

Practice Direction 15

Grounds Hearings

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SUMMARY

- A grounds hearing is a hearing arranged under section 69(2) following the reporter's decision on a referral.
- If the child does not attend the grounds hearing and has not been excused in advance, the hearing must either require the reporter to arrange another grounds hearing or discharge the referral. If the hearing requires the reporter to arrange another grounds hearing, it may make an ICSO (or an interim variation of a CSO if the child is already subject to a CSO).
- The child and relevant persons may accept, not accept or not understand a section 67 ground. If the ground is accepted by the child and each relevant person who is present, but not all supporting facts are, the hearing may amend the facts. Any amendment must not call into question the acceptance of the ground.
- If the hearing directs the reporter to make a proof application, it may make an ICSO (interim variation if child is subject to a CSO). The ICSO may not require a medical or other examination to be arranged.
- If a ground is accepted, the hearing may defer the substantive decision. If so, it may make an ICSO or MEO.
- If the ground is accepted and the child is subject to a CSO, the hearing becomes a review hearing.
- When the hearing directs the reporter to make a proof application and makes an ICSO, the hearing can make 2 further ICSOs. During the currency of the 3rd ICSO by the hearing, the reporter can apply to the sheriff for an extension. There is no limit for ICSOs if the grounds are accepted, or once established. There is no limit for interim variations.
- Where the child is not subject to a CSO, a remit under the Criminal Procedure (Scotland) Act 1995 section 49 or the Antisocial Behaviour etc (Scotland) Act 2004 section 12 requires a section 119 hearing to be arranged.
- Where the child **is** subject to a CSO, a remit under the Criminal Procedure (Scotland) Act 1995 section 49 or the Antisocial Behaviour etc (Scotland) Act 2004 section 12 requires a review hearing to be arranged.
- A hearing arranged on the basis of a remit under the Criminal Procedure (Scotland) Act 1995 section 48 is a grounds hearing, though in terms of section 48 of the CP(S)A the offence is treated as a ground established.

CONTENTS

1. Introduction	4
2. Section 67 Ground Procedure	4
3. Attendance of Child	7
4. Attendance of Relevant Persons	9
5. Combination Hearings	10
6. Interim Decisions and Subsequent Hearings	10
7. Remits.....	12
8. Responses to Case Practice Enquiries Since Publication of PD	13
Other Relevant Material	13

1. Introduction

- 1.1 This Practice Direction addresses the circumstances in which the reporter must arrange a grounds hearing, procedure within the hearing and the decision options available to the hearing. It also addresses subsequent hearings flowing from a grounds hearing.
- 1.2 A grounds hearing is defined in section 90 as a hearing arranged under 69(2).
- 1.3 The reporter must arrange a grounds hearing when, having considered a referral under section 66, the reporter determines that he considers firstly a section 67 ground applies and secondly it is necessary for a compulsory supervision order to be made in respect of the child. The duty to arrange a hearing is set out in section 69(2).
- 1.4 The most relevant statutory provisions are:
 - sections 69, 70, 71, 73, 74, 75, 89 – 97 and 98 -100
 - rules 59 - 64

2. Section 67 Ground Procedure

- 2.1 Section 90 sets out the procedure for putting the section 67 ground to the child and relevant persons at the opening of the hearing. The ‘opening’ of the hearing is to be taken to be after the procedural issues in rule 58(1) have been dealt with by the chair¹. That is: introductions; explanation of purpose of hearing; checking receipt of papers, opportunity to review and whether understanding of papers.
- 2.2 The chair must:
 - explain to the child and each relevant person each section 67 ground and the supporting facts in relation to the ground (section 90(1)(a));
 - ask whether they accept each ground applies to the child (section 90(1)(b)); and
 - if they accept that a ground applies to the child, ask whether they accept each of the supporting facts in relation to that ground (section 90(1A))².
- 2.3 If the hearing is satisfied that the child or a relevant person would not be capable of understanding an explanation of the ground, the chair need

¹ The procedure set out in rule 58(1) must take place ‘at the beginning’ of the hearing.

² Although section 90(1)(a) says that the chair must ask whether the child and each relevant person accept each ground applies to the child before asking whether they accept each of the supporting facts, the chair may choose to ask whether they accept the supporting facts before asking whether they accept each ground.

not give an explanation to them nor ask whether they accept the ground (section 94(3)).

- 2.4 Rule 59 enables the hearing to amend the supporting facts. The hearing must be satisfied that any amendment does not call into question the acceptance of the ground. This power to amend the facts will only have a practical effect if the ground is accepted by the child and each relevant person present and the hearing decides it is appropriate to proceed on the basis of the accepted facts (see paragraph 2.5 below). This is because any proof application will be in relation to the statement of grounds as drafted by the reporter.

Ground Accepted

2.5 Where:

- At least one ground and the supporting facts is accepted by the child and each relevant person³ at the hearing and the hearing considers it appropriate to proceed on the basis of that ground or grounds, **or**
- At least one ground is accepted by the child and each relevant person at the hearing, any of them do not accept all of the supporting facts, but the hearing considers:
 - the supporting facts which are accepted by the child and each relevant person present are sufficient to support the conclusion that the ground applies to the child; and
 - it is appropriate to proceed in relation to the accepted ground only on the basis of the facts which were accepted by the child and each relevant person present

section 91 requires the hearing to:

- make a CSO or
- discharge the referral or
- defer the decision whether to make a CSO

- 2.6 The hearing must delete any facts not accepted by the child and each relevant person present (section 90(1C)).
- 2.7 If the hearing defers the decision, the hearing may make an ICSO under section 92(2), or a Medical Examination Order under section 93(3).
- 2.8 If the child is already subject to a CSO, the hearing becomes a review hearing (section 97(4) amends section 91(2) and (3) to this effect) and sections 138, 139 and 142 become applicable. If deferring, the hearing may make an interim variation to the existing CSO.

³ See section 4 below in relation to the situation where a relevant person does not attend and is excused from attending or the hearing decides to proceed in their absence.

- 2.9 Where the ground is accepted, with or without amendment, after the hearing the following is to be added to the statement of grounds as accepted, below the SCRA logo, "Statement of grounds accepted at a children's hearing on [DATE]." This version of the accepted statement of grounds is to replace the original statement in the hearing papers for future hearings.
- 2.10 If the hearing makes, continues or varies a CSO after the ground is accepted, the reporter is to send to the chief social work officer a copy of the accepted statement of grounds with the phrase in paragraph 2.9 added. The reporter is to do this regardless of whether or not the accepted statement of grounds was amended.

Ground Not Accepted

2.11 Where:

- None of the grounds is accepted by the child and each relevant person at the hearing;
- Not all of the grounds are accepted and the hearing does not consider it appropriate to proceed on the basis of the accepted ground(s); or
- While the ground is accepted by the child and each relevant person at the hearing, any one of them does not accept all of the supporting facts, and the hearing does *not* consider that:
 - the supporting facts which are accepted by the child and each relevant person present are sufficient to support the conclusion that the ground applies to the child; and
 - it is appropriate to proceed in relation to the accepted ground only on the basis of the facts which were accepted by the child and each relevant person

section 93 requires the hearing to:

- direct the reporter to make a proof application in relation to the non-accepted ground(s) or
- discharge the referral.

- 2.12 If the hearing directs the reporter to make a proof application, the hearing may make an ICSO (or interim variation if the child is already subject to a CSO). The ICSO (or interim variation) may not include a requirement for medical or other examination of the child.

Ground Not Understood

- 2.13 If the child or a relevant person would not be capable of understanding an explanation of the ground or has not understood the explanation given by the chair, section 94 requires the hearing to:
- direct the reporter to make a proof application in relation to the ground(s) or
 - discharge the referral in relation to the ground

2.14 If the hearing directs the reporter to make a proof application, the same interim options exist as for a proof application in relation to a non-accepted ground(s) ie ICSO/interim variation but excluding medical or other examination.

2.15 A proof application may therefore be made under:

- section 93(2)(a); ground not accepted by the child or a relevant person
- section 94(2)(a); lack of understanding by the child or a relevant person
- both 93(2)(a) and 94(2)(a)

It is important that the basis for any proof application is clear and is accurately recorded as it affects the form of application and the procedural options available to the sheriff. Practice Direction 23 on Court Applications.

Legal Representation/Interpreter

2.16 Rule 61 enables certain hearings to determine that the child or a relevant person requires to be represented by a solicitor in order to be able to participate effectively in the hearing. Rule 61 does **not** apply to a grounds hearing before the section 67 ground is put to the child and relevant persons. It applies only once a ground has been accepted and the hearing is proceeding on the basis of that ground. If the hearing considers that the child or a relevant person requires to be represented by a solicitor to be able to participate effectively in responding to the section 67 ground, it is likely the hearing will be satisfied that the child or relevant person would not be capable of understanding an explanation of the ground (or has not understood an explanation of the ground). The options in section 94 to direct a proof application or discharge the referral would therefore apply.

2.17 Rule 61 also enables certain hearings to require the reporter to make arrangements for an interpreter. However, as with legal representation, a grounds hearing cannot require this before a ground is accepted and the hearing is proceeding on the basis of that ground. If the hearing is satisfied that the child or a relevant person requires an interpreter, it may be satisfied that the child or relevant person in question lacks understanding of the ground(s).

3. Attendance of Child

3.1 If the child has not been excused in advance of a grounds hearing and fails to attend the hearing, the hearing must either:

- require the reporter to arrange another grounds hearing - section 95; or
- discharge the referral - rule 64(3)

The hearing cannot excuse the child for that hearing, but can excuse the child for a subsequent hearing arranged by virtue of section 95.

3.2 If the hearing requires the reporter to arrange another grounds hearing, it may:

- issue a warrant to secure the child's attendance, on the application of the reporter (section 123); or
- make an ICSO (or interim variation if the child is already subject to a CSO) (section 95(4)).

Whether or not the hearing decides to make an ICSO (or interim variation) in this situation, the hearing must make and record their decision on the exercise of this power (rule 64(5)). The ICSO (or interim variation) may not include a requirement for medical or other examination of the child.

3.3 An ICSO made under section 95(4) is not included in the 3 ICSOs that can be made when the hearing has directed a proof application. If at the further grounds hearing, the hearing directs a proof application, that hearing can make an ICSO under section 93(5). That ICSO will be the first of the 3 ICSOs that can be made when a proof application has been directed.

3.4 If the hearing requires the reporter to arrange another grounds hearing, the reporter should be alert to the possibility of considering seeking a warrant to secure the child's attendance in appropriate circumstances. An application for a warrant may be appropriate primarily where the child, or carer, appear to be deliberately choosing that the child will not attend. The warrant will ensure that the child is brought to a grounds hearing as soon as possible, and therefore is kept in a place of safety for the minimum time before coming to a children's hearing at which they can participate in the decision making process.

3.5 If the child attends a grounds hearing, the hearing may excuse the child from the explanation of the section 67 ground but only if satisfied that, taking account of the child's age and maturity, the child would not be capable of understanding the explanation (section 73(4)).

3.6 If the child has been excused in advance from attending the grounds hearing and does not attend (and the hearing decides to proceed with the grounds hearing and not direct the reporter to arrange another one), the hearing must decide whether the child has:

- not accepted the statement of grounds⁴ (due to not being present) (section 93); or
- would not be capable of understanding the explanation (section 94).

⁴ This is different from the position of a relevant person. See section 4 below. Note also that the intention behind the legislation is that a child capable of understanding the statement of grounds would always be present to respond to the grounds.

4. Attendance of Relevant Persons

- 4.1 If a relevant person has not been excused in advance and fails to attend the grounds hearing, section 75 enables the hearing, as any other hearing, to proceed in the relevant person's absence if the hearing considers it appropriate to do so. There is no need for the hearing to excuse the relevant person under section 74(3) in order to be able to proceed.
- 4.2 Where a relevant person is not present at a grounds hearing and the hearing proceeds (whether the person has been excused or the hearing decides simply to proceed in their absence), no response to the section 67 ground can be recorded in relation to that relevant person. The hearing must proceed on the basis of the responses from the child and any relevant person who is present.
- 4.3 Where a grounds hearing proceeds in the absence of relevant persons and the child accepts the statement of grounds, there is no basis for the hearing directing a proof application. The position is the same if the child and all relevant persons present accept the statement of grounds and the grounds hearing has proceeded in the absence of another relevant person. The reporter must make this view clear if the hearing appears to be considering whether to proceed in the absence of relevant persons.
- 4.4 There is no express power to defer a grounds hearing. However where proceeding in the absence of a relevant person would render the hearing unfair, a power to decide not to proceed can be implied. In this case, the hearing may direct the reporter to arrange another grounds hearing. However the hearing cannot impose interim measures⁵.
- 4.5 It will be for the hearing to determine whether proceeding would be unfair. If the reporter is of the view that the hearing should be considering whether it would be unfair to proceed but is not doing so, the reporter is to intervene to express this view. Unfairness may arise where it appears that the individual is not being afforded an adequate opportunity to participate in the decision-making about the child. Factors such as proper notification, reasons for non-attendance, impact on the individual of not being present and impact on decision-making options if not present may all be relevant to the hearing's consideration of the issue.
- 4.6 A grounds hearing, as any other hearing, may exclude a relevant person if satisfied that his/her presence is preventing the hearing from obtaining the views of the child or is causing, or is likely to cause, significant distress to the child (section 76). In addition, rule 59(1) enables the chair

⁵ The power in section 95(4) to make an ICSO (or interim variation of a CSO) when directing the reporter to arrange another grounds hearing only arises when the child has not been excused in advance and has failed to attend the hearing.

to exclude a relevant person if satisfied that the presence of the relevant person is preventing the hearing obtaining the acceptance or denial of the ground and supporting facts from the child or another relevant person. Any exclusion cannot operate to remove a relevant person's opportunity to be given an explanation of each ground and to respond, where they would be capable of understanding the explanation. A relevant person must be given an explanation by the chair of what has taken place during their absence.

5. Combination Hearings

Grounds Hearing with Previous Grounds Undetermined

5.1 Where a grounds hearing takes place and there are also previous grounds either at proof or awaiting a further hearing to consider them (whether accepted or established) then, by virtue of rule 68, the following applies:

- if the new ground is accepted, the grounds hearing becomes a section 119 hearing. The hearing may make an ICSO, a further ICSO or an MEO.

5.2 However, where the child is already subject to a CSO, the grounds hearing becomes a review hearing by virtue of section 97(4).

Grounds Hearing with Review Hearing

5.3 Where a grounds hearing takes place and the hearing has also been arranged to consider a review then, by virtue of rule 69, the following additional provisions apply:

- if the hearing directs the reporter to make an application for proof, the hearing may continue the CSO until the subsequent children's hearing
- if the hearing discharges a referral because the ground has not been accepted or understood, the hearing may review the CSO.

6. Interim Decisions and Subsequent Hearings

Proof Application - Child Not Subject to CSO

6.1 Where a grounds hearing directs the reporter to make an application for proof, it may make an ICSO (section 93(5)). If the hearing makes an ICSO, the reporter may arrange a hearing to consider whether a further ICSO should be made (section 96(2)). The ICSO may not include a requirement for the implementation authority to arrange a medical or other examination of the child.

6.2 The reporter may arrange further ICSO hearings under section 96(2). However, once the children's hearing has directed that a proof application is made, it can make a maximum of 3 ICSOs before grounds are established (section 96(4)). If longer is required, the reporter may apply to the sheriff for an extension of the ICSO under section 98 (see

Practice Direction 23 on Court Applications) during the currency of the 3rd ICSO made by a children's hearing⁶. The reporter may make further applications to the sheriff under section 99.

- 6.3 The presumption is that the reporter will arrange further ICSO hearings under section 96(2). However, in exceptional circumstances it may be appropriate not to. Such a decision requires approval from a locality reporter manager or senior practitioner. A significant change of circumstances will almost certainly be required before such exceptional circumstances arise, and the reporter must consider that the test for an ICSO is not currently met.
- 6.4 It is thought that UNCRC article 12 does not apply to the reporter's decision whether to arrange a hearing under section 96. However, if the reporter is considering not arranging a section 96 hearing, it is good practice to give a child who is capable of forming their own views on the matter an opportunity to give their views. This may be done in a range of ways including through another person (verbally or in writing), such as the child's representative, safeguarder, social worker, or relevant person/carer (if no conflict). Where the child has a legal representative, this should generally be the first option. If the child would be able to understand the letter, the reporter may write to the child, and should do so if the child cannot be given the opportunity to give their views through another route, provided the timescale for arranging the hearing permits this. If the reporter decides not to arrange the hearing, the reasons for doing so should be recorded.

Proof Application - Child Subject to CSO

- 6.5 If the child is already subject to a CSO, and the grounds hearing directs the reporter to make an application for proof, the hearing may make an interim variation of the CSO (sections 93(5) and 92(2) as amended by 97(5)). The interim variation to the CSO may not include a requirement for the implementation authority to arrange a medical or other examination of the child. The reporter may arrange further interim variation hearings under section 96(2) as amended by section 97(5). There is no limit to the number of hearings arranged or interim variations made under section 96.
- 6.6 The same approach to considering not arranging a hearing under section 96 applies as for a child who is not subject to a CSO - see paragraphs 6.3 (applying the test for an interim variation) and 6.4.

Ground Accepted - Child Not Subject to CSO

- 6.7 If a grounds hearing is proceeding on the basis of an accepted ground, and defers the substantive decision on whether to make a CSO, it may make an ICSO under section 92(2) or an MEO under section 92(3). The

⁶ An ICSO made by a hearing under section 95(4) when the hearing has directed the reporter to arrange another grounds hearing is not included in the count of the 3 ICSO (see paragraph 3.2 above).

subsequent hearing is arranged under section 119(2) and it may make a further ICSO under section 120(5) or MEO under section 120(6). There is no limit on the number of deferrals or ICSO/MEOs under sections 119/120.

Ground Accepted - Child Subject to CSO

- 6.8 If the child is already subject to a CSO, and the grounds hearing is proceeding on the basis of an accepted ground, the hearing becomes a review hearing (section 91(2) as amended by section 97(4)). The hearing may defer making a substantive decision; if so, the interim options available to a review hearing apply (interim variation of the CSO under section 139(3) and/or continuation of CSO until the subsequent hearing under section 139(2)). The subsequent hearing is arranged under section 138(2). There is no limit to the number of hearings arranged or interim variations made under sections 138/139. The hearing may make an MEO.

7. Remits

Criminal Procedure (Scotland) Act 1995

- 7.1 Where a court remits a case for disposal under section 49 of the Criminal Procedure (Scotland) Act 1995, and the child is **not** subject to a compulsory supervision requirement, section 71 of the 2011 Act requires the reporter to arrange a hearing under section 119 as if a section 67(2)(j) ground had been established.
- 7.2 Where a court remits a case for disposal under section 49 of the Criminal Procedure (Scotland) Act 1995, and the child **is** subject to a compulsory supervision requirement, section 130 of the 2011 Act requires the reporter to arrange a review hearing under section 137. The remitted offence is treated as an established section 67(2)(j) ground – section 130(4).

Antisocial Behaviour etc. (Scotland) Act 2004

- 7.3 Where the sheriff requires the reporter to arrange a children's hearing under section 12(1A) of the Antisocial Behaviour etc. (Scotland) Act 2004, and the child is **not** subject to a compulsory supervision requirement, section 70 (of the 2011 Act) requires the reporter to arrange a hearing under section 119 as if a section 67 ground had been established. The sheriff must provide a 'section 12 statement' specifying which section 67 ground the sheriff considers to apply (and the reasons and any other relevant information). The specified ground is treated as the ground established.
- 7.4 Where the sheriff requires the reporter to arrange a children's hearing under section 12(1A) of the Antisocial Behaviour etc. (Scotland) Act 2004, and the child **is** subject to a compulsory supervision requirement, section 129 (of the 2011 Act) requires the reporter to arrange a review

hearing under section 137. The sheriff does not provide a 'section 12 statement' in these circumstances.

Criminal Procedure (Scotland) Act 1995 section 48

- 7.5 A reference under the Criminal Procedure (Scotland) Act 1995 section 48 is a referral under section 66(1)(a)(viii). If arranging a hearing on the basis of the remit, the reporter must arrange a grounds hearing. However, in terms of section 48 of the CP(S)A the offence is treated as a ground established. In practice, the grounds hearing will operate as if the ground has been accepted at the hearing.

8. Responses to Case Practice Enquiries Since Publication of PD

- 8.1 Panel member continuity can be considered by a hearing, even if not requested by the child or a relevant person.

Other Relevant Material

Practice Direction 14 on Notifications and Papers

Practice Direction 19 on Orders, Warrants and Measures

Practice Direction 16 on Review Hearings

Practice Direction 11 on Role of the Reporter at a hearing or Pre-hearing Panel

Practice Direction 23 on Court Applications