

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

2015 No.

CHILDREN AND YOUNG PERSONS

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

Made - - - -

Coming into force - -

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

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

Citation, commencement, interpretation and application

1.—(1) These Rules may be cited as the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Amendment Rules 2015 and come into force on 26th January 2015 ("the appointed day").

(2) In these Rules, the "2013 Rules" means the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013⁽²⁾.

(3) Rule 3 of these Rules applies to proceedings in respect of a child protection order made on or after the appointed day.

Amendment of the 2013 Rules

2. The 2013 Rules are amended in accordance with Rules 3 to 7.

Maximum period of child protection order

3. In rule 29(1)(b), after "the day" in both places it occurs, insert "after the day on which".

(1) 2011 asp 1.
(2) S.S.I. 2013/194.

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”.

Grounds hearing: non-acceptance of facts supporting ground

5.—(1) Rule 59 is amended as follows.

(2) In paragraph (1), after “section 67 ground” insert “or supporting fact”.

(3) Omit paragraph (3).

(4) In paragraph (4) omit “removing any facts denied or otherwise”.

Failure of child to attend grounds hearing: power to make interim order

6. In rule 64, after paragraph (4), insert—

“(5) Where the children’s hearing require the Reporter to arrange another grounds hearing under section 95(2) of the Act, each member of the children’s hearing must—

- (a) state their decision on the exercise of the power conferred by section 95(4) of the Act and the reason for that decision; and
- (b) where the decision is to make an interim compulsory supervision order, state their decision in relation to any measure to be contained in the order and the reasons for the inclusion of the proposed measure.

(6) Where paragraph (5) applies, the chairing member must—

- (a) confirm and explain the decision of the children’s hearing;
- (b) state the reasons for that decision; and
- (c) subject to sections 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 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 under section 154 (appeal to sheriff against decision of children’s hearing) within 21 days of that decision.”.

Non-disclosure requests in relation to information contained in reports required under section 95(2) of the Adoption and Children (Scotland) Act 2007: duty of Reporter to give reports to certain persons

7.—(1) In rule 77(6), at the beginning insert “Subject to paragraph (7),”.

(2) After rule 77(6) insert—

“(7) Where a non-disclosure request made under Part 19 of these Rules has been determined by the children’s hearing in relation to information contained in the report and in consequence of that determination the Reporter has, by virtue of rule 15, ensured the removal of that information from the report to be given to a specified person, the Reporter must, within 5 days of the hearing, give to the court mentioned in paragraph (6)(a)—

- (a) the report;
- (b) the redacted report; and
- (c) the details of the determination of the children’s hearing of the non-disclosure request made under Part 19 of these Rules and which the Reporter must keep a record of in accordance with rule 13.

(8) In paragraph (7)—

“non-disclosure request” has the meaning given by rule 84(1);

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument:
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“redacted report” means the report which has had information removed from it by virtue of rule 15, to give effect to a determination of the children’s hearing of a non-disclosure request made under Part 19 of these Rules; and

“specified person” is to be construed in accordance with rule 84(1).”.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) 2013 ("the 2013 Rules"). Rules 3 to 6 make amendments in consequence of amendments to the Children's Hearings (Scotland) Act 2011 ("the 2011 Act") made by Part 16 and part of paragraph 12 of Schedule 5 to the Children and Young People (Scotland) Act 2014 ([asp 8](#)) ("the 2014 Act"). Rule 7 amends the provision in the 2013 Rules regarding reports provided to the court under section 95(2) of the Adoption and Children (Scotland) Act 2007 ("the 2007 Act"). These amendments take effect from 26th January 2015.

Rule 3 amends rule 29 of the 2013 Rules which relates to information to be provided for a grounds hearing following the making of certain orders, including a child protection order. This amendment is to align the timescales in rule 29 in respect of child protection orders with the timescales for child protection orders in section 54(c) and (d) of the 2011 Act as amended by section 83 of the 2014 Act. Rule 1(3) provides that this amendment applies to proceedings in respect of a child protection order made on or after 26th January 2015.

Rule 4 amends Part 12 of the 2013 Rules which establishes procedures at pre-hearing panels. These amendments are in consequence of the new facility for pre-hearing panels to determine that the deeming of a person as a relevant person is to end which is provided for in section 84 of the 2014 Act.

Rule 5 amends rule 59 of the 2013 Rules which sets out the procedure to be followed at a grounds hearing when the grounds are put to the child and relevant persons. These amendments are in consequence of section 85 of the 2014 Act which makes provision for dealing with the non-acceptance by the child or a relevant person of facts supporting a section 67 ground.

Rule 6 amends rule 64 of the 2013 Rules which establishes the procedure to be followed where the child fails to attend a grounds hearing. These amendments are consequential upon section 86 of the 2014 Act which gives a grounds hearing a new power to make an interim compulsory supervision order ("an ICSO") where the child fails to attend the grounds hearing and the making of an ICSO is necessary for the protection, guidance, treatment or control of the child as a matter of urgency.

Rule 7 amends rule 77 of the 2013 Rules which relates to the procedure at a hearing where a report is required for the court under section 95(2) of the Adoption and Children (Scotland) Act 2007. It provides that, where a non-disclosure request under Part 19 of the 2013 Rules has been determined by the hearing in relation to information contained in that report, the Reporter must, within 5 days of the hearing, give to the court both redacted and un-redacted versions of the report together with details of the hearing's determination of the non-disclosure request.