



# Children's Hearings (Scotland) Act 2011

## 2011 asp 1

### PART 10

#### PROCEEDINGS BEFORE SHERIFF

##### *Review of sheriff's determination*

#### **110 Application for review of grounds determination**

- (1) This section applies where the sheriff makes a determination under section 108 that a section 67 ground (other than the ground mentioned in section 67(2)(j) if the case was remitted to the Principal Reporter under section 49 of the Criminal Procedure (Scotland) Act 1995) is established in relation to a child (a "grounds determination").
- (2) A person mentioned in subsection (3) may apply to the sheriff for a review of the grounds determination.
- (3) The persons are—
  - (a) the person who is the subject of the grounds determination (even if that person is no longer a child),
  - (b) a person who is, or was at the time the grounds determination was made, a relevant person in relation to the child.

#### **111 Sheriff: review or dismissal of application**

- (1) This section applies where an application is made under section 110.
- (2) If subsection (3) applies the sheriff must review the grounds determination.
- (3) This subsection applies if—
  - (a) there is evidence in relation to the ground that was not considered by the sheriff when making the grounds determination,
  - (b) the evidence would have been admissible,
  - (c) there is a reasonable explanation for the failure to lead that evidence before the grounds determination was made, and

- (d) the evidence is significant and relevant to the question of whether the grounds determination should have been made.

(4) If subsection (3) does not apply, the sheriff must dismiss the application.

## **112 Child's duty to attend review hearing unless excused**

- (1) This section applies where—
  - (a) a hearing is to be held by virtue of section 111(2) for the purpose of reviewing a grounds determination, and
  - (b) the person who is the subject of the grounds determination is still a child.
- (2) The child must attend the hearing unless the child is excused by the sheriff on a ground mentioned in section 103(3).
- (3) The child may attend the hearing even if the child is excused under subsection (2).
- (4) If the sheriff is satisfied that there is reason to believe that the child would not otherwise attend the hearing, the sheriff may grant a warrant to secure attendance.

## **113 Child and relevant person: representation at review hearing**

- (1) This section applies where a hearing is to be held by virtue of section 111(2) for the purpose of reviewing a grounds determination.
- (2) The person who is the subject of the grounds determination ("P") may be represented at the hearing by another person.
- (3) A relevant person in relation to P (or, where P is no longer a child, a person who was a relevant person in relation to P at the time the grounds determination was made) may be represented at the hearing by another person.
- (4) A person representing P or the relevant person (or person who was a relevant person) at the hearing need not be a solicitor or advocate.

## **114 Sheriff's powers on review of grounds determination**

- (1) This section applies where the sheriff reviews a grounds determination by virtue of section 111(2).
- (2) If the sheriff is satisfied that the section 67 ground to which the application relates is established, the sheriff must refuse the application.
- (3) If the sheriff determines that the ground to which the application relates is not established, the sheriff must—
  - (a) recall the grounds determination, and
  - (b) make an order discharging (wholly or to the extent that it relates to the ground) the referral of the child to the children's hearing.

## **115 Recall: power to refer other grounds**

- (1) This section applies where—
  - (a) the sheriff makes an order under section 114(3), but

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- (b) another section 67 ground specified in the same statement of grounds that gave rise to the grounds determination is accepted or established.
- (2) If the person to whom the grounds determination relates is still a child, the sheriff must direct the Principal Reporter to arrange a children's hearing for the purpose of considering whether a compulsory supervision order should be made in relation to the child.
- (3) If the sheriff is satisfied that the nature of the child's circumstances is such that for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that an interim compulsory supervision order be made, the sheriff may make an interim compulsory supervision order in relation to the child.
- (4) If the sheriff is satisfied that there is reason to believe that the child would not otherwise attend the children's hearing, the sheriff may grant a warrant to secure attendance.

#### **116 Recall: powers where no grounds accepted or established**

- (1) This section applies where—
  - (a) the sheriff makes an order under section 114(3), and
  - (b) none of the other section 67 grounds specified in the statement of grounds that gave rise to the grounds determination is accepted or established.
- (2) If a compulsory supervision order that is in force in relation to the person who is the subject of the grounds determination was in force at the time of the grounds determination, the sheriff must require a review of the compulsory supervision order.
- (3) In any other case, the sheriff must—
  - (a) terminate any compulsory supervision order that is in force in relation to the person who is the subject of the grounds determination, and
  - (b) if that person is still a child, consider whether the child will require supervision or guidance.
- (4) Where that person is still a child and the sheriff considers that the child will require supervision or guidance, the sheriff must order the relevant local authority for the child to provide it.
- (5) Where the sheriff makes such an order, the relevant local authority for the child must give such supervision or guidance as the child will accept.

#### **117 New section 67 ground established: sheriff to refer to children's hearing**

- (1) This section applies where—
  - (a) by virtue of section 110 the sheriff is reviewing a grounds determination, and
  - (b) the sheriff is satisfied that there is sufficient evidence to establish a section 67 ground that is not specified in the statement of grounds that gave rise to the grounds determination.
- (2) The sheriff must—
  - (a) determine that the ground is established, and
  - (b) if the person to whom the grounds determination relates is still a child, direct the Principal Reporter to arrange a children's hearing for the purpose

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of considering whether a compulsory supervision order should be made in relation to the child.

- (3) If the sheriff is satisfied that the nature of the child's circumstances is such that for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that an interim compulsory supervision order be made, the sheriff may make an interim compulsory supervision order in relation to the child.
- (4) If the sheriff is satisfied that there is reason to believe that the child would not otherwise attend the children's hearing, the sheriff may grant a warrant to secure attendance.