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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 194**

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

**PART 17**

Procedure at other children's hearings

**Procedure at a children's hearing held under section 45 (review by children's hearing where child in place of safety) or 46 (review by children's hearing where order prevents removal of child) of the Act**

**70.**—(1) This rule applies where a children's hearing is held by virtue of section 45 or 46 of the Act.

(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 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) Each member of the children's hearing must—

- (a) state their decision on whether the conditions for making the child protection order are met and the reasons for that decision; and
- (b) where the decision is that the conditions are met state the member's decision in relation to whether the order should be varied and if so the authorisation or requirement to be included in the varied order and the reasons for the inclusion of the proposed authorisation or requirement.

(4) The chairing member must—

- (a) confirm and explain the decision of the children's hearing;
- (b) state the reasons for that decision; and
- (c) where the children's hearing decide to continue the child protection order, 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 the other persons in section 48(1) (application for variation or termination) of the Act of the right to make an application to the sheriff under section 48(1) to vary the order or under section 48(2) of the Act to terminate the order, as the case may be.

**Procedure where Reporter receives notice under section 49 (notice of application for variation or termination) of the Act after arranging hearing under section 45 or 46 (review by children's hearing where child in place of safety or order prevents removal of child) of the Act**

71.—(1) Where the Reporter receives notice under section 49 of the Act of an application to vary or terminate the child protection order, after issuing the notice under rule 39 but before that hearing begins, the Reporter must, as soon as practicable before the beginning of the children's hearing, notify the persons mentioned in paragraph (2)—

- (a) that the Reporter has received notice under section 49 of the Act; and
  - (b) that the hearing will proceed as if it was arranged by virtue of section 50 (children's hearing to provide advice to sheriff in relation to application) of the Act.
- (2) Those persons are—
- (a) the child in respect of whom the child protection order is made;
  - (b) each relevant person;
  - (c) any individual other than a relevant person who appears to the Reporter to have or recently have had significant involvement in the upbringing of the child;
  - (d) the person who applied for the child protection order or child assessment order, as the case may be;
  - (e) the person who applied for the child protection order to be varied or terminated;
  - (f) the person specified in the child protection order under section 37(2)(a) (child protection orders) of the Act;
  - (g) any other person to whom the applicant for variation or termination of the child protection order is required to give notice of the making of the application under rules of court;
  - (h) the three members of the children's hearing;
  - (i) any appointed safeguarder;
  - (j) the chief social work officer of the relevant local authority for the child;
  - (k) the National Convener.

**Procedure where hearing held by virtue of section 50 (children's hearing to provide advice to sheriff in relation to application) of the Act**

72.—(1) This rule applies where a children's hearing is held by virtue of section 50 of the Act.

- (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 report, document or matter being considered by the hearing; and
    - (ii) what, if any, advice 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 advice being considered by the hearing; and
  - (d) must confirm to the child, each relevant person, the person who applied for the child protection order, the person who applied for the order to be varied or terminated, and any appointed safeguarder the advice to be given to the sheriff to assist the sheriff in the

determination of the application under section 48 (application for variation or termination) of the Act.

- (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) As soon as possible following receipt of the report the Reporter must give a copy of the report to—
  - (a) the child in respect of whom the child protection order is made;
  - (b) each relevant person;
  - (c) any appointed safeguarder;
  - (d) the sheriff who is to determine the application under section 48 of the Act;
  - (e) the person who applied for the child protection order, or child assessment order, as the case may be;
  - (f) the person who applied for the child protection order to be varied or terminated;
  - (g) the person specified in the child protection order under section 37(2)(a) (child protection orders) of the Act;
  - (h) any person other than a relevant person who appears to the Reporter to have or recently have had significant involvement in the upbringing of the child;
  - (i) any other person to whom the applicant for variation or termination of the child protection order is required to give notice of the making of the application under rules of court;
  - (j) the chief social work officer of the relevant local authority for the child.

**Procedure at a children's hearing arranged under section 96(2) (children's hearing to consider need for further interim compulsory supervision order) of the Act**

**73.—**(1) This rule applies where a children's hearing is held by virtue of section 96(2) of the Act.

- (2) The chairing member—
  - (a) must inform those present 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 report, document or matter being considered by the hearing; and
    - (ii) what, if any, measures would be in the best interests of the child; and
  - (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) Each member of the children's hearing must—
  - (a) state their decision on any exercise of the power conferred by section 96(3) of the Act and the reason for that decision;
  - (b) where the decision is to make a further interim compulsory supervision order state the member's decision and the reasons in relation to any measure to be included in the order.
- (4) The chairing member must—
  - (a) confirm the decision of the children's hearing;

- (b) state the reasons for that decision; and
- (c) 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 appointed safeguarder 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) of the Act within 21 days of that decision.

### **Procedure at a children's hearing held under section 126 (review of contact direction) of the Act**

- 74.—(1) This rule applies where a children's hearing is held by virtue of section 126 of the Act.
- (2) Where an individual claims that the conditions specified for the purposes of section 126(2)(b) of the Act are satisfied in relation to the individual, the children's hearing must consider that claim before reviewing the contact direction.
- (3) Each member of the children's hearing must state whether the member considers that the conditions specified for the purposes of section 126(2)(b) of the Act are satisfied in relation to the individual and the reasons for reaching that view.
- (4) The chairing member must confirm whether the children's hearing considers that the conditions specified for the purposes of section 126(2)(b) of the Act are satisfied in relation to the individual and the reason for reaching that view.
- (5) After considering, where applicable, whether the conditions specified for the purposes of section 126(2)(b) are satisfied the children's hearing must, where proceeding to review a contact direction, seek views on the contact direction from—
- (a) the child;
  - (b) each relevant person;
  - (c) any appointed safeguarder;
  - (d) any individual satisfying the conditions specified in an order under section 126(2)(b) of the Act;
  - (e) any individual who has a contact order regulating contact between the individual and the child;
  - (f) any individual who has a permanence order which specifies arrangements for contact between the individual and the child.
- (6) Each member of the children's hearings must state their decision in relation to the contact direction and their reasons for that decision.
- (7) The chairing member must—
- (a) confirm and explain the decision of the children's hearing in relation to the contact direction;
  - (b) state the reasons for that decision; and
  - (c) inform any individual of any applicable right of appeal of the children's hearing's decision under section 126(6) of the Act which that individual has under section 161 (appeal to sheriff against decision affecting contact or permanence order) of the Act.

**Procedure where advice required under section 49 (reference or remit to children's hearing) of the Criminal Procedure (Scotland) Act 1995**

75.—(1) This rule applies where a children's hearing is held following a request to the Reporter under section 49(1)(b), (3) or (6) of the Criminal Procedure (Scotland) Act 1995 <sup>M1</sup>.

(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 report, document or matter being considered by the hearing; and
  - (ii) what, if any, advice or 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 advice being considered by the hearing; and
- (d) must confirm to the child, each relevant person, and any appointed safeguarder the advice to be given to the court.

(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) As soon as possible following receipt of the report the Reporter must give a copy of the report to—

- (a) the child;
- (b) each relevant person;
- (c) any appointed safeguarder;
- (d) the court which made the request for advice under section 49 of the Criminal Procedure (Scotland) Act 1995;
- (e) the chief social work officer of the relevant local authority for the child.

**Marginal Citations**

M1 1995 c.46.

**Procedure where application to suspend the decision of the children's hearing made under section 158 (compulsory supervision order: suspension pending appeal) of the Act**

76.—(1) Where the Reporter is required under section 158(2) of the Act to arrange a children's hearing, as soon as practicable the Reporter must give notice of the date, time and place of the children's hearing at which the application for the suspension of the children's hearing's decision will be considered, to the persons mentioned in paragraph (2).

(2) Those persons are—

- (a) the child;
- (b) any relevant person;
- (c) any appointed safeguarder;

- (d) the three members of the children's hearing;
- (e) the chief social work officer of the implementation authority for the child;
- (f) the National Convener.

(3) If the person who applied for the suspension of the children's hearing's decision under section 158 of the Act is required by section 73(2) (child's duty to attend children's hearing) or 74(2) (relevant person's duty to attend children's hearing) of the Act to attend the hearing and fails to do so the children's hearing may, if it considers it appropriate, take no further action in relation to the application.

(4) Before making any decision on the application under section 158 of the Act the children's hearing must invite the child, any relevant person and any appointed safeguarder present at the hearing to make such representations as they wish to make.

(5) Each member of the children's hearing must state their decision on the suspension of the children's hearing's decision under section 158 of the Act, and the reasons for that decision.

(6) The chairing member must confirm the decision of the children's hearing and the reasons for that decision.

**Procedure at a children's hearing where a report is required under section 95(2) of the Adoption and Children (Scotland) Act 2007 (duty of children's hearing to prepare report for court)**

77.—(1) This rule applies where a children's hearing is required to prepare a report by virtue of section 95(2) of the Adoption and Children (Scotland) Act 2007 <sup>M2</sup> (permanence orders – duty of children's hearing to prepare report for court).

(2) The chairing member must explain to the child, any relevant person and any appointed safeguarder the purpose of the report to be prepared.

(3) The report must be prepared when the children's hearing have considered the case of the child and determined whether to make a compulsory supervision order or to vary, or vary and continue, the compulsory supervision order, as the case may be.

(4) Before preparing the report the chairing member must explain to the child, any relevant person and any appointed safeguarder—

- (a) that the hearing has determined to make a compulsory supervision order or to vary, or vary and continue, the compulsory supervision order, as the case may be;
- (b) the reasons for reaching that determination; and
- (c) that the hearing is unable to make a decision to make a compulsory supervision order or to vary, or vary and continue, the compulsory supervision order, pending the decision of the sheriff on the permanence order application or to remit the case under section 96 (application: effect on compulsory supervision order) of the Adoption and Children (Scotland) Act 2007 <sup>M3</sup>.

(5) 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.

(6) [<sup>F1</sup>Subject to paragraph (7),] the Reporter must, within 5 days of the hearing, give the report to—

- (a) the court which requires to come to a decision on the permanence order application;
- (b) the child;

- (c) any relevant person;
- (d) any appointed safeguarder;
- (e) the chief social work officer of the implementation authority for the child.

[<sup>F2</sup>(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);

“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).]

#### Textual Amendments

- F1** Words in [rule 77\(6\)](#) inserted (26.1.2015) by [The Children's Hearings \(Scotland\) Act 2011 \(Rules of Procedure in Children's Hearings\) Amendment Rules 2015 \(S.S.I. 2015/21\)](#), [rules 1\(1\)](#), [7\(1\)](#)
- F2** [Rule 77\(7\)\(8\)](#) inserted (26.1.2015) by [The Children's Hearings \(Scotland\) Act 2011 \(Rules of Procedure in Children's Hearings\) Amendment Rules 2015 \(S.S.I. 2015/21\)](#), [rules 1\(1\)](#), [7\(2\)](#)

#### Marginal Citations

- M2** [2007 asp 4](#). Section 95 is amended by the Children's Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (S.S.I. 2013/xxx).
- M3** Section 96 is amended by the Children's Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (S.S.I. 2013/xxx).

**Status:**

Point in time view as at 26/01/2015.

**Changes to legislation:**

There are currently no known outstanding effects for the The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013, PART 17.