

# CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 9 – Children's Hearing**

##### **Grounds hearing**

##### *Section 94 – Child or relevant person unable to understand grounds*

141. This section sets out the procedure for the grounds hearing where a child or relevant person is unable to understand the grounds for referral and so can neither accept nor deny the grounds. The requirement to explain the grounds applies in relation to each individual ground and if the chairing member considers that the child or a relevant person would not be capable of understanding the explanation of a particular ground then the chairing member need not provide the explanation for that ground and may refer that ground to the sheriff for establishment. If the child or relevant person is capable of understanding some of the grounds the chairing member must still explain those grounds and seek acceptance of those individual grounds.
142. Subsection (2) provides that the hearing must either direct the Principal Reporter to make an application to the sheriff for establishment of the ground(s) or discharge the referral in relation to the ground(s) that is not understood. Subsection (3) provides that if the hearing consider that the child or relevant person would not be capable of understanding an explanation of the grounds, for example, if the child is a baby, then the chairing member is not required to proceed with an explanation under section 90(1) in so far as it relates to the person who is not capable of understanding the ground. The explanation still needs to be given to those who are capable of understanding the ground. Subsection (4) applies where the hearing directs the reporter to make an application to the sheriff for a proof hearing and the child has not understood the grounds for referral. It follows that the child may also not understand the explanation provided by the chairing member explaining the purpose of the application to the sheriff.