



# Children's Hearings (Scotland) Act 2011

## 2011 asp 1

### PART 10

#### PROCEEDINGS BEFORE SHERIFF

#### *Application to establish grounds*

#### **101 Hearing of application**

- (1) This section applies where an application is made to the sheriff by virtue of section 93(2)(a) or 94(2)(a).
- (2) The application must be heard not later than 28 days after the day on which the application is lodged.
- (3) The application must not be heard in open court.

#### **Commencement Information**

**II** S. 101 in force at 24.6.2013 by [S.S.I. 2013/195](#), [arts. 2, 3](#)

#### **102 Jurisdiction and standard of proof: offence ground**

- (1) This section applies where an application is to be made to the sheriff to determine whether the ground mentioned in section 67(2)(j) is established in relation to a child.
- (2) The application must be made to the sheriff who would have jurisdiction if the child were being prosecuted for the offence or offences.
- (3) The standard of proof in relation to the ground is that which applies in criminal proceedings.
- (4) It is immaterial whether the application also relates to other section 67 grounds.

*Changes to legislation: Children's Hearings (Scotland) Act 2011, Cross Heading: Application to establish grounds is up to date with all changes known to be in force on or before 26 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

**Commencement Information**

**I2** S. 102 in force at 24.6.2013 by [S.S.I. 2013/195](#), [arts. 2, 3](#)

**103 Child's duty to attend hearing unless excused**

- (1) This section applies where an application is made to the sheriff by virtue of section 93(2)(a) or 94(2)(a).
- (2) The child to whom the application relates must attend the hearing of the application unless the child is excused from doing so under subsection (3).
- (3) The sheriff may excuse the child from attending all or part of the hearing of the application where—
  - (a) the hearing relates to the ground mentioned in section 67(2)(b), (c), (d) or (g) and the attendance of the child at the hearing, or that part of the hearing, is not necessary for a fair hearing,
  - (b) the attendance of the child at the hearing, or that part of the hearing, would place the child's physical, mental or moral welfare at risk, or
  - (c) taking account of the child's age and maturity, the child would not be capable of understanding what happens at the hearing or that part of the hearing.
- (4) The child may attend the hearing of the application even if the child is excused from doing so under subsection (3).
- (5) If the child is not excused from attending the hearing but the child does not attend the sheriff may grant a warrant to secure attendance in relation to the child.
- (6) Subsection (7) applies if—
  - (a) the hearing of the application is to be continued to another day, and
  - (b) the sheriff is satisfied that there is reason to believe that the child will not attend on that day.
- (7) The sheriff may grant a warrant to secure attendance in relation to the child.

**Commencement Information**

**I3** S. 103 in force at 24.6.2013 by [S.S.I. 2013/195](#), [arts. 2, 3](#)

**104 Child and relevant person: representation at hearing**

- (1) This section applies where an application is made to the sheriff by virtue of section 93(2)(a) or 94(2)(a).
- (2) The child may be represented at the hearing of the application by another person.
- (3) A relevant person in relation to the child may be represented at the hearing of the application by another person.
- (4) A person representing the child or relevant person at the hearing need not be a solicitor or advocate.

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#### **Commencement Information**

**I4** S. 104 in force at 24.6.2013 by [S.S.I. 2013/195](#), [arts. 2, 3](#)

**Changes to legislation:**

Children's Hearings (Scotland) Act 2011, Cross Heading: Application to establish grounds is up to date with all changes known to be in force on or before 26 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 17A inserted by [2020 asp 16 s. 6\(2\)](#)
- s. 25(3) inserted by [2020 asp 16 s. 30\(7\)](#)
- s. 27(3)-(4A) substituted for s. 27(3)(4) by [2020 asp 16 s. 3\(2\)](#)
- s. 62(5)(q)-(u) inserted by [2020 asp 9 s. 8\(2\)\(b\)](#)
- s. 163(2)-(2B) substituted for s. 163(2) by [2020 asp 16 s. 27\(3\)\(b\)](#)
- s. 164(2)-(2B) substituted for s. 164(2) by [2020 asp 16 s. 27\(4\)\(b\)](#)
- s. 165(2)-(2B) substituted for s. 165(2) by [2020 asp 16 s. 27\(5\)\(b\)](#)