

CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7 – Attendance at Children's Hearing

Section 73 – Child's duty to attend children's hearing

98. This section places an obligation on the child to attend a Children's Hearing unless excused under subsection (3) or the rules under section 177. The hearing has a general power to excuse a child from a Children's Hearing either which has been or is to be arranged, where the hearing is satisfied that the circumstances set out in subsection (3) apply. Subsection (3)(a) provides for the hearing to excuse the child where the child has been the victim of a schedule 1 offence, has (or is likely to have) a close connection with a person who has committed a schedule 1 offence, is (or is likely to become) a member of the same household as a child who is a victim of such an offence, or has (or is likely to have) a close connection with a person who has committed an offence under Parts 1, 4, or 5 of the Sexual Offences (Scotland) Act 2009 and the attendance of the child at the hearing or that part of the hearing is not necessary for a fair hearing.
99. Subsection (3)(b) provides for the hearing to excuse the child where attendance may be damaging to the child's physical, mental or moral welfare. Subsection (3)(c) provides for the hearing to excuse the child where the hearing considers the child would not be able to understand the process. Subsection (4) provides for when the Children's Hearing may excuse a child from a child's obligation to attend a grounds hearing. Acceptance or denial of ground(s) by a child is a fundamental part of the hearing and a child may only be excused from this part of the hearing where the hearing considers that the child is not capable of understanding the explanation.

Section 74 – Relevant person's duty to attend children's hearing

100. This section places an obligation on each relevant person in relation to the child who is notified of a hearing to attend the Children's Hearing unless excused under subsection (3) or rules made under section 177, or excluded under section 76(2). Subsection (3) provides the hearing with a power to excuse a relevant person from attending all or part of a Children's Hearing, where the hearing is satisfied that the obligation of the relevant person to attend the hearing is unreasonable or unnecessary for the proper consideration of the case. This determination may be made by the hearing either when the relevant person fails to attend or when a relevant person asks to be excused. Subsection (4) provides that a relevant person who is required to attend a hearing but who fails to do so commits an offence and is liable on summary conviction to a fine up to level 3 on the standard scale.

Section 75 – Power to proceed in absence of relevant person

101. This section allows the Children's Hearings to proceed if a relevant person has failed to attend where the hearing considers it appropriate to do so.

Section 76 – Power to exclude relevant person from children's hearing

102. This section provides discretion for the hearing to exclude a relevant person from the hearing. There are two grounds for exclusion: that the presence of the relevant person is preventing the hearing from obtaining the views of the child; or that significant distress is being or is likely to be caused to the child.
103. Subsection (3) provides that the chairing member of the Children's Hearing must explain to each excluded person what has taken place in their absence. Section 178 provides that a Children's Hearing can withhold information about a child from any person if the hearing considers that disclosing it would be likely to cause significant harm to the child.

Section 77 – Power to exclude relevant person's representative from children's hearing

104. This section provides discretion for the hearing to exclude any representative of a relevant person from the hearing. There are two grounds for exclusion: that the presence of the relevant person's representative is preventing the hearing from obtaining the views of the child; or that significant distress will be caused to the child. Subsection (3) provides that the chairing member of the Children's Hearing must explain to each excluded person what has taken place in their absence. Section 178 provides that a Children's Hearing can withhold information about a child from to any person if the hearing considers that disclosing it would be likely to cause significant harm to the child.

Section 78 – Rights of certain persons to attend children's hearing

105. This section lists those persons who have a right to attend a Children's Hearing (including a member of an area support team, as established under Schedule 1 of this Act). No person, other than those listed, may attend a Children's Hearing unless the chairing member considers that the person's attendance is necessary for the proper consideration of the case. In that circumstance the chairing member can permit them to attend or the person is authorised or required to attend by virtue of rules under section 177 of the Act. Notwithstanding this power, the chairing member has a duty to ensure that the number attending a hearing is kept to a minimum.
106. Subsection (2)(a) provides the chairing member with discretion to allow hearing participants who do not have a statutory right to attend but whose presence is necessary for the proper consideration of the case e.g. a social worker, to attend the hearing. Subsection (2)(b) gives the chairing member discretion to allow observers without a statutory right to attend but with a legitimate interest, such as trainee panel members, to attend the hearing. The chairing member's discretion applies where no objection is raised by the child or relevant persons.
107. Subsection (3) provides the child or relevant person with the power to object to the presence of observers under subsection (2)(b). If there is any such objection, the chairing member cannot permit the observer to attend the hearing. This right does not apply to circumstances under subsection (2)(a), for example where the chairing member has allowed a social worker to attend the hearing for the proper consideration of the case.
108. The Children's Hearing may exclude a newspaper or news agency representative under subsection (5) and the chairing member of the hearing may explain to the representative the substance of the discussion that was held in their absence, where the chairing member considers it appropriate to do so.