

CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 17 – Proceedings under Part 10: Evidence

Section 173 – Cases involving sexual behaviour: evidence

251. This section prohibits the admission of certain evidence in any hearing by a sheriff of an application to establish whether or not a ground for referral is established, or to review the establishing of a ground, where that ground involves sexual behaviour engaged in by any person. Subsection (3) applies the prohibition to evidence which shows or tends to show: that such a person is not of good character; that relates to the person's sexual history (other than that forming part of the ground of referral); that relates to any non-sexual past behaviour (other than behaviour around the time of the subject-matter of the ground of referral) that might raise an inference that the person is not credible or the evidence not reliable; or that the person has a condition or precondition, that suggests the person is not credible or that their evidence is unreliable.
252. Subsection (5) provides that the prohibition under subsection (2) applies whether any other person to whom evidence or questioning relates is giving evidence directly at the hearing or if their evidence is given in the form of a statement. Such statements include any representations of fact or opinion however made. This ensures that statements can be made in different formats such as in writing or by audio or visual recording. Subsection (6) provides that references to 'sexual behaviour engaged in' in this section and section 174 include references to having undergone or been made subject to any experience of a sexual nature. These provisions – and the protections offered by them – cover both the victim of sexual behaviour and a child alleged to have committed an offence involving sexual behaviour.