

CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8 – Pre-Hearing Panel

Section 79 – Referral of certain matters for pre-hearing determination

109. This section establishes Pre-Hearing Panels. A Pre-Hearing Panel must comprise of 3 panel members selected by the National Convener. The subsequent Children's Hearings may or may not comprise the same panel members.
110. Subsection (2) provides that the Principal Reporter must refer the issue of whether a particular person should be deemed to be a relevant person if requested to do so by the person in question, the child or their relevant person. Any person who claims to be a relevant person but does not meet the legal test set out in section 200 (e.g. the person may claim to have, or have recently had significant involvement in the upbringing of the child) may ask that a Pre-Hearing Panel is arranged to consider their status. The child and any other relevant person may also challenge the reporter's assessment if they think someone who has or who has not been recognised as a relevant person should or should not be. A Pre-Hearing Panel may be arranged at any stage prior to the Children's Hearing (i.e. before a continued hearing, or a review hearing as well as before a grounds hearing).
111. Subsection (2)(b) provides that the reporter may refer consideration of whether a person should be deemed a relevant person to the Pre-Hearing Panel for a determination on the reporter's own initiative. Subsections (2)(c) and (3) set out other specific matters that the reporter, either on the reporter's own initiative or following a request from the child, relevant person or Safeguarder, may refer to a Pre-Hearing Panel. These include: consideration of releasing a child or relevant person from their obligation to attend the Children's Hearing; whether a secure accommodation authorisation is likely to be considered at a forthcoming hearing and any other matters as specified in the procedural rules under section 177 of the Act. These procedural rules will be subject to affirmative procedure.
112. Subsections (4) and (5) provide that Pre-Hearing Panels may only excuse a child or relevant person from attending a Children's Hearing if the conditions in section 73 or 74 or in rules made under section 177, are satisfied. These rules will be subject to negative procedure.

Section 80 – Determination of matter referred under section 79

113. This section places a duty on the Principal Reporter to arrange a Pre-Hearing Panel so that the hearing can decide on the matters referred under section 79. Subsection (2) provides that the Pre-Hearing Panel must be arranged before the Children's Hearing. Subsection (3) provides that if it is not possible for the reporter to arrange a Pre-Hearing Panel for a date before the Children's Hearing as required by subsection (2), the Children's Hearing must determine the matters referred at the beginning of the hearing.

Section 81 – Determination of claim that person be deemed a relevant person

114. This section relates to when a Pre-Hearing Panel (or Children's Hearing) is considering the claim of a person to be a relevant person in relation to the child (a "relevant person claim"). It provides for this issue to be dealt with before any other matter. Only if the Pre-Hearing Panel or hearing determines that the person is a relevant person, can the person then take part in the discussions on any other issue referred. Subsection (3) provides that the Pre-Hearing Panel or hearing must deem the person to be a relevant person if they consider that the person has (or has recently had) a significant involvement in the upbringing of the child. Subsection (4) provides for the consequences of that determination by the Pre-Hearing Panel or hearing and provides that the status will be accorded for the purposes of Parts 7 to 15, 17 and 18 of the Act in so far as they relate to the Children's Hearing, any subsequent Children's Hearing under Part 11, any subsequent Pre-Hearing Panel which may be held prior to the full hearing, any compulsory supervision order or other order or warrant made by the hearing or the sheriff, any review hearing or any court proceedings (application to establish grounds or appeal) and the implementation of the order.
115. Subsection (5) provides for the Scottish Ministers to change the criteria for "deemed relevant person" status and to make any necessary or expedient consequential amendments to those provisions of the Act specified in subsection (5). Such an order will be subject to affirmative procedure.

Section 82 – Appointment of safeguarder

116. This section provides the Pre-Hearing Panel with the power to appoint a Safeguarder. A Pre-Hearing Panel may be arranged at various stages in the child's case, for example, to determine whether an individual should be deemed to be a relevant person under section 81(3), and the panel has sufficient information at that point to make a decision on whether or not to appoint a Safeguarder. The provision mirrors the duties placed on a Children's Hearing to consider appointing a Safeguarder under section 30. The Pre-Hearing Panel is required to state the reasons for appointing a Safeguarder.