# POLICY NOTE

## DRAFT : THE CHILDREN'S HEARINGS (SCOTLAND) ACT 2011 (REVIEW OF CONTACT DIRECTIONS AND DEFINITION OF RELEVANT PERSON) ORDER 2013

The above instrument is proposed to be made in exercise of the powers conferred by sections 126(2)(b) and 200(1)(g) of the Children's Hearings (Scotland) Act 2011 ("the 2011 Act").

This Order widens the category of persons who can seek a review of a contact direction in terms of section 126 of the 2011 Act. The Order also amends the definition of relevant person in section 200(1) of the 2011 Act to include all parents, unless they have had their parental rights and responsibilities removed by court order.

### Policy objectives

*Review of contact direction – use of the power at section 126(2)(b)*

Section 126 of the 2011 Act provides that, where a children's hearing makes an order specified in that section[1] and the order made contains a contact direction, there must be a hearing to review the contact direction in certain circumstances. Subsection (2)(a) requires a review hearing to take place where an individual has a contact order or a permanence order regulating contact with the child. Subsection (2)(b) allows this right of review to be extended to any person who makes a claim that conditions which are specified in an order made by the Scottish Ministers are met.

This Order opens up the right of review at section 126 to individuals who claim that they have or recently have had a significant involvement in the upbringing of the child. The policy intention is to allow individuals who are not "relevant persons" in relation to the child, but who nevertheless have a significant involvement in the child's upbringing, to participate in the hearings process.

The review trigger relies on the individual first making the claim. That, in itself, will operate as a filter and so avoid a review every time the hearing makes a contact direction. It will be for the hearing alone to determine whether that individual has or recently has had a significant involvement in the upbringing of the child. The hearing does not need to determine whether the contact direction has interfered with the individual's involvement in the upbringing of the child – the question is whether the individual meets the prescribed condition.

If it is established that the individual has or recently has had a significant involvement in the upbringing of the child, there will be a review of the contact direction and the individual will be afforded the opportunity to participate and make representations in the review process.

[1] The section applies where the hearing: makes a compulsory supervision order; makes an interim compulsory supervision order, an interim variation of a compulsory supervision order or a medical examination order which is to have effect for more than 5 working days; or continues or varies a compulsory supervision order under section 138 of the Act.

*Amendment to the definition of "relevant person" – use of the power at section 200(1)(g)*

Section 200(1) of the 2011 Act defines the meaning of "relevant person" for the purposes of the Act. An individual who falls within the definition will automatically qualify as the child's relevant person and assume all the rights and responsibilities which accompany that role, for example the duty to attend at a children's hearing and the right to appeal against the hearing's decision. The current definition specifies parents and persons who have parental rights and responsibilities (PRR) in respect of the child, including individuals holding parental responsibilities in England and Wales under the Children Act 1989.

This Order extends the definition of relevant person to include all parents, including those who do not have PRR, unless the reason for their lack of PRR is that these have been removed by court order. The extended definition would, for example, include fathers who were not married to the mother, who had registered the child's birth prior to the Family Law (Scotland) Act 2006[2] coming into force and who had not entered into an agreement with the mother under section 4 of the Children (Scotland) Act 1995. The Order further extends the definition of relevant person to include all parents, and non-parents who have acquired PRR, in Northern Ireland.

**Commencement**

This Order will come into force at the same time as section 126 of the 2011 Act.

**Consultation**

A full public consultation on this instrument was carried out from 31 October 2011 to 31 January 2012.

**Impact assessments**

There are no equality impact issues.

**Financial effects**

The Minister for Children and Young People confirms that no BRIA is necessary as the instrument has no likely financial effects on the Scottish Government, local government or business.

**Scottish Government**
**Children and Families Directorate**

**April 2013**

[2] Section 23 of the Family Law (Scotland) Act 2006 amended section 3(1) of the Children (Scotland) Act 1995 to allow unmarried fathers who, on or after 4 May 2006, are registered as the child's father under section 18 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965, or the equivalent enactments for England, Wales and Northern Ireland, to automatically assume parental responsibilities and rights in respect of the child.