



Children's Hearings
Improvement Partnership

Children (Scotland) Act 2020

July 2021 Changes – Information for SCRA Partners



Introduction

The context for these changes:

- The Promise “There must be particular attention paid to the rights of brothers and sisters to ensure that they have all the necessary legal rights to have their voice heard in relation to their brothers and sisters.” (page 40)
- Supreme Court decision - ABC/XY v Principal Reporter: SCRA’s approach is ECHR compliant but Scottish Government wanted to move to putting rights on a statutory basis
- Scottish Government – Rights Based – UNCRC Incorporation (Scotland) Act 2020

Legislative Changes

- Children (Scotland) Act 2020
- The Children’s Hearings (Scotland) Act 2011 (Rules of Procedure in Children’s Hearings) Amendment Rules 2021

Amendments to :

- Section 17 Childrens Scotland Act
- The Looked After Children (Scotland) Regulations 2009
- Children’s Hearings (Scotland) Act 2011



Purpose

- To provide an overview of the legislative changes giving participation rights in children's hearings to certain individuals
- To introduce the new Sibling Contact Report to be used for children's hearings
- To provide an overview of the legislative changes to attendance at a children's hearing



Children (Scotland) Act 2020 2020 asp 16

CHILDREN (SCOTLAND) ACT 2020

Regard to be had to child's views

- 1 Proceedings under Children (Scotland) Act 1995
- 2 Proceedings under Adoption and Children (Scotland) Act 2007
- 3 Proceedings under Children's Hearings (Scotland) Act 2011

Vulnerable witnesses and parties

- 4 Vulnerable witnesses: prohibition of personal conduct of case
- 5 Vulnerable witnesses: requirement to consider special measures without application in certain cases
- 6 Hearing to ascertain if case involves vulnerable witnesses
- 7 Register of solicitors for section 22B of the Vulnerable Witnesses (Scotland) Act 2004
- 8 Vulnerable parties

Register for child welfare reporters

- 9 Establishment of register

Contact

- 10 Regulation of provision of contact services
- 11 Referrals by solicitors to contact services
- 12 Arrangements for contact services
- 13 Promotion of contact between looked after children and siblings
- 14 Duty to consider contact when making etc. compulsory supervision order

Further provision about orders under section 11(1) of the Children (Scotland) Act 1995

- 15 Clarification of order-making power
- 16 Factors to be considered before making order
- 17 Curators ad litem

The context for the new rights

- The new participation rights in hearings are not the same as fundamental human rights and freedoms.
- The participation rights afford certain things to certain people if certain criteria are met.
- This is important as section 78(4) of the Children’s Hearings (Scotland) Act 2011 states:

“The chairing member must take all reasonable steps to ensure that the number of persons present at a children's hearing at the same time is kept to a minimum.”



What are the participation rights?

The new participation rights in hearings include the following rights:

- To be notified of a hearing
- To provide a report for the hearing
- To be provided by the reporter with certain documents.
- To be authorised by the chair to attend the hearing
- To be represented



How are participation rights obtained?

- **There are two routes:**

- 1) Reporter decides participation criteria are met and treats the individual as having participation rights.
 - 2) The individual requests a PHP and the PHP decides that the participation criteria are met. Only an individual is entitled to make the PHP request and the reporter has a duty to arrange a PHP to decide whether criteria met if requested to do so by the individual .
- If the reporter decides the participation criteria are met, the individual will be treated as having rights and a PHP will not need to make the determination.
 - There is no fixed “participation individual” status (limited continuing rights relate only to requesting a review after a hearing decision has been made)



Participation Rights and Relevant Person Status

- A Participation Individual does not have the same status as someone who is deemed a Relevant Person.
- A relevant person remains 'relevant' until a decision is taken to remove their status – until they are 'undeemed'.
- The Participation individual only has the participation rights until a substantive decision is made although they will still be treated as a participation individual if they ask for a review of that decision.
- Participation individuals have no rights of appeal.



Participation criteria

- The Participation criteria that will be applied by a reporter or PHP are:
 - 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 individual and child
 - The individual is capable of forming a view on the matter of contact between the individual and the child.



Participation criteria (2)

- The Participation criteria need to be considered for every child at every hearing and will change – they are not fixed.
- In order to assess the Participation criteria the reporter will need to have information.
- A decision recommended by the Local Authority will be viewed as a ‘likely’ decision by the reporter.
- An interim decision will also be considered as being able to significantly affect contact.
- Changes to current contact arrangements (however these are managed) may be considered as ‘significantly affecting contact or the possibility of contact’.
- Views of the child or family which are different to the current contact arrangement may be considered as ‘significantly affecting contact or the possibility of contact’.
- The capacity of a child to form a view will be assessed in the context of a child using the participation rights, e.g.:
 - Attending the hearing
 - Participating in the hearing
 - Providing a report
 - Understanding the notification from the reporter.



Review Hearings

- There are two key changes which expand the types of review hearing – a section 132A review
- Person with participation rights at a hearing that made, continued or varied the CSO can request a review hearing after 3 months – same as child and RPs
- Person who did not attend the most recent hearing where CSO made, varied or continued can request a review straight away if certain limited criteria are met



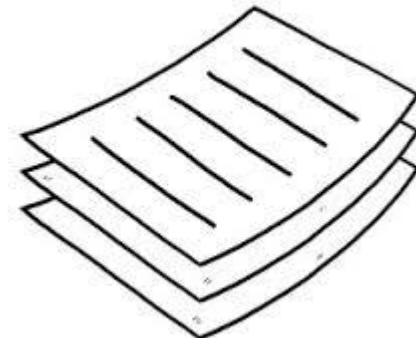
Contact Directions

- There is new duty on a children's hearing to consider whether to make a contact direction in relation a sibling, and anyone with whom the child has resided and with whom the child has an ongoing sibling-like relationship
- Duty is only in relation to someone who does not reside with the child
- NB: these duties relate to a wider group of people than the participation rights for hearings
- NB: no change to the principles to be applied: welfare is paramount; child's views; minimum intervention



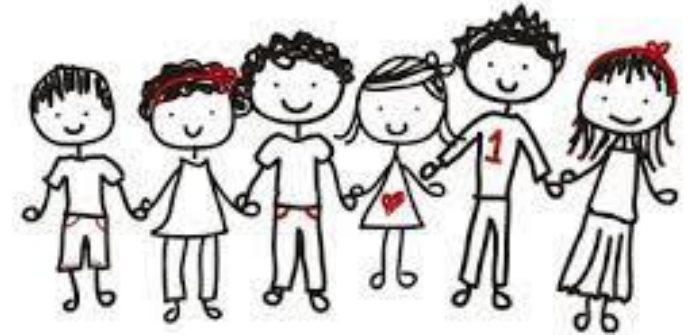
Provision of information

- Reporter requires information from the local authority to ascertain whether any individuals have participation rights.
- The hearing require information to allow them to consider making a contact direction.
- Individual with participation rights will receive:
 - Copy of any contact direction that regulates their contact with the child
 - Any information about the individual, their contact with the child, or how contact or the possibility of contact with the child may be affected by a decision of the children's hearing



Attendance at Hearings – 3 Key Changes

- Extended Duty on Reporter to Facilitate Attendance by Electronic Means
- Power of Hearing to Restrict Attendance to Electronic Means Only
- Extended Power to Exclude



Attendance by Electronic Means

- SCRA must take all reasonable steps to enable someone to attend a PHP or children's hearing by electronic means if the following criteria is met:
 - (a) Person has a right to attend
 - (b) Person has made a request to attend by electronic means, and
 - (c) the Reporter is satisfied that either:
 - the person has a good reason for not physically attending, or
 - the person would be better able to effectively participate through electronic means rather than by physically attending
- **This is not the same as the arrangements a reporter will make for a Virtual Hearing.**



Restricting Attendance to by Electronic Means Only

- PHP may be arranged by a reporter – either on own initiative or following request by child, relevant person or safeguarder for a hearing to consider restricting attendance to electronic means only
- PHP decision can apply to: relevant persons and their representatives, persons with participation rights and their representatives, and representatives of newspaper or agency
- Cannot apply to a person who is seeking to be deemed



Restricting Attendance to by Electronic Means Only

- Criteria - individual's physical presence likely to:
 - Prevent the hearing obtaining the views of the child or a relevant person, OR
 - Cause significant distress to the child or to a relevant person
- If criteria apply, PHP MAY order that individual can only attend by electronic means.
- If PHP makes that order, SCRA must take all reasonable steps to enable the individual to attend the hearing by electronic means.



Extended Power to Exclude

- **There are two new provisions:**
 - 1) chair can exclude any person where their conduct is violent, abusive or otherwise so disruptive that, unless the person is excluded, the chair would consider it necessary to end or adjourn the PHP or hearing
 - 2) chair can exclude RP, their representative where presence causes or likely to affect the hearing obtaining the views of a relevant person or likely to cause, significant distress to a relevant person attending the hearing
- Cannot be exercised before the hearing starts and the provisions last for only as long as necessary



Sending hearing papers to the CSWO

- Reporter has a duty to give hearing papers to the Chief Social Work Officer
- These will be sent to the SWIS inbox and forwarded to the appropriate social worker



Sibling Contact Report

- SCRA Localities and local authorities will agree the format of a Sibling Contact Report to be submitted with all reports for Children's Hearings.
- A template Sibling Contact Report is available together with guidance on the SCRA website.
- This report will be included in the hearing papers. It will also be provided to an individual if they meet that participation criteria.
- **It is essential that a separate report is completed for each sibling or person with a sibling type relationship.**



Sibling Contact Report

- A Sibling Contact Report should be submitted with **all reports** for Children's Hearings - this includes investigation reports and referrals to the Reporter - except where a child is living with an individual.
- A Sibling Contact Report will be needed if there is a recommendation to remove the sibling or someone else is asking the hearing to do this.
- The report must be provided to the Reporter no later than **4 weeks** before a hearing to provide sufficient time for the Reporter to take the appropriate steps.
- Where a Pre Hearing Panel has been asked to make a decision that an individual meets participation criteria and no Sibling Contact Report has been completed one must be prepared and submitted to SCRA within 7 days of being requested.



Conclusions

This is new to everyone – if you have questions, please ask.

Social workers should complete a Sibling Contact Report.

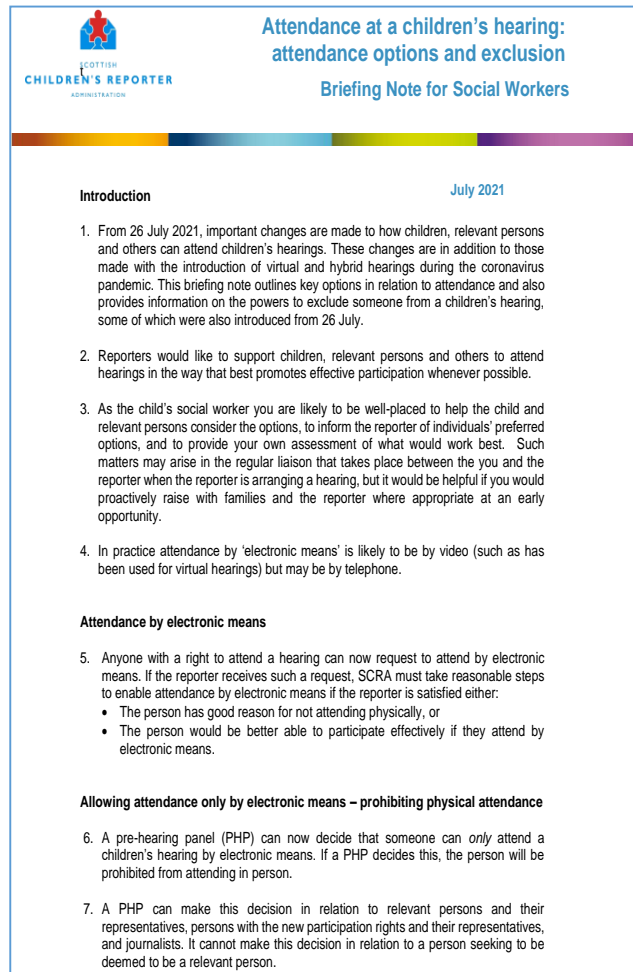
Social workers should let the reporter know if children and families have a strong preference for attending the hearing in a certain way.

Social workers should let the reporter know of any one who should be attending the hearing using technology (for example, where it would be safer not to have a person in the building)

Social workers should alert the reporter if they think that a person may need to be excluded during the hearing discussion.

Please make sure you have read [SCRA's briefing](#).

Thank you!



The image shows a thumbnail of a document titled "Attendance at a children's hearing: attendance options and exclusion Briefing Note for Social Workers". The document is dated July 2021 and is published by the Scottish Children's Reporter Administration. It contains an introduction and a list of seven points regarding attendance options and exclusion during hearings.

Attendance at a children's hearing: attendance options and exclusion
Briefing Note for Social Workers

July 2021

Introduction

1. From 26 July 2021, important changes are made to how children, relevant persons and others can attend children's hearings. These changes are in addition to those made with the introduction of virtual and hybrid hearings during the coronavirus pandemic. This briefing note outlines key options in relation to attendance and also provides information on the powers to exclude someone from a children's hearing, some of which were also introduced from 26 July.
2. Reporters would like to support children, relevant persons and others to attend hearings in the way that best promotes effective participation whenever possible.
3. As the child's social worker you are likely to be well-placed to help the child and relevant persons consider the options, to inform the reporter of individuals' preferred options, and to provide your own assessment of what would work best. Such matters may arise in the regular liaison that takes place between the you and the reporter when the reporter is arranging a hearing, but it would be helpful if you would proactively raise with families and the reporter where appropriate at an early opportunity.
4. In practice attendance by 'electronic means' is likely to be by video (such as has been used for virtual hearings) but may be by telephone.

Attendance by electronic means

5. Anyone with a right to attend a hearing can now request to attend by electronic means. If the reporter receives such a request, SCRA must take reasonable steps to enable attendance by electronic means if the reporter is satisfied either:
 - The person has good reason for not attending physically, or
 - The person would be better able to participate effectively if they attend by electronic means.

Allowing attendance only by electronic means – prohibiting physical attendance

6. A pre-hearing panel (PHP) can now decide that someone can *only* attend a children's hearing by electronic means. If a PHP decides this, the person will be prohibited from attending in person.
7. A PHP can make this decision in relation to relevant persons and their representatives, persons with the new participation rights and their representatives, and journalists. It cannot make this decision in relation to a person seeking to be deemed to be a relevant person.