

Briefing for the Public Petitions Committee

Petition Number: [PE1768](#)

Main Petitioner: James A Mackie

Subject: Children Hearing proceedings should be minuted and or recorded

Calls on the Parliament to urge the Scottish Government to ensure that all proceedings in a Children's Hearing are minuted or recorded.

Background

Legislative framework

The Children's Hearing System was established in 1971 under the Social Work (Scotland) Act 1968. The Children (Scotland) Act 1995 repealed, re-stated and modified those aspects of the 1968 Act concerning Children's Hearings. The Children's Hearings System is currently provided for by the [Children's Hearings \(Scotland\) Act 2011](#) ("the 2011 Act"). The 2011 Act again consolidated the previous legislation and made mostly structural changes to the Children's Hearings System. The 2011 Act followed a period of review which started around 2004 and coincided with the development of the 'Getting it Right for Every Child (GIRFEC)' approach to improving outcomes and supporting the wellbeing of children and young people.

The [Children's Hearings \(Scotland\) Act 2011 \(Rules of Procedure in Children's Hearings\) Rules 2013](#) ("2013 Rules") provides for how children's hearings are run in more detail.

Outline of the Children's Hearing System

There are a number of grounds on which a child's case can be referred to a children's hearing. For example, on offence grounds or because of abuse or neglect. However, it is the "needs rather than the deeds of the individual child that is the primary consideration"¹. The children's hearing should "regard the need to safeguard and promote the welfare of the child ... as paramount."²

A children's hearing consists of three lay members, one of whom is the chair. Panel members are trained, recruited and supported by Children's Hearings Scotland. Rule 3 of the 2013 Rules requires that the panel be comprised of at least one man and at least one woman from the relevant local area, where

¹ Norrie 2013, Children's Hearings in Scotland (3rd Edition), page 4.

² Section 25(2) of the 2011 Act.

practicable. Rule 3 also provides for a children's hearing to request that there be some continuity in membership of the children's panel at the next children's hearing to be arranged in relation to that child.

The Scottish Children's Reporter Administration handles referrals to the children's hearing and a reporter will draw up a statement of grounds for the referral. Grounds can be accepted (by the child and/or relevant person(s)) or, if not, it would be for a sheriff to determine whether grounds had been established.

The reporter collects and provides paperwork (e.g. social work reports) to the panel, relevant parties and, in some cases, the child in advance of a hearing. Any paperwork is provided to the three panel members sitting in the hearing and to others who have a right to attend the hearing. The Reporter has a duty to provide information, where it is available, within timescales set out in the 2013 Rules.

The children's hearing considers what, if anything, should be done to support the child once grounds have been accepted or established. That is, the hearing will consider whether to make a Compulsory Supervision Order ("CSO") and, if so, the terms of the CSO. While the focus is on how best to support the child, the hearing could potentially consider disputes of fact outside of the established or accepted grounds, e.g. a child's attendance at school. If a CSO is made, it would normally be for the local authority to carry out any instructions contained within the CSO (e.g. through a social work intervention).

Record keeping and the provision of information about a hearing

The 2013 Rules set out duties for both the chair of the panel and the reporter. In terms of the chair, Rule 6(c) state that the chair must ensure that a record is made of—

- (i) the decisions or determinations made by the children's hearing or pre-hearing panel, as the case may be; and
 - (ii) the reasons for those decisions or determinations; and
- (d) sign and date the record of the decisions or determinations.

Rule 13 provides for duties on the Reporter in terms of record keeping at a hearing. Rule 13 is reproduced in the Annexe A of this paper. These records are in relation to the location, time and date of the hearing, details of the child and any other attendees, and details of the decision and any directions made.

Once the hearing has taken place, the Reporter will, usually, provide details of the decision, why it was made, and routes of appeal to the child and any relevant person.

Appeals

The petitioner's concern appears to be that appeals can be made to the sheriff without sufficient information. Appeals can be made by the child, a relevant person or the child's safeguarder³ to a sheriff on the substantive decisions of a hearing. Section 155 of the 2011 Act provides that the SCRA must lodge with the court:

- the decision and reasons for the decision of the hearing;
- any information provided to the hearing under the 2013 Rules; and
- the report of the children's hearing.

Section 155 also provides for sheriffs to be able to hear oral evidence as part of the appeal.

The most recent [SCRA statistics](#) state that, in 2018-19, there were 824 appeals covering 651 children. Of these 824 appeals, 43% were successful.⁴ Statistics for disposals of appeals of other legal cases are not collected in Scotland. The most recent [statistics for criminal cases are from 2008-9](#) which show that 25% of appeals in criminal cases were sustained.

Scottish Parliament and Scottish Government Actions

The Education and Skills Committee undertook post-legislative scrutiny of the 2011 Act in 2017. Its report was [published on 25 April 2017](#) and the level of detail of records does not appear to have been raised during the inquiry.

Submissions and the responses to the report can be found here:

<https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/105773.aspx>

Scottish Government officials chair the Children's Hearings Improvement Partnership ("CHIP"). CHIP seeks to bring together a range of people from organisations across Scotland to develop and improve the Children's Hearings System.

Ned Sharratt
Senior Researcher
12 December 2019

³ A person who may be needed to safeguard the interests of the child in Children's Hearing proceedings.

⁴ Personal correspondence with the SCRA.

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Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

**Extract of Rule 13 of the Children's Hearings (Scotland) Act 2011
(Rules of Procedure in Children's Hearings) Rules 2013**

13.—(1) The Reporter must keep a record of the proceedings at each children's hearing and pre-hearing panel held by virtue of the Act or any other enactment.

(2) The record to be kept by the Reporter must include the information mentioned in paragraph (3) and such other information about the proceedings as the Reporter considers appropriate.

(3) That information is—

(a) the particulars of the place and date of the children's hearing or pre-hearing panel;

(b) the full name and address, date of birth and sex of the child in relation to whom the children's hearing or pre-hearing panel is held;

(c) the full name and address of each relevant person;

(d) which of the persons mentioned in sub-paragraphs (b) and (c) attended the children's hearing or pre-hearing panel;

(e) the full name and address of any representative attending the children's hearing or pre-hearing panel;

(f) the full name and address of any safeguarder attending the children's hearing or pre-hearing panel;

(g) the details of any other person attending the children's hearing or pre-hearing panel;

(h) the details of any decision or determination made by the children's hearing or pre-hearing panel or any other course of action taken by the children's hearing or pre-hearing panel;

(i) where the children's hearing to which the record relates is a grounds hearing—

(i) the details of any section 67 ground which is accepted, or not accepted, or is not understood and by whom;

(ii) the detail of any direction given by the grounds hearing under section 93(2)(a) (grounds not accepted: application to sheriff or discharge) or 94(2)(a) (child or relevant person unable to understand grounds) of the Act to the Reporter to make an application to the sheriff.