CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10 – Proceedings before Sheriff

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 The application may only be withdrawn by the reporter before it has been determined by the sheriff.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.