

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2015 No.

The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Amendment Rules 2015

Power to determine that deeming of person as relevant person to end

- 4.—(1) In rule 45(1), after “section 79(3)” insert “or (5A)(a)”.
- (2) In rule 45(3)(b)(ii), at the beginning insert “Subject to paragraph (3A)(b),”.
- (3) After rule 45(3) insert—
- “(3A) Where the pre-hearing panel will also determine a matter referred under section 79(5A)(a) or (b) (power to determine that deeming of person as relevant person to end) of the Act, the notice must—
- (a) state that fact and the name of the individual whose status as a relevant person has been referred under section 79(5A) of the Act;
 - (b) inform the individual mentioned in sub-paragraph (a) that, notwithstanding paragraph (3)(b)(ii) above, the individual will not be entitled to take part in any discussion on matters referred under section 79(2)(a) or (b) of the Act unless they continue to be deemed to be a relevant person; and
 - (c) inform the persons mentioned in paragraph (2)(a), (b) or (e) that they may—
 - (i) make representations (orally or in writing) to the pre-hearing panel in relation to the matter referred under section 79(5A) of the Act; and
 - (ii) give any report or other document relevant to that matter for the consideration of the pre-hearing panel.”.
- (4) In rule 45(4)(a), omit “and”.
- (5) After rule 45(4)(a), insert—
- “(aa) inform any individual whose status as a relevant person has been referred under section 79(5A) of the Act that the individual will not be entitled to take part in any discussion on the matter referred under section 79(2)(c) unless they continue to be deemed to be a relevant person; and”.
- (6) In rule 45(4)(b)—
- (a) after “mentioned in” insert “paragraph”; and
 - (b) after “(2)(a), (b) or (e) that” insert “, subject to sub-paragraph (aa),”.
- (7) After rule 46, insert—

“Arranging pre-hearing panels to determine whether deeming of relevant person to end

46A.—(1) Where a pre-hearing panel is to be arranged by virtue of section 79(5A), but not by virtue of section 79(2)(a) or (b), 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 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) that the pre-hearing panel is to determine whether an individual deemed to be a relevant person by virtue of section 81 of the Act should continue to be deemed to be a relevant person in relation to the child and the name of that individual; 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 relating to whether the individual whose status as a relevant person has been referred under section 79(5A) should continue to 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 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.

(4) Where a pre-hearing panel arranged by virtue of section 79(5A) of the Act, but not by virtue of section 79(2)(a) or (b), will also determine any matter referred under section 79(2)

(c) the notice must state that fact and—

- (a) inform the individual whose status as a relevant person has been referred under section 79(5A) that the individual will not be entitled to take part in any discussion on the matter referred under section 79(2)(c) unless that individual continues to be deemed a relevant person; and
- (b) inform the persons mentioned in paragraph (2)(a) to (c) that, subject to subparagraph (a), 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.”.

(8) In rule 47(1) and (3), for “or 46(2)(a) to (c)” substitute “, 46(2)(a) to (c) or 46A(2)(a) to (c)”.

(9) In rule 47(2), (4) and (5), for “or 46(2)(a) to (d)” substitute “, 46(2)(a) to (d) or 46A(2)(a) to (d)”.

(10) In rule 47(6), after “relevant person” in each place it occurs, insert “or continue to be deemed to be a relevant person”.

(11) In rule 49, for the heading substitute—

“Procedure at pre-hearing panel determination of matters not relating to relevant person status”.

(12) After rule 49, insert—

“Procedure at pre-hearing panel determination of whether to end deemed relevant person status

49A.—(1) This rule applies to a pre-hearing panel to determine a matter referred under section 79(5A)(a) or (b) of the Act.

(2) At the beginning of the pre-hearing panel the chairing member must explain the purpose of the pre-hearing panel.

(3) The chairing member—

- (a) must invite any of the persons mentioned in paragraph (4), 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.

(4) Those persons are—

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

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

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

(7) Where the pre-hearing panel has made a determination on the matter referred under section 79(5A) of the Act the chairing member must inform the persons mentioned in paragraph (8) of their right to appeal that determination under section 160 (appeal to sheriff against relevant person determination) of the Act.

(8) Those persons are—

- (a) the child;
- (b) each relevant person;
- (c) the individual whose status as a relevant person was referred under section 79(5A).”.

(13) In rule 50(1)(a), omit “and”.

(14) For rule 50(1)(b), substitute—

“(b) whether an individual should continue to be deemed to be a relevant person in relation to the child; and

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

(15) After rule 50(3), insert—

“(3A) Where the pre-hearing panel determined that an individual is no longer 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.”.

(16) In rule 50(4), for “or (3)” substitute “, (3) or (3A)”.

(17) In rule 52(1), after “section 79(2)” insert “or 79(5A)”.

- (18) In rule 52(3)(a)(v), after “paragraph (4)” insert “or (5)”.
- (19) For rule 52(4), substitute—
- “(4) Where the children’s hearing will determine a matter referred under section 79(5A) of the Act the notice must inform the individual whose status as a relevant person has been referred under that section that the individual will not be entitled to take part in any discussion on any matter also referred under section 79(2) unless the individual continues to be deemed to be a relevant person.
- (5) Where the children’s hearing will 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 or they continue to be deemed to be a relevant person.”.
- (20) In rule 54(a), for “and 49” substitute “, 49 and 49A”.