

CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6 – Investigation and Referral to Children's Hearing

Investigation and determination by Principal Reporter

Section 66 – Investigation and determination by Principal Reporter

69. This section provides for the Principal Reporter to investigate a child's circumstances whenever the Principal Reporter considers that a child might be in need of protection, guidance, treatment or control. This includes, but is not limited to, circumstances where information is passed on to the reporter under section 43, section 60 to 64 or under section 43(5) of the Criminal Procedure (Scotland) Act 1995. The source of information may also include the reporter's own files. The reporter must investigate and assess whether there is sufficient, relevant evidence to support the ground(s) for referral and whether compulsory measures of supervision are necessary for the child. If the reporter determines that both tests are satisfied, the reporter must refer the child to a hearing. The reporter may make further investigations as necessary and require the local authority to submit a report on the child.

Section 67 – Meaning of "section 67 ground"

70. This section sets out the grounds upon which a child can be referred to a Children's Hearing. This is an exhaustive list of the grounds.
71. The Principal Reporter must refer a child to a Children's Hearing where any of the grounds in section 67 exist and the reporter is satisfied that the child is in need of compulsory measures of supervision. The section 67 ground(s) may relate: to situations where the child has been or may be harmed by others; or to a specific incident, incidents or pattern of behaviour by the child, or concerning the child. Whatever the ground(s) for referral for a child, there also needs to be an assessment by the reporter to determine whether the child requires compulsory measures of supervision in consequence of the ground(s) for referral and the child's overall circumstances. Therefore the existence of a ground for referral is a necessary, but not a sufficient condition in and of itself, to trigger a referral to a Children's Hearing. It is for the reporter to decide which ground or grounds for referral apply and then to draw up a statement of facts in support of the ground or grounds if the reporter considers there is a need for compulsory measures of supervision.
72. *Section 67(2)* sets out the ground(s) for referral to be considered by the reporter and to be accepted by the child and relevant person before a Children's Hearing or, if the ground(s) are not so accepted, then established before the sheriff.
73. There are two situations where the grounds will not require to be accepted or established before a hearing or the sheriff respectively:

*These notes relate to the Children's Hearings (Scotland) Act
2011 (asp 1) which received Royal Assent on 6 January 2011*

- (a) under section 70 where the sheriff has made a child the subject of an Antisocial Behaviour Order and directed the reporter to arrange a hearing,
 - (b) under section 71 where a child has pled guilty to or been convicted of an offence in the criminal court, and the child has been referred to a Children's Hearing.
74. In these situations, the grounds are treated as having been already established by the sheriff.
75. Subsection (2)(a) to (g) and (p) relate to the conduct of persons in the child's life; subsection (2)(h) relates to the child looked after by the local authority; subsection (2)(i) relates to the child who is subject to a permanence order; and subsection (2)(j) to (o) relate to the conduct of the child.
76. Subsection (2)(a) provides for situations of inadequate parenting on the part of the person who has parental care of the child. A lack of care may arise in a wide variety of ways and may be the outcome of the parent's actions, such as emotional abuse, or of the parent's omissions, as in neglect. The lack of parental care may result from a parent's intentional or unintentional behaviour and could be a consequence of a parent's alcohol or drug abuse, mental ill-health, limited ability or lack of parenting skills. Subsection (2)(a) can be applied on the basis of past or present incidents of lack of parental care but such lack of care needs to link to the impact on the child's health or development, or may be a cause of the child's suffering. The lack of care may relate to another child, but it is the likely impact on the child to which the ground(s) applies that needs to be considered. The ground(s) can be used to protect a new-born child joining the household where there is evidence of a lack of care towards other children or the lack of care can be drawn by inference from the parent's lifestyle or capacity.
77. Subsection (2)(b), (c) and (d) relate to situations where Schedule 1 offences have been committed, such as sexual offences, an offence involving bodily injury, ill-treatment, neglect, exposure or abandonment. "Close connection" at subsection (2)(c) is defined in subsection (3).
78. "Household" at subsection (2)(d) can be given a wide interpretation. It means more than simply the bricks and mortar of the building where people live. When people are held together by particular bonds of affection or contact, even though people may not be living together at the same address, they may still be members of the same household.
79. Subsection (2)(e) is designed to protect the child exposed to significant negative influences. It may include situations of a child in a home frequented by drug addicts or alcoholics, a child who is frequenting a neighbour's house where the child is being involved in harmful activity, and a child who has been groomed by a paedophile, whether within or outwith the home or online.
80. Subsection (2)(f) is designed to cover a child who is in an environment of domestic abuse.
81. Subsection (2)(g) makes provision for a child who has or is likely to have significant contact with someone who has committed an offence under Parts 1, 4 or 5 of the Sexual Offences (Scotland) Act 2009 such as rape or other serious sexual offences.
82. Subsection (2)(h) provides for children who are being looked after by the local authority through a voluntary agreement and who, for example, repeatedly abscond or endanger themselves or others by their own behaviour.
83. Subsection (2)(i) provides for children who are the subject of a permanence order under the Adoption and Children (Scotland) Act 2007 and who may require special measures for their support.
84. "Special measures" in subsection (2)(h) and (i) mean measures over and above being looked after by a local authority or under the terms of the permanence order. The

Principal Reporter must still decide if the ground is evidenced and there is a need for compulsory measures over and above the local authority's powers. The ground may apply, for example, where a child meets the criteria for secure accommodation or where the child has particular needs or behaviours that cannot be adequately addressed within the scope of the permanence order.

85. Subsection (2)(j) is based on section 52(2)(i) of the 1995 Act. This ground applies only to children who have committed an offence.
86. Subsection (2)(k) and (l) apply to children who have misused alcohol or drugs. "Controlled drug" is defined in subsection (6) by reference to the Misuse of Drugs Act 1971.
87. Subsection (2)(m) is designed to cover circumstances where the conduct of the child either has or is likely to have a serious adverse effect on the health, safety or development of the child (e.g. self-harm or serious risk-taking behaviour such as playing on railway lines), or has caused or is likely to have a seriously adverse effect on the health, safety or development of another person (e.g. gang behaviour or severe bullying).
88. Subsection (2)(n) is intended to cover situations where a child is behaving in such a way that the child does not respond to the reasonable controls and boundaries made by the parent(s)/carers/guardians. For example this may apply when a child is running away or continually staying out overnight without the consent of the parent. "Relevant person" is defined in section 200.
89. Subsection (2)(o) covers the situation where the child has repeatedly failed to attend school without reasonable excuse for the absences. "Reasonable excuses" are defined in section 42 of the Education (Scotland) Act 1980. The Act refers to difficulties with travel arrangements, health problems or special circumstances acceptable to the education authority or a court. Exclusion due to a child's disruptive behaviour does not constitute a reasonable excuse for not attending school. A child who is being appropriately educated at home is considered to have a reasonable excuse
90. Subsection (2)(p) is designed to protect a child who is being, or is likely to be, subject to physical, emotional or other pressure to enter into a marriage or civil partnership, or is, or is likely to become, a member of the same household as such a child.
91. Subsection (4) enables the Scottish Ministers by order, to modify the grounds for referral. Such modifications may concern: adding a new ground; removing an existing ground; amending any existing ground; and amending the definition of an existing ground. Any such modification will require to be made by an order subject to affirmative procedure.

Section 68 – Determination under section 66: no referral to children's hearing

92. This section relates to circumstances where the Principal Reporter is satisfied that a Children's Hearing does not require to be arranged. Subsection (2) applies where a child is kept in a place of safety and places a duty on the reporter to order the release of the child from the place of safety. Subsections (3) and (4) provide that the reporter must inform the relevant local authority, as well as the child, relevant person and any person(s) who provided notice or information, of the decision not to refer the child to a hearing.
93. Subsection (5) provides for the reporter, if the reporter considers it appropriate, to refer the case to the relevant local authority for the child or such other person or body as may be specified by the Scottish Ministers by order with a view to their making arrangements for advice, guidance and assistance to the child and the child's family. Subsection (6) provides that the reporter cannot subsequently refer a child to a hearing unless the reporter receives new information to support a subsequent referral.

Section 69 – Determination under section 66: referral to children's hearing

94. This section provides that, where the Principal Reporter is satisfied that a Children's Hearing is required; the reporter must arrange the hearing. Subsection (3) provides that when the reporter is satisfied that a hearing is required for a child who is detained in police custody, the reporter must arrange for a Children's Hearing to take place on the third day after the reporter received the referral from the police. Subsections (4) and (5) provide that the reporter must request a report on the child from the relevant local authority unless the reporter has already done so as part of an initial investigation, in which event the reporter may request supplementary information from the local authority.

Section 70 – Requirement under Antisocial Behaviour etc. (Scotland) Act 2004

95. This section provides that where the sheriff refers a case to the Principal Reporter under section 12(1A) of the Antisocial Behaviour etc. (Scotland) Act 2004, the ground(s) are to be treated as having been established by the sheriff under section 108 of this Act. The hearing will take place as if the sheriff has then directed the reporter under section 108(2) to arrange a hearing. The sheriff is required to give the reporter a statement specifying the ground which has been determined by the sheriff in the antisocial behaviour proceedings. There is no need for a ground(s) hearing.

Section 71 – Case remitted under section 49 of Criminal Procedure (Scotland) Act 1995

96. This section applies when a child has pled guilty to or been convicted of an offence in the criminal court and the child is not already subject to a compulsory supervision order. In these circumstances, the grounds for referral are deemed to be established by the sheriff under section 108 of this Act, and there is no need for a Children's Hearing to consider the grounds further.

Section 72 – Child in place of safety: Principal Reporter's powers

97. This section deals with the situation where the police make a referral to the Principal Reporter when a child is detained in police custody and where it has been decided that criminal proceedings are not going to be taken. Subsection (2) makes provision for the reporter to direct the release of the child from police custody or to direct that the child continues to be detained until the Children's Hearing for the child.