POLICY NOTE

DRAFT : The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013

The above instrument is made in exercise of the powers conferred by section 177(1) of the Children's Hearings (Scotland) Act 2011 ('the 2011 Act').

These powers enable Scottish Ministers to make rules about the procedures relating to children's hearings and in particular the various matters listed in section 177(2). These rules give directions on all aspects of the children's hearings process including the arranging and notification of a children's hearing or pre-hearing panel, the procedures supporting, during and following the various proceedings and how the notification of decisions are to be made. Provision for pre-hearing panels is contained in Part 8 of the 2011 Act.

These rules will replace the Children's Hearings (Scotland) Rules 1996 (SI 1996/3261), which will be revoked when the 2011 Act is commenced.

Policy Objectives

The Children's Hearings (Scotland) Rules 1996 have worked well since their introduction. These rules are built upon that instrument with a similar broad intent to support ordered, clear expectations on procedural matters. However, the 2011 Act provides for a greater range of children's hearings and there are new options as to disposals. This has resulted in a need for a more detailed set of rules which need to be made in exercise of the power conferred by the 2011 Act.

As well as providing a framework for the operation of the children's hearings and related proceedings, these rules introduce procedures designed to increase each child's opportunity of having his/her views considered in their hearing. These include improved information to be sent to the child and the opportunity to attend and participate in a hearing via telephone or video-link in certain circumstances.

Stricter timescales have been introduced for safeguarder reports and to ensure that the child and relevant persons receive prompt written notification of a hearing's or prehearing panel's decision.

The Regulations ('the rules')

The rules are sub-divided into 22 Parts:

Part 1 - Introduction and general

This Part covers the citation and commencement of the rules and the interpretation of terms used throughout the rules. It also provides that these Rules apply to proceedings commenced on or after the date on which the Rules come into force. Provision is made for when proceedings are "commenced" for this purpose.

Part 2 – Selection and duties of children's hearings and pre-hearings panel members

Section 6 of the 2011 Act provides that the National Conveners selects the members of the children's hearing. The National Convener may also select the member to sit as the chairing member. In practice this function is exercised by the Area Support Team by virtue of the provisions of paragraph 14(1) of Schedule 1 to the 2011 Act.

This Part makes provision for a children's hearing to request that the National Convener or anyone to whom they may delegate that function can select, where practicable, one of the members of that hearing to be a member of the next children's hearing for that child. This is designed to enable an appropriate continuity mechanism to be formally introduced into the hearings system. Children, families and panel members have all stated that such continuity can be helpful in a number of circumstances.

Where the chairing member is not selected by the National Convener or Area Support Team a further provision allows the children's hearings members to select the most suitable person from among their number to act as chairing member on the day.

Part 2 goes on to outline duties of children's hearings members and in particular the chairing member. The rules emphasise the need to ensure the child and relevant person(s) understand and are afforded the opportunity to participate in their hearings and pre-hearings panels. Unless provided for in the 2011 Act or the Rules, then procedure is to be determined by the chairing member.

Part 3 - Duties and roles of persons attending or preparing documents for children's hearings and pre-hearing panels

This Part requires any document that is to be given to members of the children's hearing to contain any views expressed by the child to the report writer.

Part 3 sets out the responsibilities of an appointed Safeguarder in respect of any information or documents that they may be given in relation to the hearing.

Part 3 also specifies who, in addition to the panel members, the child and relevant persons is entitled to attend the children's hearing or pre-hearing panel and receive the documents at the hearing. It emphasises the requirement to keep such documents secure until they are returned to the reporter at the end of the hearing. All parties are required to preserve confidentiality and to protect the child's identity.

A child, relevant person or deemed relevant person may have a representative with them at children's hearings or pre-hearing panels to assist them with any matter that may arise. They may also have a legal representative in attendance as well.

Part 4 - General Duties of the Reporter

This Part sets out the rules that cover the duties of the Reporter for all hearings and pre-hearing panels. These rules specify the records that must be kept by the Reporter of their investigation and determination following receipt of information, and their obligations of notification where a determination has been made to refer to a children's hearing.

Part 4 also sets out the detailed duties of the Reporter in respect of keeping a record of proceedings at children's hearings and pre-hearings panels.

The Part describes the requirements on the Reporter associated with the preparation of a statement of offence grounds. It places a duty on the Reporter not to disclose information pertaining to the whereabouts of a child if disclosure would be likely to cause significant harm to the child or any relevant person.

Where a warrant has been granted to secure the attendance of a child at a hearing, Part 4 provides that the Reporter is required to arrange a hearing on the next working day after the child is detained.

The Part also gives the Reporter discretion not to notify the child or provide information or documents where, taking account of the child's age and maturity, the child would not be capable of understanding them.

Part 5 - Attendance at hearings

This Part makes provision for the Reporter to arrange for the child and any relevant person (or any individual who wishes to be so deemed) where their attendance has been excused, to participate at a children's hearing or pre-hearing panel via media links. This provision only applies to the child or relevant persons in order to obtain their views. Any other parties should appear before the hearing or pre-hearing panel.

Part 5 also gives the right of attendance to a constable, prison officer or other person who has in their lawful custody a person who must attend a pre-hearing panel or children's hearing.

Part 6 - Arranging a children's hearing – general

Part 6 places a duty on the reporter to provide notification of hearings and the accompanying information to those attending within specified timescales. Various notifications are prescribed to ensure that the child and relevant persons have sufficient information to fully protect their rights. These include the availability of legal advice, the right to request a pre-hearing panel in certain circumstances and the means by which the child may express views to the children's hearing.

Parts 7 to 11 - Specific provision for arranging other types of hearings

Parts 7-11: Each type of hearing requires a slightly different supporting package of information. It is clearer to present itemised list of documents for each type of hearing rather that a full list with various exceptions for each type of hearing.

The reporter is required to provide additional information, such as the grounds for referral, sheriff's determinations etc. dependant on the type of hearing involved. Timescales are specified for the delivery of this information. Parts 7 to 11 contain provision that is designed to ensure that the child, relevant persons and others have sufficient information to participate in the hearing and receive this information with enough time, to read and understand it and to seek advice if this is required.

In particular, Part 7 regulates the provision of information for arranging a grounds hearing.

Part 8 provides for the information supporting a children's hearing following the deferral of an earlier hearing or proceedings before the Sheriff.

Part 9 makes specific provision for review hearings where a compulsory supervision order has been made.

Part 10 describes the information to be sent when new grounds have been presented after a grounds hearing has been deferred or a hearing for the review of a compulsory supervision order has been deferred.

Part 11 regulates the information to be provided for other hearings, specifically "2nd working day" hearings, advice hearings, hearings considering interim compulsory supervision orders, hearings reviewing contact directions, hearings reviewing determinations as to relevant person status and hearings dealing with matters remitted to them under the Criminal Procedure (Scotland) Act 1995.

Part 12 - Pre-hearing panels

Under Part 8 of the 2011 Act, pre-hearing panels may be arranged to consider and determine a range of matters, including:

- Whether to deem an individual a relevant person;
- Whether a child should be excused from their obligation to attend a children's hearing;
- Whether a relevant person should be excused from their obligation to attend a children's hearing; and
- Whether the hearing is likely to consider making a compulsory supervision order with secure accommodation authorisation.

Part 12 of the rules makes provision for the operation of pre-hearing panels. Requirements are made of the reporter to arrange the pre-hearing panel, to give due notice to the required persons and issue the appropriate information and documents within the prescribed timescales.

Provision is made within Part 12 for the reporter to arrange for matters normally dealt within a pre-hearing panel to be dealt with at a children's hearing should time prove insufficient. Procedures at the pre-hearing panel are prescribed with duties placed on the panel members and the chairing member in particular.

Part 13 - Appointment of safeguarder and safeguarder's reports

Part 13 regulates the appointment of safeguarders by pre-hearing panels and by children's hearings.

This Part of the rules specify the timescales within which a safeguarder must prepare a report. There are in some circumstances no requirement on the safeguarder to produce a report but where a safeguarder's presence is required to protect the child's best interests.

A requirement is placed upon the safeguarder to prepare a report within 35 days of being appointed. On occasion there may be a requirement to produce an interim report and this is provided for in the rules. The reporter's duties on receipt of the safeguarder's report are also specified.

Part 14 - Procedure at children's hearings general

Part 14 articulates the general procedural duties of the chairing member at the start of any children's hearing. These include introductions, explaining the purpose of the hearing and confirming that the child, relevant persons and any appointed safeguarder have received all relevant information and documents issued under the rules.

Part 15 - Procedure at grounds hearing and children's hearings to which section 119 or 137 of the Act applies

This Part of the Rules sets out the duties of the chairing member and other members at grounds hearings. They are required to adopt procedures that will ensure that the child's and relevant person's rights are protected and to maximise participation and understanding throughout the hearing.

Part 15 also provides specific rules in respect of non-acceptance of grounds or lack of understanding of the grounds for referral. This Part of the Rules also governs when a child fails to attend a hearing if attendance has not been excused, the provision of a report in circumstances relating to permanence or for a review of deemed relevant person status, review of the determination of relevant person status and consideration of the breach of implementation duties relating to a compulsory supervision order.

Part 16 - Procedure where Part 10 of these rules applies

This Part of the rules regulates the circumstances where a child is subject to supervision and further grounds of referral are raised. Particular procedures are set out for a hearing that is both a grounds hearing and a review hearing. The rules make provision for progressing the hearing if the new grounds are accepted or otherwise and prescribe the options open to the hearing.

Part 17 - Procedure at other children's hearings

Part 17 regulates all children's hearings procedures other than those regulated in parts 15 & 16. Other hearings covered include:

- "second working day" hearings when the child is held in a place of safety;
- applications for variation or termination of place of safety;
- advice hearings in respect of variation or termination of a Child Protection Order;
- consideration of the need for a further interim compulsory supervision order;
- a review of a contact direction;
- provision of advice to the sheriff under section 49 of the Criminal Procedure (Scotland) Act 1995;
- applications for the suspension of a hearing's decision pending the outcome of an appeal;
- hearings suspending compulsory supervision orders pending an appeal; and

- hearings where a report is required in respect of adoption proceedings.

This Part sets out the procedure in full for each type of hearing.

Part 18 - General Issues for children's hearings

This part of the rules provides for other general hearings' issues not regulated by the preceding parts of the rules. These include:

- procedure where a warrant to secure attendance may be granted;
- procedure where advice is sought by the children's hearing from the National Convener under section 8 of the 2011 Act;
- requirements that must be met before a hearing may make a compulsory supervision order;
- requirements for a hearing to review a contact direction
- requirements where the hearing wish to refer a failure of a local authority to provide education for an excluded pupil; and
- requirements where the hearing consider applying for a parenting order.

Part 19 - Non-disclosure of information

The 2011 Act and these Rules proceed on a general proposition that all relevant information should be disclosed to parties in the proceedings. However circumstances will exist where such full disclosure is not appropriate. Part 19 makes provision for non-disclosure to specified people if disclosure would be likely to cause significant harm to the child. Decisions of this nature should not be taken by the reporter or professionals reporting to the hearing but by the hearing members. The rules therefore reflect this and as such any information withheld or requests to be withhold information from any person prior to a hearing, must be considered by the hearing.

This Part sets out the requirements for making non-disclosure requests prior to or during a children's hearing and the determination of those requests.

Part 20 - Notifying decisions

This part makes provision for the notification of the various decisions a hearing or pre-hearing panel may make to the child, to relevant persons and to any appointed safeguarder. Part 20 also regulates the information to be given to the implementation authority, the chief constable and others.

This part of the rules also provides for notification requirements flowing from child being in a place of safety or where an order prevents removal of a child, a review of a contact direction or a suspension of an order pending an appeal.

Timescales have been prescribed ensuring that those with a right to appeal a decision receive notification in sufficient time to consider and seek advice as required.

Part 21 – Specific provision for children's hearings arranged under the Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013

Part 21 covers the information required for a review of a secure accommodation authorisation and the parties that should be in receipt of the information prior to the hearing. The rules here also cover the parties that must be given an opportunity to make representations to the review hearing.

The Reporter also has a requirement to ensure that the review hearings decision is notified within 5 days and this part details the rights to appeal such decisions open to certain persons.

Part 22 – Miscellaneous

This part of the rules makes specific provision that cover travelling and subsistence expenses, authentication of documents, written communication requirements and the service of notification and documents.

Commencement Date

The date for the commencement of these regulations is 24 June 2013.

Consultation

There has been an open public consultation on this instrument which ran from 31 October 2011 to 27 January 2012. A total of 25 responses were received to that consultation and the instrument was re-drafted, as appropriate, to take account of comments made.

In further developing the draft instrument post-consultation, the Scottish Government has continued dialogue since the consultation with key partners such as Scottish Children's Reporter Administration, Children's Hearings Scotland, Children's Hearings Training Units, Scottish Legal Aid Board, Scottish Courts Service and Scottish Government colleagues with a policy interest.

Scottish Government
Children and Families Directorate

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