



Children (Scotland) Act 2020

2020 asp 16

Children's hearings

25 Opportunity to participate in hearing

(1) The Children's Hearings (Scotland) Act 2011 is modified as follows.

(2) In section 79 (referral of certain matters for pre-hearing determination)—

(a) after subsection (2)(b) insert—

“(ba) must, if requested to do so by an individual, refer for determination by a pre-hearing panel the matter of whether the individual meets the criteria specified in rules under section 177 to be afforded the rights mentioned in subsection (5ZA) in relation to the children's hearing,

(bb) must refer for determination by a pre-hearing panel the matter of whether subsection (2) of section 132A applies to an individual if—

(i) the individual has requested a review of a compulsory supervision order under that section, and

(ii) the Principal Reporter is not satisfied that the subsection applies to the individual.”

(b) after subsection (4) insert—

“(5ZA) The rights referred to in subsection (2)(ba) are the following rights, as provided for in rules under section 177 and subject to such conditions and limitations as the rules specify—

(a) the right to be notified of the hearing,

(b) the right to provide a report or other document to the hearing,

(c) the right to be provided with documents specified in the rules,

(d) authorisation to attend the hearing,

(e) the right to be represented at the hearing.”

(3) After section 81A insert—

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“81B Determination of claim that opportunity to participate not afforded

- (1) Subsection (2) applies where the Principal Reporter has referred to a meeting of a pre-hearing panel the matter of whether subsection (2) of section 132A applies to an individual, or individuals, who have requested a review of a compulsory supervision order under that section.
- (2) The pre-hearing panel must discharge the children's hearing that is to be arranged as a result of the request if—
 - (a) there is no reason for the children's hearing to be arranged besides the request from the individual, or individuals, in question, and
 - (b) the pre-hearing panel determines—
 - (i) that section 132A(2) does not apply to the individual, or
 - (ii) where its application to more than one individual is in question, that it applies to none of them.”.
- (4) In section 132 (right of child or relevant person to require review)—
 - (a) after subsection (3) insert—

“(3A) An individual who is entitled to do so by subsection (6) may by giving notice to the Principal Reporter require a review of the order.”,
 - (b) after subsection (5) insert—

“(6) An individual is entitled to require a review under subsection (3A) if—

 - (a) the Principal Reporter was satisfied at the relevant time, or
 - (b) a pre-hearing panel or children's hearing determined,

that the individual met the criteria to be afforded an opportunity to participate in relation to the children's hearing that most recently made a decision in respect of the order (whether that was a decision to make, vary or continue it).
- (7) Where a children's hearing is arranged as a result (solely or partly) of an individual requiring a review under subsection (3A), the individual is to be treated as an individual whom a pre-hearing panel has determined meets the criteria to be afforded an opportunity to participate in relation to the children's hearing.
- (8) For the purposes of subsections (6) and (7)—
 - (a) “the criteria to be afforded an opportunity to participate” means the criteria specified in rules under section 177 to be afforded the rights mentioned in section 79(5ZA) in relation to a children's hearing,
 - (b) “the relevant time” means—
 - (i) the time when the children's hearing referred to in subsection (6) began, or
 - (ii) if more than one children's hearing is to be regarded as a single children's hearing by virtue of paragraph (c), the time when any one of them began,

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- (c) if the children's hearing that most recently made a decision in respect of the order was a subsequent children's hearing arranged as a result of an earlier children's hearing deferring making a decision, they are to be regarded as a single children's hearing.”,
 - (c) the title of the section becomes “ **Right to require review: child, relevant person and person afforded opportunity to participate** ”.
- (5) After section 132 insert—

“132A Right of person not afforded opportunity to participate to require review

- (1) The Principal Reporter must initiate a review of a compulsory supervision order in relation to a child if requested to do so by an individual who claims to be an individual to whom subsection (2) applies.
- (2) This subsection applies to an individual if—
 - (a) the individual did not attend the children's hearing that most recently made a decision in respect of the order (whether that was a decision to make, vary or continue it), and
 - (b) either—
 - (i) the conditions in subsection (3) are met, or
 - (ii) the conditions in subsection (4) are met.
- (3) The conditions referred to in subsection (2)(b)(i) are—
 - (a) neither a pre-hearing panel nor a children's hearing made a determination about whether the individual met the criteria to be afforded an opportunity to participate in relation to the children's hearing referred to in subsection (2)(a),
 - (b) it is more likely than not that had a pre-hearing panel or children's hearing made a determination about that matter at the relevant time, it would have determined that the individual met those criteria in relation to the children's hearing, and
 - (c) the individual was not afforded the rights mentioned in section 79(5ZA) in relation to the children's hearing as the Principal Reporter either did not consider whether, or was not satisfied that, the individual met those criteria in relation to the children's hearing.
- (4) The conditions referred to in subsection (2)(b)(ii) are—
 - (a) the Principal Reporter was satisfied at the relevant time, or a pre-hearing panel or children's hearing determined, that the individual met the criteria to be afforded an opportunity to participate in relation to the children's hearing referred to in subsection (2)(a), and
 - (b) the individual was not able to participate properly in the children's hearing's decision making as a result of—
 - (i) a material failure to treat the individual, or any representative of the individual, in accordance with the rules, or
 - (ii) exceptional circumstances.
- (5) For the purposes of this section—

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- (a) “the criteria to be afforded an opportunity to participate” means the criteria specified in the rules to be afforded the rights mentioned in section 79(5ZA) in relation to a children's hearing,
- (b) “the relevant time” means—
 - (i) the time when the children's hearing referred to in subsection (2)(a) began, or
 - (ii) if more than one children's hearing is to be regarded as a single children's hearing by virtue of paragraph (d), the time when any one of them began,
- (c) “the rules” means rules under section 177,
- (d) if the children's hearing referred to in subsection (2)(a) was a subsequent children's hearing arranged as a result of an earlier children's hearing deferring making a decision, they are to be regarded as a single children's hearing.”.

Commencement Information

II S. 25 in force at 26.7.2021 by S.S.I. 2020/412, reg. 2(2)(c)

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