

Draft Rules laid before the Scottish Parliament under sections 177(4) and 197 of the Children's Hearings (Scotland) Act 2011, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2013 No.

CHILDREN AND YOUNG PERSONS

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

Made - - - - 2013
Coming into force in accordance with rule 1

The Scottish Ministers make the following Rules in exercise of the powers conferred by sections 177 and 195 of the Children's Hearings (Scotland) Act 2011⁽¹⁾ and all other powers enabling them to do so⁽²⁾.

In accordance with section 177(4) and 197 of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

In accordance with paragraph 24(1) and (3) of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007⁽³⁾ the Scottish Ministers have consulted the Administrative Justice and Tribunals Council and it has consulted its Scottish Committee.

PART 1

Introductory and General

Citation, commencement and application

1.—(1) These Rules may be cited as the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 and come into force on the same day as section 177 (children's hearings: procedural rules) of the Act.

(2) These Rules shall only apply to proceedings commenced on or after the day on which they come into force.

(1) [2011 asp 1](#).

(2) The powers to make these Rules are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act [2010 \(asp 10\)](#).

(3) [2007 c.15](#). Children's hearings under the Children's Hearings (Scotland) Act 2011 ("the Act") were added to the list of listed tribunals for the purpose of Schedule 7 to the 2007 Act by virtue of [S.S.I. 2011/405](#).

Interpretation

2.—(1) In these Rules—

“the Act” means the Children’s Hearings (Scotland) Act 2011;

“chairing member” means the member of the Children’s Panel selected to chair a pre-hearing panel or children’s hearing, as the case may be;

“a contact direction” has the same meaning as in section 126(1) (review of contact direction) of the Act;

“National Convener” means the National Convener of Children’s Hearings Scotland;

“member of the pre-hearing panel” and “member of the children’s hearing” means a member of the Children’s Panel selected under section 6 (selection of members of children’s hearing) of the Act, in relation to that hearing or pre-hearing, and “member” is to be construed accordingly;

“relevant person” means a relevant person in relation to a child and includes a person deemed to be a relevant person under section 81 (determination of claim that person be deemed a relevant person) or section 160(4)(b) (appeal to sheriff against relevant person determination) of the Act;

“Reporter” means the Principal Reporter or any person carrying out a function on behalf of the Principal Reporter by virtue of paragraph 10(1) (delegation of Principal Reporter’s functions) of schedule 3 to the Act;

“section 62 statement” has the same meaning as in section 62(4) (provision of information by court) of the Act.

(2) For the purposes of rule 1(2) of these Rules, proceedings are commenced on the date when any of the following occurs—

- (a) a children’s hearing is arranged by the Reporter under section 69(2) of the Act;
- (b) an application is made under Part 5 of the Act; or
- (c) an appeal is made under Part 15 of the Act.

PART 2

Selection of children’s hearings and pre-hearing panel members and duties of members

Selection of members of children’s hearing and pre-hearing panel - supplementary

3.—(1) Where a children’s hearing is held in relation to a child, by virtue of the Act or any other enactment, the children’s hearing may request that the National Convener select, where practicable, one of the members of that children’s hearing to be a member of the next children’s hearing to be arranged in relation to that child.

(2) In selecting members of a pre-hearing panel in terms of section 79(2)(a) (referral of certain matters for pre-hearing determination) of the Act the National Convener must ensure that the pre-hearing panel—

- (a) includes both male and female members of the Children’s Panel; and
- (b) so far as practicable, consists only of members of the Children’s Panel who live or work in the area of the local authority which is the relevant local authority for the child to whom the pre-hearing panel relates.

Selection of chairing member for pre-hearing panels and children's hearings

4.—(1) Paragraph (2) applies where a pre-hearing panel or children's hearing has been arranged by virtue of the Act or any other enactment and the National Convener or relevant area support team has not selected a chairing member for that pre-hearing panel or children's hearing.

(2) Immediately before beginning the pre-hearing panel or children's hearing, as the case may be, the members of that pre-hearing panel or children's hearing must determine which of their number is to chair the pre-hearing panel or children's hearing, as the case may be.

(3) A member may only be selected to chair a children's hearing if that member has successfully completed the relevant training provided by or on behalf of the National Convener relating to chairing a children's hearing.

Duties of members of the pre-hearing panel or children's hearing relating to documents and information

5.—(1) Any documents which are given to a member of the pre-hearing panel or children's hearing by the Reporter under, or by virtue of, the Act or these Rules must be kept securely in that member's custody and returned to the Reporter at the conclusion of the pre-hearing panel or children's hearing to which those documents relate.

(2) The member must not cause or permit any information which they have obtained by virtue of their involvement in a pre-hearing panel or children's hearing to be disclosed, except as permitted by the Act or these Rules.

Duties of chairing member of a pre-hearing panel or children's hearing

6.—(1) The chairing member of the children's hearing or pre-hearing panel must—

- (a) take reasonable steps to ensure that the child and each relevant person are able to—
 - (i) understand the proceedings; and
 - (ii) participate in those proceedings;
- (b) where, during the proceedings, the child wishes to express a view, make reasonable arrangements to enable the child to express those views in the manner preferred by the child;
- (c) ensure that a record is made of—
 - (i) the decisions or determinations made by the children's hearing or pre-hearing panel, as the case may be; and
 - (ii) the reasons for those decisions or determinations; and
- (d) sign and date the record of the decisions or determinations.

(2) Any requirement on the chairing member to inform those attending a children's hearing of the substance of any report, document or information or to explain any matter is subject to any decision of the children's hearing to withhold information under section 178 (children's hearing: disclosure of information) of the Act or by virtue of a non-disclosure request made in accordance with Part 19 of these Rules.

Procedure at children's hearings and pre-hearing panels where not otherwise specified

7.—(1) The procedure at any children's hearing or pre-hearing panel required to be held by virtue of the Act or any other enactment, unless that procedure is provided for under the Act or these Rules, is to be determined by the chairing member.

(2) The children's hearing or pre-hearing panel, if it considers it appropriate to do so, may adjourn the children's hearing or pre-hearing panel, as the case may be—

- (a) on the initiative of the children's hearing or pre-hearing panel; or
- (b) on the request of any person attending the hearing.

(3) Where a children's hearing or pre-hearing panel has been adjourned it must re-convene on the same day as the adjournment was made.

PART 3

Duties and roles of persons attending or preparing documents for children's hearings and pre-hearing panels

Requirement to include child's views in documents

8. Where any document is to be given to members of the children's hearing or pre-hearing panel under, or by virtue of, the Act, or these Rules, the document must contain any views expressed by the child which have been given to the person who has prepared that document.

Duties of safeguarder in respect of information and documents

9.—(1) Any documents which are given to a safeguarder by the Reporter under, or by virtue of, the Act or any other enactment must be kept securely in the safeguarder's custody and returned to the Reporter on the termination of the safeguarder's appointment.

(2) The safeguarder must not cause or permit any information which they have obtained by virtue of their appointment as a safeguarder under the Act to be disclosed, except as permitted by virtue of the Act or any other enactment.

Attendance at children's hearings by member of the Administrative Justice and Tribunals Council or the Scottish Committee of that Council or a member of an Area Support Team

10.—(1) Any documents which are given to members of the children's hearing or pre-hearing panel must be given by the Reporter to any of the following persons attending the children's hearing or pre-hearing panel where that person so requests—

- (a) a member of the Administrative Justice and Tribunals Council or the Scottish Committee of that Council (acting in that person's capacity as such);
- (b) a member of an area support team (acting in that person's capacity as such).

(2) Where documents are given to a person under paragraph (1) those documents must be kept securely in that person's custody and returned to the Reporter at the conclusion of the children's hearing or pre-hearing panel to which they relate.

(3) The person to whom the documents are given under paragraph (1) must not cause or permit any information which they have obtained by virtue of their attendance at a pre-hearing panel or children's hearing to be disclosed, except as permitted by the Act or these Rules.

Role of representative of the child, relevant person or deemed relevant person

11.—(1) Where the child or relevant person, or any person who wishes to be deemed to be a relevant person (each referred to in this rule as "the accompanied person") is accompanied at a children's hearing or pre-hearing panel by a representative that representative may assist the accompanied person to discuss any issues arising for discussion before the children's hearing or pre-hearing panel.

(2) The right of the accompanied person to be represented at the children's hearing or pre-hearing panel is without prejudice to any right of the accompanied person to legal representation by a solicitor or counsel.

PART 4

General Duties of the Reporter

Record keeping by the Reporter of investigation and determination

12.—(1) This rule applies where section 66(1) (investigation and determination by Principal Reporter) of the Act applies.

(2) The Reporter must keep a record of—

- (a) the name and address (if available) of any person providing the notice, information, statement or evidence;
- (b) the details of any investigation carried out by the Reporter under section 66 of the Act;
- (c) the determination made by the Reporter under section 66(2) of the Act; and
- (d) the details of any action taken by the Reporter under sections 68(2), 68(5) (determination under section 66: no referral to children's hearing) or 72(2) (child in place of safety: Principal Reporter's powers) of the Act.

(3) Where the Reporter is required to arrange a children's hearing under section 69(2) (determination under section 66: referral to children's hearing) of the Act the Reporter must notify—

- (a) where the information was provided under section 60 (local authority's duty to provide information to Principal Reporter) of the Act, the local authority which provided the information;
- (b) where the information was provided under section 61 (constable's duty to provide information to Principal Reporter) of the Act or section 43(5) (arrangements where children arrested) of the Criminal Procedure (Scotland) Act 1995⁽⁴⁾, the chief constable of the Police Service of Scotland.

Record keeping duties of the Reporter in relation to children's hearings

13.—(1) The Reporter must keep a record of the proceedings at each children's hearing and pre-hearing panel held by virtue of the Act or any other enactment.

(2) The record to be kept by the Reporter must include the information mentioned in paragraph (3) and such other information about the proceedings as the Reporter considers appropriate.

(3) That information is—

- (a) the particulars of the place and date of the children's hearing or pre-hearing panel;
- (b) the full name and address, date of birth and sex of the child in relation to whom the children's hearing or pre-hearing panel is held;
- (c) the full name and address of each relevant person;
- (d) which of the persons mentioned in sub-paragraphs (b) and (c) attended the children's hearing or pre-hearing panel;
- (e) the full name and address of any representative attending the children's hearing or pre-hearing panel;

(4) 1995 c.46.