

CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8 – Pre-Hearing Panel

Section 79 – Referral of certain matters for pre-hearing determination

109. This section establishes Pre-Hearing Panels. A Pre-Hearing Panel must comprise of 3 panel members selected by the National Convener. The subsequent Children's Hearings may or may not comprise the same panel members.
110. Subsection (2) provides that the Principal Reporter must refer the issue of whether a particular person should be deemed to be a relevant person if requested to do so by the person in question, the child or their relevant person. Any person who claims to be a relevant person but does not meet the legal test set out in section 200 (e.g. the person may claim to have, or have recently had significant involvement in the upbringing of the child) may ask that a Pre-Hearing Panel is arranged to consider their status. The child and any other relevant person may also challenge the reporter's assessment if they think someone who has or who has not been recognised as a relevant person should or should not be. A Pre-Hearing Panel may be arranged at any stage prior to the Children's Hearing (i.e. before a continued hearing, or a review hearing as well as before a grounds hearing).
111. Subsection (2)(b) provides that the reporter may refer consideration of whether a person should be deemed a relevant person to the Pre-Hearing Panel for a determination on the reporter's own initiative. Subsections (2)(c) and (3) set out other specific matters that the reporter, either on the reporter's own initiative or following a request from the child, relevant person or Safeguarder, may refer to a Pre-Hearing Panel. These include: consideration of releasing a child or relevant person from their obligation to attend the Children's Hearing; whether a secure accommodation authorisation is likely to be considered at a forthcoming hearing and any other matters as specified in the procedural rules under section 177 of the Act. These procedural rules will be subject to affirmative procedure.
112. Subsections (4) and (5) provide that Pre-Hearing Panels may only excuse a child or relevant person from attending a Children's Hearing if the conditions in section 73 or 74 or in rules made under section 177, are satisfied. These rules will be subject to negative procedure.