SCOTTISH STATUTORY INSTRUMENTS

# 2021 No. 68

# CHILDREN AND YOUNG PERSONS

## The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Amendment Rules 2021

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| *Made - - - -* | *8th February 2021* |
| *Coming into force - -* | *26th July 2021* |

The Scottish Ministers make the following Rules in exercise of the powers conferred by sections 177 and 195 of the Children's Hearings (Scotland) Act 2011(**a**) and all other powers enabling them to do so.

In accordance with sections 177(4) and 197 of that Act(**b**), a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation and commencement**

**1.** These Rules may be cited as the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Amendment Rules 2021 and come into force on 26 July 2021.

**Modification of the rules of procedure in children's hearings**

**2.**—(1) The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013(**c**) are modified as follows.

(2) After rule 2 (interpretation) insert—

"**Individuals to be afforded opportunity to participate**

**2A.**—(1) This rule applies only in respect of children's hearings held, or to be held, by virtue of—

(a) section 69(2) of the Act (determination under section 66: referral to children's hearing),

(b) Parts 9 to 11 of the Act (children's hearing; proceedings before sheriff; subsequent children's hearings), or

(c) Part 13 of the Act (review of compulsory supervision order).

(**a**) 2011 asp 1 ("the 2011 Act"). The powers to make these Rules are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). The Rules are subject to the affirmative procedure by virtue of section 177(4) of the 2011 Act.

(**b**) Section 197 defines the affirmative procedure for the purposes of section 177(4) and is modified by paragraph 5 of schedule 3 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

(**c**) S.S.I. 2013/194 amended by S.S.I. 2015/21, S.S.I. 2017/452 and, temporarily, modified by Part 1 of schedule 3 of the Coronavirus (Scotland) Act 2020 (asp 3).

(2) An individual is to be afforded an opportunity to participate in relation to a children's hearing if the Reporter is satisfied, or a pre-hearing panel or children's hearing has determined—

(a) that the criteria in paragraph (3) are met by the individual in relation to the children's hearing, or

(b) in the case of a children's hearing arranged (wholly or partly) in consequence of a request being made under section 132A of the Act(**a**) (right of person not afforded opportunity to participate to require review), that subsection (2) of that section applies to the individual.

(3) The criteria referred to in paragraph (2) are—

(a) the individual is living or has lived with the child,

(b) the individual and the child have an ongoing relationship with the character of a relationship between siblings (whether or not they have a parent in common),

(c) the children's hearing is likely to make a decision significantly affecting contact or the possibility of contact between the individual and the child, and

(d) the individual is capable of forming a view on the matter of contact between the individual and the child.

(4) In considering whether the criteria in paragraph (3) are met, regard is to be had to the views of the child and any relevant person.

(5) These Rules give an individual who is to be afforded an opportunity to participate the rights mentioned in section 79(5ZA) of the Act(**b**) (referral of certain matters for pre-hearing determination).".

(3) In rule 11 (role of representative of the child, relevant person or deemed relevant person)—

(a) in paragraph (1), for the words from "the child" to "referred" substitute "a person mentioned in paragraph (3) (referred",

(b) after paragraph (2) insert—

"(3) The persons referred to in paragraph (1) are—

(a) the child,

(b) any relevant person,

(c) any person who wants to be deemed to be a relevant person,

(d) any person who is or wants to be afforded an opportunity to participate in relation to the children's hearing by virtue of rule 2A.".

(c) the title of the rule becomes "Role of representatives".

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(**a**) Section 132A is inserted into the Children's Hearings (Scotland) Act 2011 (asp 1) by section 25 of the Children (Scotland) Act 2020 (asp 16).

(**b**) Subsection (5ZA) is inserted into section 79 of the Children's Hearings (Scotland) Act 2011 (asp 1) by section 25 of the Children (Scotland) Act 2020 (asp 16).

(4) For Part 5 substitute—

# "Part 5

## Attendance

*Authorisation to attend*

**Attendance by individual afforded opportunity to participate at children's hearing**

**19.**—(1) An individual who is to be afforded an opportunity to participate in relation to a children's hearing by virtue of rule 2A is authorised to attend the hearing for a period (or periods) beginning and ending in accordance with paragraph (2).

(2) A period—

(a) begins at such time as the chairing member considers appropriate, and

(b) ends when the chairing member decides that the individual's attendance is no longer necessary for the proper consideration of how a decision of the hearing may affect contact or the possibility of contact between the individual and the child.

**Attendance by representative of individual afforded opportunity to participate at children's hearing**

**20.**—(1) An individual who is authorised to attend a children's hearing by virtue of rule 19 may appoint another person to be the individual's representative.

(2) The individual's representative is authorised to attend the children's hearing as a person accompanying the individual (see rule 11).

**Attendance by custody officer, etc. at pre-hearing panel or children's hearing**

**20A.** An individual is authorised to attend a pre-hearing panel or children's hearing if—

(a) another person is in the individual's lawful custody, and

(b) that other person is attending the panel or hearing.

*Attendance by electronic means*

**Request to attend pre-hearing panel or hearing by electronic means**

**20B.**—(1) The Scottish Children's Reporter Administration must take all reasonable steps to enable an individual to attend a pre-hearing panel or children's hearing by electronic means if the conditions in paragraph (2) are met.

(2) The conditions referred to in paragraph (1) are—

(a) the individual—

(i) has a right to attend the pre-hearing panel or children's hearing under section 78(1) of the Act (rights of certain persons to attend children's hearing), or

(ii) is otherwise entitled to attend by virtue of section 78(2) of the Act,

(b) the individual has made a request to the Reporter to be allowed to attend the panel or hearing by electronic means, and

(c) the Reporter is satisfied that either—

(i) the individual has a good reason for not physically attending the panel or hearing, or

(ii) the individual would be better able to effectively participate in the panel or hearing by attending by electronic means rather than by physically attending it.

(3) In this rule—

"children's hearing" includes part of a children's hearing,

"electronic means" includes telephone and video link.

**Requirement that person attend children's hearing only by electronic means**

**20C.**—(1) Where a pre-hearing panel has determined in accordance with paragraph (2) or (4) that a person, or category of persons, should be allowed to attend a children's hearing only by electronic means—

(a) the person, or persons, may attend the hearing by electronic means only, and

(b) the Scottish Children's Reporter Administration must take all reasonable steps to enable the person, or persons, to attend the hearing by electronic means.

(2) A pre-hearing panel may determine that a person mentioned in paragraph (3) should be allowed to attend a children's hearing only by electronic means if satisfied that the person's physical presence at the hearing, or any part of it, is likely to—

(a) prevent the hearing from obtaining the views of the child or a relevant person, or

(b) cause significant distress to the child or a relevant person.

(3) The persons referred to in paragraph (2) are—

(a) a relevant person,

(b) a person representing a relevant person,

(c) a person who is to authorised to attend the hearing by virtue of rule 19,

(d) a person representing a person who is authorised to attend the hearing by virtue of rule 19,

(e) a particular representative of a newspaper or news agency.

(4) A pre-hearing panel may determine that all representatives of newspapers and news agencies should be allowed to attend a children's hearing only by electronic means if satisfied that the physical presence at the hearing, or any part of it, of any person in that category of persons is likely to—

(a) prevent the hearing from obtaining the views of the child or a relevant person, or

(b) cause significant to distress to the child or a relevant person.

(5) In this rule, "electronic means" is to be construed in accordance with rule 20B.

*Exclusion*

**Exclusion from children's hearing or pre-hearing panel**

**20D.**—(1) The chairing member may exclude from a pre-hearing panel or children's hearing, for as long as is necessary—

(a) any person whose conduct at the panel or hearing is—

(i) violent or abusive, or

(ii) otherwise so disruptive that, unless the person is excluded, the chairing member would consider it necessary to end or adjourn the panel or hearing,

(b) any person mentioned in paragraph (3) if, in the chairing member's opinion, the person's presence—

(i) is preventing, or likely to prevent, the panel or hearing from obtaining the views of a relevant person, or

(ii) is causing, or likely to cause, significant distress to a relevant person attending the hearing.

(2) After the exclusion has ended, the chairing member must explain to the person what has taken place in the person's absence.

(3) The persons referred to in paragraph (1) are—

(a) a relevant person,

(b) a person representing a relevant person,

(c) a representative of a newspaper or news agency.".

(5) In rule 22 (notification of children's hearings - general), in paragraph (2)—

(a) after sub-paragraph (b) insert—

"(ba) any individual who is to be afforded an opportunity to participate in relation to the children's hearing by virtue of rule 2A;",

(b) in sub-paragraph (c), for "individual other than a relevant person" substitute "other individual".

(6) In rule 23 (other information to be given with notification of a children's hearing to the child and each relevant person), in paragraph (e) after "the child" insert "and each relevant person".

(7) After rule 23 insert—

"**Other information to be given with notification of a children's hearing to individuals with an opportunity to participate**

**23A.** The Reporter must when issuing the notice under rule 22(1) to an individual who is to be afforded an opportunity to participate in relation to the children's hearing by virtue of rule 2A also give to the individual—

(a) confirmation of the individual's right to attend the hearing in accordance with rule 19,

(b) information on the means by which the individual may express views to the hearing,

(c) confirmation of the individual's right to give any report or other document for the consideration of the hearing or pre-hearing panel.".

(8) In rule 26 (provision of information prior to children's hearing), after paragraph (4) insert—

"(5) Where an individual is to be afforded an opportunity to participate in relation to a children's hearing by virtue of rule 2A, the Reporter must—

(a) as soon as practicable before the hearing begins, give the individual a copy of any contact direction that regulates contact between the individual and the child, and

(b) give the individual any information (including information contained in a document) that—

(i) the Reporter is required by these Rules to give to a relevant person, and

(ii) is about—

(aa) the individual,

(bb) contact between the child and the individual, or

(cc) how contact or the possibility of contact between the child and the individual may be affected by a decision of the children's hearing.

(6) But paragraph (5)(b) does not require the Reporter to give an individual the statement of grounds prepared by the Reporter under section 89 of the Act (Principal Reporter's duty to prepare statement of grounds).

(7) Where the Reporter is required by these Rules to give a copy of a report or other document to the members of a children's hearing before the hearing begins, the Reporter must also give a copy of the report or other document to—

(a) the chief social work officer of the relevant local authority for the child, or

(b) if the child is subject to a compulsory supervision order or an interim compulsory supervision order, the chief social work officer of the implementation authority.

(8) Paragraph (7) does not require the Reporter to give the chief social work officer of an authority a copy of a report or other document prepared, or given to the Reporter, by the authority.".

(9) In rule 29 (provision of information for a grounds hearing where section 69(3) of the Act applies or following the making of a child protection order under section 38 of that Act)—

(a) in paragraph (3)—

(i) after sub-paragraph (c) insert—

"(ca) any individual who is to be afforded an opportunity to participate in relation to the children's hearing by virtue of rule 2A;",

(ii) in sub-paragraph (d), for "individual other than a relevant person" substitute "other individual",

(b) after paragraph (5) insert—

"(5A) As soon as practicable before the beginning of the hearing, the Reporter must give to the persons mentioned in paragraph (3)(ca)—

(a) the information mentioned in rule 23A, and

(b) any information (including information contained in a document) that—

(i) the Reporter is required by these Rules to give to a relevant person, and

(ii) is about—

(aa) the individual,

(bb) contact between the child and the individual, or

(cc) how contact or the possibility of contact between the child and the individual may be affected by a decision of the children's hearing.

(5B) But paragraph (5A)(b) does not require the Reporter to give an individual the statement of grounds prepared by the Reporter under section 89 of the Act (Principal Reporter's duty to prepare statement of grounds).",

(c) after paragraph (8) insert—

"(9) Where the Reporter is required by these Rules to give a copy of a report or other document to the members of a children's hearing before the hearing begins, the Reporter must also give a copy of the report or other document to—

(a) the chief social work officer of the relevant local authority for the child, or

(b) if the child is subject to a compulsory supervision order or an interim compulsory supervision order, the chief social work officer of the implementation authority.

(10) Paragraph (9) does not require the Reporter to give the chief social work officer of an authority a copy of a report or other document prepared, or given to the Reporter, by the authority.".

(10) In rule 36 (provision of information for a review hearing where section 136 of the Act applies)—

(a) in paragraph (3)—

(i) after sub-paragraph (c) insert—

"(ca) any individual who is to be afforded an opportunity to participate in relation to the children's hearing by virtue of rule 2A;",

(ii) in sub-paragraph (d), for "individual other than a relevant person" substitute "other individual",

(b) after paragraph (4) insert—

"(4A) As soon as practicable before the beginning of the hearing, the Reporter must give to the persons mentioned in paragraph (3)(ca)—

(a) the information mentioned in rule 23A, and

(b) any information (including information contained in a document) that—

(i) the Reporter is required by these Rules to give to a relevant person, and

(ii) is about—

(aa) the individual,

(bb) contact between the child and the individual, or

(cc) how contact or the possibility of contact between the child and the individual may be affected by a decision of the children's hearing.

(4B) But paragraph (4A)(b) does not require the Reporter to give an individual the statement of grounds prepared by the Reporter under section 89 of the Act (Principal Reporter's duty to prepare statement of grounds).",

(c) after paragraph (6) insert—

"(7) Where the Reporter is required by these Rules to give a copy of a report or other document to the members of a children's hearing before the hearing begins, the Reporter must also give a copy of the report or other document to—

(a) the chief social work officer of the relevant local authority for the child, or

(b) if the child is subject to a compulsory supervision order or an interim compulsory supervision order, the chief social work officer of the implementation authority.

(8) Paragraph (7) does not require the Reporter to give the chief social work officer of an authority a copy of a report or other document prepared, or given to the Reporter, by the authority.".

(11) Before rule 45 insert—

"**Specification of matters that may be determined by pre-hearing panel**

**44A.** Whether a person should be allowed to attend a children's hearing only by electronic means (see rule 20C) is specified for the purpose of these Rules as a matter that may be determined by pre-hearing panels.".

(12) In rule 45 (arranging pre-hearing panel - determination of relevant person status)—

(a) in paragraph (1), for "79(3) or (5A)(a)" substitute "79(2)(ba) or (bb)(**a**), (3) or (5A) of the Act",

(b) after paragraph (3) insert—

"(3ZA) Where the pre-hearing panel will also determine in respect of an individual a matter referred under section 79(2)(ba) or (bb) of the Act, the notice must—

(a) state that fact and the name of the person,

(b) inform the individual mentioned in paragraph (2)(c) or (d) that the individual will not be entitled to take part in any discussion on the matter referred under section 79(2)(ba) or (bb) of the Act unless the individual is deemed to be a relevant person,

(c) inform any individual whose status as a relevant person has been referred under section 79(5A) of the Act that the individual will not be entitled to take part in any

(**a**) Paragraphs (ba) and (bb) are inserted into section 79(2) of the Children's Hearings (Scotland) Act 2011 (asp 1) by section 25 of the Children (Scotland) Act 2020 (asp 16).

discussion on the matter referred under section 79(2)(ba) or (bb) of the Act unless the individual continues to be deemed to be a relevant person,

(d) inform the persons mentioned in paragraph (2)(a), (b) or (e), subject to sub-paragraph (c), that they may—

(i) make representations (orally or in writing) to the pre-hearing panel in relation to the matter referred under section 79(2)(ba) or (bb) of the Act, and

(ii) give any report or other document relevant to that matter for the consideration of the pre-hearing panel.",

(c) after paragraph (4) insert—

"(5) Paragraph (6) applies where an individual is both—

(a) a person in respect of whom a matter has been referred to the pre-hearing panel under section 79(2)(ba) or (bb) of the Act, and

(b) a person mentioned in paragraph (2)(c) or (d).

(6) The notice—

(a) is not to inform the individual referred to in paragraph (5) of the things that it would otherwise be required to by virtue of paragraph (3ZA), and

(b) is instead to inform the individual that the individual may—

(i) make representations (orally or in writing) to the pre-hearing panel relating to the matter in respect of the individual that has been referred under section 79(2)(ba) or (bb) of the Act, and

(ii) give any report or other document relevant to that matter for the consideration of the pre-hearing panel.

(7) Paragraph (8) applies where an individual is both—

(a) a person in respect of whom a matter has been referred to the pre-hearing panel under section 79(2)(ba) or (bb) of the Act, and

(b) a person whose status as a relevant person has been referred to the pre-hearing panel under section 79(5A) of the Act.

(8) The notice—

(a) is not to inform the individual referred to in paragraph (7) of the things that it would otherwise be required to by virtue of paragraph (3ZA), and

(b) is instead to inform the individual that—

(i) the individual may make representations (orally or in writing) to the pre-hearing panel relating to the matter in respect of the individual that has been referred under section 79(2)(ba) or (bb) of the Act,

(ii) the individual may give any report or other document relevant to that matter for the consideration of the pre-hearing panel,

(iii) if a matter has been referred under section 79(2)(ba) or (bb) of the Act in respect of another person too, the individual will not be entitled to take part in any discussion on that matter unless the individual continues to be deemed to be a relevant person.".

(13) After rule 45 insert—

"**Arranging pre-hearing panels to determinate opportunity to participate - notice to persons other than person seeking opportunity**

**45A.**—(1) Where a pre-hearing panel is to be arranged by virtue of section 79(2)(ba) or (bb), but not by virtue of section 79(2)(a), (b) or (5A), of the Act (whether or not it is also to determine any matter mentioned in section 79(3) of the Act), wherever practicable at least 5 days before the intended date of the pre-hearing panel the Reporter must give notice of the pre-hearing panel to the persons mentioned in paragraph (2).

(2) Those persons are—

(a) the child,

(b) each relevant person,

(c) any appointed safeguarder,

(d) the members of the pre-hearing panel,

(e) the National Convener.

(3) The notice must inform—

(a) the persons mentioned in paragraph (2) of the date, time and place of the pre-hearing panel,

(b) the persons mentioned in paragraph (2)(a) to (d)—

(i) that the pre-hearing panel is to determine in respect of an individual a matter referred under section 79(2)(ba) or (bb) of the Act,

(ii) of the name of the individual,

(c) the persons mentioned in paragraph (2)(a) to (c) that they—

(i) have the right to attend the pre-hearing panel,

(ii) may make representations (orally or in writing) to the pre-hearing panel relating to the matter referred under section 79(2)(ba) or (bb) of the Act,

(iii) may give any report or document relevant to that matter for the consideration of the pre-hearing panel,

(iv) have the right to request that the Reporter takes all reasonable steps to enable the individual in question to attend the pre-hearing panel by way of telephone, through video link or by using any other method of communication.

(4) Where the pre-hearing panel will also determine a matter referred under section 79(2)(c) of the Act, the notice must—

(a) state that fact,

(b) inform the persons mentioned in paragraph (2)(a) to (c) that they may—

(i) make representations (orally or in writing) to the pre-hearing panel in relation to any matter to be determined by the panel, and

(ii) give any report or other document relevant to those matters for the consideration of the panel.

**Arranging pre-hearing panels to determine opportunity to participate - notice to person seeking opportunity**

**45B.**—(1) Where a pre-hearing panel is to be arranged to determine in respect of an individual a matter referred under section 79(2)(ba) or (bb) of the Act (whether or not the panel is to be arranged for another purpose too), the Reporter must give the individual notice of the pre-hearing panel.

(2) The notice must inform the individual that the individual—

(a) has the right to attend the pre-hearing panel,

(b) may make representations (orally or in writing) to the pre-hearing panel relating to the matter in respect of the individual that has been referred under section 79(2)(ba) or (bb) of the Act,

(c) may give any report or document relevant to that matter for the consideration of the pre-hearing panel,

(d) has the right to request that the Reporter takes all reasonable steps to enable the individual to attend the pre-hearing panel by way of telephone, through video link or by using any other method of communication.

(3) Notice of a pre-hearing panel is not to be given to an individual under this rule if the individual is to be given notice of the pre-hearing panel—

(a) under rule 45, on account of being a person mentioned in paragraph (2)(b) to (d) of that rule, or

(b) under rule 45A or 46A, on account of being a relevant person.".

(14) In rule 46A (arranging pre-hearing panels to determine whether deeming of relevant person to end)—

(a) in paragraph (1), for "79(3)" substitute "79(2)(ba) or (bb) or (3)",

(b) in paragraph (4), for the words from "a pre-hearing panel" to "or (b)," substitute "the pre-hearing panel",

(c) after paragraph (4) insert—

"(5) Where the pre-hearing panel will also determine in respect of a person a matter referred under section 79(2)(ba) or (bb) of the Act, the notice must—

(a) state that fact and the name of the person,

(b) inform the individual whose status as a relevant person has been referred under section 79(5A) of the Act that the individual will not be entitled to take part in any discussion on the matter referred under section 79(2)(ba) or (bb) of the Act unless the individual continues to be deemed a relevant person,

(c) inform the persons mentioned in paragraph (2)(a) to (c) that, subject to sub-paragraph (b), they may—

(i) make representations (orally or in writing) to the pre-hearing panel in relation to the matter referred under section 79(2)(ba) or (bb) of the Act, and

(ii) give any report or other document relevant to that matter for the consideration of the pre-hearing panel.

(6) Paragraph (7) applies where an individual is both—

(a) a person in respect of whom a matter has been referred to the pre-hearing panel under section 79(2)(ba) or (bb) of the Act, and

(b) a person whose status as a relevant person has been referred to the pre-hearing panel under section 79(5A) of the Act.

(7) The notice—

(a) is not to inform the individual referred to in paragraph (6) of the thing that it would otherwise be required to by virtue of paragraph (5)(b), and

(b) is instead to inform the individual that—

(i) the individual may make representations (orally or in writing) to the pre-hearing panel relating to the matter in respect of the individual that has been referred under section 79(2)(ba) or (bb) of the Act,

(ii) the individual may give any report or other document relevant to that matter for the consideration of the pre-hearing panel,

(iii) if a matter has been referred to the pre-hearing panel under section 79(2)(ba) or (bb) of the Act in respect of another person too, notwithstanding paragraph (5)(c)(i), the individual will not be entitled to take part in any discussion on that matter unless the individual continues to be deemed a relevant person.".

(15) In rule 47 (provision of information to pre-hearing panel)—

(a) in paragraph (1), for the words from "mentioned" to "may be," substitute "with a right to make representations"

(b) in paragraph (3), for the words from "mentioned" to "may be," substitute "with a right to make representations",

(c) after paragraph (6) insert—

"(6A) Where a matter in respect of an individual has been referred to the pre-hearing panel under section 79(2)(ba) or (bb) of the Act, and the individual is not a person referred to in paragraph (8)(a), the Reporter must give to the individual any information (including information contained in a document) that—

(a) the Reporter is required by this rule to give to a relevant person, and

(b) is relevant to the matter that has been referred in respect of the individual.",

(d) after paragraph (7) insert—

"(8) In this rule, references to a person with a right to make representations refer—

(a) to the persons mentioned in paragraph (2) of whichever of rules 45, 45A, 46 or 46A applies to the pre-hearing panel, apart from—

(i) the members of the pre-hearing panel, and

(ii) the National Convener, and

(b) to any individual in respect of whom a matter has been referred to the pre-hearing panel under section 79(2)(ba) or (bb) of the Act.".

(16) After rule 47 insert—

"**Procedure at pre-hearing panel - general**

**47A.**—(1) At the beginning of a pre-hearing panel, the chairing member must explain the purpose of the pre-hearing panel.

(2) In relation to each matter that is to be determined by a pre-hearing panel, the chairing member must invite each of the following individuals who is in attendance to make representations—

(a) the child,

(b) any relevant person.

(3) Where a pre-hearing panel is determining whether to deem an individual who is in attendance to be a relevant person, the chairing member must invite the individual to make representations in relation to that matter.

(4) Where a pre-hearing panel is determining whether an individual should be afforded an opportunity to participate in relation to a children's hearing by virtue of rule 2A, the chairing member must invite the individual who is in attendance to make representations in relation to that matter.

(5) The chairing member of a pre-hearing panel may invite any person who is in attendance to make representations in relation to any matter that is to be determined by the panel if the panel considers it appropriate to do so.

(6) A person invited by the chairing member to make representations to a pre-hearing panel may—

(a) do so orally or in writing,

(b) submit any document to the panel that the person wishes.

(7) Each member of a pre-hearing panel must state, in relation to each matter that the panel is to determine—

(a) the member's determination on the matter, and

(b) the reasons for it.

(8) Once the members of a pre-hearing panel have stated their individual determinations on each matter in accordance with paragraph (7), the chairing member must confirm—

(a) the panel's determination on each matter, and

(b) the reasons for each determination.

(9) Where a pre-hearing panel has made a determination about whether an individual should be, or should continue to be, deemed to be a relevant person, the chairing member must inform the following persons of their right to appeal that determination under section 160 of the Act—

(a) the individual in question,

(b) the child,

(c) each relevant person.".

(17) In rule 48 (procedure at pre-hearing panel determination of whether to deem an individual to be a relevant person)—

(a) paragraph (1) is omitted,

(b) in paragraph (3) for "81(2) (determination of claim that person be deemed a relevant person)" substitute "80 (determination of matter referred under section 79)",

(c) paragraphs (4) to (9) are omitted.

(18) After rule 48 insert—

"**Procedure at pre-hearing panel - determination of whether individual to be afforded opportunity to participate**

**48A.**—(1) This rule applies only in relation to a pre-hearing panel that is arranged in connection with a children's hearing that is to be held by virtue of an enactment mentioned in rule 2A(1).

(2) The pre-hearing panel, despite a referral not having been made under section 79(2) of the Act (referral of certain matters for pre-hearing determination), must determine whether an individual, who is present at the pre-hearing panel, meets the criteria in rule 2A(3) to be afforded an opportunity to participate in relation to the children's hearing on the request of—

(a) the child,

(b) any relevant person,

(c) the individual in question.

(3) Where the pre-hearing panel is to make a determination by virtue of paragraph (2), the provisions of the Act (other than section 80 (determination of matter referred under section 79)) and these Rules apply as if the matter had been referred under section 79(2)(ba) of the Act.".

(19) Rule 49 (procedure at a pre-hearing panel determination of any other matter) is omitted.

(20) Rule 49A (procedure at pre-hearing panel determination of whether to end deemed relevant person status) is omitted.

(21) In rule 50 (notice of pre-hearing panel determination), after paragraph (4) insert—

"(4A) When a pre-hearing panel has determined whether an individual is to be afforded an opportunity to participate in relation to a children's hearing by virtue of rule 2A, as soon as practicable after the pre-hearing panel, the Reporter must give notice of that determination to the individual and the reasons for that determination.".

(22) In rule 52 (notification of matter to be determined under section 79 of the Act where not practicable to arrange a pre-hearing panel before the date fixed for the children's hearing)—

(a) in paragraph (3)(a)(v), for "or (5)" substitute ", (5) or (6)",

(b) after paragraph (5) insert—

"(6) In the circumstance described by paragraph (7), the notice—

(a) is not to inform the individual referred to in that paragraph of the thing that it would otherwise be required to by virtue of paragraph (4) or (as the case may be) (5),

(b) is instead to inform the individual that, unless the individual is deemed or continues to be deemed a relevant person, the individual will not be entitled to take part in any discussion on any matter that has been referred under section 79(2) of the Act other than a matter that has been referred in respect of the individual.

(7) The circumstance referred to in paragraph (6) is that the children's hearing will determine in respect of the same individual—

(a) a matter that has been referred under section 79(2)(ba) or (bb) of the Act, and

(b) a matter that has been referred under section 79(2)(a), (b) or (5A) of the Act.".

(23) After rule 52 insert—

"**Notification of matter to be determined under section 79 person seeking opportunity to participate**

**52A.**—(1) Where—

(a) section 80(3) of the Act (determination of matter under section 79) applies,

(b) the matter being referred to the children's hearing (or one of them) is a matter mentioned in section 79(2)(ba) or (bb) of the Act, and

(c) the individual in respect of whom the matter has been referred is not a person to whom notice must be given under rule 52,

the Reporter must give notice of the hearing to the individual.

(2) The notice must inform the individual—

(a) of the date, time and place of the hearing,

(b) that the individual—

(i) has the right to attend that part of the children's hearing,

(ii) has the right to request that the Reporter takes all reasonable steps to enable the individual to attend the children's hearing by way of telephone, through video link or by using any other method of communication,

(iii) may make representations (orally or in writing) to the hearing relating to the matter in respect of the individual that has been referred under section 79(2)(ba) or (bb) of the Act,

(iv) may give any report or other document relevant to that matter for the consideration of the hearing.".

(24) In rule 53 (provision of information relating to matter referred under section 79 of the Act to the children's hearing), after paragraph (5) insert—

"(6) Where the children's hearing will determine in respect of an individual a matter which has been referred under section 79(2)(ba) or (bb) of the Act, and the individual is not a person mentioned in rule 52(2), the Reporter must give to the individual any information (including information contained in a document) that—

(a) the Reporter is required by this rule to give to a relevant person, and

(b) is either—

(i) relevant to the matter under section 79(2)(ba) or (bb) of the Act that has been referred in respect of the individual, or

(ii) is otherwise about—

(aa) the individual,

(bb) contact between the child and the individual, or

(cc) how contact or the possibility of contact between the child and the individual may be affected by a decision of the children's hearing.

(7) But paragraph (6) does not require the Reporter to give an individual the statement of grounds prepared by the Reporter under section 89 of the Act (Principal Reporter's duty to prepare statement of grounds).".

(25) In rule 54 (children's hearing determining a matter referred under section 79 of the Act), in paragraph (a), for "48(2) to (9), 49 and 49A" substitute "47A (other than paragraph (1)) to 48A".

(26) After rule 55 (children's hearings' power to determine whether a person should be deemed to be a relevant person where no referral under section 79 of the Act) insert—

"**Children's hearings' power to determine whether person to be afforded opportunity to participate where no referral made under section 79 of the Act**

**55A.**—(1) A children's hearing held in relation to a child by virtue of an enactment mentioned in paragraph (1) of rule 2A must determine whether an individual who is present at the hearing meets the criteria in paragraph (3) of that rule to be afforded an opportunity to participate in relation to the hearing on the request of—

(a) the child,

(b) any relevant person,

(c) the individual in question.

(2) Where the children's hearing is to make a determination under paragraph (1), the provisions of the Act (other than section 80) and these Rules apply as if the matter had been referred under section 79(2)(ba) of the Act.".

(27) In rule 59 (procedure at a grounds hearing - grounds put to the child and relevant person), paragraphs (1) and (2) are omitted.

(28) After rule 88 (notifying decision of a children's hearing to the child, relevant person and appointed safeguarder) insert—

"**Notifying decision of a children's hearing to an individual afforded an opportunity to participate**

**88A.** Where a children's hearing makes a direction which regulates contact between the child and an individual afforded an opportunity to participate in relation to the hearing by virtue of rule 2A, the Reporter must give to the individual—

(a) a copy of the direction, and

(b) the reasons for the direction.".

(29) In rule 97 (travelling and subsistence expenses)—

(a) in paragraph (2)—

(i) after sub-paragraph (b) insert—

"(ba) any person who is to be afforded an opportunity to participate in relation to the children's hearing by virtue of rule 2A;",

(ii) in sub-paragraph (c), for "the child or any relevant person" substitute "a person mentioned in sub-paragraph (a), (b) or (ba)",

(iii) in sub-paragraph (d), for "the child or any relevant person" substitute "a person mentioned in sub-paragraph (a), (b) or (ba)",

(iv) after paragraph (d) insert—

"(da) any individual who claimed to qualify to be afforded an opportunity to participate in relation to the children's hearing by virtue of rule 2A;",

(b) in paragraph (4), for "the child or any relevant person" substitute "a person mentioned in paragraph (2)(a), (b) or (ba)".

(30) In rule 98 (authentication of documents), after paragraph (3) insert—

"(4) For the purposes of this rule—

"signed" includes signed by means of an electronic signature,

"electronic signature" is to be construed in accordance with section 7(2) of the Electronic Communications Act 2000(**a**), but includes a version of an electronic signature which is reproduced on a paper document.".

*MAREE TODD*
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
8th February 2021

(**a**) 2000 c.7. Section 7(2) is amended by S.I. 2016/696.

## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules make changes to the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 ("the Rules"), principally as a consequence of section 25 of the Children (Scotland) Act 2020 (asp 16). That section creates a new category of person within the children's hearings process: those who are to be afforded an opportunity to participate. The opportunity to participate consists of the rights set out in section 79(5ZA) of the Children's Hearings (Scotland) 2011 ("the Act"), as amended by section 25 of the 2020 Act.

**New Rule 2A and consequential amendments**

Rule 3(2) of these Rules inserts a new rule 2A, which sets out the criteria that an individual must meet to be afforded an opportunity to participate in a children's hearing ("the individual"). In consequence, some further amendments to the Rules are provided as follows:

- Rule 11, which provides for the possibility of a representative accompanying a person who is or wants to be afforded an opportunity to participate at a children's hearing.
- The substitution of a new Part 5 of the Rules (rules 19 to 20D), in respect of the attendance at a children's hearing or pre-hearing panel of the individual or their representative, including by electronic means, or the exclusion of such an individual. The existing rules in that Part have also been updated for consistency in relation to the attendance or exclusion of other persons.
- Rule 22 (the notification of such hearings to individuals) is amended so that the individual must be notified of the children's hearing.
- Rule 23A (information to be given with notification of such hearings to individuals) is inserted so that the individual must be provided with certain information in their notification.
- Rule 26 (provision of information prior to children's hearing) is amended so that the Reporter must give the individual relevant information, as soon as practicable before the hearing begins. Similar amendments are made to rules 29 and 36.
- Rule 44A (specification of matters that may be determined by a pre-hearing panel) is inserted so that the matter of whether a person should be allowed to attend a children's hearing only by electronic means can be determined by a pre-hearing.
- Rule 45 (arranging a pre-hearing panel – determination of relevant person status) is amended so that where the pre-hearing panel will also determine the matter of opportunity to participate, the notice of the pre-hearing panel must contain information about that matter.
- Rule 45A (arranging pre-hearing panels to determinate opportunity to participate - notice to persons other than person seeking opportunity) is inserted so that where a pre-hearing panel is determining the matter of an opportunity to participate the notice of the pre-hearing panel to persons other than the individual must contain information about that matter.
- Rule 45B (arranging pre-hearing panels to determine opportunity to participate - notice to person seeking opportunity) is inserted so that when a pre-hearing panel is to determine the matter of an opportunity to participate, the notice to the individual must contain information about that matter.
- Rule 46A (arranging pre-hearing panels to determine whether deeming of relevant person to end) is amended, so that when the pre-hearing panel will also determine the matter of an opportunity to participate, the notices of the pre-hearing panel must contain information about that matter.
- Rule 47 (provision of information to pre-hearing panel) is amended so that where a pre-hearing panel is to determine the matter of an opportunity to participate, the Reporter must give the individual relevant information.

- Rule 47A (procedure at pre-hearing panel – general) is inserted to provide the procedure to be followed at all pre-hearing panels.
- Minor amendments are made to rule 48 (procedure at pre-hearing panel determination of whether to deem an individual to be a relevant person) as a consequence of rule 47A.
- Rule 48A (procedure at pre-hearing panel - determination of whether individual to be afforded opportunity to participate) is inserted so that the matter of whether an individual meets the criteria in rule 2A can be raised at the pre-hearing despite this not having been referred in advance.
- Rules 49 (procedure at a pre-hearing panel determination of any other matter) and 49A (procedure at pre-hearing panel determination of whether to end deemed relevant person status) are omitted as a consequence of rule 47A.
- Rule 50 (notice of pre-hearing panel determination) provides for notice of a decision of a pre-hearing panel to the individual.
- Rule 52 (notification of matter to be determined under section 79 of the Act where not practicable to arrange a pre-hearing panel before the date fixed for the children's hearing) is amended to provide for notices in the situation where a hearing will be considering in respect of the same individual the matter of opportunity to participate and relevant person status.
- Rule 52A (notification of matter to be determined under section 79 person seeking opportunity to participate) is inserted to provide for notice to the individual where rule 52 would not apply to that individual.
- Rule 53 (provision of information relating to matter referred under section 79 of the Act to the children's hearing) is amended so that the Reporter must give the individual relevant information.
- Rule 54 (provision of information relating to matter referred under section 79 of the Act to the children's hearing) is amended in consequence of other amendments.
- Rule 55A (children's hearings' power to determine whether person to be afforded opportunity to participate where no referral made under section 79 of the Act) is inserted to allow the matter of whether an individual meets the criteria of opportunity to participate to be raised at the hearing, despite it not being referred in advance.
- Rule 59 (procedure at a grounds hearing - grounds put to the child and relevant person) is amended as these matters are now dealt with in Part 5.
- Rule 88A (notifying decision of a children's hearing to an individual afforded an opportunity to participate) provides that the Reporter must give to the individual a copy of any relevant decision.
- Rule 97 (travelling and subsistence expenses) is amended to allow the individual to reclaim such expenses.

**Other amendments**

Other changes made by these Rules are as follows:

- Rules 26, 29 and 36 are amended so that the Reporter is required to give to the chief social work officer for the relevant local authority or the implementation authority (for a child subject to a compulsory supervision order or an interim compulsory supervision order) a copy of the same report or other documents which the Reporter is required to give to the members of the children's hearing (other than a copy of a report or document which that authority has given to the Reporter).
- Rule 98 is amended to allow documents to be authenticated by electronic signature.

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£6.90

S202102091007 02/2021 19585

http://www.legislation.gov.uk/id/ssi/2021/68

ISBN 978-0-11-104932-7

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