

CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10 – Proceedings before Sheriff

Application for extension or variation of interim compulsory supervision order

Section 98 – Application for extension or variation of interim compulsory supervision order

148. This section applies to the extension of an interim compulsory supervision order where a child has been made the subject of such interim orders for a continuous period of 66 days.
149. Subsections (2) and (3) provide that the Principal Reporter may apply to the sheriff for an extension or an extension and variation of the current interim compulsory supervision order at any time prior to the expiry of the current order. Subsection (4) provides that an interim order may only be extended, or extended and varied, where the sheriff is satisfied that the nature of the child's circumstances makes this extension necessary for the protection, guidance, treatment or control of the child.

Section 99 – Further extension or variation of interim compulsory supervision order

150. This section enables the further extension of interim compulsory supervision orders which have already been extended or extended and varied. Section 99 enables the sheriff to continue to extend or vary interim orders as many times as the sheriff considers appropriate.

Power to make interim compulsory supervision order

Section 100 - Sheriff's power to make interim compulsory supervision order

151. This section enables the sheriff to make an interim compulsory supervision order during the hearing of an application to establish the grounds where the hearing needs to be continued to another day. Where a child is not already subject to an interim compulsory supervision order and the application to the sheriff has been made but not yet determined, the sheriff may make an interim compulsory supervision order if satisfied that such an order is necessary, as a matter of urgency, for the protection, guidance, treatment or control of the child.

Application to establish grounds

Section 101 – Hearing of application

152. This section sets a time limit of 28 days for the hearing by the sheriff to commence to consider the application by the Principal Reporter to determine whether the ground(s)

for referral are established or not. The hearing is closed to the public and may not be heard in open court.

Section 102 – Jurisdiction and standard of proof: offence ground

153. This section provides a special jurisdiction rule for grounds hearings where the ground(s) for referral include that a child has committed an offence. Subsection (2) provides that the application must be made to a sheriff who would have jurisdiction if the child were being prosecuted for the offence. Subsection (3) provides that the standard of proof in relation to the ground is that which applies in criminal proceedings – that is proved beyond reasonable doubt.

Section 103 – Child's duty to attend hearing unless excused

154. This section requires a child to appear before the sheriff for the hearing to establish grounds for referral. Subsections (2) and (3) provide for the sheriff to release the child from the obligation to attend the hearing: where the child has been the victim of a schedule 1 offence, has (or is likely to have) a close connection with a person who has committed such an offence, is (or is likely to become) a member of the same household as a child who is a victim of such an offence, or has (or is likely to have) a close connection with a person who has committed an offence under Parts 1, 4, or 5 of the Sexual Offences (Scotland) Act 2009 and the sheriff considers that the child's attendance is not necessary to ensure a fair hearing; where the sheriff considers that attending the court hearing would put the child's physical, moral or mental welfare at risk; or where taking account of the child's age and maturity, the child would be incapable of understanding the hearing or that part of the hearing.
155. Subsection (4) provides that the child may attend the hearing even where he or she has been excused from the obligation to do so. Subsection (5) provides for the sheriff to grant a warrant to secure attendance of the child at the hearing, if the child has failed to attend the hearing, without being excused from attending. Subsections (6) and (7) provide that where a proof hearing needs to be continued, for example to another day, the sheriff has the power to grant a further warrant to secure the attendance of the child if there is reason to believe that the child may not attend the continued hearing.

Section 104 – Child and relevant person: representation at hearing

156. This section allows the child and/or the relevant person(s) to be represented at the hearing by another person who may or may not be a solicitor or advocate.

Ground accepted before application determined

Section 105 – Application by virtue of section 93: ground accepted before determination

157. This section applies to applications to the sheriff to establish grounds for referral under section 93(2)(a). If, at the hearing before the sheriff, the child and the relevant person(s) accept the grounds, the sheriff must, unless satisfied in all the circumstances that evidence in relation to the ground should be heard, dispense with hearing the evidence and find the ground established. This does not remove the sheriff's discretion to hear evidence where the sheriff considers this is necessary.

Section 106 – Application by virtue of section 94: ground accepted by relevant person before determination

158. This section provides powers for the sheriff to determine grounds for referral on the information lodged with the application, instead of holding a formal hearing. This applies when an application has been made to the sheriff for establishment of grounds where a child is unable to understand the grounds for referral and so can neither accept nor deny the grounds and, before the application is determined, the ground is accepted

by each relevant person in relation to the child who is present at the hearing before the sheriff. Subsection (2)(a) and (b) sets out the two circumstances where the sheriff may not use the expedited process set out at subsection (1). First, where the Principal Reporter, the child, a relevant person or an appointed Safeguarder have requested a formal hearing the sheriff must comply with such a request; and secondly where the sheriff considers that it would not be appropriate to determine the application without a hearing. Subsection (4) provides for an expedited timescale of 7 days for the sheriff to determine the application without hearing evidence.

Withdrawal of application: termination of orders etc.

Section 107 – Withdrawal of application: termination of orders etc. by Principal Reporter

159. This section provides that where an application is made to the sheriff under sections 93 or 94 of the Act and because of a change in circumstances or new information coming to light, the reporter no longer considers that any ground to which the application relates applies in relation to the child, then the reporter must withdraw the application to the sheriff. The application may only be withdrawn by the reporter before it has been determined by the sheriff.

Section 108 – Determination: ground established

160. This section applies where an application to establish grounds for referral under sections 93 or 94 is determined by the sheriff. Subsections (2) and (4) provide a duty on the sheriff to direct the Principal Reporter to arrange a Children's Hearing to consider whether a compulsory supervision order should be made in relation to the child where the sheriff determines that one or more of the grounds are established or one or more of the grounds were accepted at the grounds hearing by the child and each relevant person. Subsection (3) provides that in any other case the sheriff must dismiss the application and discharge the referral to the Children's Hearing.

Section 109 – Determination: power to make interim compulsory supervision order etc.

161. This section applies where the sheriff directs the reporter to arrange a children's hearing to decide whether to make a compulsory supervision order in relation to the child. It enables the sheriff to make an interim compulsory supervision order in relation to the child if they consider that such an order is required. Subsections (2) and (3) provide for the making of an interim compulsory supervision order where the child was not already subject to an interim order immediately prior to the hearing at which the sheriff determined the application to establish grounds for referral, and the sheriff considers that the nature of the child's circumstances is such that an interim order is necessary for the protection, guidance, treatment or control of the child. Subsection (3) makes clear that the sheriff may only make such an order if the sheriff considers that circumstances are urgent.
162. Subsections (4) and (5) make similar provision for the sheriff to make an interim compulsory supervision order where a child was already subject to an interim order immediately prior to the hearing at which the sheriff determined the application to establish grounds for referral, and the sheriff considers that the nature of the child's circumstances is such that an interim order is necessary for the protection, guidance, treatment or control of the child. Where an order has been in place previously, then the urgency in the situation should have been removed due to the effect of the order, for example, a child may already be in a place of safety as a condition of an interim order. However, it may be necessary to continue the order meantime to ensure that the child's circumstances do not deteriorate pending a substantive decision. As such the test for the making of a further interim compulsory supervision order under subsection (5) is not

that the child's circumstances are such that urgent action is required but that the order continues to be necessary for the protection, guidance, treatment or control of the child.

163. Subsection (6) provides that the sheriff may grant a warrant to secure the child's attendance at the subsequent Children's Hearing if the sheriff considers that the child would not attend otherwise. Subsection (7) makes clear that a subsequent Children's Hearing must be held within 3 days of the making of the interim order where the order requires the child to reside at a place of safety.

Review of sheriff's determination

Section 110 – Application for review of grounds determination

164. This section restricts an application for a review of the grounds determination to the person who was the subject of that grounds determination (even if that person is no longer a child); or a person who is a relevant person in relation to the child. The right to request a review of the establishment of the ground does not apply to any offence ground remitted under section 71. The child in these circumstances has appeal rights under the Criminal Procedure (Scotland) Act 1995.

Section 111 – Sheriff: review or dismissal of application

165. This section sets out the circumstances in which a sheriff must review the establishment of grounds for referral where an application has been made under section 110. The sheriff must review the case if they consider: that there is evidence in relation to the ground that was not considered by the sheriff when making the grounds determination; that this evidence would have been admissible at the time; and that there is a reasonable explanation for the failure to lead that evidence during the initial grounds determination. The evidence must be significant and relevant to the question of whether the grounds determination should have been made. If these conditions are not satisfied, then the sheriff must dismiss the application for a review of the grounds determination.

Section 112 – Child's duty to attend review hearing unless excused

166. This section requires that, where an application for the review of the grounds determination is made in relation to a person who is still a child, that child must attend the review hearing. The child must attend the review hearing unless they are excused by the sheriff. If excused the child may still attend the hearing. This places the child under the same obligations and provides the same right to attend as in relation to the original hearing to establish the grounds. Subsection (4) provides that the sheriff may grant a warrant to secure the child's attendance at the hearing if the sheriff considers that there is reason to believe that the child would not attend voluntarily.

Section 113 – Child and relevant person: representation at review hearing

167. This section provides that the child and relevant person have the same right to choose to be represented at a review of a grounds determination by a representative of their choice (who may or may not be a legal representative) as at the original hearing to establish the grounds. This right applies whether or not the person to whom the review relates to is still a child, and does not affect their right to legal representation.

Section 114 – Sheriff's powers on review of grounds determination

168. This section sets out the options available to the sheriff after the sheriff has reviewed the establishment of grounds for referral under section 111. If the sheriff determines that the ground for referral is established, then the sheriff must dismiss the application without further consideration. Subsection (3) provides that if the sheriff finds that one or more of the original grounds are not established, the sheriff must uphold the application, recall the grounds determination and discharge the referral to the Children's Hearing, in whole or part to the extent that it relates to the ground.

Section 115 – Recall: power to refer other grounds

169. This section applies when the sheriff makes an order under section 114(3) above recalling the grounds determination but another ground for referral is accepted or established. That ground must be specified in the same statement of grounds which gave rise to the grounds determination. Subsection (2) provides that, if the person who is the subject of the grounds hearing is still a child, the sheriff must direct the Principal Reporter to arrange a Children's Hearing to consider whether a compulsory supervision order should be made in relation to the child. Subsection (3) provides that the sheriff may make an interim compulsory supervision order for the child if the sheriff is satisfied that the nature of the child's circumstances is such that urgent action is necessary for protection, guidance, treatment or control of the child. Subsection (4) provides that the sheriff may grant a warrant to secure the child's attendance at the hearing if the sheriff considers that there is reason to believe that the child would not attend voluntarily.

Section 116 – Recall: powers where no grounds accepted or established

170. This section applies where the sheriff makes an order under section 114(3) recalling the grounds determination and no other grounds for referral specified in the statement of grounds which gave rise to the grounds determination are accepted or established. Subsection (2) provides a duty on the sheriff to refer the child's case back to the Children's Hearing to review the compulsory supervision order that was in force at the time of the grounds determination by the sheriff. This applies where a child was already subject to a compulsory supervision order and the reporter referred new grounds for consideration by the Children's Hearing.
171. Subsection (3) provides that the sheriff must terminate any compulsory supervision order that is in force and consider whether the person, if still a child, requires any supervision or guidance. Subsection (4) provides that, where the person is still a child, and the sheriff considers that the child requires supervision or guidance, then the sheriff must order the local authority to provide that supervision or guidance. Subsection (5) places a duty on the local authority to comply with the sheriff's order. The duty on the local authority extends to supervision and guidance that the child will accept. The supervision or guidance is voluntary and cannot be enforced upon the child.

Section 117 – New section 67 ground established: sheriff to refer to children's hearing

172. This section applies in cases where the sheriff is reviewing a grounds determination under section 110. It provides that, where the sheriff is satisfied that there is sufficient evidence to establish any ground for referral that was not specified in the statement of grounds that gave rise to the grounds determination, the sheriff must determine that ground to be established. Subsection (2)(b) provides that 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 to consider whether a compulsory supervision order should be made in relation to the child.
173. Subsection (3) provides that the sheriff may make an interim compulsory supervision order for the child if the sheriff is satisfied that the nature of the child's circumstances is such that urgent action is considered necessary for the protection, guidance, treatment or control of the child. Subsection (4) provides that the sheriff may grant a warrant to secure the child's attendance at the subsequent Children's Hearing if the sheriff is satisfied that there is reason to believe that the child would not otherwise attend.

Application of Part where compulsory supervision order in force

Section 118 - Application of Part where compulsory supervision order in force

174. This section clarifies how the provisions of Part 10 apply in relation to a child who is already subject to a compulsory supervision order and further grounds are the

*These notes relate to the Children's Hearings (Scotland) Act
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subject of an application to establish the grounds or an application for review of a grounds determination has been made. It provides that where a child is already subject to a compulsory supervision order, Part 10 is to be read as if references to an interim compulsory supervision order were references to an interim variation of the compulsory supervision order, and as if references to the sheriff directing the Principal Reporter to arrange a Children's Hearing to decide whether to make a compulsory supervision order in relation to the child were references to the sheriff requiring a review of the compulsory supervision order. Subsection (5) exempts sections 98 and 99 as section 96(4) (cap of 66 days) does not apply to the Children's Hearing's power to make an interim variation of a compulsory supervision order.