

CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 17 – Proceedings under Part 10: Evidence

Section 172 – Use of evidence obtained from prosecutor

250. This section applies where an application has been made to the sheriff to determine whether a ground for referral is established or to review a grounds determination. It provides for the Principal Reporter to ask any prosecutor to provide evidence held in connection with the investigation of a crime or suspected crime where the reporter considers that the evidence may assist the sheriff in the determination of the application. For example, the prosecutor may hold evidence in criminal proceedings relating to an alleged assault of a child by a parent. The reporter may have referred the child to a Children's Hearing based on the same alleged incident and if the grounds are denied and an application to the sheriff follows, the reporter may take the view that the evidence held by the prosecutor would assist the sheriff in order to establish the grounds. Subsection (3) makes clear that only evidence which was lawfully obtained may be made available to the reporter. Subsection (4) provides that the prosecutor is not obliged to comply with the reporter's request to provide evidence if the prosecutor reasonably believes that it is necessary to retain that evidence for the purposes of any criminal proceedings. This applies regardless of whether or not the proceedings have already commenced.