



SCOTTISH
CHILDREN'S REPORTER
ADMINISTRATION

Practice Direction 33

Participation Rights and Legislative Changes in July 2021

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A. Introduction

1. This practice direction relates to the legislative changes made from 26 July 2021 by virtue of the:
 - [Children \(Scotland\) Act 2020](#), which amends the Children’s Hearings (Scotland) Act 2011 (the 2011 Act), and
 - [The Children’s Hearings \(Scotland\) Act 2011 \(Rules of Procedure in Children’s Hearings\) Amendment Rules 2021](#), which amends The Children’s Hearings (Scotland) Act 2011 (Rules of Procedure in Children’s Hearings) Rules 2013 (the Rules of Procedure).
2. Any references to section numbers or rules in this Practice Direction are references to sections of the 2011 Act and rules in the Rules of Procedure.
3. Although the changes relate to various areas of reporters’ practice, they have been brought together into one practice direction for ease of reference. In time, the relevant individual practice directions (e.g. Practice Direction 12 on Pre-hearing Panels) will be amended to reflect the messages in this Practice Direction. Until those amendments are made, this Practice Direction is to be followed wherever it conflicts with any other Practice Direction.

B. Participation Rights for individuals who are not relevant persons

Participation Rights

4. As a result of the changes, certain individuals who are not relevant persons¹ are to be given the rights listed in section 79(5ZA) of the 2011 Act (the “participation rights”):
 - to be notified of a children’s hearing
 - to provide a report or other document for the hearing
 - to be given certain documents (specified separately in the Rules of Procedure)
 - to be authorised by the chair to attend the hearing
 - to be represented at the hearing.In this Practice Direction, any individual who has these participation rights is referred to as a “participation individual”.
5. The participation rights apply to all children’s hearings 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, suspension hearings, CPO advice hearings, criminal advice hearings or ASB advice hearings.

¹ Reporters must always be alert to identifying persons who appear to have a significant involvement in the upbringing of the child. This may include siblings.

Any directions in this Practice Direction relating to participation individuals only apply when the children's hearing is one in which someone may have participation rights.

6. A participation individual has rights to require a review hearing (see sections H and I below). However, a participation individual does not have any right to appeal against a decision of a children's hearing. Nor is there any right to appeal (for anyone) against the decision of a PHP or children's hearing about whether a person meets the participation criteria.

Participation criteria

See Appendix 3 for flowchart

7. Rule 2A states 4 criteria (the "participation criteria") that must be met in order that a person has the participation rights:
 - (a) the individual is living with or has lived with the child;
 - (b) there is an ongoing relationship with the character of a relationship between siblings (whether or not there is a parent in common);
 - (c) the hearing is likely to make a decision significantly affecting contact or the possibility of contact; and
 - (d) the individual is capable of forming a view on the matter of their contact.

8. There are 2 routes by which a person can acquire the participation rights:
 - The reporter is satisfied that the person meets the participation criteria.
 - A person requests a PHP and the PHP (or children's hearing dealing with PHP matters) decides that the person meets the participation criteria – if the individual requests a PHP for this purpose, the reporter must arrange one (see paragraph 18 below).

Whether the decision is being made by the reporter, PHP or children's hearing, the question of whether a person meets the participation criteria is a factual one. The welfare principle in section 25 does not apply to the decision.

9. When arranging a children's hearing for any child, the reporter is to consider whether there is any individual who meets the participation criteria and so should have participation rights at the hearing. In doing so, the reporter is to:
 - Take account of information from the child's social worker or from any other source about:
 - Whether the child has any siblings or other people who have a sibling-type relationship with the child
 - Whether those people have ever lived with child
 - The details of the child's current contact with those individuals (whatever the basis of those arrangements) of any kind
 - The social worker's assessment of whether any different arrangements should be in place, and any recommendation².

² Localities are agreeing with their local authorities a format for the provision of this information.

SCRA's preference is for the information about each individual to be provided on a separate form. The form can then be included in the hearing papers (see paragraphs 26 and 27 below). The form is likely to include information relevant to the hearing's decision making (in considering whether a contact

- Inform the child's social worker when the reporter considers that an individual meets the participation criteria.
10. Where the reporter arranges for children from the same family to attend the same hearing, the reporter still requires to consider whether each child meets the participation criteria in relation to the other children in the family. However, if the reporter has decided it is appropriate to arrange for the children to attend the same hearing (for example, as they're at home together or in the same placement), it's unlikely that criterion (c) will be met in relation to them (that the hearing is likely to make a decision significantly affecting contact or the possibility of contact).
 11. The reporter is to record their conclusion about whether the following individuals meet the participation criteria, and also reasons for the conclusion if the individual does not meet the criteria:
 - any known sibling of the child, and any person who may have an ongoing sibling-type relationship with the child, unless:
 - the sibling/individual is currently living with the child and there is no recommendation from the local authority that the child move elsewhere, away from the sibling/individual;
 - any other person who was previously treated as a participation individual at the time of the last substantive decision.

Where an individual is assessed as meeting the criteria, the recording of the conclusion will be in the Description field in the Connections grid in CSAS. Where an individual listed above is assessed as not meeting the criteria, the conclusion and reasons are to be recorded in the 'additional info' tab on the child's Contacts screen.

12. As criterion (a) requires that the individual is living with or has lived with the child, it will not be met where a sibling or other individual has never lived with the child. An example of where this criterion is not met is where the child is made the subject of a child protection order at birth, and never lives with their parents or older sibling. It will include a situation where the individual has lived with the child in a shared care arrangement³.
13. In relation to criterion (b), whether there is an ongoing relationship with the character of a relationship between siblings:
 - Where the other person is a sibling of the child and they have an ongoing relationship, the reporter is to presume that the relationship has "the character of a relationship between siblings" unless specific information says otherwise.
 - Where the other person is not a sibling of the child and they have an ongoing relationship, the reporter will require adequate information in order to reach the conclusion that the relationship has "the character of a relationship between siblings" and is not simply a friendship. It is most likely to arise when the person has been brought up in a family together, but may arise in other situations.

direction is required – see section J below) as well as information relevant to whether the participation criteria are met.

³ For example, for part of every week, a child's half-brother lives with the child and their mother, and for part of the week the half-brother lives with his father.

14. In assessing criterion (c), whether the “hearing is likely to make a decision significantly affecting contact or the possibility of contact”:
- The reporter is to consider a decision to be one “significantly affecting contact or the possibility of contact” if:
 - The decision being recommended by the local authority is likely to have the effect of significantly changing the current contact arrangements, whatever the basis for those arrangements (contact direction, family or local authority arrangements)
 - OR
 - Although the local authority is not recommending a decision that would significantly change the current contact arrangements, whatever their basis, the individual, the child or a relevant person wants the hearing to make such a decision (or wants the arrangements to be significantly different).
 - The reporter is to consider the significance of the decision’s effect on contact from the perspective of the individual and the child. Changes in frequency, duration, and the degree of supervision are likely to be significant from their perspective. However, this list is not exhaustive: such things as a change in venue for contact or a loss of informal contact at school may be significant in some circumstances.
 - In considering whether a decision significantly affects contact, it is unlikely to be relevant that the decision is an interim one.
 - Although the effect on contact can be positive (e.g. increasing contact) or negative (e.g. reducing contact), the reporter is not to consider criterion (c) as being met if the likely decision is that the child and the individual will resume residing together (e.g. the recommendation is for the child to return home and the sibling is also at home or the recommendation is to place the child in the same place as the sibling).
15. In assessing criterion (d), whether “the individual is capable of forming a view on the matter of their contact” the reporter is to do so in the light of the individual’s capacity to make use of the participation rights: to attend the hearing and participate in it; to provide a report or other document to the hearing; to understand the notification from the reporter, and to instruct a representative. Where a sibling would be unable to exercise the participation rights the reporter is not to consider criterion (d) as being met. Where an individual does not meet this criterion, there are other routes by which a hearing may be provided with information about the individual and their contact, for example through the child’s social worker or a safeguarder.
16. In considering whether an individual meets the participation criteria, the reporter and pre-hearing panel must have regard to the views of the child (who is the subject of the children’s hearing) and any relevant person⁴ as to whether an individual meets the participation criteria. There is no need for

⁴ Rule 2A

the reporter to proactively seek these views, only to take account of any information about them which is provided.

17. When a person meets the participation criteria and is given the participation rights, they will retain the participation rights until a substantive decision is made. When a further children's hearing is arranged after that substantive decision, the reporter is to:
 - consider again whether the person continues to meet the participation criteria;
 - record their conclusion in the Description field in the Connections grid in CSAS;
 - record their reasons in the Description field where they decide that the person no longer meets the participation criteria (there is no requirement to record any reasons where the reporter concludes the person still meets the criteria).

However, where the person who had participation rights at the previous hearing that made a substantive decision then requests a review of the CSO⁵, that person is to be treated as someone who meets the participation criteria and so has the participation rights at the review hearing to be arranged⁶.

C. Pre-hearing panels and PHP matters at a children's hearing considering whether the participation criteria are met

18. If someone who does not have participation rights requests a PHP to consider giving them those rights, the reporter must arrange the PHP⁷. Only the individual can make the request, not the child or any relevant person. It will then be for the PHP to decide whether or not the person meets the participation criteria. If the PHP decides that the person meets the participation criteria, that person will have the participation rights and will be a participation individual.
19. However, if on receiving a request for a PHP, the reporter then considers that the person meets the participation criteria, the reporter is to treat the person as a participation individual and is not to arrange a PHP. Therefore, a PHP is only be required where an individual wants the question of whether they meet the participation criteria considered, but the reporter does not think the criteria apply.
20. In relation to the PHP, the individual who requested it:
 - has the right to attend the PHP;
 - has the right to request that the reporter takes all reasonable steps to enable them to attend the hearing by way of telephone, through video link or by using any other method of communication;
 - may make oral or written representations to the PHP in relation to whether they meet the participation criteria; and

⁵ Section 132(6). See paragraph 40 in relation to these reviews.

⁶ Section 132(7).

⁷ Section 79(2)(ba)

- may give any report or other document relevant to that matter for the consideration of the hearing⁸.
21. Where it is not practicable to have a PHP before the date of the children’s hearing, the children’s hearing must consider the PHP matter at the beginning of the children’s hearing⁹. The individual who requested the PHP:
- has the right to attend the part of the children's hearing that is considering their request;
 - has the right to request that the reporter takes all reasonable steps to enable them to attend the hearing by way of telephone, through video link or by using any other method of communication;
 - may make oral or written representations to the hearing in relation to whether they meet the participation criteria and should be given participation rights; and
 - may give any report or other document relevant to that matter for the consideration of the hearing¹⁰.
22. The notifications for a PHP are listed in Appendix 1.
23. A children’s hearing or PHP (arranged for any purpose) must also determine whether someone meets the participation criteria if:
- That person is present at the hearing¹¹ or PHP; and
 - The person, the child or any relevant person requests that they be given the participation rights¹².
- The exception to this is where the children’s hearing is one at which participation rights do not apply (see paragraph 5 above). In these hearings, no request can be considered.
24. When a PHP is arranged with a purpose to decide whether or not a person meets the participation criteria (or the PHP matter is referred to a hearing), the reporter is to give that person any information in the PHP papers that is relevant to the consideration of that decision. As with any PHP, there are 4 categories of information that the reporter may include in the PHP papers:
- information from the records held by the reporter;
 - reports or extracts from reports;
 - written information submitted to the reporter for consideration by the PHP;
 - oral representations made to the reporter in advance of the PHP.

⁸ Rule 48B

⁹ Section 80(3).

¹⁰ Rule 52A

¹¹ The person will only be “present at the hearing” or PHP if they are in the hearing room or have joined the hearing by electronic means. If they are waiting to be permitted to attend by the hearing chair (e.g. in the waiting room), it will be for the chair to decide whether to allow them to join the hearing for the purposes of this request being made. Although it will be a matter for the chair in terms of fairness, it is likely that the fair approach will be to allow the person to join the hearing.

¹² Rule 55A in relation to children’s hearings. Rule 48A in relation to PHPs.

A separate PHP Papers Form has been created for use where the purpose of the PHP is to consider whether someone meets the participation criteria¹³. It is available at Appendix 2.

D. Notification and papers for a participation individual at a children's hearing

25. The reporter is to notify a participation individual of a children's hearing by sending them the appropriate notification (see Appendix 1). This notification contains the matters required by Rule 23A:

- confirmation of the participation individual's right to attend the hearing in accordance with rule 19 (see paragraph 33 below)
- information on the means by which the participation individual may express their views to the hearing
- confirmation of the participation individual's right to give any report or other document for the consideration of the hearing.

A participation individual is not entitled to be notified of a PHP (other than the PHP to make the initial consideration of whether the person meets the participation criteria).

26. The participation rights of a participation individual include the right to be given certain documents. Prior to any children's hearing at which a participation individual has participation rights, the reporter must give the following papers to the participation individual:

- A copy of any contact direction that regulates contact between the participation individual and the child.
- Any information in the hearing papers that is about:
 - the participation individual,
 - contact between the child and the participation individual, or
 - how contact or the possibility of contact between the child and the participation individual may be affected by a decision of the children's hearing¹⁴.

Where the papers to be sent to the participation individual include any contact direction between that person and the child, the reporter is to also send a copy of the hearing's reasons for making that contact direction.

However, the reporter must not send the participation individual a copy of the statement of grounds or any information from the statement of grounds¹⁵.

27. The reporter must give the participation individual this information in the hearing papers regardless of who provided it and whether it is contained in a separate document (for example a separate document submitted by the

¹³ The same PHP Papers Form is to be used where the PHP matter is consideration of the criteria for a section 132A review hearing – see Section H.

¹⁴ Rule 26(5).

¹⁵ Rule 26(6).

social worker along with the main social work report)¹⁶ or contained within a report or other document. Where the information is contained within a report or other document, the reporter is to extract that information (either by redacting the remainder of the document or extracting into a separate document) in order to send it to the participation individual¹⁷.

28. The statutory provisions should ensure that the participation individual has adequate information to be able to participate in the decision-making process to a sufficient degree. However, if need be, it would be open to the chair to give additional information verbally or exceptionally, the hearing could defer and direct the reporter to provide information from the hearing papers in writing under rule 61(1)(g).
29. If a children's hearing makes a contact direction in relation to a participation individual, the reporter must give the individual a copy of the direction and the reasons for the direction¹⁸. This will be done by creating a separate version of record of proceedings that only includes the relevant decision to make a contact direction in relation to the participation individual, and the reasons.¹⁹
30. If the hearing does not make a contact direction, there is no statutory requirement to give the participation individual any information. However, if the participation individual provides their views to the hearing (whether by attending the hearing or providing written views), the reporter is to inform them in writing that no contact direction was made about their contact. The reporter may also include any information in the hearing's reasons relevant to why a contact direction wasn't made or to the expectations about how contact will operate. However the inclusion of such information should take place only if the information is particularly significant and the individual is unlikely to learn of it from another source²⁰.
31. Similarly, where a hearing defers a decision, there is no statutory requirement to notify the participation individual of that outcome (although they will be notified of the deferred hearing). However, the reporter may notify the participation individual of the decision to defer if appropriate in the particular circumstances (for example, the deferral is likely to be for a long period).
32. Where someone is a participation individual (whether by virtue of a decision of a reporter, PHP or children's hearing) the reporter is always to send a hearing notification to that person. However, where the participation

¹⁶ Localities are agreeing with their local authorities an agreed format for the provision of the information by a social worker about a participation individual. SCRA's preference is for the information about each individual to be provided on a separate form – this will mean it is easier to extract the information about the participation individual in order to send it to that individual.

¹⁷ Where a report writer provides duplicate information about the participation individual, both in the main body of their report and in a separate document, it is not necessary to extract the information from the main body of the report. The reporter will fulfil their duty to provide the participation individual with the required information if they send the information as contained in the separate document.

¹⁸ Rule 88A.

¹⁹ The letter to be used for notifying a participation individual of a hearing's decision is a single letter for all relevant hearing or PHP decisions.

²⁰ There is a separate letter to be used for the purposes of notifying a participation individual that no contact direction was made (see appendix 1).

individual has notified the reporter in writing that they do not want to receive any papers for the hearing, the reporter is not to send them papers. When notifying the participation individual of a children's hearing, the reporter is to send a letter explaining that they have a right to receive some papers for the hearing, that the papers are not enclosed because of their request, but they will be sent if they ask for them. This approach is the same as that adopted for relevant persons who make a similar request²¹.

E. Attendance of a participation individual at a children's hearing

33. A participation individual has a right to attend a children's hearing. However, it is for the chair to decide when the attendance of the participation individual starts and finishes. In particular, the participation individual is authorised to attend for a period:

- beginning at the time the chair considers appropriate; and
- ending when the chair decides that the individual's attendance is no longer necessary for the proper consideration of how a decision of the hearing may affect contact or the possibility of contact between the individual and the child²².

The purpose of the attendance is to enable the hearing to properly consider how a decision may affect contact. This does not mean the individual necessarily requires to be present for all consideration of how a decision may affect contact – nor that the individual be present when the hearing makes its decisions (by definition the hearing is no longer considering the matter and therefore the authorisation to attend under the participation rights should have ended).

34. Although it is for the chair to decide when to authorise a participation individual to attend, at some point during the hearing the chair must allow them to do so. This remains the case even where it is likely that the hearing will defer for a procedural reason (for example, for the attendance of a relevant person)²³.

35. During the time that the participation individual attends the hearing, they may be accompanied by a representative. The representative does not have an independent right to attend the hearing in the absence of the participation individual²⁴.

36. To assist the chair in managing attendance at the children's hearing (not just attendance by a participation individual), at the start of the hearing, the reporter is to bring into the hearing room only those with a right to attend from the beginning of the hearing²⁵ and a social worker for the child. At

²¹ In paragraph 8.3 of Practice Direction 14.

²² Rule 19(2)

²³ The decision to defer may impact on contact so the participation individual should be in attendance for proper consideration of the impact on contact if the hearing were to defer.

²⁴ Rule 20

²⁵ Generally this will be the child, the relevant persons, any representatives of the child and relevant persons, and any safeguarder. However, it may include a person whose request to be deemed a

some point during the hearing, the chair must allow the participation individual to attend for the consideration of how a decision of the hearing may affect their contact or the possibility of contact with the child. It will be for the chair to decide on the extent to which the participation individual's attendance is necessary for this purpose. See paragraph 73 below for further direction in relation to attendance at a children's hearing.

37. Although a participation individual has a right to be authorised by the chair to attend a hearing, they have no duty to attend. If a participation individual does not attend, it is very likely to be fair for the hearing to proceed. The participation individual's rights are protected by the right to request a review under section 132A (see Section I below). Exceptionally, if the reporter is aware of particular circumstances that indicate there is an unfairness in proceeding, the reporter is to inform the hearing of these circumstances. It will be for the hearing to decide how to proceed. The reporter is to ensure the panel members are aware of section 132A if there appears to be any doubt.
38. Where someone does not have a right to attend a children's hearing, the chair may permit them 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. This power to permit attendance applies even where a person also has participation rights or is their representative – although the right of the participation individual and their representative to attend the hearing is only in relation to their contact with the child, the chair may permit either or both of them to attend for more of the hearing if satisfied the requirements of section 78(2) are met.

F. Other people who have established family life with the child

39. In addition to participation individuals who now have the participation rights, the reporter is to facilitate the participation in a children's hearing of anyone who has (i) established family life and an ongoing relationship with the child and (ii) sufficient age and maturity to participate in the hearing where:
 - the hearing is likely to make a contact direction about them in a CSO, ICSO or interim variation where there is no existing contact direction about them or making a different contact direction, or
 - the person has made clear²⁶ that they want the hearing to consider their contact with the child²⁷.
40. In order to facilitate their participation, the reporter is to:
 - Invite the person to the hearing using the style letter (here).
 - Invite the person to submit written views in advance.
 - Include any written views within the hearings papers.

relevant person is to be considered as a PHP matter at the hearing or a person who has requested to be treated as a participation individual. It will not include someone who is only a participation individual.

²⁶ This should be in writing if there is sufficient time.

²⁷ This may include a sibling who does not meet the participation criteria, for example because they have never lived with the child but do have established family life and an ongoing relationship.

- If the person responds to the invitation in some way but is not present in the hearing for the decision about their contact, tell them in writing the terms of the contact direction if one was made or tell them that no contact direction was made about their contact.

In exceptional circumstances, the reporter may also provide this person with information from the reasons for decision (or for why a contact direction was not made). This may be appropriate for example where the reasons provide additional information about the expected operation of any contact.

41. Where someone does not have a statutory right to attend a children's hearing, the chair may permit them 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. Where the reporter has invited someone to the hearing as described above, it is for the chair to decide on the extent to which their attendance is necessary, if any.
42. Within the hearing, the chair may disclose to the person relevant information from the hearing papers about any recommendation as to the person's contact and the reasons for the recommendation. If the chair does not do so and it appears the person is otherwise unaware of relevant information available to the hearing, the reporter is to intervene to highlight the issue of fairness.
43. If the hearing considers the person requires to receive a copy of any information from the hearing papers in order to be able to participate in the decision-making process to a sufficient degree, the hearing may consider deferring and directing the reporter to provide the information under rule 61(1)(g).
44. If in any particular case the reporter considers that more extensive action by the reporter would be appropriate to facilitate a person's participation in a hearing, the reporter is to contact the Practice Team. For example, this might include providing information from the hearing papers in advance or providing the hearing's decision and/or reasons, direct.

G. Participation of participation individuals and others with established family life in applications to the sheriff for an interim compulsory supervision order

45. The legislative changes from 26 July 2021 only apply to children's hearings. They do not apply to applications to the sheriff for an ICSO and therefore participation individuals have no rights in relation to the application to the sheriff. However, as with children's hearings, the reporter is to take steps to facilitate the participation of people other than relevant persons in a court application for an ICSO.
46. In particular, in a court application for an ICSO the reporter is to facilitate the participation of anyone who has (i) established family life and an ongoing relationship with the child and (ii) sufficient age and maturity to participate in the proceedings where:

- the sheriff is likely to consider including a contact direction about them in the ICSO where there is no existing contact direction about them or to making a different contact direction, or
- the person has made clear²⁸ that they want the sheriff to consider their contact with the child²⁹.

This will include people who have had participation rights in the children's hearings that made the previous ICSOs.

47. In order to facilitate their participation, the reporter is to
- Tell the person in writing of the application and the calling date.
 - Provide the person with the details of the contact direction being sought and any supporting information in the application, or provided subsequently to the court, relating to that.
 - Invite the person to provide written submissions which the reporter will make available to the court.
 - Tell the person in writing the outcome of the application relating to their contact including any verbal or written reasons provided by the sheriff.
- The reporter may inform the individual that they may choose to provide written submissions direct to the court rather than via the reporter and to seek an opportunity to make oral submissions.

It is open to the sheriff to order formal intimation of the ICSO application on an individual (Form 65B), to order the reporter to provide information to the individual in advance of the hearing of the application and to order formal intimation of any ICSO made, varied or extended by the sheriff (Form 65E). It is thought such orders will rarely be necessary, but the reporter's position if they are raised will depend on the particular circumstances of the case.

If in any particular case the reporter considers that more extensive action by the reporter would be appropriate to facilitate a person's participation in an application for an ICSO, the reporter is to contact the Practice Team.

H. Participation individual's right to request a review hearing

48. If a person had participation rights at the time of the last substantive decision to make, continue or vary a CSO (or at any deferred hearing prior to the substantive decision), they may require a review of the CSO after 3 months³⁰.
49. This right is identical to that of the child and any relevant person to require a review after 3 months. When the participation individual has required such a review, the reporter must arrange the review hearing³¹. For the purposes of that review hearing (and any deferred hearing), the person will be treated as having the participation rights and will be a participation individual³².

²⁸ This should be in writing if there is sufficient time.

²⁹ This may include a sibling who does not meet the participation criteria, for example because they have never lived with the child.

³⁰ Section 132(3A)

³¹ Section 137(2)

³² Section 132(7)

I. Other new rights to request a review hearing

See Appendix 3 for Flowchart

50. Someone may require a review hearing where they claim that the criteria in section 132A apply. These are:
- that they did not attend the children's hearing that made the last substantive decision to make, continue or vary a CSO;
- AND either:
- *Where they did not have participation rights at the last hearing:*
 - That no determination was made at the time by a PHP or hearing about whether they met the participation criteria.
 - The reporter didn't consider the issue or thought the criteria were not met.
 - If a PHP or hearing had considered the issue, it is more likely than not that it would have decided the participation criteria were met³³.
- OR
- *Where they did have participation rights at the last hearing* (whether by virtue of a decision of the reporter, PHP or children's hearing) - they were not able to participate properly in the children's hearing's decision making as a result of:
 - a material failure to treat the individual, or any representative of the individual, in accordance with the rules³⁴, or
 - exceptional circumstances³⁵.
51. Where the person claims the criteria in section 132A are met, the reporter must arrange the review hearing³⁶. There is no time constraint in relation that review hearing – it can be arranged prior to the expiry of 3 months from the last hearing.
52. If it is not clear whether the person requesting the review is claiming that the criteria in section 132A are met, and the reporter thinks the criteria might not be met, the reporter is to check with the person.
53. If the reporter is not satisfied that the person claiming to meet the criteria in section 132A does meet the criteria, the reporter must arrange a PHP³⁷. It is then for the PHP to decide whether the person meets those criteria³⁸. The possible outcomes of that PHP are:

³³ Section 132A(3)

³⁴ An example of this might be the reporter failing to notify the participation individual of the hearing, or the chair failing to allow them to attend any of the hearing.

³⁵ Section 132A(4)

³⁶ Where the reporter decides to arrange a PHP as they do not consider that the criteria in section 132A are met, the reporter need only make initial arrangements for the review hearing by scheduling it in CSAS and Outlook. The reporter may delay sending formal notifications of the hearing until after the PHP has taken place. The reporter may also delay requesting reports for the review, though must be alert to being able to obtain them in time for the scheduled review if it does take place.

³⁷ Section 79(2)(bb)

³⁸ Section 81B.

- If the PHP decides that the person meets the criteria in section 132A, the review hearing will proceed as arranged.
 - If the PHP decides that the person does not meet the criteria in section 132A and there is no other reason for the review hearing to proceed³⁹, the PHP must discharge the review hearing that has been arranged.
54. The notifications for a PHP are listed in Appendix 1 of this practice direction. Where a PHP decides that the person does not meet the criteria in section 132A, the reporter is to notify the person of that decision.⁴⁰
55. The reporter is to include in the PHP papers any information that is relevant to the consideration of the matter at the PHP i.e. whether the person meets the criteria in section 132A. As with any PHP, there are 4 categories of information that the reporter may include in the PHP papers:
- information from the records held by the reporter;
 - reports or extracts from reports;
 - written information submitted to the reporter for consideration by the PHP;
 - oral representations made to the reporter in advance of the PHP.

A separate PHP Papers Form has been created for use where the purpose of the PHP is to consider whether someone meets the criteria for a review under section 132A⁴¹. It is available at Appendix 2

An additional category of information is also available on the Form: information about the reporter's recollection, to be used only where the reporter at the hearing has relevant information not otherwise available from records. This is most likely to arise where the person requesting the review is claiming a material failure by the reporter or the previous hearing to act in accordance with the rules and the reporter directly involved at the time has a recollection of events contrary to the claim and such information is not contained within a formal record. Such information may also be provided by giving it verbally in the hearing (with the permission of the chair).

The reporter is to give the individual a copy of these PHP papers (but not information in the papers relating to any other PHP matter).

J. Children's hearing's duty to consider a contact direction

56. When making, varying or continuing a CSO, a children's hearing must consider whether to make a contact direction in relation to the following persons (provided the child does not reside with them):
- a relevant person
 - a sibling

³⁹ Other reasons for the review hearing to proceed could be because the review has been required by the local authority.

⁴⁰ Using the outcome letter that is to be used for notifying all outcomes relating to participation individuals.

⁴¹ The same PHP Papers Form is to be used where the PHP matter is consideration of the participation criteria.

- any other person with whom the child has resided and with whom the child has an ongoing relationship with the character of a relationship between siblings⁴².

Two people are siblings if they have at least one parent in common⁴³.

57. It is important to note that this duty on a children's hearing in relation to a contact direction extends to a wider group of people than will meet the participation criteria and will have participation rights. As a result, there will be situations where the social worker provides information for the children's hearing on a sibling's contact with the child (likely in a separate document), even though that sibling does not meet the participation criteria and is not a participation individual.
58. In making this decision about a contact direction, the children's hearing is required to apply the usual welfare principle in relation to the child who is the subject of the hearing, regarding the need to safeguard and promote the welfare of that child throughout the child's childhood as the paramount consideration. A contact direction should be made only if making the measure would be better for the child than not making the measure⁴⁴. The duty to consider whether to make a contact direction does not create a presumption that a contact direction should be made.
59. It is possible that the hearing may make a contact direction that conflicts in some way with an order in relation to a sibling or a person with a sibling-type relationship. The reporter at the hearing should be aware of the terms of any existing contact direction affecting contact between the child and the individual and intervene to inform the hearing if it is not otherwise aware. However, it is for the hearing to decide what decision to make and it is not obliged to avoid any conflict. If the decision results in conflict between orders, it will be for the local authority to deal with the situation and may involve the local authority requiring a review of the other order.
60. There is no change to the usual practice of the reporter only recording a decision to make a contact direction – the reporter is not to record a decision “not to make a contact direction with X” even though such a direction was requested.⁴⁵

K. Additional powers to exclude a person

61. There are two additional powers to exclude someone from a children's hearing or PHP. These are in addition to the powers to exclude in sections 76 and 77 (referred to in section 5 of Practice Direction 13 on Attendance at Hearings). As a result of these additional powers to exclude, the existing power in rule 59 to exclude a relevant person from a grounds hearing has been removed.

⁴² Section 29A

⁴³ Section 29A(5)

⁴⁴ Where the hearing agrees with the arrangements that will be in place without a contact direction, a contact direction is unlikely to be necessary even where the child, a relevant person or an individual do not agree with the arrangements.

⁴⁵ If the chair wishes to record anything about consideration of a contact direction, the most appropriate place is under the main decision of the hearing.

62. The chair may exclude a relevant person, their representative, or a representative of a newspaper or news agency if:
- their presence is preventing, or likely to prevent, the hearing or PHP obtaining views of a relevant person, or
 - is causing, or likely to cause, significant distress to a relevant person attending the hearing⁴⁶.
63. The chair of a children’s hearing or PHP may exclude any person whose conduct is violent or abusive or otherwise so disruptive that, unless excluded, the chair would consider it necessary to end or adjourn the hearing or PHP^{47 48}.
64. Exclusion may take place at any stage of the hearing and for as long as is necessary. After the exclusion has ended, the chair must explain to the excluded person what has happened in their absence⁴⁹.
65. The power to exclude a person who has a right to attend the hearing cannot be exercised before the hearing begins. The person retains the right to attend the hearing until the decision is made to exclude them. The person must be allowed to enter the hearing room unless they have voluntarily agreed not to do so (see paragraph 5.9 of Practice Direction 13).

L. Allowing attendance by electronic means only

66. A PHP can decide that a person may attend a children’s hearing *only* by electronic means⁵⁰. “Electronic means” includes telephone and video link⁵¹. The PHP may do so if satisfied that the person’s physical presence at the hearing (or any part of it) is likely to:
- prevent the hearing obtaining the views of child or a relevant person, or
 - cause significant distress to child or a relevant person⁵².
67. A PHP may make this decision in relation to:
- A relevant person
 - A representative of a relevant person
 - A participation individual with participation rights
 - A representative of a participation individual
 - Representatives of a newspaper or news agency.
- The PHP may not make this decision in relation to anyone seeking to be deemed as a relevant person or the child.
68. The PHP will make a decision about whether the person may attend a children’s hearing only by electronic means. If the PHP makes such a decision, SCRA must take all reasonable steps to enable the person to

⁴⁶ Rule 20D(1)(b)

⁴⁷ Rule 20D(1)(a)

⁴⁸ Previously our view has been that the hearing had an implied power to exclude someone in these circumstances.

⁴⁹ Rule 20D(2)

⁵⁰ Rule 20C.

⁵¹ Rules 20C(5) and 20B(3)

⁵² Rule 20C(3)

attend the hearing by electronic means. It is for the reporter, and not the PHP, to decide whether to use telephone or video link. There is a presumption that the reporter will use video link if that is practicable.

69. It is for the reporter to decide whether to arrange a PHP for this purpose, regardless of whether or not anyone has requested it. Having consulted with the child's social worker, the reporter is to arrange a PHP for this purpose when they consider that either of the criteria is met in relation to a person.
70. The reporter may refer the question of whether a person may attend a children's hearing only by electronic means to a children's hearing as a PHP matter. However, the practical benefit of doing so is likely to be limited as any decision to restrict a person's attendance in this way will only apply to a subsequent hearing (whether a deferred hearing or a further hearing in the same series of hearings e.g. to consider a further ICSSO).
71. A decision to restrict physical attendance is to be treated as continuing until a substantive decision is made, unless the PHP or a children's hearing indicates that it only applies to a specific hearing or is to come to an end prior to the substantive decision being made.

M. Extended Duty to Facilitate Attendance by Electronic Means

72. SCRA's duty to facilitate attendance at a children's hearing or PHP by electronic means is amended. "Electronic means" includes telephone and video link⁵³. Anyone who has a right to attend under section 78(1), or is entitled to attend under section 78(2), may ask to attend by electronic means.
73. Having received the request, SCRA must take all reasonable steps to enable the person to attend by electronic means if the reporter is satisfied that they:
 - have good reason for not attending physically or
 - would be better able to participate effectively if they attend by electronic means.Good reasons for not attending physically will include the distance or complexity of travel, or health implications of travelling. In assessing whether someone would be better able to participate effectively, the reporter is to consider the individual circumstances of the person and is to give particular weight to the person's own views.
74. This duty is separate from the duties under the Coronavirus (Scotland) Act 2020 and will continue to apply after that Act is no longer in force.
75. Currently the reporter may arrange for attendance by electronic means in circumstances other than when the duty to facilitate such attendance applies.

⁵³ Rule 20B(3)

N. Duty to send papers to the Chief Social Work Officer

76. The reporter must provide a copy of the hearing papers to the Chief Social Work Officer (CSWO)⁵⁴. As with any other duty to notify the CSWO, it is presumed to be fulfilled by sending the papers to a social worker dealing with the child's case.
77. The duty to provide a copy of the hearing papers to the CSWO does not apply to any report or other document given to the reporter by the local authority. However, to assist in the practical application of this duty, the reporter is to send the social worker the full hearing papers (including any report from the authority) – though not a report or document from the social worker where it is the only document being sent at that point to those with a right to papers.
78. The duty to provide papers to the CSWO only applies to a children's hearing. The reporter is not to send PHP papers to the CSWO.

O. Electronic signature in a children's hearing

79. Any document to be signed by the chair of a PHP or children's hearing may be signed using an electronic signature⁵⁵.
80. This provision is separate from those in the Coronavirus (Scotland) Act 2020 about electronic signature and will continue to apply after that Act is no longer in force. Unlike in the Coronavirus (Scotland) Act 2020, the provision in rule 98 enabling the chair to use an electronic signature does not permit the reporter to sign documents on behalf of the chair (whether electronically or otherwise).

P. Change in managing attendance at the hearing

81. It is for the chair to decide whether anyone who does not have a right to attend the hearing will be allowed to attend⁵⁶. In addition to this duty in section 78(2), the chair has additional responsibilities to manage the attendance of a participation individual (see paragraph 33 above).
82. In advance of the children's hearing or PHP starting, the reporter or receptionist is to tell the panel members who has attended for the purpose of being present at the hearing or PHP and their status (e.g. whether they are a relevant person or a participation individual). This should be done by the receptionist where one is available. The reporter is to ensure that the receptionist knows what the status of each individual is and whether they are to come into the hearing at the start.
83. To assist the chair in managing attendance at the children's hearing or PHP, at the start of the hearing or PHP, the reporter is to bring into the hearing

⁵⁴ Rule 26(7)

⁵⁵ Rule 98

⁵⁶ Section 78(2)

room only those with a right to attend throughout the hearing or PHP⁵⁷, those with a right to attend at the start for any PHP matter referred to the hearing and the social worker for the child.

84. If there appears to be any doubt on the part of the chair about who is waiting to attend the hearing, and their status, the reporter is to intervene to inform the chair. This will also help ensure the child and relevant persons are aware of who wishes to attend.
85. The chair may decide at any point during the hearing whether someone waiting is to be allowed to attend⁵⁸ and if so, when they are to attend. Where someone is attending by electronic means, the reporter is to agree with the receptionist the most appropriate means for the person to wait and to be contacted.

Q. Appeals against decisions of the sheriff

86. The reporter may now appeal to the Sheriff Appeal Court or Court of Session against a sheriff's decision in an appeal under section 160 in relation to a relevant person determination⁵⁹. However, the reporter may not appeal against a decision by the sheriff confirming a determination of a children's hearing⁶⁰. As with other appeals, it is for a Locality Reporter Manager to decide whether to request a stated case in relation to any appeal against a sheriff's decision, in consultation with the Practice Team to help inform the decision and obtain advice on the drafting of the questions to be included in the application^{61, 62}.

⁵⁷ Generally this will be the child, the relevant persons, any representatives of the child and relevant persons, and any safeguarder. However, it may include a person whose request to be deemed a relevant person is to be considered as a PHP matter at the hearing or a person who has requested to be treated as a participation individual. It will not include someone who is only a participation individual.

⁵⁸ The chair must allow an individual with participation rights to attend at some point during the hearing.

⁵⁹ Section 164(3)(e)

⁶⁰ Section 164(3A)

⁶¹ See the Casework Practice Scheme of Delegation

⁶² Section 27 of the Children (Scotland) Act 2020 amends sections 160, 164 and 165 of the 2011 Act to say that an appeal against the decision of a sheriff (in a proof, appeal, application for an ICSO or section 110 application) can only be to the Sheriff Appeal Court – an appellant cannot appeal directly to the Court of Session. However, this section is not yet in force.

Appendix 1

List of new notifications and letters in CSAS in relation to legislative changes

These notifications and letters are available on CSAS. The links provided here are simply to provide an opportunity to view the content of the letters.

Hearing, PHP etc	Communication	Header	Comments
PHP	Notification to PI for F2F PHP	PHP PI F2F	Although this letter is called a “Notification to PI”, the person will not be a participation individual at the time – that will be a matter for the PHP.
PHP	Notification to PI for Virtual PHP	PHP PI Virtual	Although this letter is called a “Notification to PI”, the person will not be a participation individual at the time – that will be a matter for the PHP.
PHP	Notification to PI for Hybrid Hearing – attending remotely	PHP PI Hybrid Remote	Although this letter is called a “Notification to PI”, the person will not be a participation individual at the time – that will be a matter for the PHP.
Hearing considering PHP matter	Notification to PI for PHP matter referred to a F2F Hearing	PHP_to Hrg_PI_F2F	Although this letter is called a “Notification to PI”, the person will not be a participation individual at the time – that will be a matter for the PHP.
Hearing considering PHP matter	Notification to PI for PHP matter referred to a Virtual Hearing	PHP_to Hrg_PI_Virtual	Although this letter is called a “Notification to PI”, the person will not be a participation individual at the time – that will be a matter for the PHP.
Hearing considering PHP matter	Notification to PI for PHP matter referred to a Hybrid Hearing – attending remotely	PHP_to Hrg_PI_Hybrid_Remote	Although this letter is called a “Notification to PI”, the person will not be a participation individual at the time – that will be a matter for the PHP.
Hearing	Notification to PI for F2F Hearing	PI F2F	
Hearing	Notification to PI for Virtual Hearing	PI Virtual	
Hearing	Notification to PI for Hybrid Hearing – attending remotely	PI Hybrid Remote	

Outcome	Notification to PI of any relevant hearing or PHP decision	PI_HRG_PHP OUTCOME	The outcome letter is a single letter for all relevant hearing or PHP decisions. Although this letter is called a "Notification to PI", it will also be used to notify someone of a decision that they did not meet relevant criteria (either that the participation criteria to be treated as a participation individual or the section 132A criteria to require a review).
Outcome	Notification to PI that no contact direction was made	PI_HRG_OUTCOME_NO CD	
Invitation	Invitation to school and other bodies		This invitation makes clear that that the chair will decide on the day at what point the invitee may come into the Hearing and for how long.
Invitation	Carer who is not RP		This invitation makes clear that that the chair will decide on the day at what point the carer may come into the Hearing and for how long.

Appendix 2

PHP Papers Form

Papers for the Choose an item.	On: Click to enter text.
Name of Child: Click to enter text.	Date of Birth: Click to enter text.

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

- To consider whether Click 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 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 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 an individual Click to enter text. should be allowed to attend a children's hearing only by electronic means.
Statutory Criteria

The person's physical attendance at the hearing (or any part of it) is likely to:

 - *prevent the hearing obtaining the views of a child or relevant person; or*
 - *cause significant distress to the child or a relevant person.*

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 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 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 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 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 to enter text.](#)

PHP Papers Form – PI status/s132A review matters

Papers for the Choose an item	On: Click to enter text.
Name of Child: Click to enter text	Date of Birth: Click to enter text

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

To consider whether an individual [Click to enter text.](#) meets the criteria to have participation rights in relation to a Children’s Hearing.

Statutory Criteria

- *the individual is living or has lived with the child,*
- *the individual and the child have an ongoing relationship with the character of a relationship between siblings (whether or not they have a parent in common),*
- *the hearing is likely to make a decision significantly affecting contact, or the possibility of contact, between the individual and the child, and*
- *the individual is capable of forming a view on the matter of contact between the individual and the child.*

To consider whether an individual [Click to enter text.](#) meets the criteria to require a review of the Compulsory Supervision Order

Statutory Criteria

EITHER:

- *the individual did not attend the last hearing,*
- *the individual was not treated as meeting the participation criteria, and no decision on the matter was made by a PHP or hearing, and*
- *if a hearing or a PHP had considered the matter, it is likely that it would have decided that the participation criteria applied.*

OR:

- *the individual did not attend the last hearing,*
- *the individual had participation rights in relation to the last hearing, and*
- *the individual was not able to participate properly in the hearing’s decision making as a result of:*
 - *a material failure to treat the individual or any representative of the individual in accordance with the rules; or*
 - *exceptional circumstances.*

The request by the individual for the pre-hearing panel is attached.

The following information is provided from the records held by the children’s reporter: *(Insert information, for example “The record of proceedings for the children’s hearing on x date does not record AB as attending/records AB as attending in part/records the following information within the reasons for decisions”.* **Please number each separate item.)**

Click to enter text.

The following information is provided from the recollection of the reporter at the hearing:⁶³ *(Insert information, for example “The reporter recalls that AB attended the hearing for about 15 minutes before the electronic connection failed. AB did not return to the hearing.”*

Click 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 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 Ms B, child’s mother – attached....”* **Please number each separate item.)**

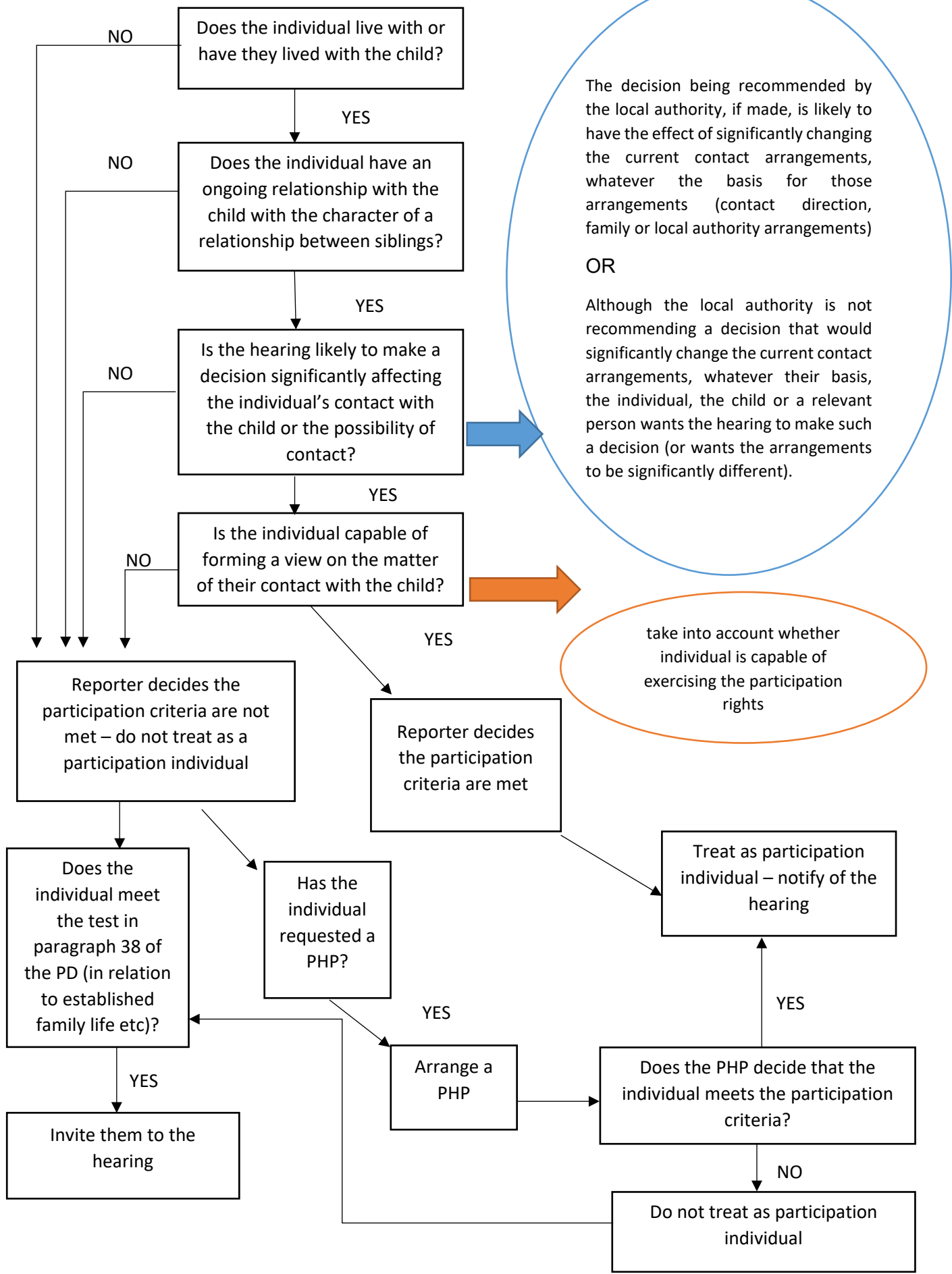
Click to enter text.

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 Ms B, child’s sister seeking PI status, to the reporter on “” – attached”* **Please number each separate item.)**

Click to enter text.

⁶³ This section is relevant only if PHP is considering whether the criteria for a s132A review are met and only if the reporter has relevant information not available from records.

Appendix 3 Participation criteria flowchart



Section 132A flowchart

