
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2013 No.

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

PART 18

General issues for children's hearings

Procedure where a warrant to secure attendance may be granted under section 123 (general power to grant warrant to secure attendance) of the Act

78.—(1) This rule applies where the children's hearing, on the application of the Reporter, is under section 123 of the Act considering granting a warrant to secure the attendance of the child at a children's hearing or a hearing to take place under Part 10 (proceedings before sheriff) of the Act.

(2) The children's hearing must seek the views of the child, each relevant person, and any appointed safeguarder, if present at the hearing.

(3) Where a warrant to secure the attendance of the child is granted, the Reporter must as soon as practicable give to the child, each relevant person and any appointed safeguarder—

- (a) a copy of the warrant; and
- (b) details of the rights of the child, each relevant person and the safeguarder to appeal the grant of the warrant under section 154 (appeal to sheriff against decision of children's hearing) of the Act.

Procedure where advice sought by children's hearing from National Convener under section 8 (provision of advice to children's hearing) of the Act

79.—(1) This rule applies where a children's hearing seeks advice under section 8 of the Act from the National Convener.

(2) Where a children's hearing defers making a decision or determination on any matter until a subsequent children's hearing and seeks advice from the National Convener under section 8 of the Act the chairing member must—

- (a) prepare a request for advice setting out the nature of the advice to be provided and such other details as the children's hearing considers appropriate;
- (b) include in the record of the children's hearing decision details of the request for advice and reasons for that request;
- (c) give that request for advice to the Reporter; and
- (d) direct the Reporter to forward to the National Convener the request for advice and a copy of the children's hearing decision and the reasons for that decision.

(3) Where the children's hearing has directed the Reporter to forward a request for advice to the National Convener the Reporter must, as soon as practicable and within 5 days of receiving the request prepared under paragraph (2), forward it to the National Convener.

(4) The National Convener must respond to any request for advice forwarded under paragraph (3) within 14 days of receiving the request.

(5) The children's hearing must give the advice received from the National Convener under paragraph (4) to all those present at the hearing.

Requirements where compulsory supervision order to be made

80. The children's hearing may not make a compulsory supervision order requiring a child to reside at a place where the child would be under the charge or control of a person who is not a relevant person or vary any compulsory supervision order so that it includes such a requirement unless the children's hearing has—

- (a) received and considered a report or information provided by the local authority or implementation authority under section 66(4) (investigation and determination by Principal Reporter), 69(4) (determination under section 66: referral to children's hearing), 137(4) or (5) (duty to arrange children's hearing) of the Act, as the case may be, which provides the local authority's or implementation authority's recommendations on—
 - (i) the needs of the child;
 - (ii) the suitability to meet those needs of the place or places in which the child is to reside by virtue of the compulsory supervision order;
 - (iii) the suitability to meet those needs of the person who is to have charge or control over the child; and
- (b) the local authority or implementation authority as the case may be have confirmed that in compiling the report they have carried out the procedures and gathered the information described in regulations 3 and 4 of the Looked After Children (Scotland) Regulations 2009⁽¹⁾.

Requirements where section 126 (review of contact direction) of the Act applies

81.—(1) This rule applies where—

- (a) section 69(2) or (3) of the Act applies;
- (b) Parts 9 to 11 or 13 of the Act apply;
- (c) following receipt of a notice under section 43 of the Act of the making of a child protection order the Reporter is required to arrange a children's hearing under section 69(2) of the Act which is to be held no later than—
 - (i) where the order contains an authorisation of the type mentioned in section 37(2)(b) of the Act, the end of the period of 8 working days beginning on the day the child was removed to a place of safety; or
 - (ii) where the order does not contain such an authorisation, the end of the period of 8 working days beginning on the day the order was made.

(2) Where this rule applies and a children's hearing is to be held in relation to a child the Reporter must notify the persons mentioned in paragraph (3) that a children's hearing is to be held in relation to a child, on the date to be specified in the notification, and, when issuing that notification, also give those persons the information mentioned in paragraphs (4) and (5).

(3) Those persons are—

- (a) 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;

(1) [S.S.I. 2009/210](#).

- (b) any individual who has a contact order regulating contact between the individual and the child;
 - (c) any individual who has a permanence order which specifies arrangements for contact between the individual and the child.
- (4) That information is confirmation that, where a children's hearing—
- (a) makes, continues or varies a compulsory supervision order; or
 - (b) makes an interim compulsory supervision order, interim variation of a compulsory supervision order or a medical examination order which is to have effect for more than 5 working days,
- and the order contains (or is varied so as to contain) a contact direction, the Reporter must arrange a children's hearing under section 126 of the Act for the purposes of reviewing the contact direction if—
- (i) a contact order or permanence order mentioned in section 126(3) of the Act is in force; or
 - (ii) the Reporter is requested to arrange a hearing by an individual who claims to have or recently have had significant involvement in the upbringing of the child.
- (5) That information is confirmation that, where a children's hearing is arranged under section 126 of the Act, they will have the right to attend.

Requirements where section 127 (referral where failure to provide education for excluded pupil) of the Act applies

- 82.—(1) Where the children's hearing requires the National Convener under section 127(2) of the Act to make a referral to the Scottish Ministers, the chairing member—
- (a) must include in the record of the decision of the children's hearing details of the ways in which the education authority is in breach of its duty under section 14(3) (education for children unable to attend school etc.) of the Education (Scotland) Act 1980(2) in relation to the child; and
 - (b) may make, or cause to be made, a report for the National Convener providing such additional information on that matter as the children's hearing considers appropriate.
- (2) As soon as practicable after the children's hearing the Reporter must give to the National Convener—
- (a) a copy of the children's hearing's decision and the reasons for the decision; and
 - (b) any report made under paragraph (1)(b).

Requirements where section 128 (duty to consider applying for parenting order) of the Act applies

83. Where the children's hearing requires the Reporter under section 128(2) of the Act to consider whether to apply under section 102(3) (applications) of the Antisocial Behaviour etc. (Scotland) Act 2004(3) for a parenting order in respect of a parent of the child, the chairing member—
- (a) must include in the record of the decision of the children's hearing details of the reasons why the children's hearing considers that it might be appropriate for a parenting order to be made in respect of that parent of the child; and
 - (b) may make, or cause to be made a report for the Reporter providing such additional information on that matter as the children's hearing considers appropriate.

(2) 1980 c.44.
(3) 2004 asp 8.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument:
The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 No. 194
