

# Practice Direction 12

## Pre-Hearing Panel Matters

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## SUMMARY

- A pre-hearing panel can be arranged to consider certain preliminary issues in advance of a children's hearing.
  - whether to deem someone to be a relevant person;
  - whether an individual currently deemed to be a relevant person should continue to be so deemed (be "undeemed");
  - whether to excuse a child or relevant person from attending the children's hearing;
  - whether it is likely the children's hearing will consider making a compulsory supervision order with secure accommodation authorisation.
  
- A pre-hearing panel arranged for any of the above purposes may:
  - appoint a safeguarder;
  - identify that the child or a relevant person requires legal representation to be able to participate effectively in the hearing and that the child or relevant person will be unlikely to arrange this for themselves.
  
- The reporter **must** arrange a pre-hearing panel where
  - (i) the child, relevant person or an individual requests one to consider deeming the individual to be a relevant person, or
  - (ii) the child or a relevant person requests one to consider whether a currently deemed relevant person should be undeemed. In other circumstances the reporter **may** arrange a pre-hearing panel.
  
- If the reporter considers that a person has, or has recently had, significant involvement in the upbringing of the child the reporter **is to** arrange a pre-hearing panel regardless of whether a request is made **unless**
  - (i) that person is a foster carer; or
  - (ii) the significant involvement has ceased and the cessation appears permanent.
  
- If the reporter considers that a deemed relevant person no longer has (and has not recently had) significant involvement in the upbringing of the child the reporter is to arrange a pre-hearing panel regardless of whether a request is made.
  
- The following people have a right, but not a duty, to attend the pre-hearing panel: the child, relevant persons, safeguarder, any person who appears to the reporter to have (or recently have had) significant involvement in the upbringing of the child, and any person who has requested to be deemed to be a relevant person. They may provide reports to the pre-hearing panel.
  
- The chief social work officer is always to be sent notification of a pre-hearing panel or a pre-hearing panel matter referred to a hearing.
  
- The pre-hearing panel must take place before the day of the children's hearing. Where this is not practicable, the children's hearing must consider the pre-hearing panel matters at the beginning of the children's hearing.

- Papers for a pre-hearing panel matter are to be provided using the PHP Papers Form. This applies whether the pre-hearing panel matter is referred to a pre-hearing panel or a children's hearing. The papers are to be provided as soon as possible before the pre-hearing panel or hearing.
- A person entitled to attend a pre-hearing panel (or the consideration of a pre-hearing panel matter at a children's hearing) may request to attend by way of telephone, video link or using any other method of communication. If the reporter is satisfied that the person has good reason for not attending in person, SCRA must take all reasonable steps to enable them to attend by the requested method.
- If a person entitled to attend a pre-hearing panel (or the consideration of a pre-hearing panel matter at a children's hearing) is unable to attend, they may make oral representations to the reporter. The reporter must make a record of the representations and include it in the papers for the pre-hearing panel (or the papers for the pre-hearing panel matter at the hearing).
- Pre-hearing panel matters which have been referred to a pre-hearing panel or hearing must be dealt with and determined in the following order: undeeming, deeming, excusing.
- Determinations of a pre-hearing panel to deem or not deem someone to be a relevant person, or to undeem or not undeem an existing relevant person, can be appealed.

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## 1. INTRODUCTION

- 1.1 Pre-hearing panels can be arranged to deal with certain preliminary matters in advance of a children's hearing. This Practice Direction explains the statutory provisions in relation to pre-hearing panels and sets out how they are to be applied by the reporter.
- 1.2 The relevant statutory provisions are contained in:
  - The Children's Hearings (Scotland) Act 2011
  - The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013
- 1.3 Pro-forma letters and forms are available for all the statutory communications noted in this Practice Direction.

## 2. MATTERS TO BE DETERMINED BY A PRE-HEARING PANEL

- 2.1 Section 79(2),(3) and (5A) of The Children's Hearings (Scotland) Act 2011 provides that a pre-hearing panel can consider the following matters.
  - Whether a particular individual should be deemed to be a relevant person in relation to the child. The criteria for determination are contained in section 81(3). The implications of determination are contained in section 81(4).
  - Whether an individual currently deemed to be a relevant person no longer satisfies the criteria in section 81(3) and should no longer be considered a relevant person in relation to the child.
  - Whether the child should be excused from attending the children's hearing. The criteria for determination are contained in section 73(3)(a)-(c).
  - Whether a relevant person in relation to the child should be excused from attending the children's hearing. The criteria for determination are contained in section 74(3)(a)-(b).

A PHP can also be arranged to consider whether the children's hearing is likely to consider making a compulsory supervision order<sup>1</sup> authorising secure accommodation. However, reporters are not to arrange a PHP for this reason as the purpose of doing so is in relation to automatic legal aid and it is not necessary for a PHP to be arranged in order for a child to be eligible for automatic legal aid.

- 2.2 In addition, a pre-hearing panel may, during the course of considering a matter referred to them from the list in paragraph 2.1 above:
  - appoint a safeguarder for the child, unless there is a safeguarder already appointed – section 82; or

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<sup>1</sup>rule 50(6) indicates that a pre-hearing panel may also determine that the hearing is likely to consider such a measure in an *interim* compulsory supervision order.

- determine that it is necessary for a child or relevant person to be represented by a solicitor or counsel to enable that person to participate effectively in the children’s hearing and that it is unlikely that the child or relevant person will arrange to be so represented – Rule 50(7).

However, a pre-hearing panel cannot be arranged solely for the purpose of considering these matters.

- 2.3 Where a pre-hearing panel deems someone to be a relevant person, that person may then ask the pre-hearing panel to excuse the child or a relevant person from the children’s hearing (or to determine that it is likely the children’s hearing will make a compulsory supervision order with secure accommodation authorisation. Rules 45(3)(c) and 52(3)(b).

### **3. ARRANGING A PRE-HEARING PANEL**

- 3.1 A PHP can be arranged to consider whether

- (i) a person should be deemed a relevant person
- (ii) a child’s attendance should be excused and
- (iii) a relevant person’s attendance should be excused
- (iv) it is likely that the children’s hearing will consider making a compulsory supervision order (or an ICSO) including a secure accommodation authorisation in relation to the child,<sup>2</sup>

A pre-hearing panel for these purposes can be arranged where a children’s hearing is to be held under section 69(2) or Parts 9, 10, 11 or 13 of the Act. This includes all grounds and review hearings, and all hearings flowing from them (including remits from the criminal court and in relation to antisocial behaviour orders). It also includes hearings flowing from a review by the sheriff of previously established grounds. It does not include second-working day hearings, CPO advice hearings, criminal advice hearings or ASB advice hearings.

- 3.2 A pre-hearing panel can also be arranged to consider undeeming a currently deemed relevant person but only where the children’s hearing to be held is

- (i) a subsequent hearing under part 11 of the Act, or
- (ii) for the purposes of reviewing a compulsory supervision order. A grounds hearing for a child already subject to a compulsory supervision order is to be considered as a hearing for the “purposes of reviewing a compulsory supervision order” therefore a pre-hearing panel to consider undeeming can be arranged. However a section 96 hearing to consider a further ICSO or interim variation during a proof is not such a hearing.

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<sup>2</sup> It is unlikely to be appropriate for the reporter to arrange a pre-hearing panel for this sole purpose. The reporter can contact the Scottish Legal Aid Board directly, without being directed to do so by a pre-hearing panel, where the reporter is of the view that a children’s hearing is likely to make such an order. Further information about legal aid is provided in Practice Direction 22 on Legal Aid.

- 3.3 The reporter must arrange a pre-hearing panel where
- (i) the child, relevant person or an individual requests one to consider deeming the individual to be a relevant person, or
  - (ii) the child or a relevant person requests one to consider whether a currently deemed relevant person should be undeemed.

3.4 The reporter may arrange a pre-hearing panel to consider whether an individual should be deemed to be a relevant person without a request having been received (Section 79(2)(b)). The reporter is to arrange a pre-hearing panel where they consider that a person has, or has recently had, significant involvement in the child's upbringing. There are two exceptions to this:

- (i) where that person is a foster carer; and
- (ii) where the significant involvement has recently ceased and this situation appears to be permanent,

It should be noted that in these situations such persons will still be notified of the hearing and will have the opportunity to request a pre-hearing panel.

Further detail on how to approach this issue can be found in Practice Direction 3 on Relevant Persons.

3.5 The reporter may arrange a pre-hearing panel to consider whether an individual currently deemed to be a relevant person should continue to be deemed without a request having been received (Section 79(5A)(b)). The reporter is to arrange a pre-hearing panel where they consider that the individual no longer has, and has not recently had, significant involvement in the child's upbringing **and** the forthcoming hearing is a review hearing or a grounds hearing for a child already subject to a compulsory supervision order. Where the forthcoming hearing is a hearing under section 119 or a deferred review hearing the reporter must consult with their senior practitioner and the Practice Team before arranging a pre-hearing panel without a request having been received. Only exceptionally will it be appropriate to arrange a pre-hearing panel to consider undeeming a relevant person within the same current proceedings as they have been deemed.<sup>3</sup>

3.6 The reporter may arrange a pre-hearing panel to determine whether to excuse the child or a relevant person, whether or not the child, relevant person or safeguarder has requested one. (Section 79(2)(c))

#### **4. TIMING OF A PRE-HEARING PANEL**

4.1 A pre-hearing panel must be arranged to take place before the date fixed for the children's hearing (Section 80(2)). Where possible, a pre-hearing panel to consider deeming should take place far enough in advance of the hearing to

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<sup>3</sup> Note also it is not open to a hearing having concluded a review of a CSO to review a current deemed relevant person in terms of s.142 where that question has already been considered by a pre-hearing panel or a children's hearing under s.80(3).

enable the issue to be determined before hearing papers require to be sent to relevant persons.

- 4.2 Where possible, a pre-hearing panel to consider undeeming should take place far enough in advance of the hearing to enable the issue to be determined before hearing notification requires to be sent to relevant person who may be undeemed.
- 4.3 Where it is not practicable to have a pre-hearing panel before the date of the children's hearing, the children's hearing must consider the matters which would otherwise have been considered by a pre-hearing panel at the beginning of the children's hearing. (Section 80(3) and Rule 52).
- 4.4 Rules 45 and 46 provide that wherever practicable the reporter must give at least 5 clear days notice of a pre-hearing panel. Therefore, in every instance where the reporter is arranging a children's hearing for which it is competent to arrange a pre-hearing panel, the reporter is to give consideration to the necessity for a pre-hearing panel at the earliest opportunity and certainly no later than when sending notifications for the children's hearing.
- 4.5 There will be occasions where it is not practicable to give 5 clear days notice of a pre-hearing panel. For example the children's hearing may be arranged at short notice, new information is received which changes the reporter's assessment about the need for a pre-hearing panel or a request for a pre-hearing panel is received. In arranging such a pre-hearing panel, the reporter is to give as much notice as possible.
- 4.6 Only where it is not practicable to arrange the pre-hearing panel for a day before the day of the children's hearing, are the pre-hearing panel matters to be referred to and considered by the children's hearing. In determining whether it is practicable to arrange a pre-hearing panel, the reporter is to take account of whether those with a right to attend would have sufficient notice to exercise that right. Given the significance of a determinations by a pre-hearing panel in relation to whether to deem (or continue to deem) someone to be a relevant person, it is particularly important that sufficient notice is given where such a matter is to be considered.

## **5. NOTIFICATIONS AND PAPERS**

### **5A. NOTIFICATION AND PAPERS FOR A PRE-HEARING PANEL**

#### ***Notifications***

- 5.1 Rules 45, 46 and 46A set out the provisions for notification of a pre-hearing panel. The reporter must give the child, relevant persons and any safeguarder 5 clear days notice of the pre-hearing panel wherever practicable. Where the pre-hearing panel is to consider whether to deem someone to be a relevant person (whether or not it is also to consider other matters), the reporter must also notify:
  - any person requesting that a pre-hearing panel consider deeming them a relevant person; and



- any person who appears to the reporter to have (or recently have had) significant involvement in the upbringing of the child.

5.2 Although not required by the rules, the reporter is to notify the chief social work officer of any pre-hearing panel.

### **Papers**

5.3 Rule 47 sets out the information to be provided to a pre-hearing panel. The following paragraphs explain the detail of these rules. The appendices to Practice Direction 14 - Notifications and Papers specify which papers must be provided to which persons for various combinations of pre-hearing panel matters referred to a pre-hearing panel.

5.4 Generally, information is to be provided to the child, relevant persons, safeguarder and panel members. In addition, if the pre-hearing panel is considering whether to deem a person, the information is also to be provided to that person and to any other person the reporter considers has or has recently had significant involvement in the upbringing of the child.

5.5 The papers are generally to be provided as soon as possible before the pre-hearing panel. There is a more specific timescale applying to written information given to the reporter by the child, relevant persons or safeguarder for consideration by the pre-hearing panel; this is to be provided by the reporter wherever practicable at least 3 days before the pre-hearing panel.<sup>4</sup>

5.6 The PHP Papers Form at Appendix 1 is to be used for all pre-hearing panels. Information may be included directly on the Form, or referred to on the Form and attached. If subsequent information is provided to the pre-hearing panel a further Form is to be completed in relation to that information.

5.7 There are 4 categories of information which the reporter may provide for consideration by a pre-hearing panel. These are considered in more detail below. The reporter is to proactively consider what information already held by the reporter will be relevant for the pre-hearing panel, taking into account the particular pre-hearing panel matter or matters to be considered and the factors which the pre-hearing panel is likely to take into account.

5.8 The 4 categories of information are:

- information from the records held by the reporter;
- reports or extracts from reports;
- written information submitted to the reporter for consideration by the pre-hearing panel;
- oral representations made to the reporter in advance of the pre-hearing panel.

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<sup>4</sup> (Where the pre-hearing panel is to consider whether to deem an individual to be a relevant person, the same 3 day timescale applies to written information provided by the individual or by any other person the reporter considers has or has recently had significant involvement in the upbringing of the child.)

### ***Info from Reporter Records***

- 5.9 This type of information is likely to be limited. It will involve specific pieces of relevant information which are not readily extracted from reports, for example that the child has been subject to a compulsory supervision order requiring him to reside with [name] since [date].

### ***Reports and Extracts from Reports***

- 5.10 These are reports (other than reports or written submissions provided specifically for the pre-hearing panel by certain persons, see paragraphs 5.7 to 5.10) which the reporter has and which the reporter considers to be relevant to the pre-hearing panel matter(s) to be considered. If the reporter is providing only part of a report, the extract may be incorporated direct onto the PHP Papers Form rather than attaching a separate document.

### ***Written Information for Consideration by the PHP***

- 5.11 The child, relevant persons or safeguarder may make written representations or give reports or documents for consideration by the pre-hearing panel.
- 5.12 In addition, where the pre-hearing panel is to consider whether to deem an individual to be a relevant person, the individual (if they requested the pre-hearing panel) and any person who appears to the reporter to have or recently have had significant involvement in the upbringing of the child may also provide written representations or reports - but only in relation to the matter of whether to deem the individual to be a relevant person.
- 5.13 For the avoidance of doubt, a person not yet deemed is not entitled to make representations, in writing or in person, regarding the issue of a undeeming a currently deemed relevant person.
- 5.14 The person providing the written representations and/or reports or documents is to provide them to the reporter as soon as possible and wherever practicable no later than 4 days before the intended date of the pre-hearing panel. The reporter must then give a copy of the information to those entitled to attend the pre-hearing panel and to the panel members, wherever practicable no later than 3 days before the intended date of the pre-hearing panel.<sup>5</sup>
- 5.15 If the pre-hearing panel concerns deeming and/or undeeming, the reporter's duty to copy and provide the information given in relation to the deeming and/or undeeming applies only to such information as the reporter considers is relevant to the deeming and/or undeeming.<sup>6</sup> (Note this restriction does not apply where deeming and/or undeeming is referred to the children's hearing (see paragraph 5.29).

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<sup>5</sup> (The reporter is not required to re-distribute this information to the person who gave the information to the reporter.)

<sup>6</sup> An exception for information which is offensive or indecent may also be justified. See Practice Direction 14 at paragraph 6.1 footnote 8.

### ***Oral Representations***

- 5.16 A person may make oral representations to the reporter where the person:
- is entitled to attend and to make representation to the pre-hearing panel; and
  - is unable to attend; and
  - wishes to make oral representations for the consideration of the pre-hearing panel.
- 5.17 The reporter must make a written record of the representations and provide a copy of the record as soon as possible before the beginning of the pre-hearing panel.

### ***Non-disclosure***

- 5.18 A non-disclosure request may be made in relation to the information being provided for a pre-hearing panel. In addition, rules 15 (duties of reporter when withholding information), 16 (withholding whereabouts) and 18 (notifications and papers for young child) apply to a pre-hearing panel. Further information on all aspects of non-disclosure is contained in Practice Direction 4 on Non-Disclosure.

## **5B. NOTIFICATION AND PAPERS FOR A PRE-HEARING PANEL MATTER REFERRED TO A CHILDREN'S HEARING**

### ***Notification***

- 5.19 The requirements to provide notifications and papers in relation to a pre-hearing panel matter which has been referred to a children's hearing are almost identical to the requirements for a pre-hearing panel. Any differences are highlighted in the following paragraphs.
- 5.20 Rule 52 sets out the notification requirements. The reporter must give notice that a pre-hearing panel matter has been referred to the children's hearing to: the child; relevant persons; safeguarder; any person requesting that a pre-hearing panel consider deeming them a relevant person; any person who appears to the reporter to have (or recently have had) significant involvement in the upbringing of the child; and the panel members.
- 5.21 Note that notification to any person who appears to the reporter to have (or recently have had) significant involvement in the upbringing of the child is not dependent on the PHP matter referred to the hearing being whether to deem a person to be a relevant person. This is different to the situation for notifications for a pre-hearing panel.
- 5.22 Although not required by the rules, the reporter is to notify the chief social work officer of any pre-hearing panel matter referred to the children's hearing.

### ***Papers***

- 5.23 Rule 53 sets out the information to be provided where a pre-hearing panel matter has been referred to the hearing. The appendices to Practice Direction

14 - Notifications and Papers specify which papers must be provided to which persons for any pre-hearing panel matter referred to a children's hearing.

- 5.24 Generally, papers for the pre-hearing panel matter are to be provided to the child; relevant persons; safeguarder; any person requesting that a pre-hearing panel consider deeming them a relevant person; any person who appears to the reporter to have (or recently have had) significant involvement in the upbringing of the child; and the panel members. They are to be provided as soon as practicable before the hearing.
- 5.25 Note that the provision of papers for the pre-hearing panel matter to any person who appears to the reporter to have (or recently have had) significant involvement in the upbringing of the child is not dependent on the PHP matter referred to the hearing being whether to deem a person to be a relevant person. This is different to the situation for papers for a pre-hearing panel.
- 5.26 The same 4 categories of information apply where a pre-hearing panel matter is referred to the children's hearing as for a pre-hearing panel. The reporter is to proactively consider what information already held by the reporter will be relevant, taking into account the particular pre-hearing panel matter or matters to be considered and the factors which the hearing is likely to take into account when considering them.
- 5.27 The papers must be provided in the same way as for a pre-hearing panel, using the PHP Papers Form. Therefore the reporter must send two sets of papers to the panel members, the child (if receiving papers), the relevant persons and any safeguarder. That is, papers for the pre-hearing panel matter(s) **and** papers for the children's hearing.
- 5.28 If the pre-hearing panel matters include whether to deem a person to be a relevant person, the reporter is to send that person, and any other person who the reporter considers has or has recently had significant involvement in the upbringing of the child, only the papers for the pre-hearing panel matters. The reporter must only give these persons papers for the children's hearing if they are deemed to be a relevant person<sup>7</sup>.
- 5.29 Where pre-hearing panel matters(s) are referred to a hearing rather than a pre-hearing panel, any written representations provided by those entitled to attend must be provided in full to the hearing. This is different to the position for a pre-hearing panel where, if the matter concerns deeming or undeeming, the reporter's duty to provide the information given in relation to the deeming and/or undeeming applies only to the information which the reporter considers relevant to the deeming and/or undeeming (see paragraph 5.15).

### ***Non-disclosure***

- 5.30 A non-disclosure request may be made in relation to the information being provided in relation to a pre-hearing panel matter referred to a children's hearing. Rules 15 (duties of reporter when withholding information), 16 (withholding whereabouts) and 18 (notifications and papers for young child)

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<sup>7</sup> A person may ask at the hearing that the hearing consider whether to deem them to be a relevant person. The matter must then be dealt with as if it had been referred.

also apply. Further information on all aspects of non-disclosure is contained in Practice Direction 4 on Non-Disclosure.

## 6. PROCEDURE AT A PRE-HEARING PANEL OR HEARING DEALING WITH PHP MATTERS<sup>8</sup>

- 6.1 Reference in this section of the Practice Direction to a pre-hearing panel is to be taken to include reference to that part of a hearing dealing with pre-hearing panel matters.
- 6.2 Section 81 requires that the order in which a pre-hearing panel (or hearing) must deal with referred pre-hearing panel matters is:
- (i) undeeming
  - (ii) deeming
  - (iii) excusing
- 6.3 If the pre-hearing panel is considering whether to deem someone and/or to continue to deem someone to be a relevant person the chair must explain the purpose of the pre-hearing panel at the beginning (rules 48(1) and 49A(2))<sup>9</sup>.
- 6.4 Under rule 48(2), where there is an individual present at the pre-hearing panel who is not a relevant person (and the pre-hearing panel has not been arranged to consider whether to deem them to be a relevant person) a request may be made to consider deeming them. The child, a relevant person or the individual in question may make such a request. If a request is made, the Act and Rules apply as though there had been a referral to the pre-hearing panel under section 79(2), and the pre-hearing panel must consider the matter (after any determination on whether to undeem an existing relevant person).

### Undeeming

- 6.5 Under rule 49A(3), when considering a matter of ending deemed relevant person status the chair must invite:
- the child; and
  - any relevant person;

to give representations (orally or in writing) or to give any other document or information that the person wishes to give for the consideration of the pre-hearing panel. The chair may invite any other person that the pre-hearing panel consider appropriate to do so.

- 6.6 Each member of the pre-hearing panel must state their determination on that matter and the reasons for that determination. The chairing member must thereafter confirm the determination of the pre-hearing panel and the reasons for that determination.

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<sup>8</sup> Section 81 and 81A, and Rules 48, 49 and 49A set out the procedure at a pre-hearing panel. Sections 81(7) and 81A(A) and Rule 54 determine the procedure to be followed by a children's hearing which is dealing with a pre-hearing panel matter.

<sup>9</sup> There is no express requirement for the chair to explain the purpose of a pre-hearing panel arranged for any other purpose but in practice the chair will do so.

- 6.7 Rule 49A(7) and (8) requires the chair to inform the child, any relevant person and any individual that the pre-hearing panel determined is no longer to be deemed a relevant person, of their rights of appeal under section 160 of the Act.
- 6.8 If the pre-hearing panel or hearing determine that an individual should no longer be considered a relevant person then the individual has no right to contribute further. It will be for the chairing member to determine the individual's further involvement.

### **Deeming**

6.9 Having dealt with any question regarding undeeming an individual currently deemed, the hearing must then deal with any questions concerning deeming individuals to be relevant persons. Under rule 48(4), when considering a relevant person determination the chair must invite:

- the child;
- any relevant person; and
- any individual in relation to whom the determination is sought;

to give representations (orally or in writing) or to give any other document or information that the person wishes to give for the consideration of the pre-hearing panel. The chair may invite any other person that the pre-hearing panel consider appropriate to do so.

- 6.10 Each member of the pre-hearing panel must state their determination on that matter and the reasons for that determination. The chairing member must thereafter confirm the determination of the pre-hearing panel and the reasons for that determination.
- 6.11 Rule 48(8) and (9) requires the chair to inform the child, any relevant person and any individual in respect of whom the pre-hearing panel determined that the individual is not to be deemed a relevant person, of their rights of appeal under section 160 of the Act. A person deemed to be a relevant person also has a right to appeal under section 160 and in practice the chair will also inform such a person of their right to appeal.

### **Other Pre-Hearing Panel Matter**

6.12 After determining any relevant person matter, the pre-hearing panel will deal with any other matters referred to it. If an individual has been deemed to be a relevant person, they may request the pre-hearing panel to determine other matters under section 79(3) (excusing a child or relevant person, secure accommodation) even though those matters were not originally referred to the pre-hearing panel. If the pre-hearing panel has determined that

- (i) an individual is no longer to be deemed a relevant person, or
- (ii) an individual is not to be deemed a relevant person, that individual has no right to take part in discussions on any other matter being considered by the pre-hearing panel.

6.13 The chair must invite the child and relevant persons to give representations (orally or in writing) or any other document or information in addition to any given under the Rules that the person wishes to give for the consideration of

the pre-hearing panel. The chair may invite any other person that the pre-hearing panel consider appropriate to do so.

- 6.14 Each member of the pre-hearing panel must state their determination on that matter and the reasons for that determination. The chairing member must thereafter confirm the determination of the pre-hearing panel and the reasons for that determination.

## **7. ADJOURNING OR DEFERRING A PRE-HEARING PANEL**

- 7.1 A pre-hearing panel, if it considers it appropriate to do so, may be adjourned on the initiative of the pre-hearing panel or on the request of any person attending. Where a pre-hearing panel is adjourned it must re-convene on the same day as the adjournment was made. (Rule 7).
- 7.2 There is no express provision to defer a pre-hearing panel. However a power for the pre-hearing panel to defer making a determination may be implied where it would be unfair to proceed. If the issue arises or is likely to arise, the reporter is to express a view in the pre-hearing panel that a determination may be deferred. Unfairness will be for the pre-hearing panel to decide but it is most likely to arise where there has been a failure in notification of the pre-hearing panel. The reporter may also express a view on whether they consider that it would be unfair to proceed. The provision in the Rules for a person who is unable to attend to give oral representations to the reporter means that an inability to attend does not render the pre-hearing panel unfair. Deferral of a pre-hearing panel determination may mean that the matter or matters will need to be dealt with by the children's hearing. The fairness of this should also be taken into consideration.

## **8. ATTENDANCE AT A PRE-HEARING PANEL**

- 8.1 Section 78(1) specifies all those who have a right to attend a pre-hearing panel<sup>10</sup>. (Section 78 relates to attendance at a children's hearing but section 78(7) makes it clear that references to "children's hearing" in that section include a pre-hearing panel).
- 8.2 In addition, where the pre-hearing panel is considering whether to deem someone to be a relevant person, by virtue of rule 45 the following people also have a right to attend the pre-hearing panel:

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<sup>10</sup> In particular:

- (a) the child,
- (b) a person representing the child,
- (c) a relevant person in relation to the child
- (d) a person representing a relevant person in relation to the child,
- (e) the reporter,
- (f) any safeguarder,
- (g) a member of the Administrative Justice and Tribunals Council or the Scottish Committee of that Council (acting in that person's capacity as such),
- (h) a member of an area support team (acting in that person's capacity as such),
- (i) a representative of a newspaper or news agency, although their right is subject to a power to exclude them in section 78(5).

- any person requesting that the pre-hearing panel deem them to be a relevant person;
  - any person who appears to the reporter to have or recently have had significant involvement in the upbringing of the child.
- 8.3 The chair may permit others to attend under section 78(2) if the chair considers their attendance to be necessary for the proper consideration of the matter before the hearing or if the child or relevant persons do not object. There are therefore three categories of person who may attend a pre-hearing panel:
- those with a right under section 78(1);
  - those permitted by the chair under section 78(2) because their attendance is necessary for the proper consideration of the case;
  - those permitted by the chair under section 78(2) for other reasons, provided the child or relevant persons do not object.
- 8.4 Under rule 19, the child, relevant persons or an individual who wants to be deemed a relevant person, may request to attend the pre-hearing panel by way of telephone, video link or using other method of communication. If the reporter is satisfied that the person so requesting has good reason for not attending in person, SCRA must take all reasonable steps to enable the person to attend by the requested method.
- 8.5 Rule 19 also applies where a children's hearing is dealing with pre-hearing panel matters.
- 8.6 The reporter is not to regard simple inconvenience, or simple preference for attending by electronic or other remote means, as good reason for not attending in person. Illness, disproportionate travel or other arrangements, or other exceptional difficulties in attending in person are likely to be good reason for not attending in person.
- 8.7 If the duty on SCRA is triggered, the reporter is to ascertain whether the facilities exist to enable the person to attend by the requested means. This may include changing the venue for the pre-hearing panel provided adequate notice can be given to all those with a right to attend and no inconvenience would be caused to those persons or to panel members. The reporter must be satisfied that the place from which the person will be remotely attending the pre-hearing panel is adequately secure and that no other person can access the proceedings without the knowledge of the chair and other persons present in person at the pre-hearing panel. This will generally require the person attending by remote means to be in an SCRA office or to be in the office of another agency which can confirm adequate security is in place. Reporters should refer to Practice Direction 13 on Attendance at Hearings.

## **9. NOTICE OF DETERMINATION**

- 9.1 Rule 50 requires that as soon as practicable after the pre-hearing panel the reporter must give notice of any determination of the pre-hearing panel (of whether or not a person should be deemed, or should continue to be deemed,



to be a relevant person and any other matter referred to the pre-hearing panel) and the reasons for that determination to:

- the child,
- each relevant person,
- any appointed safeguarder, and
- the chief social work officer of the relevant local authority for the child.

This notice must also give notice of the relevant rights of appeal under section 160 of the Act.

- 9.2 Where the pre-hearing panel has determined that an individual
- (i) is no longer to be deemed to be a relevant person, or
  - (ii) is not to be deemed a relevant person, as soon as practicable after the pre-hearing panel, the reporter must give notice of the determination and the reasons for the determination to the individual. This notice must also give notice of the relevant rights of appeal under section 160 of the Act.
- 9.3 Where the pre-hearing panel has determined that an individual is to be deemed a relevant person, as soon as practicable after that determination the Reporter must give that person all information which is to be given to each relevant person. (Rule 51)
- 9.4 Notice of a pre-hearing panel determination that a child or relevant person has been excused from attending all or part of the children's hearing must also inform the child and relevant person, as the case may be, that they:
- have the right to attend the hearing and
  - have the right to request that the reporter make arrangements to enable them to attend the hearing or part of the hearing by way of telephone, video link or any other method of communication. (Rule 50(5))
- 9.5 Where a children's hearing deals with a pre-hearing panel matter of whether
- (i) a particular individual should continue to be deemed a relevant person in relation to the child, or
  - (ii) a particular individual should be deemed to be a relevant person in relation to the child, the reporter is to notify the outcome of that particular decision as soon as practicable. This is because any appeal against that determination must be made before the expiry of 7 days beginning with the day on which the determination is made. Details of who should be notified are set out in Practice Direction 14 - Notifications and Papers.

## **10. NOTICE OF DETERMINATION AFFECTING LEGAL AID**

- 10.1 Where a pre-hearing panel has determined that it is likely that a children's hearing will consider making a compulsory supervision order or interim compulsory supervision order with a secure accommodation authorisation, the reporter must, as soon as possible after the determination, notify the Scottish Legal Aid Board of that fact and of the name and address of the child. Rule 50(6)

- 10.2 Where a pre-hearing panel has determined that a child or any relevant person requires to be represented by a solicitor or counsel to effectively participate in the children's hearing and it is unlikely that the child or relevant person will arrange to be so represented, the reporter must as soon as possible after the determination, notify the Scottish Legal Aid Board of that fact and of the name and address of the child or relevant person. (Rule 50(7)).

## **11. APPOINTMENT OF SAFEGUARDER**

- 11.1 Under rule 56, where a pre-hearing panel appoints a safeguarder, the reporter must inform the safeguarder of the date, time and place (if known) of the next hearing to be held in relation to the child and provide the safeguarder with information as soon as practicable before the intended hearing date. The information to be provided is all the information being provided to the children's hearing, the decision and reasons of the pre-hearing panel (or children's hearing), including the reasons for the appointment of a safeguarder.

## **12. RELATED MATERIALS**

Practice Direction 4 - Non-Disclosure  
Practice Direction 14 - Notifications and Papers  
Practice Direction 20 – Secure Accommodation  
Practice Direction 22 – Legal Aid

## APPENDIX 1 - Style for Providing Extracts of Documents for PHP

### PHP Papers Form

Papers for the Choose an item.

On: Click here to enter a date.

Name of Child: Click here to enter text.

Date of Birth: Click here to enter text.

Purpose of Pre-Hearing Panel/Pre-Hearing matter to be considered:

- To consider whether Click here to enter text. should continue to be deemed to be a relevant person.  
Statutory Criteria
  - *The person does not have (and has not recently had) a significant involvement in the upbringing of the child*
- To consider whether to deem Click here to enter text. to be a relevant person.  
Statutory Criteria
  - *The person has, or has recently had, a significant involvement in the child's upbringing*
- To consider whether the child should be excused from attending the children's hearing.  
Statutory Criteria
  - *the hearing relates to a ground in section 67(2)(b), (c) (d) or (g) and the attendance of the child at the hearing is not necessary for a fair hearing,*
  - *the attendance of the child at the hearing would place the child's physical, mental or moral welfare at risk, or*
  - *taking account of the child's age and maturity the child would not be capable of understanding what happens at the hearing*
- To consider whether a relevant person Click here to enter text. should be excused from attending the children's hearing.  
Statutory Criteria
  - *it would be unreasonable to require the relevant person's attendance at the hearing, or*
  - *the attendance of the relevant person at the hearing is unnecessary for the proper consideration of the matter before the hearing.*
- To consider 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

The Pre-Hearing Panel has been arranged/pre-hearing matter referred to the children's hearing:

- On the children's reporter's own initiative
- Following a request by Click here to enter text. and the request is attached

The following information is provided from the records held by the children's reporter: *(Insert information, for example "The child has been subject to a CSO since ..."* **Please number each separate item.**)

[Click here to enter text.](#)

The following extracts from reports are attached/provided below: *(Insert description, for example "Extract from social work/safeguarder report dated ..."* **Please number each separate item.**)

[Click here to enter text.](#)

The following information has been submitted to the reporter for the consideration of the Pre-Hearing Panel/Children's Hearing: *(Insert description, for example: Letter from Mrs B, child's mother – attached...."* **Please number each separate item.**)

[Click here to enter text.](#)

The children's reporter has received the following representations in advance of the Pre-Hearing Panel/Children's Hearing: *(Insert notes, for example, Note of representation made by Mr B, child's father, to the reporter on .... "....." – attached"* **Please number each separate item.**)

[Click here to enter text.](#)

## Summary of Case Practice Enquiry

### 1. Further Consideration of whether to Deem as a Relevant Person

Where a PHP or hearing decides not to deem a person to be a relevant person, and the person makes a further request for a PHP during the same set of proceedings, the reporter should not arrange a PHP. The matter has been determined by the PHP or hearing and an appeal is the appropriate route if the person is not satisfied with the decision. There may be exceptional circumstances where we would consider arranging a further PHP, for example if there was a significant change of circumstances during very lengthy proceedings. However, such circumstances are unlikely to arise and require consultation with the senior practitioner and Practice Team.

Although the reporter has not arranged a PHP, the person (if present at the hearing) may ask the hearing to consider deeming him/her to be a relevant person. If so, the reporter is to express the view that it is not appropriate for the hearing to consider the request. However, the hearing will of course be free to form its own view.

However, there may be exceptional circumstances where it would be unfair for a hearing to not consider a request made at hearing even although a PHP has already determined the issue. This would arise where the person was not notified of the PHP nor the outcome of the PHP, thereby rendering the appeal route in effect unavailable.