



Practice Direction 3

Relevant Persons

Date Issued:	21 June 2013
Date Implemented:	24 June 2013
Date Last Revised:	22 October 2025

SUMMARY

Who is a Relevant Person ?

- Any parent, with or without parental rights or responsibilities (except a parent who at one time had parental rights and responsibilities which have all been removed)
- Any person with parental rights or responsibilities
- Any person who has been deemed to be a relevant person by a pre-hearing panel or children's hearing

Relevant Persons

- Relevant Persons are those persons who either meet the definition in section 200 or have been deemed to be a relevant person by a pre-hearing panel or children's hearing.
- The definition of relevant person in section 200 covers all parents, with or without parental rights or responsibilities (except a parent who at one time had parental rights or responsibilities which have all been removed) and other persons with relevant parental rights or responsibilities.
- A deemed relevant person has all the same rights and duties as a person who meets the section 200 definition of relevant person.

Deeming Process

- The 'deeming test' is that the person has (or has recently had) a significant involvement in the upbringing of the child. This requires the person to have (or have recently had) a quasi-parental role involving decision-making in relation to the upbringing of the child.
- Where the child, a relevant person, or an individual seeking to be deemed to be a relevant person requests a pre-hearing panel to consider the issue, the reporter **must** arrange one. The reporter **may** otherwise arrange one on his own initiative.

- The reporter is **not** to arrange a PHP in the absence of a competent request unless:

- It is clear that a competent request will be made and it will be operationally difficult to arrange a PHP (or refer the matter to the hearing) if not arranged immediately. However this flexibility does not apply in relation to a foster carer, or to someone whose significant involvement has recently ceased and appears likely to be permanent.
- In any other situation, following consultation with a Senior Practitioner or Locality Reporter Manager, it is appropriate in the circumstances to arrange one.

- Where possible, the pre-hearing panel should take place at least 9 days before the children's hearing. This will allow someone deemed to be a relevant person by a pre-hearing panel to receive timely notification of the children's hearing.
- A pre-hearing panel or a hearing can consider deeming an individual to be a relevant person even though the matter was not referred to the pre-hearing panel or hearing. However, the pre-hearing panel or hearing may only do so if the individual in question is present **and** if the child, a relevant person or the individual requests that the matter be considered.
- Certain hearings cannot consider deeming an individual to be a relevant person, nor can a pre-hearing panel for this purpose be arranged in relation to these hearings. The hearings are CPO 2nd working day hearings, CPO advice hearings, criminal advice hearings and antisocial behaviour advice hearings.
- A person deemed to be a relevant person remains so until a children's hearing discharges all referrals or terminates any compulsory supervision order, or a children's hearing or PHP directs that the person is no longer to be deemed a relevant person. A decision to 'undeem' can be made:
 - by a PHP (or children's hearing) where the specific matter was referred to it, or
 - by a children's hearing following a review of a compulsory supervision order which makes a substantive decision to continue or vary the order.
- Where the child or a relevant person requests a PHP to consider whether to 'undeem' someone, the reporter **must** arrange one. The reporter **may** otherwise arrange one on his own initiative.
- If the reporter thinks that an individual no longer meets the test for being deemed to be a relevant person, the reporter is to exercise that discretion and arrange a PHP without waiting for a request if the forthcoming hearing is a review hearing or a grounds hearing for a child already subject to a CSO.
- There is a right of appeal against a decision to deem/not deem/undeem. The appeal must be lodged within 7 days (counting the day of the pre-hearing panel or hearing as day 1) and must be disposed of within 3 days (counting the day of lodging as day 1).

Persons with current or recent significant involvement

- An individual who appears to have current or recent significant involvement in the upbringing of the child has a right to be told about

most forthcoming hearings and about the circumstances in which a review of a contact direction will take place. This is to enable them to exercise their rights to request a pre-hearing panel to consider deeming them to be a relevant person or to request a review of a contact direction.

- An individual who appears to have current or recent significant involvement has a right to attend a CPO 2nd working day hearing or CPO advice hearing and to receive papers.

Contents

1.	INTRODUCTION	6
2.	SECTION 200 DEFINITION - PARENTS	6
3.	SECTION 200 DEFINITION – OTHER PERSONS WITH PARENTAL RIGHTS OR RESPONSIBILITIES.....	10
4.	SECTION 200 DEFINITION - GENERAL	10
5.	DEEMED RELEVANT PERSON	11
6.	THE DEEMING PROCESS	13
7.	UNDEEMING.....	15
8.	APPEALS	17
9.	OTHER BASES FOR NOTIFYING A PERSON OF A HEARING	17
10.	INVITING A PERSON TO ATTEND A HEARING.....	18
11.	RESPONSES TO CASE PRACTICE ENQUIRIES Error! Bookmark not defined.	
	APPENDIX 1 – Scenarios on Significant Involvement.....	19
	APPENDIX 2 – Flowchart on Section 200	21

1. INTRODUCTION

- 1.1 This Practice Direction addresses the meaning of ‘relevant person’ under the Children's Hearings (Scotland) Act 2011 and sets out how the relevant statutory provisions are to be applied by the reporter.
- 1.2 There are two routes to being a relevant person. The first is to come within the definition of relevant person in section 200. This covers parents, and persons with relevant parental rights or responsibilities. The second is to be deemed to be a relevant person by a pre-hearing panel (PHP) or a hearing.
- 1.3 The reporter has a key role in early identification of those who meet the definition in section 200 and those who appear to meet the test to be deemed to be a relevant person. Significant duties flow from that identification. However it is the children’s hearing (or PHP) which ultimately determines whether someone is to be deemed to be a relevant person.
- 1.4 Practice Direction 12 on Pre-hearing Panels contains detailed information about the operation of PHPs.
- 1.5 The most relevant statutory provisions are:
 - Section 200 of the Children's Hearings (Scotland) Act 2011
 - The Children's Hearings (Scotland) Act 2011 (Review of Contact Directions and Definition of Relevant Persons) (Scotland) Order 2013
 - Sections 79-81 of the Children's Hearings (Scotland) Act 2011
 - Rules 48, 54 and 55 of The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013

2. SECTION 200 DEFINITION - PARENTS

- 2.1 The definition in section 200(1) makes the following people relevant persons:
 - (a) a parent or guardian with parental rights or responsibilities under Part 1 of the Children (Scotland) Act 1995 (the “95 Act”)
 - (b) a person with parental rights or responsibilities under section 11(2)(b) of the 95 Act (a parental rights and responsibilities order)
 - (c) a person with parental rights and responsibilities under section 11(12) of the 95 Act (these flow from a residence order under section 11(2)(c))
 - (d) a parent with parental responsibility under Part 1 of the Children Act 1989

- (e) a person with parental responsibility under section 12(2) or 14C of the Children Act 1989 or section 25(3) of the Adoption and Children Act 2002
- (f) a person with parental responsibilities or rights under a Permanence Order
- (g) any other person specified by order. The *Children's Hearings (Review of Contact Directions and Definition of Relevant Persons) (Scotland) Order 2013* specifies that a parent is a relevant person, other than a parent who falls within section 200(1)(a) or (d), or who has had all parental rights and responsibilities removed.

2.2 Therefore, parents who have the parental rights and responsibilities specified in section 200(1)(a) or (d) are relevant persons through that route rather than through section 200(1)(g).

2.3 The following parents fall within section 200(1)(a) through having parental responsibilities or rights under Part 1 of the 95 Act:

- Mothers;
- Fathers who are married to the child's mother at the time of the child's conception or subsequently;
- Unmarried fathers who:
 - are registered on a birth certificate issued in Scotland, England, Wales or Northern Ireland as the child's father - the date of registration must be on or after 4 May 2006;
 - have an order in terms of section 11(2)(b) of the 95 Act granting such responsibilities or rights;
 - have parental responsibilities and rights by virtue of having a right to have the child living with him in terms of a residence order under sections 11(2)(c) and 11(12) of the 95 Act ; or
 - have registered an agreement in terms of section 4 of the 95 Act.

2.4 Any queries on whether a parent has parental responsibility under Part 1 of the Children Act 1989 or whether a parent has rights or responsibilities from a foreign jurisdiction that are recognised under Parts 1 of the 95 Act or the Children Act 1989 should be referred to the Practice Team.

2.5 Parents without relevant rights or responsibilities will fall within section 200(1)(g) provided they are not in that position because all parental rights and responsibilities have been removed by court order¹.

2.6 Parent is not defined in the Act. However the primary issue likely to arise for reporters is not so much the definition as the information or evidence required before recognising someone as a parent. In the absence of the listed parental rights and responsibilities, the reporter is to treat someone as a parent under section 200(1)(g) if:

¹ This means a parent who has never had parental rights and responsibilities (and continues to meet one of the criteria in paragraphs 2.6 or 2.7) will remain a relevant person even if the other parent has all their parental rights and responsibilities removed by court order.

- There is some formal recognition of their status as a parent (see paragraph 2.7); or
- In the absence of formal recognition, on the particular facts of the case it is settled that there is no dispute that the person is the parent (see paragraph 2.9); or
- In the absence of formal recognition of another person as father, there is a reliable DNA test report establishing paternity from a reputable DNA testing company (see paragraph 2.12). A DNA test is insufficient to rebut formal recognition, or to allow the test-holder to be treated as the father in addition to the formally recognised father.

2.7 Formal recognition of a person's status as a parent may arise through:

- Being registered as the father on a birth certificate issued in Scotland, England, Wales or Northern Ireland before 4 May 2006;
- Being registered as a parent on any foreign birth certificate which does not confer relevant parental responsibilities or rights under section 200(1)(a)-(f);
- A presumption of law that the person is a parent, or
- A declarator of paternity, or equivalent from a foreign jurisdiction.

This is not an exhaustive list. Presumptions of law regarding parentage include:

- A husband is presumed to be the father of a child born to his wife, if married at any time between the conception and birth of the child.
- The Human Fertilisation and Embryology Act 2008 addresses who is to be treated in law as a parent in various situations of assisted reproduction including same sex relationships.

Where a question arises as to whether formal recognition exists contact the Practice Team.

2.8 Where there is formal recognition of parenthood, including a presumption of law regarding parenthood, the reporter is to treat the person as a relevant person under section 200², even where there are differing opinions as to whether he/she is a parent of the child or widely shared agreement that the person is not a parent. A formal process, such as declarator of paternity or non-paternity, will be required to change the situation.

2.9 It will be settled that there is no dispute that a person without formal recognition of parenthood ("the other person") is a parent if:

- One person has formal recognition as a parent;
- There is no second parent who has been formally recognised (including no presumption of law regarding parenthood);
- The formally recognised parent and the other person agree that the other person is the genetic parent; *and*

² The particular subsection will depend on the circumstances of the case.

- The agreement of both has been clear for a sufficient period of time for it to be reasonable for the reporter to conclude that there is no dispute.

The views of both persons, including the person without formal recognition, must be known to the reporter before the reporter can conclude that the above criteria are met.

- 2.10 Consideration of whether someone is a parent because it is settled that there is no dispute that the person is a parent arises only where one person has formal recognition and **no second person** has formal recognition (including no presumption of law regarding parenthood).

Examples

- (i) Where a father is named on the birth certificate, the reporter is to treat that person as the father/section 200 relevant person, and is **not** to treat any other person as the father/section 200 relevant person on the basis of settled no dispute that the other person is the father. The man named on the birth certificate is legally presumed to be the father, will have parental rights and responsibilities, and so will be a section 200 relevant person. A DNA certificate in relation to paternity, however reliable, is insufficient to rebut the legal presumption of paternity of the man named on the birth certificate³.
- (ii) There is a legal presumption that a husband is the father of his wife's child⁴. Therefore, the reporter is to treat the husband as the father/section 200 relevant person even if there is settled no dispute that another person is the father. If another person is recorded on the birth certificate as the father, the reporter is to treat both the husband and the person recorded as the father as section 200 relevant persons.

- 2.11 The reporter is to contact the Practice Team if:

- A dispute arises as to whether a person is a parent, when previously the reporter has treated that person as a parent under section 200(1)(g); or
- There is a dispute that a person is the parent (or it is not sufficiently settled that there is no dispute), and as a result the reporter has not treated the person as a parent under section 200(1)(g).

This will enable consideration of appropriate communication with the person about the reporter's position.

- 2.12 The reporter is to contact the Practice Team if presented with a copy of a DNA test report establishing parentage, in order to support consideration of whether the report is reliable and from a reputable company. **The**

³ The presumption of paternity may be rebutted in court proceedings (such as for a declarator of paternity or non-paternity, though is not restricted to such proceedings) on the balance of probabilities. A DNA certificate is likely to be relevant evidence in such proceedings.

⁴ If married at any point between the child's conception and birth. This is so even if the mother and husband are separated (but not divorced).

process used by the company requires to be robust in relation to the identity of the sample provider and the integrity of the evidence chain.

- 2.13 Where the reporter cannot treat a person as the parent under section 200(1)(g), the reporter is to be alert to the possibility of the person nevertheless meeting the test to be deemed to be a relevant person on the basis of current or recent significant involvement in the upbringing of the child.

3. SECTION 200 DEFINITION – OTHER PERSONS WITH PARENTAL RIGHTS OR RESPONSIBILITIES

- 3.1 Non-parents with relevant parental rights and responsibilities will meet the section 200 definition. Persons who have the following parental rights and responsibilities are relevant persons:
- A parental rights and responsibilities order under section 11(2)(b) of the 95 Act.
 - Parental rights and responsibilities under section 11(2) of the 95 Act. These flow from a residence order under section 11(2)(c).
 - Parental responsibility under section 12(2) or 14C of the Children Act 1989 or section 25(3) of the Adoption and Children Act 2002.
 - Parental responsibilities or rights under a permanence order.

4. SECTION 200 DEFINITION - GENERAL

- 4.1 On its own a contact order under section 11(2)(d) of the 95 Act does not create any of the listed parental rights or responsibilities in section 200. Nor does contact under a permanence order. The 2011 Act recognises such persons may need to be involved in the decision-making process to protect their ECHR Article 8 rights. It makes specific provision for such persons to be notified in relation to certain hearings and for them to have a right to be involved in hearings to review a contact direction.
- 4.2 A parent or person need have only one parental responsibility or right under the various provisions in section 200 to come within the definition. A relevant interim order is sufficient.
- 4.3 The reporter must be satisfied that a person has parental rights or responsibilities or is the parent of a child before treating them as a relevant person. This need not always require the reporter to see documented proof. Where the issue is non-contentious, confirmation from the local authority will in many cases be sufficient. If the reporter has any doubt as to the position, the reporter should request copy documentation such as the marriage certificate, birth certificate, relevant court order or registered agreement. This may be via the local authority, the person direct or their solicitor depending on what is most appropriate for the circumstances.
- 4.4 If a criminal court seeks advice from a children's hearing in relation to a 16 or 17 year old offender who does not have a compulsory supervision

order, or does not otherwise come within the definition of a 'child' in the 2011 Act, the reporter is to apply section 200 as if the offender were a child under the Act⁵.

- 4.5 The reporter is to record in CSAS the reasons why each section 200 relevant person is to be treated as a relevant person.

5. DEEMED RELEVANT PERSON

- 5.1 A PHP may deem an individual to be a relevant person under section 81 or rule 48. A children's hearing may deem someone to be a relevant person under section 80 or rule 55. The individual then has all the rights and duties of a person who is a relevant person under section 200.
- 5.2 The test for someone to be deemed to be a relevant person is set out in section 81(3): the individual has (or has recently had) a significant involvement in the upbringing of the child. The test is not based on care of, or contact with, the child but on having an involvement in the child's upbringing. 'Upbringing' is defined in the Oxford Dictionary as the 'treatment and instruction received by a child from its parents throughout its childhood'⁶. To be involved in a child's upbringing therefore requires a role similar to that of a parent. The statutory test further requires the involvement to be significant. In *MT & AG v Gerry*, the Court of Session said the focus should be on "whether the individual in question has had an involvement in the upbringing of the child of such significance as to give rise to a relationship between the individual and the child which calls for the procedural protection of constituting the individual as a party to the proceedings, with all the procedural obligations and rights which that status entails."
- 5.3 An individual will have a significant involvement in the upbringing of the child where they are:
- providing actual care where the care being provided has features similar to the care that a parent would provide, for example decision-making about how the child is brought up;
 - exercising significant influence in the way the child is brought up, even if actual care is limited (for example, continuing to make decisions about a child's upbringing); or
 - enabling the child to be brought up by a parent or parents, by exercising a role similar to that of a parent.

⁵ Rule 44 of the Children's Hearings Procedural Rules deals with notifications for advice hearings. It fails to reflect that the offender may not be a child. Reference to 'child' in rule 44 is to be read as meaning the offender – and it follows that 'relevant person' should be read to include persons who would be relevant persons if the offender were a child. As the purpose of the advice hearing is to consider whether to recommend the offender be remitted to the children's hearings system, and as a remit would clearly bring the offender within the 2011 Act definition of a child, it is appropriate that persons who would be relevant persons under a remit are involved in the advice hearing.

⁶ This definition of 'upbringing' is also referred to in the National Convenor's guidance to panel members in the Practice and Procedure Manual and was approved implicitly by the Court of Session in *MT and AG v Gerry*.

- 5.4 Where a person looks after a child or has contact with the child but has no significant parental-like role in the child's upbringing, then the person does not have a significant involvement in the upbringing of the child. This would include, for example, teachers, nursery workers and childminders.
- 5.5 All cases will require assessment by the reporter of the particular facts and circumstances of the case. Foster carers, and cohabitants of a parent, are likely to require particular consideration of whether there is any involvement in the upbringing of the child and, if so, whether the involvement is significant. However, the mere fact of caring for a child for a period of time will not be sufficient⁷.
- 5.6 The reporter is to regard foster carers as meeting the test where the reporter has information which indicates that the nature and duration of the care provided by them is such that they have a significant involvement in the child's upbringing. If the reporter does not have information about the nature of the care being provided by the carers in addition to the duration of the residence, the reporter is not to seek that information. In the absence of that information, the reporter is not to treat the foster carers as meeting the test.
- 5.7 The decision of the Supreme Court in *PR (respondent) v K (appellant)* is not directly relevant as it concerns the ECHR compatibility of the definition of relevant person in the Children (Scotland) Act 1995. However persons who fall within the Supreme Court approach to relevant person under the 95 Act will almost certainly fall within the 'significant involvement' test of the 2011 Act. The Supreme Court's approach required that persons who have established family life with the child with which the children's hearing may interfere and for whom the involvement of the child's parents does not provide adequate protection of their procedural rights be fully involved in the children's hearing. The particular example given by the Supreme Court is that the child's hope of reintegration in her natural family depends on maintaining the close relationship established with a grandparent or other family member. Such a person would meet the significant involvement test under the 2011 Act.
- 5.8 The test also includes a person who has recently had a significant involvement in the upbringing of the child. A person who has recently had such involvement continues to meet the test even if the involvement has now ceased.
- 5.9 Where a person has had a significant involvement but this has ceased or reduced as a result of the investigation or intervention leading to the current referral to the children's hearing, the reporter is to regard that person as continuing to have a significant involvement. In most cases, the individual will in any event meet the test of recent significant involvement.

⁷ MT and AG v Gerry at paragraph 17

- 5.10 The test in section 81(3) is a factual one and not “a decision about a matter relating to a child”. Therefore sections 25 and 27 do not apply to the decision⁸.
- 5.11 The reporter should generally determine whether someone meets the ‘significant involvement’ test based on information received in reports. There is no need to specifically investigate whether persons exist who might meet the test. If the available information indicates someone may meet the test, the reporter may seek clarification from report providers about any details that would help the reporter’s assessment⁹.

6. THE DEEMING PROCESS

- 6.1 Only a PHP or children’s hearing can deem someone to be a relevant person. Section 79(2) sets out the circumstances in which the reporter must or may refer the matter of whether someone should be deemed to be a relevant person to a PHP. If the child, relevant person or the individual in question requests the reporter to refer the matter to a PHP, the reporter **must** do so. The reporter **may** otherwise refer the matter on his own initiative.
- 6.2 The reporter has a duty under rule 22 to notify any individual who appears to have current or recent significant involvement in the upbringing of the child of the date time and place of almost every hearing. This is to enable the individual to decide whether to request a PHP (or to seek to raise the issue at the hearing itself).¹⁰ Rule 22 does not apply to a CPO 2nd working day hearing, a CPO advice hearing, a criminal advice hearing or an antisocial behaviour advice hearing. In terms of section 79, it is not competent for such hearings to deem someone to be a relevant person, nor for a PHP to be arranged to consider the matter in relation to these hearings.
- 6.3 However, under rules 39 and 40 the reporter has a duty to notify any individual who appears to have current or recent significant involvement in the upbringing of the child of the date time and place of a CPO 2nd working day or advice hearing and to give them a copy of the hearing papers. Although the individual has no express right to attend, the chair has discretion under section 78(2) to allow him to attend. Fairness is likely to require that the individual be allowed to attend if he wishes, at least in part.
- 6.4 While the reporter may arrange a PHP to consider deeming an individual even though a request for such a PHP has not been received, the reporter is not to arrange a PHP in the absence of a competent request unless:

⁸ MT and AG v Gerry

⁹ However, see paragraph 5.6 in relation to foster carers.

¹⁰ Rule 81 requires that they are also given information about the circumstances in which a contact direction review hearing will be arranged.

- It is clear that a competent request will be made and it will be operationally difficult to arrange a PHP (or refer the matter to the hearing) if not arranged immediately. However this flexibility does not apply in relation to a foster carer, or to someone whose significant involvement has recently ceased and appears likely to be permanent.
- In any other situation, following consultation with a Senior Practitioner or Locality Reporter Manager, it is appropriate in the circumstances to arrange one.

6.5 In terms of rule 48(2), even if the reporter has not referred the matter to a PHP, a PHP arranged to deal with other matters must consider deeming an individual to be a relevant person where:

- the child, relevant person or individual in question requests it **and**
- the individual is present at the PHP.

6.6 In terms of rule 55, most hearings have a duty to consider whether to deem an individual to be a relevant person where:

- the child, relevant person or individual in person requests it **and**
- the individual is present at the hearing.

6.7 A PHP or hearing may wish to consider deeming someone who is present to be a relevant person, but the matter has not been referred for consideration nor a request made. In this situation it would be in order for the hearing to suggest that the child, relevant persons or the individual consider making a request. In order to ensure that the process is fair, the child, relevant persons and the individual must be allowed adequate time to consider the suggestion and must not be placed under any pressure to make a request.

6.8 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 proceedings¹¹, the reporter is not to arrange a PHP. The matter has been determined by the PHP or hearing and an appeal is the appropriate route if the person (or the child or a relevant person) is not satisfied with the decision. There may be exceptional circumstances where it would be appropriate to arrange a further PHP, for example if there was a significant change of circumstances during very lengthy proceedings, or the person was erroneously not notified of the PHP/hearing nor the outcome thereby rendering the appeal route in effect unavailable. The reporter is to consult with their Senior Practitioner and the Practice Team if considering whether exceptional circumstances apply.

6.9 Although the reporter will not have arranged a PHP in the circumstances in paragraph 6.8 above, the person (if present at the hearing) may still 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

¹¹ All pre-hearing panels and hearings relating to the current outstanding substantive decision.

hearing to consider the request unless exceptional circumstances apply. It will be for the hearing to decide how to proceed.

7. UNDEEMING

- 7.1 Once an individual is deemed to be a relevant person, they remain a relevant person until either a PHP or children's hearing decides under section 81A, or a hearing directs under section 142, that he is no longer to be deemed to be a relevant person.
- 7.2 A PHP or hearing can make this decision under section 81A only when the specific matter is referred to the PHP or hearing of whether a person should continue to be deemed to be a relevant person.
- 7.3 Section 79(5A) sets out the circumstances in which the reporter must or may refer the matter of whether someone should continue to be deemed to be a relevant person to a PHP or hearing. If the child, relevant person or the individual in question requests the reporter to refer the matter to a PHP or hearing, the reporter **must** do so. The reporter **may** otherwise refer the matter on his own initiative.
- 7.4 The duty or power to refer the 'undeeming' question to a PHP exists in relation to any hearing arranged under section 119 (i.e. to consider accepted or established grounds) or any hearing held 'for the purposes of reviewing a compulsory supervision order' (section 79(1A)). In addition to any review hearing a grounds hearing to consider new grounds for a child already subject to a CSO is to be taken to be a hearing for the purposes of reviewing a CSO. A section 96 hearing to consider a further ICSO or interim variation during a proof is not such a hearing and so a PHP to consider undeeming cannot be arranged prior to such a hearing.
- 7.5 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.
- 7.6 A review hearing may direct that a person is no longer to be deemed a relevant person under section 142 only once it has made a substantive decision to continue or vary a compulsory supervision order. However it may not do so if the question of whether to undeem that individual was

determined by either a PHP held in relation to that hearing or at the hearing itself (section 142(1A)).

- 7.7 On conclusion of the review of the compulsory supervision order, if it appears to the hearing that the individual may no longer have (nor recently have had) a significant involvement in the upbringing of the child, the hearing must review whether the individual should continue to be deemed to be a relevant person.
- 7.8 There is therefore a two stage process. Firstly the hearing decides whether it appears that the individual may no longer meet the deeming test. Only if the hearing decides that it so appears, does the hearing then proceed to formally review whether the person should continue to be deemed to be a relevant person. The reporter must be clear whether the hearing has proceeded to the stage of formal review.
- 7.9 The hearing may defer its decision on the formal review of whether the individual should continue to be deemed to a relevant person (the undeeming decision) (section 142(3)). If the deemed relevant person whose status is being reviewed is not present, it is very likely to be unfair to proceed to make a decision in their absence. The reporter should express the view to the hearing that, as a result, the hearing should defer the undeeming decision.
- 7.10 Where a hearing removes the child from the care of someone who is a deemed relevant person, that person will almost certainly continue to meet the significant involvement test because of recent significant involvement. Therefore the person may only be undeemed on conclusion of a subsequent review hearing.
- 7.11 Where there has been a review of a determination of relevant person status, the reporter must send the notification of the decision **no later than 2 working days** from the day of the hearing. More details of this notification are in paragraph 11.3 of Practice Direction 14 on Notifications and Papers.
- 7.12 If a review hearing is requested by a deemed relevant person, and the reporter considers that the person no longer has current or recent significant involvement, the reporter is not to arrange a PHP on their own initiative. If another relevant person or the child requests that a PHP be arranged to consider undeeming the person, the reporter has a duty to arrange this. If the PHP then undeems the person, the arranged review hearing should still take place as the reporter's duty under section 137(2) has been properly triggered¹². If no request for a PHP is made, the review hearing, after it has made its substantive decision and if it appears to the hearing that the person may no longer have current or recent significant involvement, will be able to review under section 142 whether the relevant person should continue to be deemed¹³.

¹² Note that the person who has been undeemed by the PHP will no longer have attendance or appeal rights in relation to the substantive review hearing even though it has been arranged on their request.

¹³ See paragraphs 7.6 – 7.11 above.

- 7.13 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 undeeding a relevant person within the same current proceedings as they have been deemed¹⁴.

8. APPEALS

- 8.1 Section 160 sets out the appeal provisions in relation to deemed relevant person decisions. The child, relevant person and individual in question may appeal the decision of a pre-hearing panel or hearing:
- to deem or not deem the individual to be a relevant person;
 - to continue to deem the individual to be a relevant person; and
 - to undeed the individual.
- 8.2 The appeal must be made within 7 days (counting the day of the pre-hearing panel/hearing's decision as day 1) and must be disposed of within three days (counting the day of lodging as day 1). Practice Direction 24 on Appeals contains more information about such appeals.
- 8.3 If a hearing directs under section 142 that an individual is no longer to be deemed to be a relevant person, the individual nevertheless retains the right to appeal the substantive decision on the review of the compulsory supervision order.

9. OTHER BASES FOR NOTIFYING A PERSON OF A HEARING

- 9.1 There are a number of bases other than being a relevant person that require the reporter to notify a person of a hearing. These include:
- the person appears to the reporter to have current or recent significant involvement in the upbringing of the child
 - the person has contact under a contact order or permanence order
 - the person has participation rights .

The reporter is always to be alert to whether a person meets any of these categories.

- 9.2 The right to be notified applies to most hearings but not all. Detailed information is available in Practice Direction 14 on Notifications and Papers.

¹⁴ 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 prehearing panel or a children's hearing under s.80(3)

10. INVITING A PERSON TO ATTEND A HEARING

10.1 Section 78(2) gives the chair of the hearing authority to allow a person to attend a hearing when the person does not have an express right of attendance. When arranging a hearing, the reporter is to consider whether there is anyone who does not have a right to be notified but whose attendance is likely to be necessary for the proper consideration of the matter before the hearing. If so, the reporter is to invite the person in order that the chair of the hearing may consider allowing them to attend.

10.2 In particular, the reporter is to invite 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 consider including a contact direction about them in a CSO for the first time or to vary a contact direction about them in a CSO, or
- the person has made clear that they want the hearing to consider their contact with the child.

See section 16 of Practice Direction 14 on Notifications and Papers for more information about inviting persons to a hearing. It will be for the chair of the hearing to decide whether and when the individual is allowed to attend the hearing.

10.3 Within hearings, the reporter is to be alert to situations where the hearing is considering including for the first time, or varying, a contact direction in a CSO in relation to a person with established family life and an ongoing relationship with the child. In most such cases, the person will have been invited by the reporter but there may be cases where the consideration of the contact direction was not anticipated in advance or where the person was not of sufficient age and maturity to be invited. In these circumstances the reporter is to take the view that the hearing should satisfy itself that, subject to age and understanding of the person:

- it has the views of the person (directly or indirectly) in relation to their contact or
- if not, the person has been given an opportunity to provide their views.

The hearing can decide to defer to give the person the opportunity to attend or give their views (directly or indirectly). An interim decision can be made if necessary.

APPENDIX 1 – Scenarios on Significant Involvement

SCENARIO	A SIGNIFICANT INVOLVEMENT IN THE UPBRINGING OF THE CHILD ?
<p>Grandparents who have looked after 2 children for two separate 6 month periods over the past 3 years because of justifiable concerns about the care provided by the children's parents. The children returned to the care of their parents 3 months ago. The grandparents provide considerable support to the parents without which the parents would struggle to look after the children.</p>	<p>Yes. The past care of a quasi-parental nature means they have recently had significant involvement. The nature of the current support, enabling the children to remain in the care of their parents, means that they also have current significant involvement.</p>
<p>Mother's former partner (not the child's biological father) who lived with the mother and child from the time the child was 2½ years old for about 6 years before they separated. During that time he was substantially involved in the child's life. The child is now 10 years old and is accommodated with foster carers. There is a contact direction in the child's supervision order providing for contact between the child and the mother's former partner.</p>	<p>Only if the former partner is maintaining a significant quasi-parental role. The nature and frequency of contact will help in the assessment but there must also be a decision-making role for significant involvement in the child's upbringing to exist. On the information available, there is nothing to indicate a current or recent decision-making role. It might be appropriate for reporter to seek clarification.</p>
<p>A grandmother who has regular contact with the child and had significant involvement in supporting the child's mother to care for the child when the child was living at home. The child is now accommodated with foster carers. There is a contact direction in the child's supervision order requiring that the child's contact with the grandmother is supervised.</p>	<p>The grandmother does not appear to have a current significant quasi-parental role, despite regular contact. It is possible that the level of support provided while the child was living at home amounted to a significant quasi-parental role and therefore significant involvement. Depending on how long since child was living at home the grandmother may still have recent significant involvement.</p>
<p>Grandparents of a 3 month old baby that was accommodated with foster carers following the granting of a CPO shortly after the child's birth. The grandparents have had weekly contact with the child since the CPO was taken. The child's mother has identified the grandparents as alternative carers and</p>	<p>Although the grandparents have very limited direct care or contact, the significance of their involvement in plans for the child's upbringing means they currently have a significant involvement in the upbringing of the child. This approach is also consistent with PR v K.</p>

the grandparents have themselves asked to be formally assessed as carers.	
Maternal grandparents of a child who lives at home with her mother and her mother's partner. The maternal grandparents see the child most weeks by way of informal arrangements with the child's mother.	There is no indication of anything other than normal ties of affection. The grandparent do not appear to have a quasi-parental role therefore they do not have a significant involvement.
A child has been residing with foster carers since the last review hearing 9 months ago, in compliance with the terms of her CSO.	In the absence of any information regarding the nature of the foster carers' care of the child, the mere fact of the duration of the child's residence with them does not amount to them having significant involvement in the child's upbringing. The reporter should not seek further information about the nature of their care.
A child has been residing with foster carers for the past 4 months on a series of ICSSOs pending the outcome of a proof application.	It is likely that given the circumstances and duration of the child's residence with the foster carers, that they do not have a significant involvement in the child's upbringing.
A child had been residing with foster carers for two years, and the foster carers were deemed to be relevant persons. A hearing has just moved the child to live with different foster carers who plan to adopt her.	Although the child has been moved from the foster carers, the foster carers have recently had a significant involvement in the upbringing of the child. They therefore still meet the test at the hearing which moved the child and that hearing could not 'undeem' them.

APPENDIX 2 – Flowchart on Section 200

