



Children's Hearings (Scotland) Act 2011

2011 asp 1

PART 8

PRE-HEARING PANEL

79 Referral of certain matters for pre-hearing determination

(1) [^{F1}Subsections (2) to (5) apply] where a children's hearing is to be held in relation to a child by virtue of section 69(2) or Part 9 to 11 or 13.

[^{F2}(1A) Subsection (5A) applies (in addition to subsections (2) to (5)) where the children's hearing is—

- (a) a subsequent children's hearing under Part 11, or
- (b) held for the purposes of reviewing a compulsory supervision order.]

(2) The Principal Reporter—

- (a) must refer the matter of whether a particular individual should be deemed to be a relevant person in relation to the child for determination by three members of the Children's Panel selected by the National Convener (a “pre-hearing panel”) if requested to do so by—
 - (i) the individual in question,
 - (ii) the child, or
 - (iii) a relevant person in relation to the child,

(b) may refer that matter for determination by a pre-hearing panel on the Principal Reporter's own initiative,

[^{F3}(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.]

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- (c) may refer a matter of a type mentioned in subsection (3) for determination by a pre-hearing panel—
 - (i) on the Principal Reporter's own initiative, or
 - (ii) following a request to the Principal Reporter from the child, a relevant person in relation to the child, or if a safeguarder has been appointed for the child, the safeguarder.
- (3) Those matters are—
 - (a) whether the child should be excused from attending the children's hearing,
 - (b) whether a relevant person in relation to the child should be excused from attending the children's hearing,
 - (c) whether it is likely that the children's hearing will consider making a compulsory supervision order including a secure accommodation authorisation in relation to the child,
 - (d) a matter specified in rules under section 177(2)(a).
- (4) For the purposes of subsection (3)(a), the pre-hearing panel may excuse the child from attending the children's hearing only if—
 - (a) the pre-hearing panel is satisfied that any of paragraphs (a) to (c) of section 73(3) applies, or
 - (b) the child may be excused under rules under section 177.
- [^{F4}(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.]
- (5) For the purposes of subsection (3)(b), the pre-hearing panel may excuse a relevant person in relation to the child from attending the children's hearing only if—
 - (a) the pre-hearing panel is satisfied that section 74(3)(a) or (b) applies, or
 - (b) the relevant person may be excused under rules under section 177.
- [^{F5}(5A) The Principal Reporter—
 - (a) must refer the matter of whether an individual deemed to be a relevant person by virtue of section 81 should continue to be deemed to be a relevant person in relation to the child for determination by a pre-hearing panel if requested to do so by—
 - (i) the individual so deemed,
 - (ii) the child, or
 - (iii) a relevant person in relation to the child,
 - (b) may refer that matter for determination by a pre-hearing panel on the Principal Reporter's own initiative.]
- (6) A member of the Children's Panel selected for a pre-hearing panel may (but need not) be a member of the children's hearing.

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Textual Amendments

- F1** Words in s. 79(1) substituted (26.1.2015) by Children and Young People (Scotland) Act 2014 (asp 8), **ss. 84(2)(a)**, 102(3); S.S.I. 2014/353, art. 2(2)(3), Sch.
- F2** S. 79(1A) inserted (26.1.2015) by Children and Young People (Scotland) Act 2014 (asp 8), **ss. 84(2)(b)**, 102(3); S.S.I. 2014/353, art. 2(2)(3), Sch.
- F3** S. 79(2)(ba)(bb) inserted (26.7.2021) by Children (Scotland) Act 2020 (asp 16), **ss. 25(2)(a)**, 34(2); S.S.I. 2020/412, reg. 2(2)(c)
- F4** S. 79(5ZA) inserted (26.7.2021) by Children (Scotland) Act 2020 (asp 16), **ss. 25(2)(b)**, 34(2); S.S.I. 2020/412, reg. 2(2)(c)
- F5** S. 79(5A) inserted (26.1.2015) by Children and Young People (Scotland) Act 2014 (asp 8), **ss. 84(2)(c)**, 102(3); S.S.I. 2014/353, art. 2(2)(3), Sch.

Commencement Information

- I1** S. 79 in force at 24.6.2013 by S.S.I. 2013/195, **arts. 2, 3**

80 Determination of matter referred under section 79

- (1) This section applies where the Principal Reporter refers a matter to a pre-hearing panel under section 79(2) [^{F6}or (5A)].
- (2) The Principal Reporter must arrange a meeting of the pre-hearing panel for a date before the date fixed for the children's hearing.
- (3) If it is not practicable for the Principal Reporter to comply with subsection (2), the children's hearing must determine the matter referred at the beginning of the children's hearing.

Textual Amendments

- F6** Reference in s. 80(1) inserted (26.1.2015) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), **Sch. 5 para. 12(2)**; S.S.I. 2014/353, art. 2(2)(3), Sch.

Commencement Information

- I2** S. 80 in force at 24.6.2013 by S.S.I. 2013/195, **arts. 2, 3**

81 Determination of claim that person be deemed a relevant person

- (1) This section applies where a matter mentioned in section 79(2)(a) (a “relevant person claim”) is referred to a meeting of a pre-hearing panel.
- (2) Where the relevant person claim is referred along with any other matter, the pre-hearing panel must [^{F7}, unless that other matter is a matter mentioned in section 79(5A) (a)] determine the relevant person claim before determining the other matter.
- (3) The pre-hearing panel must deem the individual to be a relevant person if it considers that the individual has (or has recently had) a significant involvement in the upbringing of the child.
- (4) Where the pre-hearing panel deems the individual to be a relevant person, the individual is to be treated as a relevant person for the purposes of Parts 7 to 15, 17 and 18 in so far as they relate to—

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- (a) the children's hearing,
 - (b) any subsequent children's hearing under Part 11,
 - (c) any pre-hearing panel held in connection with a children's hearing mentioned in paragraph (a), (b) or (e),
 - (d) any compulsory supervision order, interim compulsory supervision order, medical examination order, or warrant to secure attendance made by—
 - (i) a hearing mentioned in paragraph (a) or (b),
 - (ii) the sheriff in any court proceedings falling within paragraph (f),
 - (e) any children's hearing held for the purposes of reviewing a compulsory supervision order falling within paragraph (d),
 - (f) any court proceedings held in connection with a hearing mentioned in paragraph (a), (b) or (e),
 - (g) any court proceedings held in connection with an order or warrant falling within paragraph (d),
 - (h) the implementation of an order or warrant falling within paragraph (d).
- (5) The Scottish Ministers may by order—
- (a) amend subsection (3),
 - (b) in consequence of provision made under paragraph (a), make such other amendments as appear to the Scottish Ministers to be necessary or expedient to—
 - (i) section 43,
 - (ii) section 48,
 - (iii) section 51,
 - (iv) this section,
 - [^{F8}(iva) section 81A,]
 - (v) section 142.
- (6) An order under subsection (5) is subject to the affirmative procedure.
- (7) Where, by virtue of section 80(3), the children's hearing is to determine the relevant person claim, references in subsections (2) to (4) (other than paragraph (c) of subsection (4)) to the pre-hearing panel are to be read as references to the children's hearing.

Textual Amendments

- F7** Words in s. 81(2) inserted (26.1.2015) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), s. 102(3), [Sch. 5 para. 12\(3\)\(a\)](#); S.S.I. 2014/353, art. 2(2)(3), Sch.
- F8** S. 81(5)(b)(iva) inserted (26.1.2015) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), s. 102(3), [Sch. 5 para. 12\(3\)\(b\)](#); S.S.I. 2014/353, art. 2(2)(3), Sch.

Commencement Information

- I3** S. 81 in force at 24.6.2013 by [S.S.I. 2013/195](#), [arts. 2, 3](#)

[^{F9}81A] Determination that deeming of person as relevant person to end

- (1) This section applies where a matter mentioned in section 79(5A)(a) is referred to a meeting of a pre-hearing panel.

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- (2) Where the matter is referred along with any other matter, the pre-hearing panel must determine it before determining the other matter.
- (3) The pre-hearing panel must determine that the individual is no longer to be deemed to be a relevant person if it considers that the individual does not have (and has not recently had) a significant involvement in the upbringing of the child.
- (4) Where the pre-hearing panel makes a determination as described in subsection (3), section 81(4) ceases to apply in relation to the individual.
- (5) Where, by virtue of section 80(3), the children's hearing is to determine a matter mentioned in section 79(5A)(a), references in subsections (2) to (4) to the pre-hearing panel are to be read as references to the children's hearing.]

Textual Amendments

F9 S. 81A inserted (26.1.2015) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), ss. **84(3)**, 102(3); S.S.I. 2014/353, art. 2(2)(3), Sch.

[^{F10}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.]

Textual Amendments

F10 S. 81B inserted (26.7.2021) by [Children \(Scotland\) Act 2020 \(asp 16\)](#), ss. **25(3)**, 34(2); S.S.I. 2020/412, reg. 2(2)(c)

82 Appointment of safeguarder

- (1) A pre-hearing panel may appoint a safeguarder for the child to whom the children's hearing relates.
- (2) A pre-hearing panel must record an appointment made under subsection (1).
- (3) If a pre-hearing panel appoints a safeguarder, it must give reasons for the decision.
- (4) Subsection (1) does not apply where a safeguarder has already been appointed.

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- (5) A safeguarder appointed under this section is to be treated for the purposes of this Act (other than this section) as being appointed by a children's hearing by virtue of section 30.

Commencement Information

I4 S. 82 in force at 24.6.2013 by [S.S.I. 2013/195](#), [arts. 2, 3](#)

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 17A inserted by [2020 asp 16 s. 6\(2\)](#)
- s. 25(3) inserted by [2020 asp 16 s. 30\(7\)](#)
- s. 27(3)-(4A) substituted for s. 27(3)(4) by [2020 asp 16 s. 3\(2\)](#)
- s. 62(5)(q)-(u) inserted by [2020 asp 9 s. 8\(2\)\(b\)](#)
- s. 163(2)-(2B) substituted for s. 163(2) by [2020 asp 16 s. 27\(3\)\(b\)](#)
- s. 164(2)-(2B) substituted for s. 164(2) by [2020 asp 16 s. 27\(4\)\(b\)](#)
- s. 165(2)-(2B) substituted for s. 165(2) by [2020 asp 16 s. 27\(5\)\(b\)](#)