

CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10 – Proceedings before Sheriff

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.

*These notes relate to the Children's Hearings (Scotland) Act
2011 (asp 1) which received Royal Assent on 6 January 2011*

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.