

New Grounds of Referral – Children’s Hearings Scotland Act 2011 Section 67(2)

The grounds of referral to the Children’s Reporter are found under s67(2) of the new act. There are some similarities with the 1995 Act & 5 new grounds. The wording “close connection” is used throughout and this should be interpreted as a member of the same household or someone with significant contact with the child.

Similar grounds:

- 67(2)(a) this is the old lack of parental care 52(2)(c)
- 67(2)(b) Schedule 1 offence committed against a child 52(2)(d)
- 67(2)(c) child is likely to have a close connection with a schedule 1 offender 52(2)(f)
- 67(2)(d) child is likely to become a member of the same house as a victim of a schedule 1 offence 52(2)(e)
- 67(2)(e) exposure to a person whose **conduct** is likely to affect the child’s health, safety or development 52(2)(b)
- 67(2)(h & i) are special measures for some looked after children 52(2)(l)
- 67(2)(j) child has committed an offence 52(2)(i)
- 67(2)(k & l) child has misused alcohol or drugs 52(2)(j)
- 67(2)(n) child is beyond the control of a relevant person 52(2)(a)
- 67(2)(o) child has failed to attend school regularly 52(2)(h)

New grounds:

- 67(2)(f) child has or is likely to have a close connection with a person who has carried out domestic abuse.
- 67(2)(g) child is likely to have a close connection with a sex offender (Sexual offences Scotland Act 2009).
- 67(2)(m) child’s conduct has had or is likely to have a serious adverse effect on the health, safety & development of another child or person. *Professor Kenneth McK. Norrie has suggested that the “conduct” referred to should not be “criminal conduct” although SCRA are consulting on practice implications if a wider interpretation was taken.*
- 67(2)(p) child is being pressured into a civil partnership or is likely to become a member of the same household as such a child.
- 67(2)(q) child has been or is likely to be forced into a marriage.

Social workers should start to see a wide variety of grounds being used which reflect the main concern for the child and family and in some cases it will be appropriate for more than one ground of referral to be used. This should reduce the use of the more general ground of lack of parental care.

Due to the number of differences between the new and old legislation, it will take time for Children’s Reporters, Court practitioners and panel members to become confident with the new grounds in terms of their suitability for individual cases. Therefore a period of adjustment or “bedding in” is likely.

If you have questions about the new legislation and practice implications for social work staff please contact the Criminal Justice Social Work Development Centre or visit our website.

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