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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 15**

Procedure at grounds hearing and children's hearings to which section 119 (children's hearing following deferral or proceedings under Part 10) or 137 (duty to arrange children's hearing) of the Act applies

**Procedure at a grounds hearing - grounds put to the child and relevant person**

**59.**—(1) When complying with section 90 (grounds to be put to child and relevant person) of the Act, and without prejudice to sections 76 (power to exclude relevant person from children's hearing) and 77 (power to exclude relevant person's representative from children's hearing) of the Act, the chairing member may exclude any relevant person if satisfied that the presence at the hearing of that person is preventing the children's hearing obtaining the acceptance or denial of a section 67 ground specified in the statement of grounds from any person who is required to accept or deny the grounds.

(2) After the exclusion has ended, the chairing member of the children's hearing must explain to the relevant person what has taken place in the relevant person's absence.

(3) Paragraph (4) applies where the child or any relevant person accept a section 67 ground specified in the statement of grounds but do not accept all of the facts relating to that ground narrated in the statement of grounds.

(4) The children's hearing may, where it considers it appropriate to do so, amend the statement of grounds by removing any facts denied or otherwise amending the facts narrated in the statement of grounds.

(5) Where paragraph (4) applies the children's hearing may not amend the section 67 ground specified in the statement of grounds.

(6) Where paragraph (4) applies the children's hearing must be satisfied that any amendments to the facts narrated in the statement of grounds do not call into question the acceptance of a section 67 ground by the child or any relevant person.

**Procedure where section 91(1) (grounds accepted: powers of grounds hearing), 119(1) (children's hearing following deferral or proceedings under Part 10), or 138(1) (powers of children's hearing on review) of the Act applies**

**60.**—(1) This rule applies where section 91(1), 119(1) or 138(1) of the Act apply.

(2) The chairing member—

- (a) must inform those present at the hearing of the substance of any relevant report or other relevant document;
- (b) must take all reasonable steps to obtain the views of the child, each relevant person and any appointed safeguarder in relation to—

- (i) any relevant report, document or matter being considered by the hearing; and
  - (ii) what, if any, measures would be in the best interests of the child;
  - (c) may invite any other person present at the hearing, as the children's hearing considers appropriate, to express their views on, or provide any other information relevant to, any matter or action being considered by the hearing.
- (3) Where the children's hearing has been given an interim report and statement prepared by the safeguarder under these Rules the hearing must consider that interim report and statement.
- (4) After considering the interim report and statement the children's hearing may set a further date up to a maximum of 35 days for the provision of the report from the safeguarder and defer making a decision on whether to make a compulsory supervision order until a subsequent children's hearing.

**Procedure when proceedings under section 91(2) (grounds accepted: powers of grounds hearing), 119(2) (children's hearing following deferral or proceedings under Part 10) or 138(2) (powers of children's hearing on review) of the Act**

**61.**—(1) Where the children's hearing proceeds under section 91(2), 119(2) or 138(2) of the Act, without prejudice to the powers of the children's hearing in section 92 (powers of grounds hearing on deferral), 120 (powers of children's hearing on deferral under section 119) or 139 (powers of children's hearing on deferral under section 138) of the Act, the children's hearing may—

- (a) appoint a safeguarder if one has not already been appointed;
  - (b) require the Reporter to obtain any report from any person which the children's hearing considers would be relevant to any matter to be determined by the hearing;
  - (c) set a date for the subsequent children's hearing to be held under section 119 or 139 of the Act, as the case may be;
  - (d) determine that—
    - (i) 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
    - (ii) it is unlikely that the child or relevant person will arrange to be represented by a solicitor or counsel;
  - (e) require the Reporter, as soon as possible after the determination in sub-paragraph (d), to notify the Scottish Legal Aid Board of that determination, the reasons for that determination and the name and address of the child or relevant person;
  - (f) require the Reporter to make arrangements for an interpreter for the child or any relevant person or take any other step with a view to securing participation of the child or any relevant person in the hearing;
  - (g) give any other direction on any other matter as is necessary to enable the hearing to make a decision on whether to make a compulsory supervision order and if so the measures to be included in that order.
- (2) Each member of the children's hearing must—
- (a) state their decision on the exercise of the power conferred by section 91(2), 119(2) or 138(2) of the Act, as the case may be, and the reason for that decision;
  - (b) state their decision on the exercise of the power conferred by section 92(2) or (3), 120(3), (5) or (6), 123 (general power to grant warrant to secure attendance) or 139(3) (powers of children's hearing on deferral under section 138) of the Act as the case may be, and the reasons for that decision;

- (c) where the decision is to make an interim compulsory supervision order, interim variation of a compulsory supervision order, medical examination order or to grant a warrant to secure attendance, state the member's decision in relation to any measure to be contained in the order or warrant and the reasons for the inclusion of the proposed measure; and
  - (d) where any other decision is made to exercise any other power, give any direction or impose any requirement, state their decision on that matter and reasons for that decision.
- (3) The chairing member must—
- (i) confirm and explain the decision of the children's hearing;
  - (ii) state the reasons for that decision; and
  - (iii) subject to sections 73 (child's duty to attend children's hearing), 74 (relevant person's duty to attend children's hearing), 75 (power to proceed in absence of relevant person) and 79 (referral of certain matters for pre-hearing determination) of the Act, inform the child, each relevant person and any safeguarder appointed of the right to appeal the children's hearing's decision to make an interim compulsory supervision order, interim variation of a compulsory supervision order, medical examination order or to grant a warrant to secure the attendance under section 154 (appeal to sheriff against decision of children's hearing) of the Act within 21 days of that decision.

**Procedure where section 91(3) (grounds accepted: powers of grounds hearing), 119(3) (children's hearing following deferral or proceedings under Part 10) or 138(3) (powers of children's hearing on review) of the Act applies**

**62.**—(1) This rule applies where the children's hearing is required to proceed under section 91(3), 119(3) or 138(3) of the Act.

- (2) Each member of the children's hearing must—
- (a) state their decision on whether to make a compulsory supervision order or to terminate, vary or continue the compulsory supervision order, as the case may be, and the reason for that decision; and
  - (b) where the decision is to make a compulsory supervision order, continue or vary the compulsory supervision order, state the member's decision in relation to any measure to be contained in the order and the reasons for the inclusion of the proposed measure.
- (3) The chairing member must—
- (a) confirm and explain the decision of the children's hearing;
  - (b) state the reasons for that decision;
  - (c) subject to sections 73 (child's duty attend children's hearing), 74 (relevant person's duty to attend children's hearing), 75 (power to proceed in absence of relevant person) and 79 (referral of certain matters for pre-hearing determination) of the Act, inform the child, each relevant person and any safeguarder appointed of the right to appeal the children's hearing's decision to make a compulsory supervision order, or discharge the referral or terminate, vary or continue the compulsory supervision order under section 154 (appeal to sheriff against decision of children's hearing) of the Act within 21 days of that decision; and
  - (d) where the decision of the children's hearing is to make a compulsory supervision order, or terminate, vary or continue the compulsory supervision order, subject to sections 73, 74, 75 and 79 of the Act, inform the child, each relevant person and any appointed safeguarder of the right to seek a suspension of the children's hearing's decision under section 158 (compulsory supervision order: suspension pending appeal) of the Act.

**Grounds hearing procedures where section 93 (grounds not accepted: application to sheriff or discharge) or 94 (child or relevant person unable to understand grounds) of the Act applies**

- 63.**—(1) This rule applies where section 93 or 94 of the Act applies.
- (2) Each member of the children's hearing must—
- (a) state their decision on whether to proceed under section 93(2)(a) or (b), or 94(2)(a) or (b) of the Act as the case may be, and the reason for that decision;
  - (b) state any decision on the exercise of the power conferred by section 93(5) or 123 (general power to grant warrant to secure attendance) of the Act and the reasons for that decision;
  - (c) where the decision is to make an interim compulsory supervision order or grant a warrant to secure attendance state the member's decision in relation to any measure to be contained in the order or warrant and the reasons for the inclusion of the proposed measure.
- (3) The chairing member must—
- (i) confirm and explain the decision of the children's hearing;
  - (ii) state the reasons for that decision; and
  - (iii) subject to sections 73 (child's duty to attend children's hearing), 74 (relevant person's duty to attend children's hearing), 75 (power to proceed in absence of relevant person) and 79 (referral of certain matters for pre-hearing determination) of the Act, inform the child, each relevant person and any safeguarder appointed of the right to appeal the children's hearing's decision to discharge the referral, make an interim compulsory supervision order, or grant a warrant to secure attendance under section 154 (appeal to sheriff against decision of children's hearing) of the Act within 21 days of that decision.

**Procedure where section 95 (child fails to attend grounds hearing) of the Act applies**

- 64.**—(1) Where section 95(1) of the Act applies each member of the children's hearing must state their decision on whether to require the Reporter under section 95(2) of the Act to arrange another grounds hearing and their reasons for that decision.
- (2) The chairing member must—
- (a) confirm and explain the decision of the children's hearing; and
  - (b) state the reasons for that decision;
- (3) Where the children's hearing do not require the Reporter to arrange another grounds hearing under section 95(2) of the Act the children's hearing must discharge the referral.
- (4) Where paragraph (3) applies, subject to sections 73 (child's duty to attend children's hearing), 74 (relevant person's duty to attend children's hearing), 75 (power to proceed in absence of relevant person) and 79 (referral of certain matters for pre-hearing determination) of the Act, the chairing member must inform each relevant person and any appointed safeguarder of the right to appeal the children's hearing's decision to discharge the referral under section 154 (appeal to sheriff against decision of children's hearing) of the Act within 21 days of that decision.

**Procedure where report required under section 141 (preparation of report in circumstances relating to permanence order or adoption) of the Act**

- 65.**—(1) Where a children's hearing is required to produce a report under section 141 of the Act, subject to sections 73 (child's duty to attend children's hearing), 74 (relevant person's duty to attend children's hearing), 75 (power to proceed in absence of relevant person) and 79 (referral of certain matters for pre-hearing determination) of the Act, the chairing member must—
- (a) explain to the child and each relevant person the purpose of the report to be prepared;

- (b) inform the child and each relevant person of the substance of any document or information which is material to the advice to be contained in the report to be prepared by the children's hearing.
- (2) Before preparing the report the children's hearing must subject to sections 73, 74, 75 and 79 of the Act—
- (a) discuss the case with the child and each relevant person and any safeguarder appointed;
  - (b) seek the views of the child, each relevant person and the safeguarder on the arrangements which would be in the best interests of the child; and
  - (c) confirm the advice to be contained in the report.
- (3) The chairing member must—
- (a) make, or cause to be made, a report of the advice;
  - (b) sign and date the report; and
  - (c) give the report to the Reporter at the conclusion of the hearing.
- (4) The Reporter must give a copy of the report within 5 days of receiving it under paragraph (3) to—
- (a) the child;
  - (b) each relevant person;
  - (c) any appointed safeguarder;
  - (d) the court which requires to come to a decision about an application of the type mentioned in section 131(2)(c) or (e) (duty of implementation authority to require review) of the Act;
  - (e) the chief social work officer of the implementation authority;
  - (f) the couple making the application under section 29 (adoption by certain couples) of the Adoption and Children (Scotland) Act 2007(1) or the person making the application under section 30 (adoption by one person) of that Act, as the case may be.

#### **Procedure where there is a review of determination that person be deemed a relevant person**

**66.**—(1) Where the children's hearing is reviewing whether an individual should continue to be deemed to be a relevant person under section 142(2) (review of determination that person be deemed a relevant person) of the Act the chairing member must inform those present of the purpose of the review.

- (2) The chairing member—
- (a) must invite the child, each relevant person and any appointed safeguarder to express their views in relation to whether the individual should continue to be deemed to be a relevant person;
  - (b) may invite any other person present at the hearing, as the children's hearing considers appropriate, to express their views on that matter.
- (3) Where the children's hearing exercises the power under section 142(3) of the Act—
- (a) each member of the children's hearing must state their decision and the reasons for that decision;
  - (b) the chairing member must confirm and explain the decision of the children's hearing on the exercise of that power and the reasons for it;
  - (c) the chairing member must confirm that the individual will continue to be deemed to be a relevant person.

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(1) 2007 asp 4.

- (4) Where the children's hearing determine the review under section 142(2) of the Act—
- (a) each member of the children's hearing must state their determination on the matter and the reasons for that determination;
  - (b) the chairing member must—
    - (i) confirm and explain the determination of the children's hearing;
    - (ii) state the reasons for the determination; and
    - (iii) subject to sections 73 (child's duty to attend children's hearing), 74 (relevant person's duty to attend children's hearing), 75 (power to proceed in absence of relevant person) and 79 (referral of certain matters for pre-hearing determination) of the Act, inform the child, each relevant person, the individual in relation to whom the determination was made and any safeguarder appointed of the right to appeal the children's hearing's decision under section 160 (appeal to sheriff against relevant person determination) of the Act within 7 days of that determination;
- (5) As soon as practicable and no later than 2 working days from the day of the children's hearing the Reporter must give to the persons mentioned in paragraph (6) the information mentioned in paragraph (7).
- (6) Those persons are—
- (a) the child;
  - (b) each relevant person;
  - (c) the individual in relation to whom the determination was made.
- (7) That information is—
- (a) a copy of the determination of the children's hearing in relation to whether the individual should continue to be deemed to be a relevant person and the reasons for that determination; and
  - (b) details of the rights of the child, each relevant person and the individual in relation to whom the determination was made, to appeal that decision under section 160 of the Act.

**Breach of duties imposed by sections 144 (implementation of compulsory supervision order: general duties of implementation authority) or 145 (duty where order requires child to reside in certain place) of the Act**

- 67.**—(1) Where the children's hearing direct the National Convener under section 146(2) (breach of duties imposed by sections 144 and 145) of the Act the chairing member—
- (a) must include in the record of the decision of the children's hearing details of the ways in which the implementation authority is in breach of its duty in relation to the child; and
  - (b) may prepare 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
  - (b) any report prepared under paragraph (1)(b).
- (3) Where it appears to the children's hearing at the further review of the compulsory supervision order to be held by virtue of section 146(5) of the Act that the implementation authority continues to be in breach of its duty and the children's hearing under section 146(6) of the Act directs the National Convener to make an application under section 147 (application for order) of the Act the chairing member—

- (a) must include in the record of the decision of the children's hearing details of the ways in which the implementation authority continues to be in breach of its duty in relation to the child; and
  - (b) may prepare a further report for the National Convener providing such additional information on that matter as the children's hearing considers appropriate.
- (4) 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
  - (b) any report prepared under paragraph (3)(b).