

## SCHEDULE 1

### MODIFICATION OF PRIMARY LEGISLATION

#### **Criminal Procedure (Scotland) Act 1995**

- 10.**—(1) The Criminal Procedure (Scotland) Act 1995<sup>(1)</sup> is amended as follows.
- (2) In section 18E (retention of samples etc.: children referred to children’s hearings)<sup>(2)</sup>—
- (a) in subsection (1), for the words from “the”, where it first occurs, to the end substitute “subsection (3), (4) or (5) applies.”;
  - (b) subsection (2) is repealed;
  - (c) for subsections (3) to (5) substitute—
    - “(3) This subsection applies where—
      - (a) in relation to a children’s hearing arranged in relation to the child under section 69(2) of the 2011 Act, a section 67 ground is that the child has committed an offence mentioned in subsection (6) (a “relevant offence”),
      - (b) the ground is accepted by the child and each relevant person in relation to the child under section 91(1) or 105(1) of that Act, and
      - (c) no application to the sheriff under section 93(2)(a) or 94(2)(a) of that Act is made in relation to that ground.
    - (4) This subsection applies where—
      - (a) in relation to a children’s hearing arranged in relation to the child under section 69(2) of the 2011 Act, a section 67 ground is that the child has committed a relevant offence,
      - (b) the sheriff, on an application under section 93(2)(a) or 94(2)(a) of that Act, determines under section 108 of that Act that the ground is established, and
      - (c) no application to the sheriff under section 110(2) of that Act is made in relation to the ground.
    - (5) This subsection applies where, on an application under section 110(2) of the 2011 Act in relation to the child—
      - (a) the sheriff is satisfied under section 114(2) or 115(1)(b) of that Act that a section 67 ground which constitutes a relevant offence is established or accepted by the child and each relevant person in relation to the child, or
      - (b) the sheriff determines under section 117(2)(a) of that Act that—
        - (i) a section 67 ground which was not stated in the statement of grounds which gave rise to the grounds determination is established, and
        - (ii) the ground constitutes a relevant offence.”;
  - (d) in subsection (9)(a), for sub-paragraphs (i) to (iv) substitute—
    - “(i) where subsection (3) applies, the date on which the section 67 ground was accepted as mentioned in that subsection,
    - (ii) where subsection (4) applies, the date on which the section 67 ground was established as mentioned in that subsection,

---

(1) 1995 c.46.

(2) Section 18E was inserted by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 80.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (iii) where the section 67 ground is established as mentioned in paragraph (a) of subsection (5), the date on which that ground was established under section 108 of the 2011 Act or, as the case may be, accepted under section 91(1) or 105(1) of that Act, or
- (iv) where the section 67 ground is established as mentioned in paragraph (b) of subsection (5), the date on which that ground was established as mentioned in that paragraph.”;
- (e) in subsection (11)—
  - (i) after “section”, where it first occurs, insert—
    - ““the 2011 Act” means the Children’s Hearings (Scotland) Act 2011 (asp 1),
    - “grounds determination” has the meaning given by section 110(1) of the 2011 Act.”;
  - (ii) in the definition of “relevant person”, for “93(2) of the Children Act” substitute “200(1) of the 2011 Act except that it includes a person deemed to be a relevant person by virtue of section 81(3), 160(4)(b) or 164(6) of that Act”; and
  - (iii) at the end, insert—
    - ““section 67 ground” has the meaning given by section 67(1) of the 2011 Act;
    - “statement of grounds” has the meaning given by section 89(3) of the 2011 Act.”; and
- (f) in subsection (12), for “ground of referral” substitute “section 67 ground”.
- (3) In section 46(5)(b) (presumption and determination of age of child: effect of failure to provide certain information to court)(3)—
  - (a) for “supervision requirement” substitute “compulsory supervision order or interim compulsory supervision order”; and
  - (b) from “the”, where it fourth occurs, to the end substitute “section 190 of the Children’s Hearings (Scotland) Act 2011 (asp 1)”.
- (4) In section 48(1) (power to refer certain children to reporter), from “Chapter” to the end substitute “the Children’s Hearings (Scotland) Act 2011 (asp 1)”.
- (5) In section 49 (reference or remit to children’s hearing)(4), in each of subsections (1), (3) and (6)(a), for “supervision requirement”, wherever it occurs, substitute “compulsory supervision order or interim compulsory supervision order”.
- (6) In section 51 (remand and committal of children and young persons)(5)—
  - (a) in subsection (1)(a)(i), from “within” to “1995” substitute “(as defined in section 202(1) of the Children’s Hearings (Scotland) Act 2011 (asp 1))”;
  - (b) in subsection (1)(aa), for “supervision requirement” substitute “compulsory supervision order or interim compulsory supervision order”; and

(3) There are amendments to section 46 which are not relevant to this Order.

(4) Section 49 has been amended by the Crime and Punishment (Scotland) Act 1997 (c. 48), section 23(a), the Crime and Disorder Act 1998 (c. 37), Schedule 8, paragraph 118, the Criminal Justice Act 2003 (c. 44), section 290(2), the Violent Crime Reduction Act 2006 (c. 38), Schedule 1, paragraph 4(2) and the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), schedule 1, paragraph 26(d).

(5) Subsection (1)(aa) was inserted by the Crime and Punishment (Scotland) Act 1997 (c. 48), section 56(2) and has been amended by the Criminal Justice (Scotland) Act 2003 (asp 7), section 23(3)(b)(i) and (ii). Subsection (4A) was inserted by the Crime and Punishment (Scotland) Act 1997 (c. 48), section 56(4) and has been amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 64(2)(d). There are other amendments to section 51 which are not relevant to this Order.

- (c) in subsection (4A)(c), from “supervision” to the end substitute “compulsory supervision order or interim compulsory supervision order, the implementation authority (as defined in section 202(1) of the Children’s Hearings (Scotland) Act 2011 (asp 1).”.
- (7) In section 262(3) (construction of sections 259 to 261A)(6), in the definition of “criminal proceedings”, from “under” to the end, substitute “by virtue of section 93(2)(a) or 94(2)(a) of the Children’s Hearings (Scotland) Act 2011 (asp 1) to determine whether a ground is established, in so far as the application relates to the commission of an offence by the child, or for a review of such a determination;”.
- (8) In section 307(1) (interpretation)(7)—
- (a) in the definition of “child”, from “Chapters” to the end substitute “section 199 of the Children’s Hearings (Scotland) Act 2011 (asp 1)”;
- (b) in the definition of “children’s hearing”, from “has” to the end substitute “is to be construed in accordance with section 5 of the Children’s Hearings (Scotland) Act 2011 (asp 1)”;
- (c) after the definition of “compulsion order”, insert—
- ““compulsory supervision order” has the meaning given by section 83 of the Children’s Hearings (Scotland) Act 2011 (asp 1);”;
- (d) after the definition of “interim compulsion order”, insert—
- ““interim compulsory supervision order” has the meaning given by section 86 of the Children’s Hearings (Scotland) Act 2011 (asp 1);”;
- and
- (e) in the definition of “place of safety”, from “means”, where it second occurs, to the end substitute “has the meaning given by section 202(1) of the Children’s Hearings (Scotland) Act 2011 (asp 1).”.
- (9) In Schedule 8 (documentary evidence in criminal proceedings), in paragraph 8, in the definition of “criminal proceedings”, from “under” to the end substitute “of an application made by virtue of section 93(2)(a) or 94(2)(a) of the Children’s Hearings (Scotland) Act 2011 (asp 1) to determine whether a ground is established, in so far as the application relates to the commission of an offence by the child, or for a review of such a determination;”.

---

(6) Section 262(3) has been amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 85(3).

(7) There are amendments to section 307 which are not relevant to this Order.