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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2013 No.**

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

**PART 12**

**Pre-hearing panels and determination of matters  
which may be referred to pre-hearing panels**

**Arranging pre-hearing panel - determination of relevant person status**

**45.**—(1) Where a pre-hearing panel is to be arranged by virtue of section 79(2)(a) or (b) (referral of certain matters for pre-hearing determination) of the Act (whether or not it is also to determine any matter mentioned in section 79(3)), 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 individual requesting a determination that they be deemed a relevant person under section 79(2)(a) of the Act;
- (d) any individual other than a relevant person who appears to the Reporter to have or recently have had significant involvement in the upbringing of the child;
- (e) any appointed safeguarder;
- (f) the three members of the pre-hearing panel;
- (g) 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 (e) 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 whether the individual mentioned in paragraph (2)(c) or (d) should be deemed to be a relevant person;
  - (iii) may give any report or other 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 child, each relevant person, or the individual in question, as the case may be, to attend the pre-hearing panel by way of telephone, through video link or by using any other method of communication; and

- (c) the individual mentioned in paragraph (2)(c) or (d) that the individual, if deemed a relevant person under section 81(3) (determination of claim that person be deemed a relevant person) of the Act after that determination has been made, may request the pre-hearing panel to determine any matter mentioned in section 79(3) of the Act.
- (4) Where the pre-hearing panel will also determine any other matter referred under section 79(2)(c) of the Act the notice must state that fact and—
  - (a) inform the individual mentioned in paragraph (2)(c) or (d) that the individual will not be entitled to take part in any discussion on that matter unless they are deemed to be a relevant person; and
  - (b) inform the persons mentioned in (2)(a), (b) or (e) 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 pre-hearing panel.

**Arranging pre-hearing panels to determine matter in section 79(3) (referral of certain matters for pre-hearing determination) of the Act**

46.—(1) Where a pre-hearing panel is to be arranged by virtue only of section 79(2)(c) 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 three 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) of the matters to be determined by the pre-hearing panel; and
  - (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;
    - (iii) may give any report or other document for the consideration of the pre-hearing panel;
    - (iv) have the right to request that the Reporter takes all reasonable steps to enable the child and each relevant person to attend the pre-hearing panel by way of telephone, through video link or by using any other method of communication.

**Provision of information to pre-hearing panel**

47.—(1) Where any person mentioned in rule 45(2)(a) to (e) or 46(2)(a) to (c), as the case may be, wishes to make written representations or give any report or other document for the consideration of the pre-hearing panel, as soon as possible and wherever practicable no later than 4 days before the intended date of the pre-hearing panel, that person must give those representations, report or other document to the Reporter.

(2) Subject to the provisions of paragraphs (6) and (7), where the Reporter receives any representations, report or other document under paragraph (1), wherever practicable no later than 3 days before the intended date for the pre-hearing panel the Reporter must give a copy of that information to the persons mentioned in rule 45(2)(a) to (f) or 46(2)(a) to (d), as the case may be, (unless that person gave the information in question to the Reporter).

(3) Where any person mentioned in rule 45(2)(a) to (e) or 46(2)(a) to (c), as the case may be, is unable to attend the pre-hearing panel and wishes to make oral representations for the consideration of the pre-hearing panel that person may make those representations to the Reporter.

(4) The Reporter must make a record of any representations given under paragraph (3) and give a copy of that record to those persons mentioned in rule 45(2)(a) to (f) or 46(2)(a) to (d), as the case may be, as soon as possible before the beginning of the pre-hearing panel.

(5) As soon as possible before the beginning of the pre-hearing panel the Reporter must also give the persons mentioned in rule 45(2)(a) to (f) or 46(2)(a) to (d), as the case may be, any other document, or part of a document, that is relevant to the issues to be determined by the pre-hearing panel and is in the possession of the Reporter.

(6) Where the matter referred to a pre-hearing panel concerns the question of whether a particular person should be deemed to be a relevant person, the obligation under paragraph (2) shall only apply to such material as the Reporter considers relevant to the question of whether that person should be deemed to be a relevant person.

(7) The provisions of Part 19 of these Rules apply to any representations, report or other document received by the Reporter under paragraph (1) as they apply to any document relating to a children's hearing.

### **Procedure at pre-hearing panel determination of whether to deem an individual to be a relevant person**

**48.**—(1) At the beginning of the pre-hearing panel the chairing member must explain the purpose of the pre-hearing panel.

(2) The pre-hearing panel, despite a referral not having been made under section 79(2) (referral of certain matters for pre-hearing determination) of the Act, must consider whether to deem an individual, who is present at the pre-hearing panel, to be a relevant person on the request of—

- (a) the child;
- (b) any relevant person;
- (c) the individual in question.

(3) Where the pre-hearing panel is to consider whether to deem an individual to be a relevant person under paragraph (2) the provisions of the Act (other than section 81(2) (determination of claim that person be deemed a relevant person)) and these Rules apply as if the matter had been referred under section 79 of the Act.

(4) Where the pre-hearing panel is to determine the matter of whether any individual should be deemed to be a relevant person, the chairing member—

- (a) must invite any of the persons mentioned in paragraph (5), who is in attendance, to give to the pre-hearing panel any representations (orally or in writing) or any other document or information in addition to any given under these Rules that the person wishes to give for the consideration of the pre-hearing panel; and
- (b) may invite any other person that the pre-hearing panel consider appropriate to do so.

(5) Those persons are—

- (a) the child;
- (b) any relevant person;

(c) any individual in relation to whom the determination is sought.

(6) Each member of the pre-hearing panel must state their determination on that matter under paragraph (2) and the reasons for that determination.

(7) Once each member of the pre-hearing panel has stated their determination on that matter the chairing member must confirm the determination of the pre-hearing panel in respect of the matter and the reasons for that determination.

(8) Where the pre-hearing panel has made a determination under section 81(3) of the Act the chairing member must inform the persons mentioned in paragraph (9) of their right to appeal that determination under section 160 of the Act.

(9) Those persons are—

(a) the child;

(b) each relevant person;

(c) any individual in respect of whom the pre-hearing panel determined that the individual is not to be deemed a relevant person.

#### **Procedure at pre-hearing panel determination of any other matter**

**49.**—(1) Where the pre-hearing panel is to determine any matter of a type mentioned in section 79(3) (referral of certain matters for pre-hearing determination) of the Act, the chairing member—

(a) must invite any of the persons mentioned in rule 48(4)(a) and (b), who is in attendance, to give to the pre-hearing panel any representations (orally or in writing) or any other document or information in addition to any given under these Rules that the person wishes to give for the consideration of the pre-hearing panel; and

(b) may invite any other person that the pre-hearing panel consider appropriate to do so.

(2) Each member of the pre-hearing panel must state their determination on each matter and the reasons for that determination.

(3) Once each member of the pre-hearing panel has stated their determination on each matter the chairing member must confirm the determination of the pre-hearing panel in respect of each matter and the reasons for that determination.

#### **Notice of pre-hearing panel determination**

**50.**—(1) As soon as practicable after the pre-hearing panel the Reporter must give notice of any determination of the pre-hearing panel and the reasons for that determination to the persons mentioned in paragraph (2) as regards—

(a) whether any individual should or should not be deemed to be a relevant person; and

(b) any other matter referred to the pre-hearing panel.

(2) Those persons are—

(a) the child;

(b) each relevant person;

(c) any appointed safeguarder;

(d) the chief social work officer of the relevant local authority for the child.

(3) Where a pre-hearing panel determined that an individual is not to be deemed a relevant person, as soon as practicable after the pre-hearing panel the Reporter must give notice of that determination to the individual in question and the reasons for that determination.

(4) When issuing the notice under paragraph (1) or (3) the Reporter must also give notice of any relevant right of appeal of the recipient of the notice under section 160 (appeal to sheriff against relevant person determination) of the Act.

(5) Where the pre-hearing panel has determined that a child or relevant person is to be excused from attending all or part of the children's hearing, the Reporter must inform the child and relevant person as the case may be, that—

- (a) the child or relevant person has been excused;
- (b) the child or relevant person has the right to attend the hearing; and
- (c) they have the right to request that the Reporter make arrangements to enable the child, or the relevant person, as the case may be, to attend the children's hearing or part of the children's hearing by way of telephone, video link or any other method of communication.

(6) Where the pre-hearing panel has determined that it is likely that a children's hearing will consider making a compulsory supervision order or an interim compulsory supervision order including a secure accommodation authorisation in relation to the child, the Reporter must, as soon as possible after that determination, notify the Scottish Legal Aid Board of that fact and the name and address of the child.

(7) Where the pre-hearing panel has determined that—

- (a) for the purpose of enabling a child or any relevant person to participate effectively in the proceedings before the children's hearing it may be necessary that the child or relevant person be represented by a solicitor or counsel; and
- (b) it is unlikely that the child or relevant person will arrange to be represented by a solicitor or counsel,

the Reporter must, as soon as possible after that determination, notify the Scottish Legal Aid Board of that determination and the reasons for it and the name and address of the child or relevant person.

### **Provision of information to persons deemed to be relevant persons**

**51.** Where the pre-hearing panel deems a person to be a relevant person under section 81(3) (determination of claim that person be deemed a relevant person) of the Act, as soon as practicable after that determination, the Reporter must give to that person all information given under these Rules which is to be given to each relevant person.

### **Notification of matter to be determined under section 79 (referral of certain matters for pre-hearing determination) where not practicable to arrange a pre-hearing panel before the date fixed for the children's hearing**

**52.—**(1) Where section 80(3) (determination of matter referred under section 79) of the Act applies, as soon as practicable, the Reporter must give notice to the persons mentioned in paragraph (2) that the matter to be referred to a pre-hearing panel under section 79(2) of the Act will be referred to the children's hearing.

(2) Those persons are—

- (a) the child;
- (b) each relevant person;
- (c) any individual requesting a determination that they be deemed a relevant person;
- (d) any individual other than a relevant person who appears to the Reporter to have or recently have had significant involvement in the upbringing of the child;
- (e) any appointed safeguarder;
- (f) the three members of the children's hearing.

- (3) The notice under paragraph (1) must inform—
- (a) the persons mentioned in paragraph (2)(a) to (e)—
    - (i) of the date, time and place of the children's hearing;
    - (ii) of the matters to be determined by the children's hearing by virtue of section 80(3) of the Act;
    - (iii) that they have the right to attend that part of the children's hearing;
    - (iv) that they have the right to request that the Reporter takes all reasonable steps to enable the child, relevant person, or the person mentioned in paragraph (2)(c) or (d), as the case may be, to attend the children's hearing by way of telephone, through video link or by using any other method of communication;
    - (v) that they may make representations (orally or in writing) to the children's hearing relating to any matter referred under section 79 of the Act, except where paragraph (4) applies;
    - (vi) that they may give any report or other document relevant to that matter for the consideration of the children's hearing; and
  - (b) the individual mentioned in paragraph (2)(c) or (d), that the individual, where deemed to be a relevant person under section 81(3) (determination of claim that person be deemed a relevant person) of the Act, may request the children's hearing to determine any matter mentioned in section 79(3) of the Act.
- (4) Where the children's hearing will also determine any matter referred under section 79(2)(c) of the Act the notice must inform the individual mentioned in paragraph (2)(c) or (d) that the individual will not be entitled to take part in any discussion on that matter unless they are deemed to be a relevant person.

**Provision of information relating to matter referred under section 79 (referral of certain matters for pre-hearing determination) of the Act to the children's hearing**

**53.—**(1) Where any person mentioned in rule 52(2)(a) to (e) wishes to make written representations or give any report or other document for the consideration of the children's hearing, as soon as practicable, and wherever practicable no later than 4 days before the date fixed for the children's hearing that person must give those representations, report or other document to the Reporter.

(2) Where the Reporter receives any representations, reports or other document under paragraph (1), as soon as practicable before the beginning of the children's hearing, the Reporter must give a copy of that information to the persons mentioned in rule 52(2) (unless that person gave the information in question to the Reporter).

(3) Where any person mentioned in rule 52(2)(a) to (e) is unable to attend the children's hearing and wishes to make oral representations for the consideration of the children's hearing that person may make those representations to the Reporter.

(4) The Reporter must make a record of any representations given under paragraph (3) and give a copy of that record to those persons mentioned in rule 52(2) as soon as practicable before the beginning of the children's hearing.

(5) As soon as practicable before the beginning of the children's hearing the Reporter must also give the persons mentioned in rule 52(2) any other document or part of a document that is relevant to the issues under section 79 of the Act to be determined by the children's hearing and is in the possession of the Reporter.

**Children's hearing determining a matter referred under section 79 (referral of certain matters for pre-hearing determination) of the Act**

54. Where by virtue of section 80(3) (determination of matter referred under section 79) of the Act the children's hearing is to determine a matter referred under section 79 of the Act—

- (a) rules 48(2) to (9) and 49 apply; and
- (b) references in those rules to the pre-hearing panel are to be read as references to the children's hearing.

**Children's hearings' power to determine whether a person should be deemed to be a relevant person where no referral made under section 79 (referral of certain matters for pre-hearing determination) of the Act**

55.—(1) A children's hearing held in relation to a child by virtue of section 69(2) (determination under section 66: referral to children's hearing) or Part 9 to 11 (children's hearing; proceedings before sheriff; subsequent children's hearings) or 13 (review of compulsory supervision order) of the Act, despite a referral not having been made under section 79 of the Act, must consider whether to deem an individual who is present at the hearing to be a relevant person on the request of—

- (a) the child;
- (b) any relevant person;
- (c) the individual in question.

(2) Where the children's hearing is to consider whether to deem an individual to be a relevant person under paragraph (1) 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 of the Act.