



# Children's Hearings (Scotland) Act 2011

## 2011 asp 1

### PART 10

#### PROCEEDINGS BEFORE SHERIFF

##### *Application for extension or variation of interim compulsory supervision order*

#### **98 Application for extension or variation of interim compulsory supervision order**

- (1) This section applies where—
  - (a) a child is subject to an interim compulsory supervision order (“the current order”), and
  - (b) by virtue of section 96(4) a children’s hearing would be unable to make a further interim compulsory supervision order.
- (2) The Principal Reporter may, before the expiry of the current order, apply to the sheriff for an extension of the order.
- (3) The Principal Reporter may, at the same time as applying for an extension of the current order, apply to the sheriff for the order to be varied.
- (4) The current order may be extended, or extended and varied, only 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 that the current order be extended or extended and varied.

#### **99 Further extension or variation of interim compulsory supervision order**

- (1) This section applies where an interim compulsory supervision order is—
  - (a) extended, or extended and varied, under section 98(4), or
  - (b) further extended, or further extended and varied, under subsection (4).
- (2) The Principal Reporter may, before the expiry of the order, apply to the sheriff for a further extension of the order.
- (3) The Principal Reporter may, at the same time as applying for a further extension of the order, apply to the sheriff for the order to be varied.

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- (4) The sheriff may further extend, or further extend and vary, the order 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 that the order be further extended or, as the case may be, further extended and varied.

*Power to make interim compulsory supervision order*

**100 Sheriff's power to make interim compulsory supervision order**

- (1) This section applies where—
- (a) a child is not subject to an interim compulsory supervision order, and
  - (b) an application to the sheriff by virtue of section 93(2)(a) or 94(2)(a) in relation to the child has been made but not determined.
- (2) 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.

*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.

**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.

**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.

#### **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.

#### *Ground accepted before application determined*

#### **105 Application by virtue of section 93: ground accepted before determination**

- (1) This section applies where—
  - (a) an application is made to the sheriff by virtue of section 93(2)(a) in relation to a ground, and
  - (b) before the application is determined, the ground is accepted by the child and each relevant person in relation to the child who is present at the hearing before the sheriff.
- (2) Unless the sheriff is satisfied in all the circumstances that evidence in relation to the ground should be heard, the sheriff must—
  - (a) dispense with hearing such evidence, and
  - (b) determine that the ground is established.

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

- (1) This section applies where—
  - (a) an application to the sheriff is made by virtue of section 94(2)(a) in relation to a ground on the basis that the child would not understand, or has not understood, an explanation given in compliance with section 90(1)(a), and
  - (b) 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.
- (2) The sheriff may determine the application without a hearing unless—
  - (a) a person mentioned in subsection (3) requests that a hearing be held, or
  - (b) the sheriff considers that it would not be appropriate to determine the application without a hearing.
- (3) The persons are—
  - (a) the child,
  - (b) a relevant person in relation to the child,
  - (c) if a safeguarder has been appointed, the safeguarder,
  - (d) the Principal Reporter.
- (4) If the sheriff determines the application without a hearing, the sheriff must do so before the expiry of the period of 7 days beginning with the day on which the application is made.

*Withdrawal of application: termination of orders etc.*

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

- (1) This section applies where—
  - (a) an application is made to the sheriff by virtue of section 93(2)(a) or 94(2)(a), and
  - (b) before the application is determined, due to a change of circumstances or information becoming available to the Principal Reporter, the Principal Reporter no longer considers that any ground to which the application relates applies in relation to the child.
- (2) The Principal Reporter must withdraw the application.
- (3) If one or more grounds were accepted at the grounds hearing which directed the Principal Reporter to make the application, the Principal Reporter must arrange a children's hearing to decide whether to make a compulsory supervision order in relation to the child.
- (4) If none of the grounds was accepted at the grounds hearing, any interim compulsory supervision order or warrant to secure attendance which is in force in relation to the child ceases to have effect on the withdrawal of the application.

### *Determination of application*

#### **108 Determination: ground established**

- (1) This section applies where the sheriff determines an application made by virtue of section 93(2)(a) or 94(2)(a).
- (2) If subsection (4) applies, the sheriff must direct the Principal Reporter to arrange a children's hearing to decide whether to make a compulsory supervision order in relation to the child.
- (3) In any other case, the sheriff must—
  - (a) dismiss the application, and
  - (b) discharge the referral to the children's hearing.
- (4) This subsection applies if—
  - (a) the sheriff determines that one or more grounds to which the application relates are established, or
  - (b) one or more other grounds were accepted at the grounds hearing which directed the Principal Reporter to make the application.
- (5) In subsection (4)(b), "accepted" means accepted by the child and (subject to sections 74 and 75) each relevant person in relation to the child.

#### **109 Determination: power to make interim compulsory supervision order etc.**

- (1) This section applies where the sheriff directs the Principal Reporter to arrange a children's hearing to decide whether to make a compulsory supervision order in relation to the child.
- (2) Subsection (3) applies if immediately before the hearing at which the sheriff determined the application made by virtue of section 93(2)(a) or 94(2)(a) an interim compulsory supervision order was not in force 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) Subsection (5) applies if immediately before the hearing at which the sheriff determined the application made by virtue of section 93(2)(a) or 94(2)(a) an interim compulsory supervision order was in force in relation to the child.
- (5) 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 that a further interim compulsory supervision order be made, the sheriff may make a further interim compulsory supervision order in relation to the child.
- (6) 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.
- (7) If the sheriff makes an interim compulsory supervision order under subsection (3) or (5) specifying that the child is to reside at a place of safety, the children's hearing must

be arranged to take place no later than the third day after the day on which the child begins to reside at the place of safety.

*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
  - (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

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- (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 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.

*Application of Part where compulsory supervision order in force*

**118 Application of Part where compulsory supervision order in force**

- (1) This Part has effect in relation to a child mentioned in subsection (2) with the modifications set out in subsections (3) to (5).
- (2) The child is a child in relation to whom a compulsory supervision order is in force.



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- (3) References to an interim compulsory supervision order are to be read as references to an interim variation of the compulsory supervision order.
- (4) 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 are to be read as references to the sheriff requiring a review of the compulsory supervision order.
- (5) Sections 98 and 99 do not apply.