



Children (Scotland) Act 1995

1995 CHAPTER 36

PART II

PROMOTION OF CHILDREN'S WELFARE BY LOCAL
AUTHORITIES AND BY CHILDREN'S HEARINGS ETC.

CHAPTER 3

PROTECTION AND SUPERVISION OF CHILDREN

New evidence: review of establishment of grounds of referral

85 Application for review of establishment of grounds of referral

- (1) Subject to subsections (3) and (4) below, where subsection (2) below applies an application may be made to the sheriff for a review of a finding such as is mentioned in section 68(10) of this Act.
- (2) This subsection applies where the sheriff, on an application made by virtue of subsection (6) or (8) of section 65 of this Act (in this section referred to as the "original application"), finds that any of the grounds of referral is established.
- (3) An application under subsection (1) above may only be made where the applicant claims—
 - (a) to have evidence which was not considered by the sheriff on the original application, being evidence the existence or significance of which might materially have affected the determination of the original application;
 - (b) that such evidence—
 - (i) is likely to be credible and reliable; and
 - (ii) would have been admissible in relation to the ground of referral which was found to be established on the original application; and

Status: This is the original version (as it was originally enacted).

- (c) that there is a reasonable explanation for the failure to lead such evidence on the original application.
- (4) An application under subsection (1) above may only be made by—
 - (a) the child in respect of whom the ground of referral was found to be established; or
 - (b) any person who is a relevant person in relation to that child.
- (5) Where the sheriff on an application under subsection (1) above is not satisfied that any of the claims made in the application are established he shall dismiss the application.
- (6) Where the sheriff is satisfied on an application under subsection (1) above that the claims made in the application are established, he shall consider the evidence and if, having considered it, he is satisfied that—
 - (a) none of the grounds of referral in the original application to which the application relates is established, he shall allow the application, discharge the referral to the children’s hearing in respect of those grounds and proceed in accordance with subsection (7) below in relation to any supervision requirement made in respect of the child (whether or not varied under section 73 of this Act) in so far as it relates to any such ground; or
 - (b) any ground of referral in the original application to which the application relates is established, he may proceed in accordance with section 68(10) of this Act.
- (7) Where the sheriff is satisfied as is mentioned in subsection (6)(a) above, he may—
 - (a) order that any supervision requirement so mentioned shall terminate—
 - (i) immediately; or
 - (ii) on such date as he may specify; or
 - (b) if he is satisfied that there is evidence sufficient to establish any ground of referral, being a ground which was not stated in the original application, find such ground established and proceed in accordance with section 68(10) of this Act in relation to that ground.
- (8) Where the sheriff specifies a date for the termination of a supervision requirement in accordance with subsection (7)(a)(ii) above, he may, before such termination, order a variation of that requirement, of any requirement imposed under subsection (6) of section 70 of this Act, or of any determination made under subsection (7) of that section; and such variation may take effect—
 - (a) immediately; or
 - (b) on such date as he may specify.
- (9) Where the sheriff orders the termination of a supervision requirement in accordance with subsection (7)(a) above, he shall consider whether, after such termination, the child concerned will still require supervision or guidance; and where he considers that such supervision or guidance will be necessary he shall direct a local authority to provide it in accordance with subsection (10) below.
- (10) Where a sheriff has given a direction under subsection (9) above, it shall be the duty of the local authority to comply with that direction; but that duty shall be regarded as discharged where they offer such supervision or guidance to the child and he, being a child of sufficient age and maturity to understand what is being offered, is unwilling to accept it.