



SCOTTISH  
**CHILDREN'S REPORTER**  
ADMINISTRATION

# **Practice Direction 7**

## **Statement of Grounds – Decision Making and Drafting**

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## **Part 1: Decision Making**

### **1. Introduction**

- 1.1. Part 1 of this Practice Direction provides direction regarding the purpose of the statement of grounds and the choice of content. It applies where the reporter has decided that:
- there is sufficient evidence to establish at least one section 67 ground and
  - it is necessary for a compulsory supervision order to be made in respect of the child (or that a child already subject to such an order should be re-referred to a hearing).
- 1.2. This Part complements:
- The Framework for Decision Making by Reporters (including the section on decision making on children who are subject to a supervision requirement) [The DMF will become Practice Direction 6.] and
  - Practice Direction 5 on Receipt and Registration of Referrals
- 1.3. Section 89(2) of the Children's Hearings (Scotland) Act 2011 states that when the reporter has arranged a children's hearing by virtue of section 69(2) (having decided that a ground applies and it is necessary for a compulsory supervision order to be made in respect of the child), the reporter must prepare the "statement of grounds".
- 1.4. Section 89(3) defines the statement of grounds as a statement that sets out:
- Which of the section 67 grounds the reporter believes applies in relation to the child – the "section 67 ground"; and
  - The facts on which that belief is based – the "supporting facts".

### **2. Purpose of the Statement of Grounds**

- 2.1. The statement of grounds is the principal legal basis for decision making by a children's hearing. The reporter's approach to drafting the statement of grounds must reflect this.
- 2.2. The Court of Session confirmed in *O v Rae* 1993 SLT 570 that a children's hearing may take account of information that is not in the statement of grounds (referred to as the grounds for referral in that case). However in *H and M v Bell*<sup>1</sup> Sheriff Principal Taylor was clear that there are limits to the information which may be so considered. The hearing must protect the rights of individuals to a fair hearing as well as considering the interests of the child. Therefore the principle in *O v Rae* is no substitute for the proper drafting and establishment of a relevant statement of grounds.

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<sup>1</sup> Reported as *LM & JH v The Authority Reporter* 2010 WL 4863727

### **3. Choice of section 67 ground within the statement of grounds**

- 3.1. When drafting the statement of grounds the reporter is to specify the section 67 ground or grounds which relevantly reflect the principal concerns regarding the child's welfare and which support constructive and appropriate consideration and decision making by the children's hearing.
- 3.2. In determining which section 67 ground or grounds to include, the reporter is to have regard to:
  - The key issues identified in the child's plan or other relevant reports;
  - The reason or reasons why the reporter has decided to refer the child to a children's hearing; and
  - The factors likely to be relevant to consideration and decision making by the children's hearing.
- 3.3. The principles which apply to registration of referrals set out in Section 6 of Practice Direction 5 on Receipt and Registration of Referrals apply equally to deciding which section 67 ground or grounds to include in the statement of grounds. More than one section 67 ground is to be included in the statement of grounds only where:
  - there is distinguishable information and
  - a single ground does not more appropriately reflect the concerns and
  - each ground reflects significant concerns and is likely to assist with decision making in relation to the child.
- 3.4. Where the ground or grounds identified as appropriate for inclusion in the statement of grounds differ from those registered, the reporter is to amend the registration details prior to recording a final decision, in accordance with Section 8 of Practice Direction 5 on Receipt and Registration of Referrals and paragraph 3.7 of this Practice Direction.
- 3.5. In addition to the general considerations outlined above, the specific approaches set out in Section 7 of Practice Direction 5 on Receipt and Registration of Referrals also apply to deciding which section 67 ground or grounds to include in the statement of grounds where more than one may apply. The key approaches are replicated here:
  - Where a child is the victim of a Schedule 1 offence, the reporter should specify a section 67(2)(b) section 67 ground (offence committed in respect of the child). A section 67(2)(b) ground is not to be specified in conjunction with 67(2)(c) or (g) (close connection with person who committed the offence) in relation to the same incident.
  - Where both section 67(2)(c) (close connection with schedule 1 offender) and section 67(2)(g) (close connection with offender under Parts 1, 4 or 5 of the Sexual Offences (Scotland) Act 2009) may apply, the reporter should specify the section 67(2)(g) section 67 ground.

- Where information forms the basis of an alleged offence by or against a child and more than one offence categorisation could apply to the information,<sup>2</sup> the reporter may exceptionally specify the different possible offences in the alternative, but never as multiple 'stand alone' offences.
- Where the primary concern is the child's contact with a perpetrator of domestic abuse, there is a strong presumption that the reporter specify the section 67(2)(f) section 67 ground (close connection with perpetrator of domestic abuse) rather than defining the behaviour as a schedule 1 offence or as a lack of parental care.
- Where the primary concern is the child's exposure to persons whose conduct is likely to have a detrimental effect on the child, there is a strong presumption that the reporter specify a section 67(2)(e) ground (exposure to persons whose conduct is likely to have an adverse impact) rather than a lack of parental care.
- Where the primary concern is that the child is displaying a range of concerning behaviour, there is a strong presumption that (subject to paragraph 7.8) the reporter specify a section 67(2)(m) section 67 ground (child's conduct) rather than record a specific section 67 ground for each aspect of behaviour (eg the misuse of alcohol or drugs, the failure to attend school or being beyond the control of a relevant person).

### **Choice of section 67 ground where referral received from police as a result of the child committing an offence**

- 3.6. The approach described in paragraphs 3.1 – 3.4 is equally applicable when the police referred the child as a result of the child committing an offence.
- 3.7. Therefore, if the police have referred the child on the grounds of committing an offence, the reporter may decide to add an additional section 67 ground other than section 67(2)(j) and to select that section 67 ground for the statement of grounds in referring the child to the children's hearing. However, in doing so the reporter is to record an outcome (in this case a "not to arrange a children's hearing" decision) in relation to the offence. That outcome will be reported to the police and will be recorded against the offence in the police's Criminal History System.
- 3.8. In deciding on whether the appropriate section 67 ground for the statement of grounds is section 67(2)(j) or another section 67 ground, the reporter is to consider the following factors:
  - Following the decision of the Court of Session in *Constanda v M*, 1997 SLT 1396, where the whole basis of the supporting facts is that the child has

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<sup>2</sup> For example, the offence could be contrary to section 1 or section 3 of the Sexual Offences (Scotland) Act 2009.

performed certain acts that constitute criminal offences, the section 67 ground must be section 67(2)(j);

- The more serious the child's behaviour in a specific incident of offending then the more likely that the section 67 ground should be section 67(2)(j);
- The more distinct an incident of a child's offending behaviour from the other facts for a section 67 ground other than section 67(2)(j)<sup>3</sup>, then the more likely that the section 67 ground should be section 67(2)(j);
- The more that the principal concerns about the child relate to their offending behaviour, then the more likely that the section 67 ground should be section 67(2)(j)<sup>4</sup>.

3.9. The consequences of the Rehabilitation of Offenders Act 1974<sup>5</sup> for a section 67(2)(j) statement of grounds is not a relevant factor for this decision – the reporter is to choose the condition that reflects the principal concern for the child's welfare and the reason or reasons why compulsion is necessary.

3.10. The reporter can refer a child over the age of 8 but under the age of 12 to a children's hearing on a section 67(2)(j) statement of grounds<sup>6</sup>. However the reporter is to give particular consideration as to whether a section 67 ground other than section 67(2)(j) is appropriate when deciding to refer such a young child to a children's hearing as a result of concerns about their behaviour.

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<sup>3</sup> For example, if the other supporting facts for a section 67(2)(m) section 67 ground relate to the child running away from home and getting drunk, it is more likely that an incident of sexual behaviour should be in a statement of grounds with a section 67(2)(j) condition. However, if the other supporting facts for a section 67(2)(m) section 67 ground relate to other incidents in a course of sexualised behaviour, it is more likely that an incident of sexual behaviour should be included in the same statement of grounds.

<sup>4</sup> If there are concerns about the child's offending behaviour, then social workers (or other professionals) will be working with the child to address their offending behaviour. It may be particularly relevant to their work that the statement of grounds includes the details of that behaviour and describes it as committing offences.

<sup>5</sup> See the appendix to Practice Direction X on Offending Issues.

<sup>6</sup> Although by virtue of section 41A of the Criminal Procedure (Scotland) Act 1995 they may not be prosecuted for an offence.

## Part 2: Drafting the Statement of Grounds

### 1. Introduction

- 1.1. While section 89 of the Children's Hearings (Scotland) Act 2011 contains some statutory direction in relation to the statement of grounds, the Principal Reporter has a wide discretion in drafting of grounds, in particular in relation to style and content. This part of the Practice Direction provides a framework for the exercise of the reporter's discretion and provides direction, where necessary, to ensure consistency of practice.

### 2. Section 67 Ground

#### ***Specification of Section 67 Ground***

- 2.1. When specifying the section 67 ground, the reporter is to use the actual wording contained in section 67 of the Act. The reporter is not to amend or delete any part of the statutory condition. Where specification of an offence committed by or against a child is required, the reporter is to do so within the supporting facts and not by amendment or addition to the statutory condition. For example:

- A section 67(2)(b) section 67 ground should read "*a schedule 1 offence has been committed in respect of the child*". The reporter is to specify the particular offence(s) in the supporting facts.
- A section 67(2)(e) section 67 ground should read "*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*"even if the reporter is intending to prove only one aspect of the section 67 ground, for example "the child will be abused or harmed".

- 2.2. The standard wording for section 67 grounds to be stated by reporters is at Appendix 1.

#### ***Use of Alternative and Cumulative Section 67 Grounds***

##### ***Cumulative Section 67 Grounds***

- 2.3. The reporter is to specify more than one section 67 ground only where:
- there are distinguishable supporting facts which fulfil more than one section 67 ground  
*and*

- the reporter has decided that it is in the interests of the child's welfare to specify more than one section 67 ground.
- 2.4. Supporting facts are distinguishable if they can be separated out with different and identifiable elements capable of establishing different section 67 grounds. Although there may be some overlap between the different elements, in effect distinguishable supporting facts mean that one of the section 67 grounds may be established and the other not. Where substantially the same supporting facts are capable of establishing both section 67 grounds then the reporter is to specify only one section 67 ground or section 67 grounds in the alternative (see below).
- 2.5. For example, a child's circumstances may indicate a pattern of parental behaviour which adversely affects the child and is likely to continue. The reporter is to state both section 67(2)(a) and (b) section 67 grounds only where there has been a specific incident (for example an assault causing bodily injury) which although forming part of the general pattern of parental behaviour, is distinguishable and is capable of standing on its own. Where it is in the interests of this child and necessary to ensure the best outcome, it will be appropriate for the reporter to include both section 67(2)(a) and (b) section 67 grounds.
- 2.6. Where the reporter has decided to specify more than one section 67 ground the following general principles apply:
- where the majority of supporting facts for each section 67 ground are unrelated, the reporter is to use a separate form for each section 67 ground and related supporting facts - for example section 67(2)(j) and (o) section 67 grounds;
  - where the supporting facts are distinguishable but related or interconnected, the reporter is to use a single form - for example section 67(2)(a) and (b) section 67 grounds;
  - where there are a number of offences stated in relation to section 67(2)(j) section 67 grounds, the reporter is to state these on a single form.
- 2.7. Where more than one section 67 ground is specified on a single form, the reporter is to separate the section 67 grounds with "and". Where the reporter is stating more than one section 67 ground, the reporter is to state them as either cumulative or alternative. Therefore the reporter is not to use "and/or" between section 67 grounds.
- 2.8. Where the reporter decides to specify more than one Schedule 1 offence, the reporter is to consider whether these should be stated on a separate form. Generally, where the offences are unrelated, the reporter should use a separate form for each unrelated incident. Where the offences are related or interconnected then the reporter should use a single form. Where the reporter



uses a single form to specify two or more schedule 1 offences, the reporter is to state only one section 67(2)(b) section 67 ground.

- 2.9. Where the reporter states cumulative section 67 grounds on a single form, the reporter is to make it clear which supporting facts are stated in support of each section 67 ground (See Appendix 2).

### ***Alternative Section 67 Grounds***

- 2.10. Where substantially the same supporting facts are capable of establishing more than one section 67 ground but are not distinguishable (as outlined above), the reporter may state section 67 grounds in the alternative. The reporter is to only use alternative section 67 grounds where the reporter is seeking to establish only one or other of the section 67 grounds, but not both.
- 2.11. The reporter should exercise professional judgement on a case by case basis when considering whether to specify section 67 grounds in the alternative. In doing so, the reporter is to consider the following factors:
- Although rule 3.48 of the Act of Sederunt (Child Care and Maintenance Rules) 1997, allows the sheriff to amend the statement of grounds, this power is discretionary and is one the reporter is to seek to rely on in relation to amending the section 67 ground itself only in exceptional circumstances; and
  - although rule 3.50 of the Act of Sederunt (Child Care and Maintenance Rules) 1997, allows the sheriff to find that any other offence is established where the statement of grounds allege that an offence has been committed by or against any child, this power is discretionary.
- 2.12. It is likely to be rare that the reporter will use alternative section 67 grounds. It is most likely that the reporter will use alternative section 67 grounds where it is difficult to assess the quality, strength and weight of evidence that will be led in support or rebuttal of the statement of grounds. It may be appropriate for the reporter to specify an alternative section 67 ground as a fall back position where it is difficult to predict this in advance.
- 2.13. For example, a child's circumstances may indicate that he has been under the influence of a substance that appears to be a drug. Therefore the appropriate section 67 ground is that he has misused a drug in terms of section 67(2)(l). However, it may be difficult for the reporter to assess in advance whether the evidence will support this condition as it may be that evidence will be led to show that he was under the influence of alcohol not a drug. Therefore it may be appropriate for the reporter to state an alternative section 67 ground to section 67(2)(k) (that the child has misused alcohol) where the circumstances would support this condition as an alternative to the section 67(2)(l) but are not distinguishable from it.

- 2.14. In considering whether to specify alternative section 67 grounds, there is a balance to be struck between specifying what is the most relevant section 67 ground and what the reporter regards as achievable in terms of proving the statement of grounds.
- 2.15. Where alternative section 67 grounds are specified the reporter is to separate them with “or alternatively”.
- 2.16 Some examples of the use of cumulative and alternative conditions are attached at Appendix 2.

### **3. Supporting Facts**

- 3.1. The reporter is to take particular care when drafting the supporting facts. It is important that the reporter applies principles of fairness and balance when undertaking this complex task.
- 3.2. In drafting the supporting facts the reporter is to ensure they are relevant, accurate and stated clearly and succinctly. The reporter is to draft them so that they communicate well to all readers and, as far as possible, are capable of being understood by children and relevant persons. The reporter must ensure they are sufficient to support the section 67 ground and are capable of standing up to legal scrutiny. The reporter is to only statement facts where the necessary admissible evidence is available to prove them.

#### ***Fact not Evidence***

- 3.3. The reporter’s statement of grounds is a statement of which of the section 67 grounds the reporter believes apply in relation to the child and the facts on which that belief is based. As it includes a statement of the supporting facts, the reporter is to take care to state the facts and not the evidence by which it is intended to prove the facts.
- 3.4. An example of stating the evidence is: “On 2<sup>nd</sup> January 2006, James stated that his mother slapped him across the face. He was examined by Dr Jones and was found to have bruising to his face consistent with non accidental injury. When questioned by Dr Jones, Mrs Smith indicated that she had lost her temper.”

Instead of stating the evidence, the reporter is to state the facts: “On 2<sup>nd</sup> January 2006, Mrs Smith assaulted James by striking him on the face with her hand causing bruising to his left cheek”.

- 3.5. Another example of stating the evidence is “In the opinion of Dr Jones, these injuries are consistent with non accidental injury”. The opinion of Dr Jones is the evidence that will be led in support of this fact.

### ***Relevancy of Supporting Facts***

- 3.6. “Relevancy” in Scots legal language is the logical connection between the fact averred and the legal proposition derived from that fact. The supporting facts are relevant provided at least one of the facts which is alleged, if proved, would result in the section 67 ground linked with that fact being established. The supporting facts are irrelevant if, even if all of the individual facts are proved, this will not amount to the establishment of the section 67 ground relied upon.
- 3.7. The reporter must ensure that the supporting facts specified in support of a condition of referral, when taken together, are stated with sufficient relevancy to support the section 67 ground.
- 3.8. In addition to this legal requirement, the reporter is to ensure that each individual fact is relevant to the section 67 ground it is stated to support.
- 3.9. As outlined above, the reporter is to apply principles of fairness. The statement of grounds is not the appropriate place to provide general and background information unless directly relevant to the section 67 ground.
- 3.10. Therefore, the reporter should not state facts which are not relevant. For example, the reporter should not:
- state as a fact the persons who are relevant persons in respect of the child unless this is relevant to the section 67 ground;
  - state that a child’s father is his putative or biological father, unless this is relevant to the section 67 ground;
  - state that the child is or has been on the Child Protection Register unless this is a relevant fact; and
  - state that the child’s parent has been convicted of an offence (for example fraud or prostitution) unless a fact is also stated that shows how this is relevant to the section 67 ground, for example stating the impact that this has had, or is likely to have, on the child if this course of behaviour continues.
- 3.11. The reporter is to state the essential facts that must be included to satisfy the section 67 ground and facts that, while not essential, are relevant to the section 67 ground and the final disposal of the child’s case. For example:
- the name of the person who has committed the schedule 1 offence is an essential fact in support of a section 67(2)(c) section 67 ground;
  - the name of the person who has committed the schedule 1 offence is not an essential fact in support of a section 67(2)(b) section 67 ground; however where the name is known this will be a relevant fact in the disposal of the child’s case (see paragraph 3.16.9); and
  - the time of the offence and the age of any co-accused are not essential facts in support of a section 67(2)(j) section 67 ground; however these will be relevant facts in the disposal of the child’s case.

- 3.12. When drafting the statement of grounds, the reporter should ask the “So what?” question of each of the supporting facts. For example:
- “James told his teacher that his mother hits him regularly”. If the fact that the reporter is seeking to establish is that James mother hits him regularly, “so what” that James told his teacher? The reporter should state the fact as “James mother hits him regularly”.
  - “The social work department has concerns about James.” “So what?” The relevant facts are the details of the behaviour leading to the concern and the impact of that behaviour on the child.
- 3.13. The reporter is to take particular care when considering whether to include historical information. Historical information can be useful to show a pattern or course of behaviour. However, the reporter should include historical or past events only where they continue to be relevant to the present section 67 ground. (See section 4 for details on inclusion of a previously established statement of grounds).

### ***Specification of Supporting Facts***

- 3.14. The reporter is to ensure that supporting facts are stated with sufficient detail and latitude to meet the necessary legal requirements for the section 67 ground. In addition, wherever possible, the reporter is to ensure that supporting facts are stated with sufficient specification of detail to give fair notice of, and reasonable certainty as to, what is alleged. The reporter is to do this in a way that is consistent with the other principles contained within this Part of the Practice Direction.
- 3.15. Although Rule 3.48 of the Act of Sederunt (Children's Hearings (Scotland) Act 2011) (Miscellaneous Amendments) 2013 (as amended) enables the sheriff to allow amendment of the statement of grounds and Rule 3.50 allows the sheriff to find that any other offence has been established where it is alleged that an offence has been committed by or against a child, both powers are discretionary.
- 3.16. Appendix 3 contains a detailed examination of the specification required for each of the section 67 grounds. In addition, some particular aspects relating to specification are outlined below:
- 3.16.1 **Detail.** The reporter is to specify sufficient detail in the supporting facts to support the section 67 ground. For example, omitting to state facts that show a child is, or is likely to have, a close connection with a person who has committed a schedule 1 offence in support of a section 67(2)(b) section 67 ground would result in the statement of grounds not being established. In support of a section 67(2)(a) section 67 ground, failure to state the effect that the lack of parental care has, or is likely to have, on the child would result in the statement of grounds not being established.

- 3.16.2 **Dates and Places.** Although there is no legal requirement to specify dates and places in conditions other than section 67(2)(j) section 67 grounds, the reporter should state these where they are known and relevant. Where exact details are unknown, the reporter should state a time period e.g. “between (date) and (date)...”.
- 3.16.3 **Offences committed by a child.** The detail and latitude required in the statement of facts for a section 67(2)(j) section 67 ground is prescribed by Rule 14 of the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013. This provides that the statement of facts constituting the offence shall have the same degree of specification as is required by section 138(4) of, and Schedule 3 to, the Criminal Procedure (Scotland) Act 1995 and the statement shall also specify the nature of the offence in question. Further details on the specification required for section 67(2)(j) is outlined within Appendix 3.
- 3.16.4 Where there is reason to believe that the evidence may establish either of two offences, it may be necessary for the reporter to include alternative offences in the supporting facts. For example, it may be that the evidence would establish either an offence of theft or alternatively an offence of reset. Both Rule 3.48 and Rule 3.50 apply to a section 67(2)(j) section 67 ground. However the reporter should respect the principle of fair notice as far as possible and, where appropriate, should state both alternative offences. The reporter should only ever seek to establish one of the alternatives as it is incompetent to seek to establish two or more offences from the same facts.
- 3.16.5 **Offences committed against a child.** Where the statement of grounds contains a section 67 ground that relates to a schedule 1 offence (section 67(2)(b), (c), or (d)), the reporter is to include the details of the offence within the supporting facts and not the section 67 ground. Whilst there is no legal requirement to name the specific offence, the reporter is to state the offence in the supporting facts and should identify which of the schedule 1 offences has been committed against the child.
- 3.16.6 For example, if it is stated that “Mrs Smith struck James on the face with her hand causing bruising to his left cheek”, the reporter should also identify the offence that was committed (assault) and which of the schedule 1 offences has been committed in support of the section 67 ground (an offence involving bodily injury to a child under the age of 17 years). Further details on the specification required for section 67 grounds that include a schedule 1 offence are outlined within Appendix 3.
- 3.16.7 The reporter is to specify more than one schedule 1 offence only where there are distinguishable separate offences and the reporter has decided that it is in the interests of the child's welfare to specify more than one offence. Where the reporter states distinguishable separate offences on a single form, only the reporter should state only one section 67(2)(b) section 67 ground.
- 3.16.8 Where there is reason to believe that the evidence may establish either of two offences, it may be necessary to include alternative offences in the statement

of facts. For example, it may be that the evidence would establish either an offence of assault or an offence of culpable and reckless conduct causing injury. Where alternative offences are specified the reporter should seek to establish one or other of the alternatives and not both.

**3.16.9 Name of alleged offender.** Where the statement of grounds contain a section 67(2)(b) or (d) section 67 ground, the reporter is to state the name of the person who committed the schedule 1 offence where the identity is reasonably thought to be known on the basis of the available evidence, provided such naming is consistent with the welfare of the child who has been referred. The reporter is to take this approach as:

- the identity of the offender will be a relevant fact for the children’s hearing in the disposal of the child’s case, and,
- establishing in an application that a person has committed a schedule 1 offence may allow other children who are members of the same household as the perpetrator in the future, to be protected under section 67(2)(e).

**3.16.10 Member of the same household and close connection.** In section 67(2)(c), (d), and (f) section 67 grounds, the reporter should state in the supporting facts the broad facts regarding the relationship between the child who is the subject of the statement of grounds and the child victim, the offender or the perpetrator of domestic abuse. These facts must amount to them being, or being likely to become, members of the same “household” or having, or likely to have, a “close connection”.

**3.16.11 ‘Catch all/conclusion’ paragraphs.** There is no legal requirement to specify a ‘catch all’ or ‘conclusion’ final paragraph in a statement of grounds for any of the section 67 grounds. In many cases these paragraphs are not strictly factual statements. They tend to represent the legal conclusion to be drawn from the stated facts, in support of the section 67 ground. However there are circumstances where the reporter may state a ‘catch all’ or ‘conclusion’ paragraph, for example:

- where the condition stated is in the present tense (for example section 67(2)(a) and (n) section 67 grounds. For example “the relationship between John and Mrs Smith has broken down to the extent that John refuses to return to the family home”, or “as a result of her lifestyle as shown in statements 3, 4 and 5 above, Mrs Smith is unable to provide an acceptable standard of care for John. As a result John has suffered injuries as shown in statement 6 above”;
- where it would assist with the understanding of the section 67 ground; or
- where the reporter has specified more than one section 67 ground on a single form.

If the reporter includes a ‘catch all’ statement of fact, the reporter should ensure that it does not simply reiterate the wording of the section 67 ground itself.

## Style

3.17 Although the reporter has some discretion as to style and presentation the following principles and direction must be applied when writing supporting facts:

3.17.1 **Avoid long complex sentences and paragraphs.** The reporter should ensure that a paragraph addresses a single issue. Where possible, the reporter should use single sentences followed by sub-paragraphs to provide detail.

e.g. “..... for example;

- a)
- b)

“.....including the following;

- a)
- b)

It is suggested that the words “for example” or “including the following” are used. Using the “in particular” may restrict the reporter to leading evidence on only those incidents, events or circumstances stated.

3.17.2 **Section 67 grounds and supporting facts must be linked.** As outlined above at paragraph 2.9, where the reporter states cumulative section 67 grounds on a single form, the reporter must make it clear to the reader which facts are stated in support of each section 67 ground. For example “ in support of the (first) (second) section 67 ground above it is stated that”, or, “Statements of fact 3,4 and 5 demonstrate a lack of parental care....statement of facts 5,6,and 7 demonstrate an offence of neglect...”.

3.17.3 **Children and adults must be designed by name and title.** It is important when drafting a statement of grounds that the reporter respects the rights and dignity of children and adults. Therefore in all statements of grounds, other than those stated under section 67(2)(j), the reporter is to identify the child by full name in the initial supporting facts. Thereafter the reporter is to design the child by first name and not as “the child”. The reporter is to design adults by their full name and title initially (for example “Mrs Margaret Smith”) and subsequently as “Mrs Smith” and not as “the child’s mother”. Where persons have the same name, the reporter should distinguish the individuals concerned e.g. “Mr Smith, junior” and “Mr Smith, senior”.

3.18. The reporter is to state the statement of grounds on the form. The reporter should number each paragraph within the supporting facts and use letters for each sub-paragraphs. In section 67(2)(j) section 67 grounds, the reporter is to state each offence by a child as a separate and numbered paragraph of the supporting facts. Where cumulative section 67 grounds are stated, the reporter is to number these grounds. The reporter is not to use bullet points in a statement of grounds.

- 3.19. With the exception of section 67(2)(j) section 67 grounds, the reporter should use the first few paragraphs of the supporting facts to cover any formal matters relative to the section 67 ground, for example the family composition where this is relevant. The reporter should then use the remainder of the paragraphs to outline the substantive facts which the reporter is stating in support of the section 67 ground.

### **Language**

- 3.20. Language can be a powerful tool. The appropriate use of words can mean the difference between acceptance and non acceptance of the statement of grounds. It can also impact on how well the statement of grounds is understood and interpreted.
- 3.21. In exercising professional judgement and discretion, the reporter is to give careful consideration to the use of language when specifying statements of fact. The reporter is to apply the following principles:
- 3.21.1 **The language used should be easily understood.** The statement of grounds has to meet the needs of a variety of audiences, from child, to sheriff, to children’s hearing. Accordingly, the reporter is to use language that is straight forward, accessible and in plain English. The reporter should write in clear sentences. The reporter should not begin a paragraph with “That” and conclude it with a semi-colon.
- 3.21.2 **Legal language and terminology should not be used.** The reporter is to use legal language and terminology only when required for sufficient specification of the section 67 ground, for example, the name of the offence or the specific paragraph of schedule 1. The reporter is not to use the following phrases:
- as far as has been ascertained
  - hereinafter referred to as
  - hereby incorporated within
  - the lieges.
- This list is not exhaustive.
- 3.21.3 **Jargon, euphemisms and acronyms are to be avoided.** For example. “Munchausen’s syndrome”, “non accidental injury” “ADHD”, “over-chastisement”, “private parts”.
- 3.21.4 **Language that is not specific is to be avoided.** For example, “concerns”, “serious problems”, “drink problem”, “mental health issues”. These phrases do not contain sufficient specification to convey the extent or impact of the issue of concern. It is more appropriate for the reporter to state the details of the behaviour and its relevance to the section 67 ground. For example, “Mrs Smith has ... [e.g. depression]... which causes her to ... As a result ... [e.g. the impact, or likely impact, on the child]...”, or “Mrs Smith regularly ... [e.g. consumes alcohol]... to such an extent that she is unable to ... As a result ... [e.g. the impact, or likely impact ...”



3.21.5 **Detailed medical terminology should be avoided.** It is unlikely that children, relevant persons and panel members will be familiar with detailed medical terms. Therefore the reporter should not use them unless there is no appropriate alternative to convey the detail or nature of the injury or condition. For example it may be appropriate for the reporter to refer to a fracture as a “spiral fracture” where it is necessary to convey a break to the bone that involves a twisting motion. The reporter should use “bruise” rather than “haematoma”. Whenever possible, the reporter should avoid using unusual medical terms which would not be widely understood. Examples of suggested alternatives to detailed medical terms are stated at Appendix 4.

3.21.6 Where it is necessary and relevant to state that an individual has a medical condition, the reporter can use the medical name for the condition where:

- the condition is generally well known and understood e.g. diabetes;
- the family are likely to be familiar with the medical name;
- there is no appropriate alternative to convey the detail or nature of the condition.

3.21.7 **Body parts in sexual offence cases should be referred to by anatomical names.** The reporter is to take care to ensure that children are treated with respect. Assumptions are often made about the “appropriate” language to use when referring to parts of the body. Therefore, the reporter is to avoid using family names for parts of the body and instead is to use the correct anatomical name, for example penis and vagina.

3.22. In addition to the above, the reporter should consider the following factors when drafting a statement of grounds:

3.22.1 **Tone, implication and weight of language.** The reporter should take care with the implications that can be drawn from the language used. For example referring to an individual as “a drug addict”, “an alcoholic” or “a prostitute”. It is more appropriate for the reporter to state the impact that the behaviour associated with these activities is having or may have on the child, where this is relevant to the section 67 ground.

3.22.2 The reporter should take care not to overstate a relevant issue. For example stating “on several occasions ...” when there has been only two. It is more accurate for the reporter to state “on two occasions”.

3.22.3 **Use of tense.** The reporter should use tense carefully to convey whether acts or omissions have occurred in the past, are ongoing and continuing or are likely to happen in the future. For example, “Mrs Smith regularly consumes alcohol to such an extent that ..., for example on...”. This use of the present tense conveys a continuing and ongoing course of conduct. Use of the present tense allows the possibility of the reporter leading evidence not only of past events, but also evidence about related events that have occurred after the statement of grounds was drafted.

3.22.4 **Use of adverbs and adjectives.** The reporter should take care in the use of adverbs and adjectives. Although descriptive language may add colour and

context, it may not always be necessary to state words such as “significantly” “frequently” and “considerable”. The inappropriate use of adverbs and adjectives can result in legal debate that diverts from the key facts.

#### **4. Use of Historical Information, Previously Established Statements of Grounds and Previous Convictions**

##### ***Historical Information***

- 4.1. The reporter is to take particular care when considering whether to include information about historical or past events, including information contained within previously established statements of grounds<sup>7</sup>. Historical information can often be useful or necessary to show a pattern or course of behaviour. However, the reporter is to include this type of information only where the facts continue to be relevant to the present section 67 ground.
- 4.2. For example: *“Mrs Smith has a history of drug use and previously behaved in a manner that resulted in unnecessary suffering to her son John.”* This is likely to be a relevant fact for the reporter to state in support of a section 67(2)(a) section 67 ground in respect of Mrs Smith’s daughter Anne where the reporter is seeking to show a pattern of behaviour likely to cause unnecessary suffering to Anne and the impact of Mrs Smith’s drug use is a *present* cause for concern.
- 4.3. However, it is unlikely to be a relevant fact to state in support of a section 67(2)(n) section 67 ground where the reporter is seeking to show that Anne’s behaviour is beyond her mother’s control. It will not be a relevant fact to state in support of a section 67(2)(b) section 67 ground where the reporter is seeking to establish that Anne has been assaulted by her mother resulting in Anne suffering bodily injury.

##### ***Previously Established Statement of Grounds***

- 4.4. Where a fact contained within the statement of grounds has been previously established, this fact can be proved (subject to the qualification from *M v Constanda* 1999 SLT 494) by production of a certified copy of the court interlocutor and the statement of previously established statement of grounds. (*McGregor v H* 1983 SLT 626). This applies only where evidence was led in the original application (*M v Constanda* 1999 SLT 494).
- 4.5. Where a previously established statement of grounds is relied upon, the reporter is seeking to prove the original fact or concern (for example that David has been wilfully ill-treated) and the link to the current section 67 ground (for example, Marie is a member of the same household as David who has been wilfully ill-treated). The previously established statement of grounds

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<sup>7</sup> References to previously established statements of grounds includes reference to grounds for referral previously established under the Criminal Procedure (Scotland) Act 1995.

and the court interlocutor are the *evidence* by which the reporter will seek to prove the fact that David was wilfully ill-treated.

### **Previous Convictions**

4.6. The fact that a person has committed an offence can be proved by production of a certified copy of the conviction. (Section 10 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968). Production of an extract conviction creates a rebuttable presumption that the offence was committed by the person named in the conviction.

4.7. Where a previous conviction is relied upon, the reporter is seeking to prove:

- either that a schedule 1 offence has been committed against a child or that a perpetrator has committed a specific offence (either a schedule 1 offence, an offence that constitutes domestic abuse or an offence under Part 1, 4 or 5 of the Sexual Offences (Scotland) Act 2009), and
- the link to the current section 67 ground (for example that the child has a close connection with the perpetrator of the schedule 1 offence or the domestic abuse)

The extract conviction is the *evidence* by which the reporter will seek to prove the fact that an offence has been committed and the identity of the perpetrator.

### **Use of Previously Established Grounds for Referral and Previous Convictions**

4.8. As outlined above the reporter is to apply principles of fairness and balance when drafting the statement of grounds. The reporter is to take particular care when considering whether to include information about historical or past events, including a previously established statement of grounds or previous convictions.

4.9. The reporter is to consider carefully the use of details of the previously established statement of grounds or previous conviction. The reporter is to state only the essential facts and any non-essential, but relevant, facts within the supporting facts. The reporter is to take particular care with a statement of grounds which was previously established some time ago and a previous conviction obtained outwith Scotland. It may not be sufficient for the reporter to simply re-state the offences as narrated in the conviction or previous statement of grounds.

4.10. For example, where the previous conviction states:

- “That on 13 May 1999, at 45 High Street, Anytown, Kate Smith, being a person who has attained the age of 16 years, and has parental responsibilities in relation to Kevin Smith (born 2/11/1998), did wilfully assault the said Kevin Smith in a manner likely to cause him unnecessary suffering or injury to health, by slapping him on the face causing him bruising, contrary to section 12 of the Children and Young Persons (Scotland) Act 1937; the reporter should state this as:

- “That on 13 May 1999, at 45 High Street, Anytown, Kate Smith assaulted Kevin Smith (born 2/11/88) by slapping him on the face causing him bruising. This is an offence involving bodily injury to a child under the age of 17 years.” The extract conviction will provide the evidence in order to prove this fact<sup>8</sup>.

4.11. The reporter should not state as a fact that something has been “previously established” or that an individual has been “convicted”. This is evidence and not fact (see paragraph 3.3). For example:

- “On 12th January 2002, it was established at Edinburgh Sheriff Court that Mrs Smith wilfully neglected John by ...” should be stated as “On 1 June 2001, Mrs Smith wilfully neglected John by ...”
- “On 22nd January 2002, at Edinburgh Sheriff Court, Jane Smith was convicted of wilfully neglecting John Smith by ...” should be stated as “On 1 June 2001, Mrs Smith wilfully neglected John by...”

The relevant fact that the reporter is seeking to prove in the above examples is that John has been wilfully neglected by his mother not that his mother was convicted, or that a statement of grounds was previously established.

4.12. The reporter should not attach or annex to the statement of grounds a copy of a previously established statement of ground or a copy of the previous conviction, except in the circumstances stated in paragraph 4.13.

4.13. The reporter may attach a copy of the previously established statement of grounds where:

- the facts established in the previous statement of grounds forms part of a pattern of behaviour and this behaviour is relevant to the section 67 ground; and
- the vast majority of the supporting facts within the previous statement of grounds are either essential or relevant to the current section 67 ground; and
- the facts established in the previous statement of grounds cannot be summarised in the current supporting facts.

It is likely to be rare for the reporter to attach a previously established statement of grounds. Unless these 3 criteria are met, the reporter should not attach a copy. Instead the reporter is to state the relevant facts within the supporting facts as outlined above.

4.14. Where a copy of the previously established statement of grounds is attached the reporter is to ensure that the statement is appropriately linked and referred to within the new supporting facts. The reporter must include a statement that links, and shows the relevance of, the previously established statement of grounds. In addition, the reporter must state that the previous statement of grounds is incorporated and forms part of the supporting facts. For example:

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<sup>8</sup> See practice note on Criminal Justice (Scotland) Act 2003

“A statement of grounds dated [date of the original grounds] is attached. The terms of the attached statements of grounds are included in, and form part of, this statement.”

## Appendix 1

### Specification of Section 67 Grounds

This appendix shows the degree of specification that is required when the reporter states the section 67 ground in the statement of grounds (see paragraph 2.2 of Part 2 above).

a	Lack of parental care	that in terms of Section 67(2)(a) of the Children's Hearings (Scotland) Act 2011, [he]/[she] is likely to suffer unnecessarily, or [his]/[her] health or development is likely to be seriously impaired, due to a lack of parental care
b	Victim of a schedule 1 offence	that in terms of Section 67(2)(b) of the Children's Hearings (Scotland) Act 2011, a schedule 1 offence has been committed in respect of [him]/[her]
c	Close connection with a schedule 1 offender	that in terms of Section 67(2)(c) of the Children's Hearings (Scotland) Act 2011, [he]/[she] has, or is likely to have, a close connection with a person who has committed a schedule 1 offence
d	Member of the same household as a victim of a schedule 1 offence	that in terms of Section 67(2)(d) of the Children's Hearings (Scotland) Act 2011, [he]/[she] 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	Exposure to persons whose conduct likely to have an adverse impact	that in terms of Section 67(2)(e) of the Children's Hearings (Scotland) Act 2011, [he]/[she] is being, or is likely to be, exposed to persons whose conduct is (or has been) such that it is likely that: (i) [he]/[she] will be abused or harmed, or (ii) [his]/[her] health, safety or development will be seriously adversely affected
f	Close connection with person who has carried out domestic abuse	that in terms of Section 67(2)(f) of the Children's Hearings (Scotland) Act 2011, [he]/[she] has, or is likely to have, a close connection with a person who has carried out domestic abuse
g	Close connection with a Sexual Offences Act offender	that in terms of Section 67(2)(g) of the Children's Hearings (Scotland) Act 2011, [he]/[she] 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
h	Accommodated under section 25 and special measures required	that in terms of Section 67(2)(h) of the Children's Hearings (Scotland) Act 2011, [he]/[she] 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	Permanence Order in force and special measures required	that in terms of Section 67(2)(i) of the Children's Hearings (Scotland) Act 2011, a permanence order is in force in respect of [him]/[her] and special measures are needed to support [him]/[her]
j	Committed an offence	that in terms of Section 67(2)(j) of the Children's Hearings (Scotland) Act 2011, [he]/[she] has committed an offence
k	Misuse of alcohol	that in terms of Section 67(2)(k) of the Children's Hearings (Scotland) Act 2011, [he]/[she] has misused alcohol
l	Misuse of a drug	that in terms of Section 67(2)(l) of the Children's Hearings (Scotland) Act 2011, [he]/[she] has misused a drug (whether or not a controlled drug)
m	Child's conduct	that in terms of Section 67(2)(m) of the Children's Hearings (Scotland) Act 2011, [his]/[her] conduct has had, or is likely to have, a serious adverse effect on the health, safety or development of [his]/[her] or another person
n	Beyond control	that in terms of Section 67(2)(n) of the Children's Hearings (Scotland) Act 2011, [he]/[she] is beyond the control of a relevant person
o	Failure to attend school	that in terms of Section 67(2)(o) of the Children's Hearings (Scotland) Act 2011, [he]/[she] has failed without reasonable excuse to attend regularly at school
p	Forced civil partnership	that in terms of Section 67(2)(p) of the Children's Hearings (Scotland) Act 2011, [he]/[she]: (i) is being, or is likely to be, subjected to physical, emotional or other pressure to enter into a civil partnership, or (ii) is, or is likely to become, a member of the same household as such a child
q	Forced marriage	that in terms of Section 67(2)(q) of the Children's Hearings (Scotland) Act 2011, [he]/[she]: (i) has been, is being or is likely to be forced into a marriage (that expression being construed in accordance with section 1 of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act) or, (ii) is, or is likely to become, a member of the same household as such a child


## Appendix 2

### Examples of Cumulative and Alternative Section 67 Grounds

This appendix contains examples of the use of cumulative and alternative conditions in the drafting of grounds for referral (see paragraphs 2.3 -2.15 of Part 2 above).

#### Cumulative Section 67 Grounds

**Case Example 1:** Louise's family life is characterised by violent, aggressive and emotionally abusive behaviour by her parents towards her. In addition to this pattern of behaviour, the police have reported one specific incident when Louise's father assaulted her by hitting her on the head causing her bruising. The reporter has decided to arrange a children's hearing and state both section 67(2)(a) and (b) section 67 grounds. The supporting facts are related and interconnected and therefore a single form is used. The statement of grounds can be stated as follows:



SCOTTISH  
CHILDREN'S REPORTER  
ADMINISTRATION

*The children's reporter has arranged for Louise ..... to attend a children's hearing for .....*

*The reason for this is:*

- 1. that in terms of Section 67(2)(a) of the Children's Hearings (Scotland) Act 2011, she is likely to suffer unnecessarily, or her health or development is likely to be seriously impaired, due to a lack of parental care*

**and**

- 2. that in terms of Section 67(2)(b) of the Children's Hearings (Scotland) Act 2011, a schedule 1 offence has been committed in respect of her*

**Supporting Facts**

*In support of the above it is stated that:*

- 1. Paragraph identifying Louise, narrating her family composition and specifying who normally cares for Louise [assuming these facts are stated in support of both section 67 grounds].*

*In support of the first section 67 ground above it is stated that:*

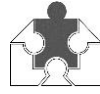
- 2. Paragraph(s) narrating the facts regarding the pattern of violent, aggressive and emotionally abusive behaviour by Louise's parents towards her*
- 3. ....[as above]*

*In support of the second section 67 ground it is stated that:*

- 4. Paragraph narrating the offence committed by Louise's father against Louise. [Although this offence may form part of the pattern referred to in paragraph 2, it should not be an essential element of that pattern – see paragraphs 2.4 and 2.5 of Part 2 above. If it is an essential aspect, then either one section 67 ground should be stated, or alternative section 67 grounds should be stated].*
- 5. Paragraph narrating that the offence in paragraph 4 is an offence involving bodily injury and that this is an offence specified in Schedule 1.3 to the Criminal Procedure (Scotland) Act 1995.*



**ANOTHER WAY OF STATING THE FACTS IN THIS CASE WOULD BE:**



SCOTTISH  
CHILDREN'S REPORTER  
ADMINISTRATION

*The children's reporter has arranged for Louise ..... to attend a children's hearing for .....*

*The reason for this is:*

1. *that in terms of Section 67(2)(a) of the Children's Hearings (Scotland) Act 2011, she is likely to suffer unnecessarily, or her health or development is likely to be seriously impaired, due to a lack of parental care*

**and**

2. *that in terms of Section 67(2)(b) of the Children's Hearings (Scotland) Act 2011, a schedule 1 offence has been committed in respect of her*

**Supporting Facts**

*In support of the above it is stated that:*

1. *Paragraph identifying Louise, narrating her family composition and specifying who normally cares for Louise [assuming these facts are stated in support of both section 67 conditions].*
2. *Paragraph(s) narrating the facts regarding the pattern of violent, aggressive and emotionally abusive behaviour by Louise's parents towards her.*
3. *.....[as above]*
4. *Paragraph narrating the offence committed by Louise's father against Louise. [Although this offence may form part of the pattern referred to in paragraph 2, it should not be an essential aspect of that pattern – see paragraphs 2.4 and 2.5 of Part 2 above. If it is an essential aspect, then either only one section 67 ground should be stated, or alternative section 67 grounds should be stated].*
5. *As a result of the actions of Louise's parents as demonstrated in paragraphs 2,3 and 4, Louise is likely to.....[this style would be appropriate where a "catch-all" conclusion paragraph is being stated – see paragraphs 3.16.11 of Part 2 above.]*
6. *Paragraph 4 demonstrates an offence of assault involving bodily injury to a child under the age of 17 years. This is an offence specified in Schedule 1.3 to the Criminal Procedure (Scotland) Act 1995.*

## ALTERNATIVE CONDITIONS

**Case Example 2:** Andrew has been repeatedly found by the police and his parents to be under the influence of a substance. Andrew has refused to say what he has been taking, and in the absence of any evidence that he has been drinking alcohol (for example, his breath did not smell of alcohol), it is believed that he has been misusing a drug.

The reporter has decided to arrange a children's hearing. It is difficult for the reporter to assess whether the evidence led will be of sufficient quality, strength and weight to support the section 67(2)(l) section 67 ground (that Andrew has misused a drug). In particular it is not possible to assess what evidence will be led by Andrew of what substance he had taken. The facts in this case are also capable of establishing a section 52(2)(b) condition, but they are not distinguishable from the section 52(2)(f) condition. Therefore the reporter specifies an alternative condition as follows:

SCRA Form F



SCOTTISH  
CHILDREN'S REPORTER  
ADMINISTRATION

*The children's reporter has arranged for Andrew ..... to attend a children's hearing for .....*

*The reason for this is:*

*that in terms of Section 67(2)(l) of the Children's Hearings (Scotland) Act 2011, he has misused a drug (whether or not a controlled drug)*

*or alternatively*

*that in terms of Section 67(2)(k) of the Children's Hearings (Scotland) Act 2011, he has misused alcohol*

**Supporting Facts**

*In support of the above it is stated that:*

- 1. Paragraph(s) identifying the occasions when Andrew has been under the influence of "a substance" and the effect this has had on him.*
- 2. Statement saying that during the occasions mentioned in paragraph 1 (and other paragraphs if applicable), Andrew was under the influence of an unknown drug or alternatively was under the influence of alcohol.*

[Alternative conditions must only be used where the reporter is seeking to establish only one or other of the conditions, but not both (paragraphs 2.12 – 2.18). Therefore the facts are stated in support of both of the alternative conditions.]

N.B. Alternative conditions must not be stated where one of section 67 grounds is section 67(2)(j) *Constanda v M* 1997 SLT 1396).

## Appendix 3

### Specification of the Supporting Facts

This appendix contains a detailed examination of the specification required for each of the section 67 grounds. It outlines what facts are legally required and essential to support the section 67 ground, together with relevant case law and extracts from text books and other documents, including the Policy Memorandum to the Children's Hearings (Scotland) Bill.

There are other reported cases in relation to the section 67 grounds (or at least their statutory predecessors in the Social Work (Scotland) Act 1968 and the Children (Scotland) Act 1995) and therefore this list is not exhaustive. However, the leading authorities are stated.

The appendix also gives examples of facts that may be relevant to the disposal of the case, and therefore that the reporter should state.

A summary comparison between the section 67 grounds within the Children's Hearings (Scotland) Act 2011 and the grounds for referral in the Children (Scotland) Act 1995 is below:

<b>Section 67(2) 2011 Act</b>	<b>Section 52(2)1995 Act</b>
(a)	(c)
(b)	(d)
(c)	(f)
(d)	(e)
(e)	No equivalent
(f)	No equivalent
(g)	No equivalent
(h)	(l)
(i)	(l)
(j)	(i)
(k)	(j)
(l)	(j)
(m)	No equivalent
(n)	(a)
(o)	(h)
(p)	No equivalent
(q)	No equivalent

The Policy Memorandum states the intention behind the section 67 grounds was “*to modernise the grounds of referral, to simplify the language and ensure they provide for vulnerable children and young people who can benefit from a referral to a children’s hearing.*”<sup>9</sup> Therefore some of the existing grounds have been reworded, sections 52(2)(b), (g) and (k) have been deleted and other new grounds have been introduced.

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<sup>9</sup> Paragraph 199

**Section 67(2)(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.**

<p align="center"><b>Essential Facts and Potentially Relevant Facts</b></p>	<p align="center"><b>Relevant case law, references in the Policy Memorandum, text books<sup>10</sup> and related legislation</b></p>
<p><b>Essential Facts</b></p> <p>State the facts regarding:</p> <ul style="list-style-type: none"> <li>• The relevant person in relation to the child whose care is lacking</li>   <li>• the nature of any lack of parental care and/or the basis of the likely lack of parental care: <ul style="list-style-type: none"> <li>○ what the parent has been doing, or not doing, in relation to the referred child that amounts to a lack of care of the child – this would include the duration and pattern of that lack of care; and/or</li> <li>○ what the parent has been doing, or not doing, in relation to another child, <i>where that is relevant to the likely lack of care of the referred child</i>; and/or</li> <li>○ the parent’s lifestyle and behaviour <i>where that is relevant to the likely lack of care of the referred child</i></li> </ul> </li>   <li>• The nature of any serious impairment or unnecessary suffering that the child has suffered, or is likely to suffer.</li>   <li>• How the lack of care caused, or is likely to cause, the impairment or suffering. i.e. the link between the lack of parental care with the, or likely lack of care, and the child’s serious impairment or unnecessary suffering.</li> </ul>	<p>The Policy Memorandum (paragraphs 196 – 205) is clear that the intention is to restate the grounds of referral but to simplify the language of existing grounds in order to make them more easily understandable for panel members, children and families. The intention is therefore not to move away from the established understanding of ‘lack of parental care’ under the 1995 Act.</p> <p>D v Kelly 1995 SLT 1220 (the test is that of a “reasonable parent” and neither a failure to attain perfection or success in parental care nor the absence of some care that might be provided by others constituted a lack of parental care in terms of section 32(2)(c)).</p> <p>Finlayson Applicant 1989 SCLR 601 (Although the parents were loving and concerned with the health of the child, their refusal to consent to conventional medical treatment amounted to a lack of parental care, as this is to be tested objectively)</p> <p>H v Harkness 1998 SLT 1431 (must ask the statutory question of whether a lack of parental care is likely to cause the child unnecessary suffering or serious impairment to health or development; it is not enough for the reporter merely to show that children might be better off or have a better chance with foster parents)</p> <p>M v McGregor 1982 SLT 41 (proper test to be applied is an objective one, “namely whether a reasonable person looking into the circumstances of the particular case would consider that this child was likely to be caused unnecessary suffering or serious impairment to her health or development through lack of parental care on the part of this mother”)</p>

<sup>10</sup> This section will be added to once text books on the Children’s Hearings (Scotland) Act 2011 are published.

	<p>McGregor v L 1981 SLT 194 (“if it is proved that the habits and mode of life of these parents are such as to yield the reasonable inference that they are unlikely to care for this child in a manner likely to prevent unnecessary suffering or serious impairment of her health or development, the ground for referral would be established”)</p> <p>MM v McClafferty 2008 FamLR 22 (“Likely” does not mean “probably” or “more likely than not”, but that there is a significant or substantial risk of events set out under the condition (c) occurring in the future; in order to assess whether there is such a “likelihood”, the sheriff requires to look at past events and the character of the people involved, so that conclusions can be drawn as to what is likely to occur in the future - a form of evidence-based risk assessment)</p>
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**Section 67(2)(b): a schedule 1 offence has been committed in respect of the child**

<p align="center"><b>Essential Facts and Potentially Relevant Facts</b></p>	<p align="center"><b>Relevant case law, references in the Policy Memorandum, text books and related legislation</b></p>
<p><b>Essential Facts</b></p> <p>State the facts regarding:</p> <ul style="list-style-type: none"> <li>▪ The circumstances that amount to the offence that was committed in respect of the child (when the offence is a statutory offence these will include the essential elements of the offence<sup>11</sup>).</li> <li>▪ The specific offence that was committed in respect of the child – this offence must be one of the offences mentioned in Schedule 1.</li> <li>▪ Which of the paragraphs in schedule 1 the offence is mentioned in (for example, an offence involving bodily injury to a child under the age of 17 years, being an offence mentioned in paragraph 3 of schedule 1).</li> </ul>	<p>Section 67(6) of the Act defines a schedule 1 offence as being an offence mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1995. The full list of schedule 1 offences is available at Schedule 1 to the Criminal Procedure (Scotland) Act 1995</p> <p>See Practice Note on schedule 1 offences involving physical injury to a child</p> <p>See note on section 51 of the Criminal Justice (Scotland) Act 2003</p> <p>Section 10 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 states that a conviction creates a rebuttable presumption that a person has committed the offence stated in the conviction.</p>
<p><b>Relevant facts</b></p> <ul style="list-style-type: none"> <li>▪ Additional facts that will be relevant are: <ul style="list-style-type: none"> <li>○ The identity of the perpetrator<sup>12</sup> (see paragraph 3.16.9 above)</li> <li>○ The nature of the injuries and/or harm caused<sup>13</sup></li> <li>○ The date, or dates, of the offence</li> <li>○ The locus of the offence</li> <li>○ If the identity of the perpetrator cannot be stated, then the people in whose care the child was when the offence was committed</li> </ul> </li> </ul>	<p>McGregor v K 1982 SLT 293 (not necessary to specify person alleged to have committed the offence)</p>

<sup>11</sup> E.g. see appendix 1 of Practice Instruction Note 38 on the Sexual Offences (Scotland) Act 2009 for details of the essential elements of offences under that act.

<sup>12</sup> An offence contrary to section 12 of the Children and Young Persons (Scotland) Act can only be committed by a person who is aged 16 or over and who has parental responsibilities in relation to the child or had charge or care of the child. Therefore if the schedule 1 offence is such an offence, it is an essential fact to state who committed the offence. This can either be a named individual or a group of persons (e.g. the child's mother and father) so long as all of the group are aged 16 or over and have parental responsibilities or had charge or care of the child.

<sup>13</sup> If the schedule 1 offence is one involving bodily injury, then the nature of the injury *is* an essential fact. If the schedule 1 offence is one contrary to section 12 of the Children and Young Persons (Scotland) Act 1937 and specific harm was caused, then this will also be an essential fact.

<p><b>Other points</b></p> <p>The offence may have been committed outside of Scotland. However, the conduct must amount to an offence under Scots law that is mentioned in Schedule 1.</p>	<p>S v Kennedy 1996 SLT 1087</p> <p>(no requirement that the offence had to be one which occurred in Scotland)</p>



**Section 67(2)(c): the child has, or is likely to have, a close connection with a person who has committed a schedule 1 offence.**

<p align="center"><b>Essential Facts and Potentially Relevant Facts</b></p>	<p align="center"><b>Relevant case law, references in the Policy Memorandum, text books and related legislation</b></p>
<p><b>Essential Facts</b></p> <p>State the facts regarding:</p> <ul style="list-style-type: none"> <li>▪ The circumstances that amount to the offence that was committed by the perpetrator (when the offence is a statutory offence these will include the essential elements of the offence<sup>14</sup>) –               <ul style="list-style-type: none"> <li>○ the perpetrator <i>must</i> be named</li> <li>○ the age of the victim <i>must</i> be stated – however, the name of the victim is not an essential fact (see below).</li> </ul> </li> <li>▪ The specific offence that was committed by the perpetrator – this offence must be one of the offences mentioned in schedule 1.</li> <li>▪ Which of the paragraphs in schedule 1 the offence is mentioned in (for example, an offence involving bodily injury to a child under the age of 17 years, being an offence mentioned in paragraph 3 of schedule 1).</li> <li>• The circumstances which amount to the referred child having a “close connection” with the perpetrator.</li> </ul> <p><b>Relevant Facts</b></p> <ul style="list-style-type: none"> <li>• The victim’s relationship to the perpetrator.</li> </ul>	<p>Section 67(3) says that a child is to be taken to have a “close connection” with someone if either the child is a member of the same household as the person or is not a member of the same household but has “significant contact” with the person.</p> <p>As “significant contact” is only to be considered if a child is not a member of the same household as the person, it should be interpreted separately from “member of the same household”. Our view is that “significant” should not be interpreted only to include volume of contact, but also the nature of the contact and the whole circumstances relating to the contact.</p> <p>Where the “significant contact” is on the basis of the child being a member of the same household as the person, the previous case law regarding “household” will continue to be relevant.</p> <p><b>Case law relating to the interpretation of “household”</b></p> <p>Kennedy v R's Curator ad litem 1993 SLT 295          (the important question in deciding whether a person was a member of a household is whether the ties of affection and regular contact which held the parties together as a group still continued, and the fact that persons were separated temporarily or only due to the intervention of the authorities would not generally mean that they were not members of the same household)</p> <p>McGregor v H 1983 SLT 626          (“household” connotes a family unit or</p>

<sup>14</sup> E.g. see appendix 1 of Practice Instruction Note 38 on the Sexual Offences (Scotland) Act 2009 for details of the essential elements of offences under that act.

<ul style="list-style-type: none"> <li>• Additional facts that will be relevant are: <ul style="list-style-type: none"> <li>○ The nature of the injuries and/or harm caused to the child victim<sup>15</sup></li> <li>○ The date, or dates, of the offence</li> <li>○ The locus of the offence</li> </ul> </li> </ul> <p><b>Other points</b></p> <p>It is not essential to name the victim of the offence in section 67(2)(c) grounds. In recognition of the victim's right to privacy, there is a presumption that the victim will not be named in the statement of facts<sup>16</sup>. Instead the victim must be described by reference to their age, gender and any relationship to the perpetrator. The presumption shall not apply where:</p> <ul style="list-style-type: none"> <li>○ The victim is a member of the same family as the referred child and the relevant persons and so is known to them; or</li> <li>○ fair notice to the perpetrator is required as: <ul style="list-style-type: none"> <li>• he/she has not previously been convicted of the offence; and</li> <li>• the offence has not been stated in a previous statement of grounds sent to the perpetrator.</li> </ul> </li> </ul> <p>The offence may have been committed outside of Scotland. However, the conduct must amount to a schedule 1 offence under Scots law.</p>	<p>something akin to such a unit - a group of persons, held together by a particular kind of tie who normally live together, even if individual members of the group may be temporarily separated from it")</p> <p>A v Kennedy 1993 SCLR 107 (followed the test of "household" that was set out in McGregor v H and added that a household might continue to constitute the same household even if one or more members had separated from it permanently, in this case because of the earlier death of the child's sibling)</p> <p>Ferguson v S 1992 SCLR 866 (there is no presumption that a child is a member of the same household as his or her parent)</p> <p>Templeton v E 1998 SCLR 672 (ties of affection or occasional overnight contact may not be enough, particularly if the separation has been permanent)</p> <p>Cunningham v M 2005 SLT (Sh Ct) 73 (‘household’ is a group of persons and not the locality in which they live i.e. the criterion is relationship rather than locality)</p> <p>Refer to specification of section 67(2)(b) section 67 grounds regarding matters relating to schedule 1 offences.</p>
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<sup>15</sup> If the schedule 1 offence is one involving bodily injury, then the nature of the injury *is* an essential fact.

If the schedule 1 offence is one contrary to section 12 of the Children and Young Persons (Scotland) Act 1937 and specific harm was caused, then this will also be an essential fact.

<sup>16</sup>In leading evidence in a resulting proof (or sharing evidence prior to the proof), the reporter can provide other parties with the details of the victim, for example by providing the perpetrator's solicitor with a copy of the extract conviction that provides the evidence for the offence.

**Section 67(2)(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**

<p><b>Essential Facts and Potentially Relevant Facts</b></p>	<p><b>Relevant case law, references in the Policy Memorandum, text books and related legislation</b></p>
<p><b>Essential Facts</b></p> <ul style="list-style-type: none"> <li>▪ State the facts regarding: <ul style="list-style-type: none"> <li>○ The circumstances that amount to the offence that was committed in respect of the child victim (when the offence is a statutory offence these will include the essential elements of the offence<sup>17</sup>)</li> <li>○ The specific offence that was committed in respect of the child victim – this offence must be one of the offences mentioned in Schedule 1.</li> <li>○ Which of the paragraphs in schedule 1 the offence is mentioned in (for example, an offence involving bodily injury to a child under the age of 17 years, being an offence mentioned in paragraph 3 of schedule 1).</li> </ul> </li> <li>▪ State the broad facts regarding the relationship between the referred child and the child victim [this must amount to them being, or likely to become, members of the same “household”]</li> </ul> <p><b>Relevant facts</b></p> <p>Additional facts that will be relevant are:</p> <ul style="list-style-type: none"> <li>▪ The identity of the perpetrator<sup>18</sup> (see paragraph 3.16.9 above)</li> <li>▪ The nature of the injuries and/or harm caused<sup>19</sup></li> </ul>	<p>Unlike section 67(2)(c), this section 67 ground is limited to situations where the referred child is a member of the same household as the child victim.</p> <p><b>Case law relating to the interpretation of “household”</b></p> <p>Kennedy v R's Curator ad litem 1993 SLT 295 (the important question in deciding whether a person was a member of a household is whether the ties of affection and regular contact which held the parties together as a group still continued, and the fact that persons were separated temporarily or only due to the intervention of the authorities would not generally mean that they were not members of the same household)</p> <p>McGregor v H 1983 SLT 626 (“household” connotes a family unit or something akin to such a unit - a group of persons, held together by a particular kind of tie who normally live together, even if individual members of the group may be temporarily separated from it”)</p> <p>A v Kennedy 1993 SCLR 107 (followed the test of “household” that was set out in McGregor v H and added that a household might continue to constitute the same household even if one or more members had separated from it permanently, in this case because of the earlier death of</p>

<sup>17</sup> E.g. see appendix 1 of Practice Instruction Note 38 on the Sexual Offences (Scotland) Act 2009 for details of the essential elements of offences under that act.

<sup>18</sup> An offence contrary to section 12 of the Children and Young Persons (Scotland) Act can only be committed by a person who is aged 16 or over and who has parental responsibilities in relation to the child or had charge or care of the child. Therefore if the schedule 1 offence is such an offence, it is an essential fact to state who committed the offence. This can either be a named individual or a group of persons (e.g. the child’s mother and father) so long as all of the group are aged 16 or over and have parental responsibilities or had charge or care of the child.

<ul style="list-style-type: none"> <li>▪ The date, or dates, of the offence</li> <li>▪ The locus of the offence</li> <li>▪ If the identity of the perpetrator cannot be stated, then the people in whose care the child was when the offence was committed</li> </ul> <p><b>Other points</b></p> <p>The offence may have been committed outside of Scotland. However, the conduct must amount to an offence under Scots law that is mentioned in Schedule 1.</p>	<p>the child's sibling)</p> <p>Ferguson v S 1992 SCLR 866 (there is no presumption that a child is a member of the same household as his or her parent)</p> <p>Templeton v E 1998 SCLR 672 (ties of affection or occasional overnight contact may not be enough, particularly if the separation has been permanent)</p> <p>Cunningham v M 2005 SLT (Sh Ct) 73 (‘household’ is a group of persons and not the locality in which they live i.e. the criterion is relationship rather than locality)</p> <p>Refer to specification of section 67(2)(b) section 67 grounds regarding matters relating to Schedule 1 offences.</p>
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<sup>19</sup> If the schedule 1 offence is one involving bodily injury, then the nature of the injury *is* an essential fact.

If the schedule 1 offence is one contrary to section 12 of the Children and Young Persons (Scotland) Act 1937 and specific harm was caused, then this will also be an essential fact.

**Section 67(2)(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**

<p align="center"><b>Essential Facts and Potentially Relevant Facts</b></p>	<p align="center"><b>Relevant case law, references in the Policy Memorandum, text books and related legislation</b></p>
<p><b>Essential Facts</b></p> <p>State the facts regarding:</p> <ul style="list-style-type: none"> <li>▪ The conduct of the persons (<i>in the plural</i>) that support the conclusion that it is likely that the child will be abused or harmed, or the child’s health, safety or development will be seriously adversely affected. Examples may include sexual exploitation of others, alcohol or drug misuse, violence, or other criminal behaviour.</li> <li>▪ The circumstances which mean that the referred child is being, or is likely to be, exposed to these persons.</li> </ul> <p><b>Relevant Facts</b></p> <ul style="list-style-type: none"> <li>• The nature of any abuse or harm the child has suffered or the nature of any serious adverse affect on the child’s health, safety or development that has occurred (<i>if any</i>) as a result of the exposure to the persons.</li> <li>• The identities of the persons whose conduct is referred to.</li> <li>• The relationship of the child or relevant person to the persons whose conduct is referred to.</li> </ul>	

**Section 67(2)(f) the child has, or is likely to have, a close connection with a person who has carried out domestic abuse.**

<p><b>Essential Facts and Potentially Relevant Facts</b></p>	<p><b>Relevant case law, references in the Policy Memorandum, text books and related legislation</b></p>
<p><b>Essential Facts</b></p> <p>State the facts regarding:</p> <ul style="list-style-type: none"> <li>• The conduct of the person that amounts to “domestic abuse”. This “domestic abuse” need not necessarily be within the referred child’s family and no criminal conviction is necessary.</li> <li>• The identity of the person who has carried out this “domestic abuse”.</li> <li>• The circumstances that amount to the referred child having a “close connection” with the perpetrator.</li> </ul> <p>The focus in this section 67 ground is on the conduct of the perpetrator of the domestic abuse and their close connection with the child. There is therefore no need to state facts relating to whether the child was present during the domestic abuse or any effect that the domestic abuse has had, or may have, on the child. The presence of the child may be a relevant fact in some cases and, if so, may be included. However, the reporter is not to state facts relating to the effect on the child. It will be for the hearing to take account of any information and assessment about the impact on the child available to it when considering the case.</p>	<p>“Domestic abuse” is not defined in the act. Although the term is used in other legislation, for example section 11(7C) of the Children (Scotland) Act 1995 and section 1 of the Domestic Abuse (Scotland) Act 2011, it is not defined in any legislation.</p> <p>In his chapter on “Children’s Hearings” in the book “Domestic Abuse and Scots Law”<sup>20</sup>, Kenneth Norrie says that domestic abuse “is one of these concepts that, however difficult to define precisely, tends to be easy to recognise. To ensure that it achieves its protective function the concept as it appears in the Children’s Hearings (Scotland) Act 2011 ought to be given a wide definition.”</p> <p>He goes on to say that “The parameters of “abuse”, though not set out in the 2011 Act, are likely to be very similar to the definition of “abuse” contained in the Protection from Abuse (Scotland) Act 2001. Section 7 of that Act defines “abuse” to include “violence, harassment, threatening conduct, and any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm or distress”; “conduct” is defined to include speech or presence in a specified place or area.”</p> <p>In relation to the “domestic” nature of the abuse, he says “the definition given in other legislation is less helpful. The Domestic Abuse (Scotland) Act 2011 limits its operation to partner abuse and so excludes, for example, intergenerational abuse. Words and phrases need to be read within their own contexts and the protective nature of the Children’s Hearings (Scotland) Act 2011 suggests a wider reading of “domestic abuse” is appropriate than is given in the Domestic Abuse (Scotland) Act 2011. Abuse by a man of his daughter, witnessed by younger children, is as able to found the “domestic abuse” ground of referral of the</p>

<sup>20</sup> At paragraph 4-10 of “Domestic Abuse and Scots Law”, edited by Helen Hughes and published in 2011 by W Green and Son.

	<p>younger children to a children’s hearing as his abuse of their mother. “Domestic abuse”, it is submitted, includes but is not limited to the abuse of one family member by another family member (whether or not they live together), or of one member of a household by another member of that household, or abuse committed by familiars within the child’s home environment.”</p> <p>In a footnote to the passage above, Norrie refers to the case of <i>Yemshaw v Hounslow LBC</i> [2011] UKSC 3, [2011] 1 WLR 433 in support of his contention that “domestic abuse” should be interpreted widely. In that case the Supreme Court held that the narrower term “domestic violence” should be interpreted as including physical violence, threatening or intimidating behaviour and any other form of abuse which, directly or indirectly, might give rise to the risk of harm.</p> <p>Our view is that sheriffs should adopt the wide interpretation of “domestic abuse” advocated by Norrie.</p> <p>Section 67(3) says that a child is to be taken to have a “close connection” with someone if either the child is a member of the same household as the person or is not a member of the same household but has “significant contact” with the person.</p> <p>As “significant contact” is only to be considered if a child is not a member of the same household as the person, it should be interpreted separately from “member of the same household”. Our view is that “significant” should not be interpreted only to include volume of contact, but also the nature of the contact and the whole circumstances relating to the contact.</p> <p>Where the “significant contact” is on the basis of the child being a member of the same household as the person, the previous case law regarding “household” will continue to be relevant.</p> <p><b>Case law relating to the interpretation of “household”</b></p>
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	<p>Kennedy v R's Curator ad litem 1993 SLT 295  (the important question in deciding whether a person was a member of a household is whether the ties of affection and regular contact which held the parties together as a group still continued, and the fact that persons were separated temporarily or only due to the intervention of the authorities would not generally mean that they were not members of the same household)</p> <p>McGregor v H 1983 SLT 626  (“household” connotes a family unit or something akin to such a unit - a group of persons, held together by a particular kind of tie who normally live together, even if individual members of the group may be temporarily separated from it”)</p> <p>A v Kennedy 1993 SCLR 107  (followed the test of “household” that was set out in McGregor v H and added that a household might continue to constitute the same household even if one or more members had separated from it permanently, in this case because of the earlier death of the child’s sibling)</p> <p>Ferguson v S 1992 SCLR 866  (there is no presumption that a child is a member of the same household as his or her parent)</p> <p>Templeton v E 1998 SCLR 672  (ties of affection or occasional overnight contact may not be enough, particularly if the separation has been permanent)</p> <p>Cunningham v M 2005 SLT (Sh Ct) 73  (‘household’ is a group of persons and not the locality in which they live i.e. the criterion is relationship rather than locality)</p>
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**Section 67(2)(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**

<p><b>Essential Facts and Potentially Relevant Facts</b></p>	<p><b>Relevant case law, references in the Policy Memorandum, text books and related legislation</b></p>
<p><b>Essential Facts</b></p> <p>State the facts regarding:</p> <ul style="list-style-type: none"> <li>• The circumstances that amount to an offence under Part 1, 4 or 5 of the Sexual Offences (Scotland) Act 2009. The essential elements of the particular offence will require to be specified.</li>   <li>• The perpetrator of the offence.</li>   <li>• The circumstances that amount to the referred child having a “close connection” with the perpetrator.</li> </ul>	<p>Refer to the appendix to the Practice Direction on the Sexual Offences (Scotland) Act 2009 for details of the essential elements of the offences.</p> <p>Section 67(3) says that a child is to be taken to have a “close connection” with someone if either the child is a member of the same household as the person or is not a member of the same household but has “significant contact” with the person.</p> <p>As “significant contact” is only to be considered if a child is not a member of the same household as the person, it should be interpreted separately from “member of the same household”. Our view is that “significant” should not be interpreted only to include volume of contact, but also the nature of the contact and the whole circumstances relating to the contact.</p> <p>Where the “significant contact” is on the basis of the child being a member of the same household as the person, the previous case law regarding “household” will continue to be relevant.</p> <p><b>Case law relating to the interpretation of “household”</b></p> <p>Kennedy v R's Curator ad litem 1993 SLT 295          (the important question in deciding whether a person was a member of a household is whether the ties of affection and regular contact which held the parties together as a</p>

	<p>group still continued, and the fact that persons were separated temporarily or only due to the intervention of the authorities would not generally mean that they were not members of the same household)</p> <p>McGregor v H 1983 SLT 626  (“household” connotes a family unit or something akin to such a unit - a group of persons, held together by a particular kind of tie who normally live together, even if individual members of the group may be temporarily separated from it”)</p> <p>A v Kennedy 1993 SCLR 107  (followed the test of “household” that was set out in McGregor v H and added that a household might continue to constitute the same household even if one or more members had separated from it permanently, in this case because of the earlier death of the child’s sibling)</p> <p>Ferguson v S 1992 SCLR 866  (there is no presumption that a child is a member of the same household as his or her parent)</p> <p>Templeton v E 1998 SCLR 672  (ties of affection or occasional overnight contact may not be enough, particularly if the separation has been permanent)</p> <p>Cunningham v M 2005 SLT (Sh Ct) 73  (‘household’ is a group of persons and not the locality in which they live i.e. the criterion is relationship rather than locality)</p>
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**Section 67(2)(h): the child is being provided with accommodation by a local authority under section 25 of the 1995 Act and special measures are required to support the child**

<p><b>Essential Facts and Potentially Relevant Facts</b></p>	<p><b>Relevant case law, references in the Policy Memorandum, text books and related legislation</b></p>
<p><b>Essential Facts</b></p> <p>State the facts regarding:</p> <ul style="list-style-type: none"> <li>• the child being provided with accommodation by a local authority under section 25</li> <li>• The circumstances that mean that special measures are required to support the child. These circumstances need not necessarily relate to the child’s behaviour.</li> </ul> <p>The statement of facts should not include a statement regarding what “special measures” are required.</p>	<p><b>Other</b></p> <p>No definition of “special measures” is provided by the Act. “Special measures” may mean that compulsory measures are required for the child.</p>

**Section 67(2)(i): a permanence order is in force in respect of the child and special measures are needed to support the child**

<p><b>Essential Facts and Potentially Relevant Facts</b></p>	<p><b>Relevant case law, references in the Policy Memorandum, text books and related legislation</b></p>
<p><b>Essential Facts</b></p> <p>State the facts regarding:</p> <ul style="list-style-type: none"> <li>▪ The child being the subject of a permanence order made under section 80 of the Adoption and Children (Scotland) Act 2007.</li> <li>• The circumstances that mean that special measures are required to support the child. These circumstances need not necessarily relate to the child’s behaviour.</li> </ul> <p>The statement of facts should not include a statement regarding what “special measures” are required.</p>	<p>Section 67(6) defines a permanence order as having the meaning given by section 80(2) of the Adoption and Children (Scotland) Act 2007</p> <p><b>Other</b></p> <p>No definition of “special measures” is provided by the Act. “Special measures” may mean that compulsory measures are required for the child.</p>

**Section 67(2)(j): the child has committed an offence**

Essential Facts and Potentially Relevant Facts	Relevant case law, references in the Policy Memorandum, text books and related legislation
<p><b>Essential Facts</b></p> <p>State the facts regarding:</p> <ul style="list-style-type: none"> <li>• Who committed the offence i.e. the child who is the subject of the referral (either he/she or the name of the child is sufficient)</li> <li>• When the offence occurred Schedule 3 allows some latitude regarding this)</li> <li>• Where the offence occurred Schedule 3 allows some latitude regarding this)</li> <li>• What action(s) of the child constituted the offence (when the offence is a statutory offence these will include the essential elements of the offence<sup>21</sup>)</li> <li>• The name of the offence committed by the child (the <i>nomen juris</i>)</li> </ul> <p><b>Relevant facts</b></p> <p>The following facts are not essential but are very likely to be relevant to the disposal of the child's case:</p> <ul style="list-style-type: none"> <li>• the time of the offence;</li> <li>• the age of any co-accused;</li> <li>• the detail of injuries caused;</li> <li>• the value of property damaged.</li> </ul> <p>In addition, any other information regarding the offence that is relevant to the final disposal should be stated.</p>	<p>Rule 14 of The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 states that: "Where the statement of grounds prepared by the Reporter under section 89 .. includes a ground mentioned in section 67(2)(j) .. the facts relating to that ground must have the same degree of specification as is required by section 138(4)..of, and Schedule 3 ...to, the Criminal Procedure (Scotland) Act 1995 in a charge in a complaint, and the statement of grounds must also specify the nature of the offence in question."</p> <p>Section 138(4) states that Schedule 3 of that Act shall apply. Schedule 3 sets out the <b>minimum</b> level of specification that is required in the Supporting Facts; it does not prevent further specification of the offence by the addition of relevant facts.</p> <p>See the Practice Direction on Offending Issues regarding the specification of offences of assault.</p> <p>Merrin v S 1987 SLT 193 (a child under 8 cannot commit an offence)</p> <p>See the Practice Direction on Offending Issues</p>

<sup>21</sup> E.g. see appendix 1 of the Practice Instruction Note 38 on the Sexual Offences (Scotland) Act 2009 for details of the essential elements of offences under that act.

**Section 67(2)(k): the child has misused alcohol**

<p><b>Essential Facts and Potentially Relevant Facts</b></p>	<p><b>Relevant case law, references in the Policy Memorandum, text books and related legislation</b></p>
<p><b>Essential Facts</b></p> <p>State the facts regarding:</p> <ul style="list-style-type: none"> <li>• the child taking the alcohol</li> <li>• how the child’s taking of the alcohol constituted a “misuse” rather than simply a “use” e.g. the child became drunk as a result.</li> </ul> <p>It is important to note that possession of alcohol will not constitute “misuse”.</p> <p><b>Potentially relevant facts</b></p> <p>Facts relating to the incidents of “misuse” that are likely to be relevant to the disposal, and should be stated are:</p> <ul style="list-style-type: none"> <li>• the period of time (if any) during which this has occurred</li> <li>• the frequency</li> <li>• the location</li> <li>• the time</li> <li>• who the child was with</li> </ul>	<p>Applying Constanda v M 1997 SLT 1396, this section 67 ground cannot be used if the only relevant facts are that the child has committed an offence. To use this section 67 ground there must be other relevant facts to support it.</p>

**Section 67(2)(l): the child has misused a drug (whether or not a controlled drug)**

<p><b>Essential Facts and Potentially Relevant Facts</b></p>	<p><b>Relevant case law, references in the Policy Memorandum, text books and related legislation</b></p>
<p><b>Essential Facts</b></p> <p>State the facts regarding:</p> <ul style="list-style-type: none"> <li>• the child taking drugs – the drug need not be controlled (e.g. it could be Paracetamol)</li> <li>• how the child’s taking of the drug constituted a “misuse” rather than simply a “use” e.g.: that the child took an overdose of Paracetamol or was hospitalised as a result.</li> </ul> <p>It is important to note that possession of a controlled drug will not constitute “misuse”.</p> <p><b>Potentially relevant facts</b></p> <p>Facts relating to the incidents of “misuse” that are likely to be relevant to the disposal, and should be stated are:</p> <ul style="list-style-type: none"> <li>• the period of time (if any) during which this has occurred</li> <li>• the frequency</li> <li>• the location</li> <li>• the time</li> <li>• who the child was with.</li> </ul>	<p>Section 67(6) states that a “controlled drug” means a controlled drug as defined in section 2(1)(a) of the Misuse of Drugs Act 1971</p> <p>Applying <i>Constanda v M</i> 1997 SLT 1396, this section 67 ground cannot be used if the only relevant facts are that the child has committed an offence. To use this section 67 ground there must be other relevant facts to support it.</p>

**Section 67(2)(m): the child’s conduct has had, or is likely to have, a serious adverse effect on the health, safety or development person of the child or another**

<p><b>Essential Facts and Potentially Relevant Facts</b></p>	<p><b>Relevant case law, references in the Policy Memorandum, text books and related legislation</b></p>
<p><b>Essential Facts</b></p> <p>State the facts regarding:</p> <ul style="list-style-type: none"> <li>• The child’s conduct – it must be conduct that support the conclusion that it has had, or is likely to have, a serious adverse effect on the health, safety or development person of the child or another</li> <li>• The serious adverse effect that the conduct of the child has had on the health, safety or development of the referred child or on some other person (the name of the other person is not an essential fact)</li> </ul> <p>And / or</p> <ul style="list-style-type: none"> <li>• The serious adverse effect that the conduct of the child is likely to have on the health, safety or development of the referred child or on some other person (the name of the other person is not an essential fact)</li> </ul> <p><b>Relevant Facts</b></p> <ul style="list-style-type: none"> <li>• The location where the conduct is taking place. For example the family home or school.</li> <li>• The time when the conduct is taking place.</li> <li>• Where the impact of the child’s conduct is on some other person, the name of the person and / or the relationship of the child to that person.</li> </ul>	<p>Applying Constanda v M 1997 SLT 1396, this section 67 ground cannot be used if the only relevant facts are that the child has committed an offence. To use this section 67 ground there must be other relevant facts to support it.</p>



**Section 67(2)(n): the child is beyond the control of a relevant person**

<p><b>Essential Facts and Potentially Relevant Facts</b></p>	<p><b>Relevant case law, references in the Policy Memorandum, text books and related legislation</b></p>
<p><b>Essential facts</b></p> <ul style="list-style-type: none"> <li>• Identify the person:               <ul style="list-style-type: none"> <li>a) who is the relevant person in relation to the child; and</li> <li>b) whose control the child is beyond</li> </ul> </li> <li>• State the actions of the child that support the conclusion that this particular child is beyond the control of the particular relevant person. Clearly these facts will relate to past events, but they must support an inference that the child is beyond the control of the relevant person in the present.</li> <li>• State the facts regarding the reasonable efforts of the relevant person to control the child’s actions.</li> </ul> <p><b>Potentially relevant facts</b></p> <ul style="list-style-type: none"> <li>• Any facts indicating how the child’s actions are detrimental to him/her may be relevant to disposal (e.g. that the 10 year old travelled to a neighbouring city when out without the permission of the parent).</li> </ul> <p>It is important to note that this section 67 ground is not satisfied if a child is beyond the control of someone who is not a relevant person. If the child is provided with accommodation by a local authority under section 25 of the Act, or is the subject of a permanence order, then section 67(h) and (i) may apply.</p>	<p>Applying <i>Constanda v M</i> 1997 SLT 1396, this section 67 ground cannot be used if the only relevant facts are that the child has committed an offence. To use this section 67 ground there must be other relevant facts to support it.</p>

**Section 67(2)(o): the child has failed without reasonable excuse to attend school regularly**

<p><b>Essential Facts and Potentially Relevant Facts</b></p>	<p><b>Relevant case law, references in the Policy Memorandum, text books and related legislation</b></p>
<p><b>Essential Facts</b></p> <p>State the facts that:</p> <ul style="list-style-type: none"> <li>▪ the child is a child of school age</li> <li>▪ the child is required to attend school [not all children are required to attend school e.g. if the child is being home educated and the appropriate procedure has been applied]</li> <li>▪ the school(s) that the child is required to attend</li> <li>▪ in what way the child has failed to attend school regularly by stating the:               <ul style="list-style-type: none"> <li>○ the dates between which he/she has failed to attend, and</li> <li>○ the details of the child’s non-attendance at school [normally this is expressed in the number of half day absences out of the possible half day attendances]</li> </ul> </li> <li>▪ the child did not have a reasonable excuse for these absences</li> </ul> <p><b>Other points</b></p> <ul style="list-style-type: none"> <li>• There was a statutory style for this ground for referral in the rules associated with the Social Work (Scotland) Act 1968. However, this no longer applies.</li> </ul>	<p>The definition of when a child is of “school age” is in section 31 of the Education (Scotland) Act 1980</p> <p>D v Kennedy 1988 SLT 55 (it is probably not a “reasonable excuse” when a child is absent due to having been excluded provided evidence is led in the proof regarding the reasons for the exclusion)</p> <p>Finlayson v D: Edinburgh Sheriff Court Unreported, 05 July 1982 (Test to be applied is what a reasonable parent in her situation would believe to be reasonable)</p> <p>Kiely v Lunn 1983 SLT 207 (illness brought about by glue sniffing did not constitute a reasonable excuse)</p> <p>Montgomery v Cumming 1999 SCCR 178 (in a situation where bullying had not been reported to the school authorities, bullying was seen as not providing a reasonable excuse for failure to attend school)</p> <p>The onus of proof to establish this section 67 ground remains on the Reporter. However, having established that the child has failed to attend school, the onus for proving that the child had a reasonable excuse for his/her absences shifts to the child and / or relevant persons (Kennedy v Clark 1970 JC 55; McGregor v M: Court of Session, Unreported, 27 October 1978)</p> <p>A certificate of attendance will establish the extent of the child’s absences – see section 86(c) of the Education (Scotland) Act 1980</p>

**Section 67(2)(p): the child:**

**(i) is being, or is likely to be, subjected to physical, emotional or other pressure to enter into a ... civil partnership; or**

**(ii) is, or is likely to become, a member of the same household as such a child**

<p><b>Essential Facts and Potentially Relevant Facts</b></p>	<p><b>Relevant case law, references in the Policy Memorandum, text books and related legislation</b></p>
<p><b>Essential Facts</b></p> <p>State the facts regarding:</p> <ul style="list-style-type: none"> <li>• The circumstances which amount to, or which are likely to amount to, physical, emotional or other pressure on the referred child to enter into a civil partnership (if section 67(2)(p)(i) applies) [Note the pressure has to be current, or prospective, and not historic. If so this ground will not apply after the child has entered into a civil partnership.]</li> </ul> <p>Or alternatively</p> <ul style="list-style-type: none"> <li>• The circumstances which amount to, or which are likely to amount to, physical, emotional or other pressure on the another child to enter into a civil partnership.</li> <li>• The broad facts regarding the relationship between the referred child and the child who is being pressured to enter into a civil partnership [this must amount to them being, or likely to become, members of the same “household”] (if section 67(2)(p)(i) applies)</li> </ul> <p><b>Relevant Facts</b></p> <ul style="list-style-type: none"> <li>• The person who is exerting the pressure on the child to enter into the civil partnership. This will be particularly relevant where this is the child’s parent(s) or another close relative.</li> <li>• The identity of the person the child is being pressurised into entering the civil partnership with.</li> </ul>	<p><b>Case law relating to the interpretation of “household”</b></p> <p>Kennedy v R's Curator ad litem 1993 SLT 295                      (the important question in deciding whether a person was a member of a household is whether the ties of affection and regular contact which held the parties together as a group still continued, and the fact that persons were separated temporarily or only due to the intervention of the authorities would not generally mean that they were not members of the same household)</p> <p>McGregor v H 1983 SLT 626                      (““household” connotes a family unit or something akin to such a unit - a group of persons, held together by a particular kind of tie who normally live together, even if individual members of the group may be temporarily separated from it”)</p> <p>A v Kennedy 1993 SCLR 107                      (followed the test of “household” that was set</p>

	<p>out in McGregor v H and added that a household might continue to constitute the same household even if one or more members had separated from it permanently, in this case because of the earlier death of the child's sibling)</p> <p>Ferguson v S 1992 SCLR 866 (there is no presumption that a child is a member of the same household as his or her parent)</p> <p>Templeton v E 1998 SCLR 672 (ties of affection or occasional overnight contact may not be enough, particularly if the separation has been permanent)</p> <p>Cunningham v M 2005 SLT (Sh Ct) 73 (‘household’ is a group of persons and not the locality in which they live i.e. the criterion is relationship rather than locality)</p>
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**Section 67(2)(q): the child:**

- (i) has been, is being or is likely to be forced into a marriage (that expression being construed in accordance with section 1 of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 or,**
- (ii) is, or is likely to become, a member of the same household as such a child**

Essential Facts and Potentially Relevant Facts	Relevant case law, references in the Policy Memorandum, text books and related legislation
<p><b>Essential Facts</b></p> <p>State the facts regarding:</p> <ul style="list-style-type: none"> <li>• The circumstances which amount to, or which are likely to amount to, the referred child being forced to enter into a marriage (if section 67(2)(q)(i) applies) [Note the pressure can be current, prospective, or historic. The ground may therefore apply after the child has entered into a forced marriage.]</li> </ul> <p>Or alternatively</p> <ul style="list-style-type: none"> <li>• The circumstances which amount to, or which are likely to amount to another child being forced to enter into a marriage.</li> <li>• The broad facts regarding the relationship between the referred child and the child who is being forced into a marriage. [This must amount to them being, or likely to become, members of the same “household” (if section 67(2)(q)(ii) applies).]</li> </ul> <p><b>Relevant Facts</b></p> <ul style="list-style-type: none"> <li>• The person who is exerting the pressure on the child to enter into the forced marriage. This will be particularly relevant where this is the child’s parent(s) or another close relative.</li> <li>• The identity of the person the child is being forced into entering the marriage with.</li> </ul>	<p>Section 1 of the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Act 2011 states that:</p> <ul style="list-style-type: none"> <li>• “a person (“A”) is forced into a marriage if another person (“B”) forces A to enter into a marriage (whether with B or another person) without A’s free and full consent” (section 1(4));</li> <li>• “it does not matter whether the conduct of B which forces A to enter into a marriage is directed against A, B or another person” (section 1(5)); and</li> <li>• “force” includes: <ul style="list-style-type: none"> <li>(a) coerce by physical, verbal or psychological means, threatening conduct, harassment or other means,</li> <li>(b) knowingly take advantage of a person’s incapacity to consent to marriage or to understand the nature of the marriage (section 1(6))</li> </ul> </li> </ul> <p><b>Case law relating to the interpretation of “household”</b></p> <p>Kennedy v R's Curator ad litem 1993 SLT 295  (the important question in deciding whether a person was a member of a household is whether the ties of affection and regular contact which held the parties together as a group still continued, and the fact that persons were separated temporarily or only due to the intervention of the authorities would not generally mean that they were not members of the same household)</p>

	<p>McGregor v H 1983 SLT 626        (“household” connotes a family unit or something akin to such a unit - a group of persons, held together by a particular kind of tie who normally live together, even if individual members of the group may be temporarily separated from it”)</p> <p>A v Kennedy 1993 SCLR 107        (followed the test of “household” that was set out in McGregor v H and added that a household might continue to constitute the same household even if one or more members had separated from it permanently, in this case because of the earlier death of the child’s sibling)</p> <p>Ferguson v S 1992 SCLR 866        (there is no presumption that a child is a member of the same household as his or her parent)</p> <p>Templeton v E 1998 SCLR 672        (ties of affection or occasional overnight contact may not be enough, particularly if the separation has been permanent)</p> <p>Cunningham v M 2005 SLT (Sh Ct) 73        (‘household’ is a group of persons and not the locality in which they live i.e. the criterion is relationship rather than locality)</p>
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## Appendix 4

### Medical terms in statements of fact

Paragraph 3.21 states that detailed medical terminology should be avoided in a statement of facts. The table below provides examples of ways in which certain medical terms might be stated in a statement of facts.

<b>Medical Term</b>	<b>The way the term might be incorporated in a statement of fact if the term is necessary</b>
Anus	anus
Axilla	armpit
Breasts	breasts
Cerebral haemorrhage	bleeding in the brain
Femur	thigh bone
Fibula	smaller of the lower leg bones
Genitals	genitals
Genital area	genital area (this term should be used in place of “private parts” in a situation where it is not possible to be specific about the part of the body that was touched)
Haematoma	bruise (sometimes a ‘swelling filled with blood’ will be more appropriate)
Haemorrhage	loss of a large quantity of blood
Helix	outer edge of the ear
Humerus	upper arm bone
Mandible	lower jaw
Maxilla	upper jaw
Metacarpus bones	hand bones
Metatarsus bones	foot bones
Nocturnal enuresis	bedwetting
Patella	knee cap
Penis	penis
Petechiae	pin point bruises
Phalanges	finger or toe bones
Radius	shorter of the 2 forearm bones
Semen	semen
Sacrum	bone at the base of the spine
Scapula	shoulder blade
Septicaemia	blood poisoning
Sternum	breastbone
Subcutaneous	under the skin
Subdural haematoma	collection of blood in the space between the outer and middle layers of the covering of the brain
Talus	ankle bone
Testicles	testicles
Tibia	larger of the lower leg bones
Ulna	longer of the 2 forearm bones
Urine	urine
Vagina	vagina