



# Children's Hearings (Scotland) Act 2011

## 2011 asp 1

### PART 6

#### INVESTIGATION AND REFERRAL TO CHILDREN'S HEARING

##### *Provision of information to Principal Reporter*

#### **60 Local authority's duty to provide information to Principal Reporter**

- (1) If a local authority considers that it is likely that subsection (2) applies in relation to a child in its area, it must make all necessary inquiries into the child's circumstances.
- (2) This subsection applies where the local authority considers—
  - (a) that the child is in need of protection, guidance, treatment or control, and
  - (b) that it might be necessary for a compulsory supervision order to be made in relation to the child.
- (3) Where subsection (2) applies in relation to a child the local authority must give any information that it has about the child to the Principal Reporter.

#### **61 Constable's duty to provide information to Principal Reporter**

- (1) This section applies where a constable considers—
  - (a) that a child is in need of protection, guidance, treatment or control, and
  - (b) that it might be necessary for a compulsory supervision order to be made in relation to the child.
- (2) The constable must give the Principal Reporter all relevant information which the constable has been able to discover in relation to the child.
- (3) If the constable makes a report under section 17(1)(b) of the Police (Scotland) Act 1967 (c.77) in relation to the child, the constable must also make the report to the Principal Reporter.

## **62 Provision of information by court**

- (1) This section applies where, in the course of relevant proceedings, a court considers that a section 67 ground (other than the ground mentioned in section 67(2)(j)) might apply in relation to a child.
- (2) The court may refer the matter to the Principal Reporter.
- (3) If the court refers the matter under subsection (2) it must give the Principal Reporter a section 62 statement.
- (4) A section 62 statement is a statement—
  - (a) specifying which of the section 67 grounds the court considers might apply in relation to the child,
  - (b) setting out the reasons why the court considers that the ground might apply, and
  - (c) setting out any other information about the child which appears to the court to be relevant.
- (5) In this section “relevant proceedings” means—
  - (a) an action for divorce,
  - (b) an action for separation,
  - (c) an action for declarator of marriage,
  - (d) an action for declarator of nullity of marriage,
  - (e) an action for dissolution of a civil partnership,
  - (f) an action for separation of civil partners,
  - (g) an action for declarator of nullity of a civil partnership,
  - (h) an action for declarator of parentage,
  - (i) an action for declarator of non-parentage,
  - (j) proceedings relating to parental responsibilities or parental rights,
  - (k) an application for an adoption order (as defined in section 28(1) of the Adoption and Children (Scotland) Act 2007 (asp 4)),
  - (l) an application for the making, variation or revocation of a permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007) in respect of a child who is not subject to a compulsory supervision order, or
  - (m) proceedings relating to an offence under any of the following sections of the Education (Scotland) Act 1980 (c.44)—
    - (i) section 35 (failure by parent to secure regular attendance by child at a public school),
    - (ii) section 41 (failure to comply with attendance order),
    - (iii) section 42(3) (failure to permit examination of child).

## **63 Provision of evidence from certain criminal cases**

- (1) The Lord Advocate may direct that in any specified case or class of case evidence lawfully obtained in the investigation of a crime or suspected crime must be given to the Principal Reporter.
- (2) The evidence must in that case, or in a case of that class, be given to the Principal Reporter even if the Principal Reporter has not made a request under section 172.

#### **64 Provision of information by other persons**

- (1) This section applies where a person considers—
  - (a) that a child is in need of protection, guidance, treatment or control, and
  - (b) that it might be necessary for a compulsory supervision order to be made in relation to the child.
- (2) The person may give the Principal Reporter all relevant information which the person has in relation to the child.

#### **65 Provision of information by constable: child in place of safety**

- (1) Subsection (2) applies where a constable informs the Principal Reporter under subsection (5) of section 43 of the Criminal Procedure (Scotland) Act 1995 (c.46) that—
  - (a) a child is being kept in a place of safety under subsection (4) of that section, and
  - (b) it has been decided not to proceed with the charge against the child.
- (2) The Principal Reporter may direct—
  - (a) that the child be released from the place of safety, or
  - (b) that the child continue to be kept in the place of safety until the Principal Reporter makes a determination under section 66(2).

#### *Investigation and determination by Principal Reporter*

#### **66 Investigation and determination by Principal Reporter**

- (1) This section applies where—
  - (a) the Principal Reporter receives in relation to a child—
    - (i) notice under section 43 of the making of a child protection order,
    - (ii) information from a local authority under section 60,
    - (iii) information or a report from a constable under section 61,
    - (iv) a section 62 statement,
    - (v) evidence under section 63,
    - (vi) information from a person under section 64,
    - (vii) information from a constable under section 43(5) of the Criminal Procedure (Scotland) Act 1995 (c.46), or
  - (b) it appears to the Principal Reporter that a child might be in need of protection, guidance, treatment or control.
- (2) The Principal Reporter must determine—
  - (a) whether the Principal Reporter considers that a section 67 ground applies in relation to the child, and
  - (b) if so, whether the Principal Reporter considers that it is necessary for a compulsory supervision order to be made in respect of the child.
- (3) The Principal Reporter may make any further investigations relating to the child that the Principal Reporter considers necessary.

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- (4) The Principal Reporter may require a local authority to give the Principal Reporter a report on—
  - (a) the child generally,
  - (b) any particular matter relating to the child specified by the Principal Reporter.
- (5) A local authority may include in a report given to the Principal Reporter under subsection (4) information given to the local authority by another person.
- (6) The report may contain information in addition to any information given to the Principal Reporter under section 60.

## **67      Meaning of “section 67 ground”**

- (1) In this Act “section 67 ground”, in relation to a child, means any of the grounds mentioned in subsection (2).
- (2) The grounds are that—
  - (a) the child is likely to suffer unnecessarily, or the health or development of the child is likely to be seriously impaired, due to a lack of parental care,
  - (b) a schedule 1 offence has been committed in respect of the child,
  - (c) the child has, or is likely to have, a close connection with a person who has committed a schedule 1 offence,
  - (d) the child is, or is likely to become, a member of the same household as a child in respect of whom a schedule 1 offence has been committed,
  - (e) the child is being, or is likely to be, exposed to persons whose conduct is (or has been) such that it is likely that—
    - (i) the child will be abused or harmed, or
    - (ii) the child’s health, safety or development will be seriously adversely affected,
  - (f) the child has, or is likely to have, a close connection with a person who has carried out domestic abuse,
  - (g) the child has, or is likely to have, a close connection with a person who has committed an offence under Part 1, 4 or 5 of the Sexual Offences (Scotland) Act 2009 (asp 9),
  - (h) the child is being provided with accommodation by a local authority under section 25 of the 1995 Act and special measures are needed to support the child,
  - (i) a permanence order is in force in respect of the child and special measures are needed to support the child,
  - (j) the child has committed an offence,
  - (k) the child has misused alcohol,
  - (l) the child has misused a drug (whether or not a controlled drug),
  - (m) the child’s conduct has had, or is likely to have, a serious adverse effect on the health, safety or development of the child or another person,
  - (n) the child is beyond the control of a relevant person,
  - (o) the child has failed without reasonable excuse to attend regularly at school,
  - (p) the child—
    - (i) is being, or is likely to be, subjected to physical, emotional or other pressure to enter into a marriage or civil partnership, or

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- (ii) is, or is likely to become, a member of the same household as such a child.
- (3) For the purposes of paragraphs (c), (f) and (g) of subsection (2), a child is to be taken to have a close connection with a person if—
  - (a) the child is a member of the same household as the person, or
  - (b) the child is not a member of the same household as the person but the child has significant contact with the person.
- (4) The Scottish Ministers may by order—
  - (a) amend subsection (2) by—
    - (i) adding a ground,
    - (ii) removing a ground for the time being mentioned in it, or
    - (iii) amending a ground for the time being mentioned in it, and
  - (b) make such other amendments of this section as appear to the Scottish Ministers to be necessary or expedient in consequence of provision made under paragraph (a).
- (5) An order under subsection (4) is subject to the affirmative procedure.
- (6) In this section—
  - “controlled drug” means a controlled drug as defined in section 2(1)(a) of the Misuse of Drugs Act 1971 (c.38),
  - “permanence order” has the meaning given by section 80(2) of the Adoption and Children (Scotland) Act 2007 (asp 4),
  - “schedule 1 offence” means an offence mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (c.46) (offences against children under 17 years of age to which special provisions apply).

## **68 Determination under section 66: no referral to children's hearing**

- (1) This section applies where, having made a determination under section 66(2) in relation to a child, the Principal Reporter considers that—
  - (a) none of the section 67 grounds applies in relation to the child, or
  - (b) it is not necessary for a compulsory supervision order to be made in respect of the child.
- (2) If the child is being kept in a place of safety under section 65(2)(b) the Principal Reporter must direct that the child be released from the place of safety.
- (3) The Principal Reporter—
  - (a) must inform the persons mentioned in subsection (4) of the determination and the fact that the question of whether a compulsory supervision order should be made in respect of the child will not be referred to a children's hearing, and
  - (b) may, if the Principal Reporter considers it appropriate, inform any other person of the determination and that fact.
- (4) Those persons are—
  - (a) the child,
  - (b) each relevant person in relation to the child,
  - (c) the relevant local authority for the child,

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- (d) any person specified in a child protection order in force in relation to the child under section 37(2)(a),
  - (e) any person who has given the Principal Reporter—
    - (i) notice under section 43 of a child protection order,
    - (ii) information under section 60, 61, 64 or 66,
    - (iii) a report under section 61 or 66,
    - (iv) a section 62 statement,
    - (v) evidence under section 63, or
    - (vi) information under section 43(5) of the Criminal Procedure (Scotland) Act 1995 (c.46).
- (5) The Principal Reporter may refer the child to—
- (a) the relevant local authority for the child with a view to the authority providing (or making arrangements for the provision by another person or body of) advice, guidance and assistance to the child and the child's family in accordance with Chapter 1 of Part 2 of the 1995 Act (support for children and their families),
  - (b) such other person or body as may be specified by the Scottish Ministers by order for the purposes of this subsection, with a view to that person or body providing advice, guidance and assistance to the child and the child's family.
- (6) After complying with the requirements imposed by subsection (3)(a), the Principal Reporter must not refer the question of whether a compulsory supervision order should be made in respect of the child to a children's hearing unless the Principal Reporter receives new information about the child.

## **69 Determination under section 66: referral to children's hearing**

- (1) This section applies where, having made a determination under section 66(2) in relation to a child, the Principal Reporter considers that it is necessary for a compulsory supervision order to be made in respect of the child.
- (2) The Principal Reporter must arrange a children's hearing for the purpose of deciding whether a compulsory supervision order should be made in respect of the child.
- (3) If the child is being kept in a place of safety under subsection (4) of section 43 of the Criminal Procedure (Scotland) Act 1995 (c.46) at the time the determination is made, the children's hearing must be arranged to take place no later than the third day after the Principal Reporter receives the information under subsection (5) of that section.
- (4) If the Principal Reporter has required a local authority to give the Principal Reporter a report under section 66(4), the Principal Reporter may request additional information from the local authority.
- (5) If the Principal Reporter has not required a local authority to give the Principal Reporter a report under section 66(4), the Principal Reporter must require a local authority to give the Principal Reporter a report under that section.

## **70 Requirement under Antisocial Behaviour etc. (Scotland) Act 2004**

- (1) This section applies where—

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- (a) under section 12(1A) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) the sheriff requires the Principal Reporter to arrange a children's hearing in respect of a child, and
  - (b) a compulsory supervision order is not in force in relation to the child.
- (2) This Act applies as if—
- (a) the requirement of the sheriff were a determination of the sheriff under section 108 that the section 67 ground specified in the statement given to the Principal Reporter under section 12 of the Antisocial Behaviour etc. (Scotland) Act 2004 was established in relation to the child, and
  - (b) the sheriff had directed the Principal Reporter under section 108(2) to arrange a children's hearing.

## **71 Case remitted under section 49 of Criminal Procedure (Scotland) Act 1995**

- (1) This section applies where under section 49 of the Criminal Procedure (Scotland) Act 1995 (c.46)—
- (a) a court remits a case to the Principal Reporter to arrange for the disposal of the case by a children's hearing, and
  - (b) a compulsory supervision order is not in force in relation to the child or person whose case is remitted.
- (2) A certificate signed by the clerk of the court stating that the child or person whose case is remitted has pled guilty to, or been found guilty of, the offence to which the case relates is conclusive evidence for the purposes of the children's hearing that the offence was committed by the child or person.
- (3) This Act applies as if—
- (a) the plea of guilty, or the finding of guilt, were a determination of the sheriff under section 108 that the ground in section 67(2)(j) was established in relation to the child, and
  - (b) the sheriff had directed the Principal Reporter under section 108(2) to arrange a children's hearing.

## **72 Child in place of safety: Principal Reporter's powers**

- (1) Subsection (2) applies where—
- (a) the Principal Reporter is required by section 69(2) to arrange a children's hearing in relation to a child, and
  - (b) the child is being kept in a place of safety under section 65(2)(b).
- (2) The Principal Reporter may direct—
- (a) that the child be released from the place of safety, or
  - (b) that the child continue to be kept in the place of safety until the children's hearing.