child to live safely with his or her parents on a permanent basis. Whether this is possible might change as circumstances change. Guidance therefore recommends planning for various options.

From the outset in every case, there should be active consideration of the purpose of a child becoming looked after and of the possible outcomes. In its broadest interpretation, 'permanence planning', should cover all options, with the aim of a stable living situation for a child and one which meets his or her needs for consistent, sustainable positive relationships, normally within a family setting. The normal point for the local authority is assumed to be the maintenance of the child within, or the restoration of the child to, the birth parents and failing that to the kinship network, unless it is clear that this is contrary to the best interests of the child. Planning should therefore take account of various possible options, at/or returning home, or away from home. Models of 'twin tracking' should be considered (Scottish Government, 2011a, p. 11).

The guidance on the 2009 regulations envisages a situation where after 6 months the majority of looked after children should have a clear plan either to achieve a return home or permanent placement elsewhere.

It should be clear from the start of each child's involvement in the looked after system that the aim of local authority involvement is to achieve stability and security for the child, in an environment where they are safe and their developmental needs met. Parents should be clear about the efforts they are expected to make to achieve this, how they will be supported in this and also to recognise that if this cannot be managed, alternative plans will be made.

It would normally be expected that within a timescale of six months there should be a clear picture of the direction in an individual case. Where a child is placed by the local authority and he or she has not returned home by this stage or if significant progress towards that has not been achieved, then the review should consider whether a plan for permanence away from birth parents is required (Scottish Government, 2011a ch. 15.7)

Where a child cannot be rehabilitated to their parents, then one option is adoption. However, guidance emphasises that alternatives to adoption must be considered.

The duty on the adoption panel is to make a recommendation on whether adoption is in the best interests of the child. To do this there must be positive reasons to recommend this step. [...] there should be explicit consideration of the benefits of the legal security of adoption for growing children if their birth parents are not able to provide this and a recognition of the life-long aspect of adoption. For each individual child there needs to be clear evidence of why this is not available to them within their birth family or kinship network and sufficient understanding of the needs of the child to be confident that s/he can become a full member of another family. This should be rooted in the history of the child's life thus far and a comprehensive assessment of their future needs. Where it becomes necessary to consider grounds for dispensing with the consent of the birth parents to the adoption, these are listed in section 31 of the 2007 Act. Adoption agencies need to ensure that everyone playing a part in planning adoption has the opportunity to explore these concepts covered by the grounds and consider the evidence to look for and measure against the most up to date knowledge of the effectiveness of adoption (Scottish Government, 2011a, ch. 18)

Section 14 of the Adoption and Children (Scotland) Act 2007 lays out all the considerations that the court or adoption agency must bear in mind in making a decision about the adoption of the child. Regulations⁹ also require the adoption panel to provide "a written report of the consideration given by it to the alternatives to adoption". The long term alternative to parental care or adoption would be a Permanence Order.

DELAYS IN REACHING PERMANENCE

Research by the SCRA on 100 children who were eventually adopted found that the main causes of delay were assessments and attempts at rehabilitation (SCRA, 2011a). This research was carried out prior to the bringing into force of the new permanence orders under the 2007 Act or the Looked After Children (Scotland) Regulations 2009. It is not known whether these have changed practice in recent years.

The SCRA looked at the cases of 100 children who were eventually adopted. All 100 children had already been removed from their parents by social services and most were on the child protection register. For 32 children (35%) it took less than a year from their first contact with services to the decision for permanence. For 35 children (38%) this took over two years, and for

⁹ Regulations 6(3), Adoption Agencies (Scotland) Regulations 2009

19 of these children it took over three years. The main causes of delays in reaching the decision to move to permanence were parenting assessments and rehabilitation attempts with birth parents or other relatives. SCRA recommended that:

There is a need for discussion and guidance on rehabilitation with birth parents. This needs to balance the rights of parents and the child. Consideration should be given to the level of risk a parent presents to their child from what is known about their history of care of their other children, if other children have been adopted or accommodated, and/or their offending history (especially offences against children).

The report also raised the question about general delays in decision making:

If there are delays in decision making for children who are adopted, including babies accommodated at birth, we should consider whether this is also the case for other looked after children.

ANNEX GIRFEC CORE COMPONENTS

Getting it right for every child is founded on ten core components which can be applied in any setting and in any circumstance including the child protection and looked after children processes described in this briefing.

- 1 A focus on improving outcomes for children, young people and their families based on a shared understanding of wellbeing
 - 2 A common approach to gaining consent and to sharing information where appropriate
 - 3 An integral role for children, young people and families in assessment, planning and intervention
 - 4 A co-ordinated and unified approach to identifying concerns, assessing needs, and agreeing actions and outcomes, based on the *Wellbeing Indicators*
 - 5 Streamlined planning, assessment and decision-making processes that lead to the right help at the right time
 - 6 Consistent high standards of co-operation, joint working and communication where more than one agency needs to be involved, locally and across Scotland
 - 7 A *Named Person* for every child and young person, and a *Lead Professional* (where necessary) to co-ordinate and monitor multi-agency activity
 - 8 Maximising the skilled workforce within universal services to address needs and risks as early as possible
 - 9 A confident and competent workforce across all services for children, young people and their families
 - 10 The capacity to share demographic, assessment, and planning information electronically within and across agency boundaries
- ([Scottish Government, Guide to GIRFEC, 2012](#))

Only when support from the family and community and the universal services can no longer meet their needs will targeted and specialist help be called upon. GIRFEC also supports immediate action when necessary to keep children or young people safe. The approach needs a *Named Person* for every child, and a *Lead Professional* to co-ordinate support when two or more agencies are working together with a child or young person.

GIRFEC has developed a 'national practice model' which is designed to apply to a wide range of settings. Its main elements are:

1. Observing and recording using the 'Wellbeing Wheel' of 8 indicators (safe, healthy, achieving, nurtured, active, respected, responsible and included). Taking early action at this stage if possible.
2. Gathering and analysing information using the 'my world triangle' and, in more complex situations 'the resilience matrix.' The *My World Triangle* is made up of three headings: *How I grow and develop, what I need from people who look after me and my wider world.* This helps practitioners understand a child or young person's whole world and can be used to explore needs and risks. The resilience matrix involves consideration of: resilience, vulnerability, adversity and protective environment. It is used in more complex situations, to help practitioners organise and analyse information.
3. Planning, action and review using the 'Wellbeing Wheel.' When the child or young person's needs are clear, they can be summarised using the *Wellbeing Wheel* to develop a plan for action.

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