

Practice Direction 7

Statement of Grounds – Decision Making and Drafting

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CONTENTS

Part 1: Decision Making

1.	Introduction	2
2.	Purpose of the Statement of Grounds	2
3.	Choice of section 67 ground within the statement of grounds	3

Part 2: Drafting the Statement of Grounds

1.	Introduction	7
2.	Section 67 Ground	
	Specification of Section 67 Ground	7
	Use of Alternative and Cumulative Section 67 Grounds	7
	Cumulative Section 67 Grounds	7
	Alternative Section 67 Grounds	8
3.	Supporting Facts	
	Fact not Evidence	10
	Relevancy of Supporting Facts	10
	Specification of Supporting Facts	12
	Style	14
4.	Use of Historical Information, Previously Established Statements of Grounds and Previous Convictions	
	Historical Information.....	18
	Previously Established Statement of Grounds	18
	Previous Convictions	18
	Use of Previously Established Grounds for Referral and Previous Convictions	18
	Appendix 1 - Specification of Section 67 Grounds	21
	Appendix 2 - Examples of Cumulative and Alternative Section 67 Grounds	23
	Appendix 3 - Specification of the Supporting Facts	26
	Appendix 4 - Medical terms in statements of fact	54

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:
- Practice Direction 6 the Framework for Decision Making by Reporters (including the section on decision making on children who are subject to a supervision requirement) 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 is to 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*¹ 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

¹ Reported as LM & JH v The Authority Reporter 2010 WL 4863727

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.

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 is to 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 or 5 of the Sexual Offences (Scotland) Act 2009) may apply, the reporter is to 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,² 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 3.8) 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 (for example 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

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

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 Where the child was under 12 when the offence was committed, the reporter cannot choose a section 67(2)(j) ground³. The reporter must add an additional section 67 ground other than section 67(2)(j) and select that ground for the statement of grounds in referring the child to the children's hearing.
- 3.9 Where the child was aged 12 or over when the offence was committed, in deciding 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 factors⁴:
- 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 performed certain acts that constitute criminal offences, the section 67 ground must be section 67(2)(j)⁵;
 - 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)⁶, 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)⁷.
- 3.9 The consequences of the Rehabilitation of Offenders Act 1974⁸ for a section 67(2)(j) statement of grounds is not a relevant factor for this

³ Section 3 of the Age of Criminal Responsibility (Scotland) Act 2019 (which came into force on 29 November 2019). Until section 1 of the Act is commenced (raising the age of criminal responsibility), paragraph (a) of section 3 applies as if "before the day on which section 1 came into force" was omitted.

⁴ See also paragraph 3.21.8 on supporting facts for various grounds (including section 67(2)(m): in stating facts regarding the child's behaviour, the reporter is not to use the language of the criminal law (e.g. saying that the child 'punched and kicked x' and not that the child 'assaulted x by punching and kicking him').

⁵ Where the child was under 12 when the offence was committed, the decision in *Constanda v M* will not apply as section 3 of the Age of Criminal Responsibility (Scotland) Act 2019 prevents the reporter from selecting a section 67(2)(j) ground. Therefore, in drafting the non-offence grounds, it will be quite competent to only state a fact that relates to the incident that was the subject of the referral.

⁶ 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.

⁷ 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.

decision – the reporter is to choose the ground that reflects the principal concern for the child's welfare and the reason or reasons why compulsion is necessary.

⁸ See the Practice Note on Offence grounds, the Rehabilitation of Offenders Act 1974 and Disclosures

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 a statement 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 ground. 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 ground. 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 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.

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 (for example, section 67(2)(k): that the child has misused alcohol) where the circumstances would support this ground as an alternative to the section 67(2)(l) section 67 ground 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 state facts only where the nature and the quality of the evidence is such that there is a reasonable prospect of the fact being found to be established.

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 2nd 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 left cheek 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 2nd 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 section 67 ground, 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 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 continues⁹.
- 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 is to 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).

⁹ In any event, if the fact that the parent committed the offence is relevant to the statement of grounds, it is more likely to be appropriate to state this as the fact that the parent committed the offence, not that they were convicted of it (see paragraphs 4.10 and 4.11 below).

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 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 is to state these where they are known and relevant. Where exact details are unknown, the reporter is to 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 supporting 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 supporting 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 is to respect the principle of fair notice as far as possible and, where appropriate, is to state both alternative offences. The reporter is to 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 is to 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 is to 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 is to 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 is to 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 is to 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”. 13

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 is to 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 are to be applied when writing supporting facts:

3.17.1 **Avoid long complex sentences and paragraphs.** The reporter is to ensure that a paragraph addresses a single issue. Where possible, the reporter is to 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 is to 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 wilful 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 is to distinguish the individuals concerned (for example “Mr Smith, junior” and “Mr Smith, senior”).
- 3.18 The reporter is to draft the statement of grounds on the relevant SCRA form. The reporter is to 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 is to 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 is to then use the remainder of the paragraphs to outline the substantive facts that 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 supporting facts. The reporter is to apply the following principles:

- 3.21.1 **The language used is to 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 is 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: 15
- 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]... that 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 is to be avoided.** It is unlikely that children, relevant persons and panel members will be familiar with detailed medical terms. Therefore the reporter is not to 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. Whenever possible, the reporter is to 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; and

- there is no appropriate alternative to convey the detail or nature of the condition.

3.21.7 **Body parts in sexual offence cases are to 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.

16

3.21.8 **The language of the criminal law is not to be used in non-offence grounds relating to the child’s behaviour.** In stating facts regarding the child’s behaviour in grounds other than section 67(2)(j), the reporter is not to use the language of the criminal law (e.g. saying that the child ‘punched and kicked x’ and not that the child ‘assaulted x by punching and kicking him’).

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

3.22.1 **Tone, implication and weight of language.** The reporter is to 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 is to 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 is to 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 is to 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 grounds¹⁰. 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 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

¹⁰ References to previously established statements of grounds includes reference to grounds for referral previously established under the Criminal Procedure (Scotland) Act 1995.

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 fact¹¹.

¹¹ See practice note on section 51 of the Criminal Justice (Scotland) Act 2003

4.11 The reporter is not to 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 When grounds were previously established after evidence was led, the reporter is able to rely on the certified copy interlocutor finding the ground or grounds established as evidence of the factual matters in the grounds¹². The reporter is then able to state those matters as facts in a new statement of grounds with the evidence for those facts being the certified copy interlocutor from the previous proof (but see paragraph 4.17 for circumstances where the reporter is not to seek to rely on the interlocutor).

4.13 A judgement in other civil proceedings (whether in Scotland or elsewhere) cannot be used in the same way as previously established grounds.. Such a judgment does not establish the findings in fact in the judgement for the purposes of our proof proceedings¹³.

4.14 The situation may arise where there are previously established grounds that state that a relevant person of the currently referred child committed a schedule 1 offence. Where that person was not a relevant person in relation to the original child and therefore was not a party to the previous proceedings, the reporter is not to seek to rely on the interlocutor from the previous proceedings as evidence in the current proceedings. To do so would give rise to an unfairness. Instead, the reporter is to rely on evidence other than the interlocutor (in many cases this will involve the reporter relying on the same evidence that was relied upon in the previous proceedings).

Response to Case Practice Enquiries Since Publication of Practice Direction

Offences and (m) Grounds

Where alleged offences by a child have been dealt with through Early and Effective Intervention without referral to the reporter, the reporter may include them in subsequent (m) grounds where they form part of an overall picture supporting (m) grounds.

¹² McGregor v H 1983 SLT 626

¹³ For an example of this in the context of an application for a permanence order, see the opinion of Lady Wise in West Lothian Council v CM and MW [2015] CSOH 181 at paragraph 4.

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 [him]/[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) has been, 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

STATEMENT OF GROUNDS

Section 67 Ground
The children's reporter has arranged a children's hearing for Louise..... because the reporter believes the following grounds apply:

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

STATEMENT OF GROUNDS

Section 67 Ground

The children's reporter has arranged a children's hearing for Louise..... because the reporter believes the following grounds apply:

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

STATEMENT OF GROUNDS

Section 67 Ground
The children's reporter has arranged a children's hearing for Andrew.....because the reporter believes the following ground(s) apply:

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 is to 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:

Section 67(2) 2011 Act	Section 52(2)1995 Act
(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."¹⁴ 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.

¹⁴ 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">Essential Facts and Potentially Relevant Facts</p>	<p align="center">Relevant case law, references in the Policy Memorandum, text books and related legislation</p>
<p>Essential Facts</p> <p>State the facts regarding:</p> <ul style="list-style-type: none"> • The person in relation to the child whose care is lacking • Why the person’s care is “parental care” – normally this will simply be a statement that the child lives in family with this adult, although sometimes it will require more explanation. • 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"> ○ 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 ○ 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; and/or</i> ○ the parent’s lifestyle and behaviour <i>where that is relevant to the likely lack of care of the referred child</i> • The nature of any serious impairment or unnecessary suffering that the child has suffered, or is likely to suffer. • 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. 	<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>In “Children’s Hearings and the Sheriff Court” (2nd Edition) at paragraph 46.06, Kearney refers to a lack of care by a relevant person. In writing on the 1995 Act, Norrie took a contrary view and this is repeated in “Children’s Hearings in Scotland” (3rd edition) (at page 38) where he says “‘Parental care’ is provided by a person (whether a parent or not) who has the responsibility to safeguard and promote the child’s health, development and welfare.”</p> <p>In the practice instruction on the 1995 Act we said that we preferred Kearney’s view as we considered Norrie’s to be too restrictive.</p> <p>As someone can now only be deemed a relevant person by a children’s hearing or pre-hearing panel, it is too restrictive an approach to say that the person named in the supporting facts must already be a relevant person.</p> <p>We consider that “parental care” should be given a broad interpretation and should include a situation where someone is caring for a child even if they do not have the formal parental responsibility to do so. Although that person may not be a relevant person when drafting the statement of grounds, it follows that this person will appear to have significant involvement in the upbringing of the child and therefore the reporter will be arranging a pre-hearing panel to consider whether to deem the person to be a relevant person..</p>

If there is any doubt that the person is providing “parental care” but their conduct is likely to be detrimental to the child, consideration can be given to stating a section 67(2)(e) ground.

If in a proof in relation to a section 67(2)(a) ground, a sheriff prefers Norrie’s approach to “parental care”, the reporter can move the sheriff to amend the statement of grounds to state a section 67(2)(e) ground. (This approach may also be appropriate if the person is not deemed to be a relevant person.)

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)).

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)

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)

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”)

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”)

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)

AM & SO v Brechin 2015 Fam. L.R. 138; (aka M v Children’s Reporter 2015 S.L.T. (Sh Ct) 215) (a failure to cooperate with a risk-assessment is not relevant to a lack of parental care ground – it could only be only be relevant where the “threshold test” for intervention has been met)

Section 67(2)(b): a schedule 1 offence has been committed in respect of the child

<p>Essential Facts and Potentially Relevant Facts</p>	<p>Relevant case law, references in the Policy Memorandum, text books and related legislation</p>
<p>Essential Facts</p> <p>State the facts regarding:</p> <ul style="list-style-type: none"> ▪ 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 offence¹⁵). ▪ The specific offence that was committed in respect of the child – this offence must be one of the offences mentioned in Schedule 1. ▪ 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). 	<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 Practice Note on section 12 of the Children and Young Persons (Scotland) Act 1937</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>Paragraph 3 of schedule 1 refers to “Any other offence involving bodily injury to a child under the age of 17 years.” “Bodily Injury” was defined in the cases of B v Kennedy (1987 SLT 756) and F v Kennedy (1988 SLT 404) as meaning “physical injury”. In F v Kennedy the Court of Session considered the interpretation of “bodily injury” at some length and concluded that it should be given its “ordinary meaning”. The Oxford English Dictionary defines “injury” as meaning harm and damage, and to “injure” as meaning to do physical harm, damage or hurt. Therefore “bodily injury” would appear to include situations where a child is hurt even if no physical injury is apparent.</p> <p>If a child is not hurt by the offence, the circumstances may amount to an offence of wilful ill-treatment of the child contrary to section 12 of the Children and Young Persons (Scotland) Act 1937. In these circumstances, reporters are to consider whether to state the person’s actions as being a section 12 offence of wilful ill-treatment.</p>

¹⁵ 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.

<p>Relevant facts</p> <ul style="list-style-type: none"> ▪ Additional facts that will be relevant are: <ul style="list-style-type: none"> ○ The identity of the perpetrator¹⁶ (see paragraph 3.16.9 above) ○ The nature of the injuries and/or harm caused¹⁷ ○ The date, or dates, of the offence ○ The locus of the offence ○ If the identity of the perpetrator cannot be stated, then the people in whose care the child was when the offence was committed 	<p>McGregor v K 1982 SLT 293 (not necessary to specify person alleged to have committed the offence)</p>
<p>Other points</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 (no requirement that the offence had to be one which occurred in Scotland)</p> <p>AA v Children's Reporter (Unreported: 16 August 2013) (the offence may have been committed in another country while both the child and perpetrator were resident in that country - what matters is the character of the conduct and that is the same wherever it may occur)</p>

¹⁶ 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.

¹⁷ 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)(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">Essential Facts and Potentially Relevant Facts</p>	<p align="center">Relevant case law, references in the Policy Memorandum, text books and related legislation</p>
<p>Essential Facts</p> <p>State the facts regarding:</p> <ul style="list-style-type: none"> ▪ 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 offence¹⁸) – <ul style="list-style-type: none"> ○ the perpetrator <i>must</i> be named ○ the age of the victim <i>must</i> be stated – however, the name of the victim is not an essential fact (see below). ▪ The specific offence that was committed by the perpetrator – this offence must be one of the offences mentioned in schedule 1. ▪ 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). • The circumstances which amount to the referred child having a “close connection” with the perpetrator. <p>Relevant Facts</p> <ul style="list-style-type: none"> • The victim’s relationship to the perpetrator. • Additional facts that will be relevant are: <ul style="list-style-type: none"> ○ The nature of the injuries and/or harm caused to the child victim¹⁹ 	<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>Where the “significant contact” is on the basis of the child being a member of the same household as the person, the case law regarding “same household” under previous legislation continues to be relevant.</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”.</p> <p>Our view is that “significant” should be interpreted in a way that considers the underlying purpose of the ground – to prevent the child being subject to the same behaviour as the person in question already subjected another child.</p> <p>Therefore it should not only relate to the volume of contact, but also the nature of the contact and the whole circumstances relating to the contact e.g. the nature of the relationship between the child and the person, the nature and purpose of the contact, and the reasons for any temporary suspension of the contact (with no one factor being determinative).</p> <p>In Butterworths’ Family Law Service (at paragraph C2021), Kearney says: “The context here is the protection of the child and it is therefore suggested that where there is a real possibility that the connection would put the child at risk then this would be enough.”</p>

¹⁸ 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.

¹⁹ If the schedule 1 offence is one involving bodily injury, then the nature of the injury *is* an essential fact.

<ul style="list-style-type: none"> ○ The date, or dates, of the offence ○ The locus of the offence <p>Other points</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 facts²⁰. 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"> • The victim is a member of the same immediate family as the referred child and the relevant persons and so is known to them; or • fair notice to the perpetrator is required as: <ul style="list-style-type: none"> • he/she has not previously been convicted of the offence; and • the offence has not been stated in a previous statement of grounds sent to the perpetrator. <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>Case law relating to the interpretation of “household”</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> <p>Refer to specification of section 67(2)(b) section 67 grounds regarding matters relating to schedule 1 offences.</p>
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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.

²⁰In 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

Essential Facts and Potentially Relevant Facts	Relevant case law, references in the Policy Memorandum, text books and related legislation
<p>Essential Facts</p> <ul style="list-style-type: none"> ▪ State the facts regarding: <ul style="list-style-type: none"> ○ 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 offence²¹) ○ The specific offence that was committed in respect of the child victim – this offence must be one of the offences mentioned in Schedule 1. ○ 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). ▪ 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”] <p>Relevant facts</p> <p>Additional facts that will be relevant are:</p> <ul style="list-style-type: none"> ▪ The identity of the perpetrator²² (see paragraph 3.16.9 above) ▪ The nature of the injuries and/or harm caused²³ ▪ The date, or dates, of the offence 	<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>Case law relating to the interpretation of “household”</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>

²¹ 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.

²² 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.

²³ 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.

<ul style="list-style-type: none"> ▪ The locus of the offence ▪ If the identity of the perpetrator cannot be stated, then the people in whose care the child was when the offence was committed <p>Other points</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>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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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>Essential Facts and Potentially Relevant Facts</p>	<p>Relevant case law, references in the Policy Memorandum, text books and related legislation</p>
<p>Essential Facts</p> <p>State the facts regarding:</p> <ul style="list-style-type: none"> ▪ The conduct of the person or persons 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. ▪ The circumstances which mean that the referred child is being, or is likely to be, exposed to this person or persons. <p>Relevant Facts</p> <ul style="list-style-type: none"> • 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 person or persons. • The identity of the person or persons whose conduct is referred to. • The relationship of the child or relevant person to the person or persons whose conduct is referred to. 	<p>Although section 67(2)(e) refers to “persons”, section 22 of the Interpretation and Legislative Reform (Scotland) Act 2010 says that words in the singular include the plural and vice versa.</p> <p>Norrie “Children’s Hearings in Scotland” (3rd Edition) para 3-14: “The nature of the conduct that founds this ground is governed by the harm that is likely to befall the referred child.....The purpose of this ground is to protect the child from people whose conduct either directly or indirectly creates a risk of harm.”</p> <p>H v Children’s Reporter [2016] SC GLA 18 (the court followed the approach of the appellant’s solicitor in identifying 4 components of the ground: 1. Exposure (or likely exposure) to a person or persons. 2. The conduct of that person or persons 3. Causation - there must be a link between the conduct and the likely effect on the child. 4. The likely effect on the child – the likely effect must be that the child will be abused or harmed, or their health, safety or development will be seriously adversely affected.)</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> <p>Although this decision related to the lack of</p>

	<p>parental care ground under the Children (Scotland) Act 1995, the formulation of section 67(2)(e) is sufficiently similar to the previous section 52(2)(c) to mean that this approach to likelihood should be followed in a case with a section 67(2)(e) ground.</p>
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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>Essential Facts and Potentially Relevant Facts</p>	<p>Relevant case law, references in the Policy Memorandum, text books and related legislation</p>
<p>Essential Facts</p> <p>State the facts regarding:</p> <ul style="list-style-type: none"> • 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. • The identity of the person who has carried out this “domestic abuse”. • The circumstances that amount to the referred child having a “close connection” with the perpetrator. <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>Section 7 of the Protection from Abuse (Scotland) Act 2001 defines “abuse” as including “violence, harassment, threatening conduct, and any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm or distress” and defines conduct as including “speech or presence in a specified place or area”.</p> <p>Section 3 of the Domestic Abuse (Scotland) Act 2011 says an interdict is a “domestic abuse” interdict if is to protect the applicant from “a person who is (or was):</p> <ul style="list-style-type: none"> • the applicant's spouse, • the applicant's civil partner, • living with the applicant as if they were husband and wife or civil partners, or • in an intimate personal relationship with the applicant.” <p>The Domestic Abuse (Scotland) Act 2018 created a new criminal offence that applies where a person has engaged in a course of behaviour which is abusive of their partner or ex-partner. It criminalises a course of behaviour but does not apply to a single incident (many of which will be offences under existing law e.g. common law assault) As a result, the Act does not provide an exhaustive definition of “domestic abuse”.</p> <p>It is relevant to the definition of “domestic abuse” that the new criminal offence created by the Domestic Abuse (Scotland) Act 2018 can only be committed against a partner or ex-partner (a near identical class of persons as that referred to in section 3 of the Domestic Abuse (Scotland) Act 2011 referred to above).</p> <p>Norrie “Children’s Hearings in Scotland” (3rd Edition) para 3-15: “Domestic abuse’ is not defined in the</p>

Children’s Hearings (Scotland) Act 2011, though as a concept it is easily recognised if a technical meaning is avoided and the protective aim of the legislation is kept in mind. ‘Abuse’ ought to be given as wide a meaning as it has in, for example, the Protection from Abuse (Scotland) Act 2001. The phrase ‘domestic violence’ as it appeared in English legislation was held by the Supreme Court to refer to ‘violence between people who are or were connected with one another in an intimate or familial way’, and ‘domestic abuse’ ought, it is submitted, to be interpreted no less broadly. In particular, there is no justification within the context of a child protection system to limit ‘domestic abuse’ to partner-abuse thereby excluding inter-generational abuse.”

Our view is that sheriffs should not adopt the wide interpretation of when abuse is “domestic” advocated by Norrie, but instead should adopt the approach to “domestic” in section 3 of the Domestic Abuse (Scotland) Act 2011 and the Domestic Abuse (Scotland) Act 2018. If there is a concern about a child’s close connection with someone who has perpetrated some other form of inter-familial abuse, it is likely that one of the other grounds will apply.

Refer to specification of section 67(2)(c) grounds regarding matters relating to ‘close connection’.

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).

Although this decision related to the lack of parental care ground under the Children (Scotland) Act 1995, the formulation of section 67(2)(e) is sufficiently similar to the previous section 52(2)(c) to mean that this approach to likelihood should be followed in a case with a section 67(2)(f) ground.

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>Essential Facts and Potentially Relevant Facts</p>	<p>Relevant case law, references in the Policy Memorandum, text books and related legislation</p>
<p>Essential Facts</p> <p>State the facts regarding:</p> <ul style="list-style-type: none"> • 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. • The perpetrator of the offence. • The circumstances that amount to the referred child having a “close connection” with the perpetrator. 	<p>Refer to the appendix to the Practice Instruction Note 38 on the Sexual Offences (Scotland) Act 2009 for details of the essential elements of the offences.</p> <p>Refer to specification of section 67(2)(c) grounds regarding matters relating to ‘close connection’.</p>

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>Essential Facts and Potentially Relevant Facts</p>	<p>Relevant case law, references in the Policy Memorandum, text books and related legislation</p>
<p>Essential Facts</p> <p>State the facts regarding:</p> <ul style="list-style-type: none"> • the child being provided with accommodation by a local authority under section 25 • The circumstances that mean that special measures are required to support the child. These circumstances need not necessarily relate to the child’s behaviour. <p>The statement of facts should not include a statement regarding what “special measures” are required.</p>	<p>Other</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

Essential Facts and Potentially Relevant Facts	Relevant case law, references in the Policy Memorandum, text books and related legislation
<p>Essential Facts</p> <p>State the facts regarding:</p> <ul style="list-style-type: none"> ▪ The child being the subject of a permanence order made under section 80 of the Adoption and Children (Scotland) Act 2007. • The circumstances that mean that special measures are required to support the child. These circumstances need not necessarily relate to the child’s behaviour. <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>Other</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

<p>Essential Facts and Potentially Relevant Facts</p>	<p>Relevant case law, references in the Policy Memorandum, text books and related legislation</p>
<p>Essential Facts</p> <p>State the facts regarding:</p> <ul style="list-style-type: none"> • 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) • When the offence occurred (Schedule 3 allows some latitude regarding this) • Where the offence occurred (Schedule 3 allows some latitude regarding this) • What action(s) of the child constituted the offence (when the offence is a statutory offence these will include the essential elements of the offence²⁴) • The name of the offence committed by the child (the <i>nomen juris</i>) <p>Relevant facts</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"> • the time of the offence; • the age of any co-accused; • the detail of injuries caused; • the value of property damaged. <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 minimum 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 Addendum to Practice Instruction Note 28 on Offending Issues regarding the specification of offences of assault.</p> <p>Where the child was under 12 when the offence was committed, the reporter cannot choose a section 67(2)(j) ground (Section 3 of the Age of Criminal Responsibility (Scotland) Act 2019 (which came into force on 29 November 2019). Until section 1 of the Act is commenced (raising the age of criminal responsibility), paragraph (a) of section 3 applies as if “before the day on which section 1 came into force” was omitted.)</p>

²⁴ E.g. see appendix 1 of Practice Direction 31 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

Essential Facts and Potentially Relevant Facts	Relevant case law, references in the Policy Memorandum, text books and related legislation
<p>Essential Facts</p> <p>State the facts regarding:</p> <ul style="list-style-type: none"> the child taking the alcohol 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. <p>It is important to note that possession of alcohol will not constitute “misuse”.</p> <p>Potentially relevant facts</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"> the period of time (if any) during which this has occurred the frequency the location the time who the child was with 	<p>Norrie “Children’s Hearings in Scotland” (3rd Edition) para 3-21: “Not all use of alcohol by a child will be ‘misuse’, if responsible supervision and small amounts are involved. If, however, the child took alcohol without responsible adult supervision, or to such an extent as to become inebriated, then there is likely to have been a misuse.”</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 if the child was aged 12 or over when the offence was committed²⁵. To use this section 67 ground there must be other relevant facts to support it. In stating facts regarding the child’s behaviour, the reporter is not to use the language of the criminal law (e.g. saying that the child ‘punched and kicked x’ and not that the child ‘assaulted x by punching and kicking him’).</p>

²⁵ See Section 3 of the Age of Criminal Responsibility (Scotland) Act 2019 in relation to the conduct of a child under 12.

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

Essential Facts and Potentially Relevant Facts	Relevant case law, references in the Policy Memorandum, text books and related legislation
<p>Essential Facts</p> <p>State the facts regarding:</p> <ul style="list-style-type: none"> the child taking drugs – the drug need not be controlled (e.g. it could be Paracetamol) 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. <p>It is important to note that possession of a controlled drug will not constitute “misuse”.</p> <p>Potentially relevant facts</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"> the period of time (if any) during which this has occurred the frequency the location the time who the child was with. 	<p>Norrie “Children’s Hearings in Scotland” (3rd Edition) para 3-22: “As with the ground in paragraph (k) above, there must be a ‘misuse’. A child may legitimately take a drug for medicinal purposes. The use by a child of drugs, for recreational or indeed any other reason than for medicinal purposes, will clearly amount to misuse.”</p> <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 and the child was aged 12 or over when the offence was committed²⁶. To use this section 67 ground there must be other relevant facts to support it. In stating facts regarding the child’s behaviour, the reporter is not to use the language of the criminal law (e.g. saying that the child ‘punched and kicked x’ and not that the child ‘assaulted x by punching and kicking him’).</p>

²⁶ See Section 3 of the Age of Criminal Responsibility (Scotland) Act 2019 in relation to the conduct of a child under 12.

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 of the child or another person

Essential Facts and Potentially Relevant Facts	Relevant case law, references in the Policy Memorandum, text books and related legislation
<p>Essential Facts</p> <p>State the facts regarding:</p> <ul style="list-style-type: none"> • 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 of the child or another person • 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) <p>And / or</p> <ul style="list-style-type: none"> • 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) <p>Relevant Facts</p> <ul style="list-style-type: none"> • The location where the conduct is taking place. For example the family home or school. • The time when the conduct is taking place. • 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. 	<p>In “Children’s Hearings in Scotland” (3rd Edition) at para 3-23, Norrie says that to differentiate this ground from section 67(2)(j), the behaviour must be “non-criminal”. The footnote refers to the case of <i>Constanda v M</i> 1997 SLT 1396. He then proceeds to give examples of behaviour that may constitute the ground, many of which may amount to criminal offences.</p> <p>In the case of <i>Constanda v M</i>, when considering a statement of grounds under section 52(2)(b) of the Children (Scotland) Act 1995, the Court of Session held that where the “whole substratum of the ground of referral” is that the child has committed certain criminal offences, it is not appropriate to proceed simply on the basis of a ground other than that the child has committed an offence. The court held that the commission of the offences would require actually to be proved.</p> <p>However, the court said that the position would be different where the reporter seeks to prove facts which show that the child committed an offence, but simply as one element in a wider picture on which the reporter relies to establish that one of the grounds applies to the child.</p> <p>Therefore, following the approach in <i>Constanda v M</i>, this section 67 ground cannot be used if the only relevant facts are that the child has committed an offence and the child was aged 12 or over when the offence was committed²⁷ Although the supporting facts can include criminal offences committed by the child, to use this section 67 ground there must be other relevant facts to support it.</p> <p>In stating facts regarding the child’s</p>

²⁷ See Section 3 of the Age of Criminal Responsibility (Scotland) Act 2019 in relation to the conduct of a child under 12.

behaviour, the reporter is not to use the language of the criminal law (e.g. saying that the child 'punched and kicked x' and not that the child 'assaulted x by punching and kicking him').

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).

Although this decision related to the lack of parental care ground under the Children (Scotland) Act 1995, the formulation of section 67(2)(e) is sufficiently similar to the previous section 52(2)(c) to mean that this approach to likelihood should be followed in a case with a section 67(2)(m) ground.

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

Essential Facts and Potentially Relevant Facts	Relevant case law, references in the Policy Memorandum, text books and related legislation
<p>Essential facts</p> <ul style="list-style-type: none"> Identify the person: <ol style="list-style-type: none"> who is the relevant person in relation to the child; and whose control the child is beyond 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. State the facts regarding the reasonable efforts of the relevant person to control the child's actions. <p>Potentially relevant facts</p> <ul style="list-style-type: none"> 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). <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>In "Children's Hearings in Scotland" (3rd Edition) at para 3-24, Norrie says that the person must either be:</p> <ul style="list-style-type: none"> A 'relevant person' as defined in section 200; or A deemed relevant person under section 81 if the child is already in the system. <p>Norrie "Children's Hearings in Scotland" (3rd Edition) para 3-24: "Nor does it matter why the relevant person is unable to exercise control, and it might be because of illness, incapacity or facility of the relevant person, instability or hyperactivity of the child, a breakdown of the relationship between the two, or for any other reason." "'Control' is to be interpreted according to the need of the particular child for protection, guidance, direction and advice."</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 and the child was aged 12 or over when the offence was committed²⁸. To use this section 67 ground there must be other relevant facts to support it. In stating facts regarding the child's behaviour, the reporter is not to use the language of the criminal law (e.g. saying that the child 'punched and kicked x' and not that the child 'assaulted x by punching and kicking him').</p>

²⁸ See Section 3 of the Age of Criminal Responsibility (Scotland) Act 2019 in relation to the conduct of a child under 12.

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

Essential Facts and Potentially Relevant Facts	Relevant case law, references in the Policy Memorandum, text books and related legislation
<p>Essential Facts</p> <p>State the facts that:</p> <ul style="list-style-type: none"> ▪ the child is a child of school age ▪ 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] ▪ the school(s) that the child is required to attend ▪ in what way the child has failed to attend school regularly by stating the: <ul style="list-style-type: none"> ○ the dates between which he/she has failed to attend, and ○ 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] ▪ the child did not have a reasonable excuse for these absences <p>Other points</p> <ul style="list-style-type: none"> • 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. 	<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>Isle of Wight Council v Platt [2017] UKSC 28 (‘regularly’ means ‘in accordance with the rules’ and not ‘sufficiently frequently’ or ‘at regular intervals’)</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) has been, 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>Essential Facts and Potentially Relevant Facts</p>	<p>Relevant case law, references in the Policy Memorandum, text books and related legislation</p>
<p>Essential Facts</p> <p>State the facts regarding:</p> <p>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 can be current, or prospective, or historic.]</p> <p>Or alternatively</p> <ul style="list-style-type: none"> • The circumstances which amount to, or which are likely to amount to, physical, emotional or other pressure on the other child to enter into a civil partnership. • 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) <p>Relevant Facts</p> <ul style="list-style-type: none"> • 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. • The identity of the person the child is being pressurised into entering the civil partnership with. 	<p>Note that this ground will be satisfied if the child has been subjected to pressure at some time in the past to enter into a civil partnership, even if the child did not in fact enter into a civil partnership.</p> <p>Refer to specification of section 67(2)(d) grounds regarding matters relating to ‘same household’.</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> <p>Although this decision related to the lack of parental care ground under the Children (Scotland) Act 1995, the formulation of section 67(2)(e) is sufficiently similar to the previous section 52(2)(c) to mean that this approach to likelihood should be followed in a case with a section 67(2)(p) ground.</p>

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>Essential Facts</p> <p>State the facts regarding:</p> <ul style="list-style-type: none"> • 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 circumstances can be current, prospective, or historic. The ground may therefore apply after the child has entered into a forced marriage.] <p>Or alternatively</p> <ul style="list-style-type: none"> • The circumstances which amount to, or which are likely to amount to another child being forced to enter into a marriage. • 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).] <p>Relevant Facts</p> <ul style="list-style-type: none"> • The person who is has, is or is likely to force the child into forced marriage. This will be particularly relevant where this is the child’s parent(s) or another close relative. • The identity of the person the child is being forced into entering the marriage with. 	<p>Section 1 of the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Act 2011 states that:</p> <ul style="list-style-type: none"> • “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)); • “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 • “force” includes: <ul style="list-style-type: none"> (a) coerce by physical, verbal or psychological means, threatening conduct, harassment or other means, (b) knowingly take advantage of a person’s incapacity to consent to marriage or to understand the nature of the marriage (section 1(6)) <p>Note that this ground will <i>not</i> be satisfied if the child has been subjected to pressure at some time in the past to enter into a marriage, but did not in fact enter into the marriage - unless it can be shown that the child is still being or is likely to be forced into a marriage. In this respect it is narrower than the section 67(2)(p) ground.</p> <p>Refer to specification of section 67(2)(d) grounds regarding matters relating to ‘same household’.</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</p>

	<p>“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> <p>Although this decision related to the lack of parental care ground under the Children (Scotland) Act 1995, the formulation of section 67(2)(e) is sufficiently similar to the previous section 52(2)(c) to mean that this approach to likelihood should be followed in a case with a section 67(2)(p) ground.</p> <p>More information and guidance about forced marriage is available here.</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.

Medical Term	The way the term might be incorporated in a statement of fact if the term is necessary
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