

CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10 – Proceedings before Sheriff

Ground accepted before application determined

Section 105 – Application by virtue of section 93: ground accepted before determination

157. This section applies to applications to the sheriff to establish grounds for referral under section 93(2)(a). If, at the hearing before the sheriff, the child and the relevant person(s) accept the grounds, the sheriff must, unless satisfied in all the circumstances that evidence in relation to the ground should be heard, dispense with hearing the evidence and find the ground established. This does not remove the sheriff's discretion to hear evidence where the sheriff considers this is necessary.

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

158. This section provides powers for the sheriff to determine grounds for referral on the information lodged with the application, instead of holding a formal hearing. This applies when an application has been made to the sheriff for establishment of grounds where a child is unable to understand the grounds for referral and so can neither accept nor deny the grounds and, 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. Subsection (2)(a) and (b) sets out the two circumstances where the sheriff may not use the expedited process set out at subsection (1). First, where the Principal Reporter, the child, a relevant person or an appointed Safeguarder have requested a formal hearing the sheriff must comply with such a request; and secondly where the sheriff considers that it would not be appropriate to determine the application without a hearing. Subsection (4) provides for an expedited timescale of 7 days for the sheriff to determine the application without hearing evidence.