

Children (Scotland) Bill

Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 3 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

Note: The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above the line must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

Group 1: The voice of the child

8, 35, 12, 13, 14, 15, 16, 31, 48

Group 2: Matters to be considered in making an order under section 11(1) of the Children (Scotland) Act 1995

9, 10, 11, 26

Group 3: Disclosure of information

36, 46

Group 4: Vulnerable witnesses and vulnerable parties

37, 38, 39

Debate to end no later than 1 hour 10 minutes after proceedings begin

Group 5: Child welfare reporters: qualifications and experience

40, 1, 2

Group 6: Regulation of contact services

3, 4, 5, 17, 18, 19, 41, 6, 42, 7, 20

Group 7: Promotion of contact between children and others

43, 22, 44, 45

Debate to end no later than 2 hours 5 minutes after proceedings begin

Group 8: Alternative methods of dispute resolution

24, 25, 32, 33

Group 9: Duty to ensure availability of child advocacy services

27, 28, 29, 30

Group 10: Duty to ensure system of redress

47

Group 11: Children's hearings: opportunity to participate

34

Debate to end no later than 2 hours 40 minutes after proceedings begin

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Amendments in debating order

Group 1: The voice of the child

Ash Denham

- 8 In section 1, page 1, line 12, leave out <a manner suitable to the child,> and insert <—
- (i) the manner that the child prefers, or
 - (ii) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child’s preference,>

Alex Cole-Hamilton

- 35 In section 1, page 1, line 15, after <maturity> insert <(including views expressed by the child about the child’s desire to maintain personal relations with family members, in so far as doing so is practicable and in the interests of the child)>

Ash Denham

- 12 In section 1, page 3, line 4, leave out <a manner suitable to the child,> and insert <—
- (i) the manner that the child prefers, or
 - (ii) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child’s preference,>

Ash Denham

- 13 In section 1, page 3, leave out lines 21 and 22 and insert—
- <(a) give the child concerned an opportunity to express the child’s views in—
 - (i) the manner that the child prefers, or
 - (ii) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child’s preference, and>

Ash Denham

- 14 In section 2, page 4, leave out lines 31 and 32 and insert—
- <(a) give the child an opportunity to express the child’s views in—
 - (i) the manner that the child prefers, or
 - (ii) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child’s preference, and>

Ash Denham

- 15 In section 2, page 5, leave out lines 3 and 4 and insert—
- <“(a) give the child an opportunity to express the child’s views in—
 - (i) the manner that the child prefers, or

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- (ii) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child's preference,">

Ash Denham

16 In section 3, page 5, leave out lines 18 and 19 and insert—

- <(a) give the child an opportunity to express the child's views in—
 - (i) the manner that the child prefers, or
 - (ii) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child's preference, and>

Ash Denham

31 In section 16, page 24, line 14, leave out <a manner suitable to the child,> and insert <—

- (A) the manner that the child prefers, or
- (B) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child's preference,>

Liam McArthur

48 Before section 22, insert—

<Review of children's ability to participate

- (1) The Scottish Ministers must review the ability of children to effectively participate in the making of decisions in relation to which one of the following enactments requires that the child be given an opportunity to express a view and that regard be had to any view expressed—
 - (a) sections 11ZB(1), 11DA(3), 11F(2)(b) and 16(1) of the Children (Scotland) Act 1995,
 - (b) sections 14(4A) and 84(5) of the Adoption and Children (Scotland) Act 2007,
 - (c) section 27(3) of the Children's Hearings (Scotland) Act 2011.
- (2) The review must, in particular, consider the resources required to ensure effective participation by children in the making of the decisions.
- (3) The review must be completed no later than 5 years after the date of Royal Assent.
- (4) As soon as practicable after completing the review, the Scottish Ministers must—
 - (a) make a report of the review publicly available, and
 - (b) lay a copy of the report before the Scottish Parliament.
- (5) The report must set out—
 - (a) the steps, if any, that the Scottish Ministers propose to take in light of the review,
 - (b) a proposed timetable for taking the steps, and
 - (c) if any of the steps are not to be taken in the parliamentary session during which the copy of the report is laid before the Parliament, an explanation of why the Ministers do not propose to take those steps before that session ends.

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- (6) In subsection (5)(c), “parliamentary session” has the meaning given in section 19(1) of the Interests of Members of the Scottish Parliament Act 2006.>

Group 2: Matters to be considered in making an order under section 11(1) of the Children (Scotland) Act 1995

Rhoda Grant

- 9 In section 1, page 1, line 26, leave out <(7D)> and insert <(7E)>

Rhoda Grant

- 10 In section 1, page 2, line 23, leave out <the effect of the fact that two or more persons would be required to> and insert <whether it is, or would be, appropriate for an order to require that two or more persons>

Rhoda Grant

- 11 In section 1, page 2, leave out lines 35 to 41

Liam McArthur

- 26 In section 12, page 21, line 17, at end insert—

<() in the absence of an agreement on the pattern of residence of a child and at the request of at least one of the child’s parents, the possibility of ordering that the child should reside on an approximately equal basis with each of the child’s parents.”>

Group 3: Disclosure of information

Liam McArthur

- 36 Leave out section 1A

Liam McArthur

- 46 Leave out section 13A and insert—

<Duty to consider child’s best interests when allowing access to information

- (1) The Children (Scotland) Act 1995 is modified as follows.
(2) After section 11D (which is inserted by section 13(2) of this Act) insert—

“11DA Duty to consider child’s best interests when allowing access to information

- (1) Where the court—
(a) is considering making an order under section 11(1), and
(b) has to decide whether a person should have access to anything in which private information about a child is recorded,

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in making that decision it must comply with subsections (2) and (3) in relation to that child.

- (2) The court must regard the best interests of the child as a primary consideration.
- (3) The court must—
 - (a) give the child an opportunity to express the child’s views in—
 - (i) the manner that the child prefers, or
 - (ii) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child’s preference, and
 - (b) have regard to any views expressed by the child, taking into account the child’s age and maturity.
- (4) But the court is not required to comply with subsection (3) if satisfied that—
 - (a) the child is not capable of forming a view, or
 - (b) the location of the child is not known.
- (5) The child is to be presumed to be capable of forming a view unless the contrary is shown.
- (6) In this section, “private information” means information in which the child could have a reasonable expectation of privacy.”.>

Group 4: Vulnerable witnesses and vulnerable parties

Ash Denham

37 After section 4, insert—

<Vulnerable witnesses: requirement to consider special measures without application in certain cases

- (1) The Vulnerable Witnesses (Scotland) Act 2004 is modified as follows.
- (2) In section 12 (orders authorising the use of special measures for vulnerable witnesses), after subsection (6) insert—
 - “(6A) If the witness is deemed to be a vulnerable witness by virtue of section 11B—
 - (a) before the proof or other hearing at which the witness is to give evidence the court must either—
 - (i) make an order under subsection (6) authorising the use of a special measure for the purpose of taking the witness’s evidence, or
 - (ii) make an order that the witness is to give evidence without the benefit of any special measure,
 - (b) the court is to do so whether or not a vulnerable witness application is made.”.>

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Ash Denham

- 38 In section 7, page 14, line 3, leave out <applies,> and insert <applies—
- (a) in relation to a party whom the court would be required by section 11B of the Vulnerable Witnesses (Scotland) Act 2004 to consider a vulnerable witness if the party were to give evidence in or for the purposes of the proceedings, the court must—
 - (i) order the use of any special measure that the party requests,
 - (ii) order the use of a special measure that the court considers appropriate and, if the party requested a different special measure, give reasons for not ordering its use, or
 - (iii) give reasons for not ordering the use of any special measure,
 - (b) in relation to any other party,>

Ash Denham

- 39 In section 7, page 14, line 4, leave out <in relation to a party>

Group 5: Child welfare reporters: qualifications and experience

Liam McArthur

- 40 In section 8, page 16, line 20, at end insert—
- <() Only a social worker registered with the Scottish Social Services Council may be appointed as a child welfare reporter.>

Neil Findlay

- 1 In section 8, page 16, line 32, at end insert—
- <() For the purposes of subsection (3)(a), persons who have knowledge in a professional capacity of the child to which the child welfare report relates may be included in the register where they have obtained the necessary professional qualifications.>

Neil Findlay

- 2 In section 8, page 16, line 32, at end insert—
- <() Before making, revising or revoking regulations under subsection (3), the Scottish Ministers must consult persons with lived experience of—
- (a) domestic abuse,
 - (b) court-ordered contact.>

Group 6: Regulation of contact services

Neil Findlay

- 3 In section 9, page 17, line 3, after <centre> insert <—

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(a)>

Neil Findlay

4 In section 9, page 17, line 4, at end insert <, and

(b) the child to whom the contact order relates is the responsibility of the contact centre for the duration of that child’s time in the contact centre.>

Neil Findlay

5 In section 9, page 17, line 11, at end insert—

<() make provision for staff referred to in paragraph (a) to be trained and to hold recognised professional qualifications in relation to issues concerning children,>

Ash Denham

17 In section 9, page 17, line 30, leave out <(2)(g)> and insert <(2)(d)>

Ash Denham

18 In section 9, page 17, line 33, leave out <undertaking> and insert <having>

Ash Denham

19 In section 9, page 17, line 33, leave out <to be carried out by staff> and insert <undertaken by persons>

Bob Doris

41 In section 9, page 17, line 36, at end insert—

<() issuing reports on any failure, or possible failure, by a contact service provider to comply with the provider’s duties under the Equality Act 2010, and in particular any duty to make reasonable adjustments to premises in order to facilitate their use by disabled people,>

Neil Findlay

6 In section 9, page 17, line 39, at end insert—

<() Before making, implementing or reviewing regulations under subsection (1), the Scottish Ministers must consult persons with lived experience of—

(a) domestic abuse,

(b) court-ordered contact.>

Ash Denham

42 In section 9, page 18, line 7, at end insert—

<“enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.>

Neil Findlay

7 In section 9, page 18, line 18, after <organisation> insert <that is publicly provided and accountable to the Scottish Ministers and>

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Ash Denham

20 After section 9, insert—

<Referrals by solicitors to contact services

- (1) The Children (Scotland) Act 1995 is modified as follows.
- (2) After section 101C (which is inserted by section 9(3) of this Act) insert—

“101CA Contact services: referrals by solicitors

- (1) A solicitor must not—
 - (a) refer a person to a contact service that is not a regulated contact service, or
 - (b) allow another person to do so on the solicitor’s behalf.
- (2) If a solicitor fails to comply with subsection (1), that failure may be treated as professional misconduct or unsatisfactory professional conduct.
- (3) In this section, “contact service” and “regulated contact service” have the meanings given in section 101C(5).”.>

Group 7: Promotion of contact between children and others

Rona Mackay

43 In section 10, page 19, line 1, leave out from <(including> to <whole-blood> in line 2

Liam McArthur

22 In section 10, page 19, line 6, at end insert <, and

- () individuals who are important to the child (such as former foster carers of the child).”.>

Rona Mackay

44 In section 10, page 19, line 6, at end insert—

- <() For the purposes of subsection (1A), two people are siblings if they have at least one parent in common.”.>

Rona Mackay

45 In section 10A, page 19, leave out lines 19 to 27 and insert <any person mentioned in subsection (4) with whom the child does not reside.

- (4) The persons referred to in subsection (3) are—
 - (a) a relevant person in relation to the child,
 - (b) a sibling of the child,
 - (c) 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 siblings.
- (5) For the purposes of subsection (4), two people are siblings if they have at least one parent in common.”.>

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Group 8: Alternative methods of dispute resolution

Ash Denham

Supported by: Margaret Mitchell

24 Leave out section 11A

Ash Denham

Supported by: Margaret Mitchell

25 Leave out section 11B

Ash Denham

Supported by: Margaret Mitchell

32 After section 16, insert—

<Alternative dispute resolution

Funding for alternative dispute resolution

- (1) The Scottish Ministers must—
 - (a) set up a scheme to make assistance available so that individuals can meet the costs of alternative dispute resolution procedures in relation to a dispute of the kind described in subsection (2), or
 - (b) arrange for assistance to be made available from the Scottish Legal Aid Fund so that individuals can meet those costs.
- (2) The kind of dispute referred to in subsection (1) is a dispute that—
 - (a) is about any of the matters mentioned in section 11(1) of the Children (Scotland) Act 1995, and
 - (b) either—
 - (i) has resulted in an order being sought under that section, or
 - (ii) is likely to do so if it is not resolved through an alternative dispute resolution procedure.
- (3) Entitlement to the assistance that is to be made available by virtue of subsection (1) may be made to depend on an individual satisfying any eligibility conditions that the Scottish Ministers consider appropriate.
- (4) But any eligibility conditions relating to an individual's financial circumstances may not render an individual ineligible for assistance if the individual's circumstances are such that the individual could not be refused civil legal aid under section 15 of the Legal Aid (Scotland) Act 1986.
- (5) Any scheme set up, or arrangement made, in accordance with subsection (1), must be framed so that assistance under it is only available to meet the costs of alternative dispute resolution procedures that ensure regard is had to children's views to at least the same extent as a court would be required to have regard to them by section 11ZB of the Children (Scotland) Act 1995.
- (6) Having fulfilled their duty under subsection (1), the Scottish Ministers must lay before the Scottish Parliament a statement explaining how they have done so.

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- (7) If, at the end of a period described by subsection (8), the Scottish Ministers have not fulfilled their duty under subsection (1), they must lay before the Scottish Parliament a statement explaining why not and stating when they expect to fulfil it.
- (8) For the purposes of subsection (7)—
 - (a) the first period begins on Royal Assent,
 - (b) after that, a new period begins with the last day of the previous period,
 - (c) each period ends with the day falling 6 months after it began,
 - (d) if the previous period ended on the 29th, 30th or 31st of a month and the month falling 6 months later has no such day, the period ends on the last day of that month.
- (9) The Scottish Ministers may by regulations make any provision that they consider necessary or appropriate for the purpose of fulfilling their duty under subsection (1).
- (10) Regulations under subsection (9) may—
 - (a) make different provision for different purposes or areas,
 - (b) modify any enactment.
- (11) Regulations under subsection (9) are subject to the affirmative procedure.>

Ash Denham

Supported by: Margaret Mitchell

33 After section 16, insert—

<Pilot scheme for mandatory alternative dispute resolution meetings

- (1) The Scottish Ministers must arrange a pilot scheme under which a court, in proceedings to which the scheme applies, may only make an order under section 11(1) of the Children (Scotland) Act 1995—
 - (a) where the parties to the proceedings have attended a meeting at which the options available to resolve the dispute giving rise to the proceedings are explained, or
 - (b) if the terms of the scheme allow, where the court has decided on cause shown that it would not be appropriate to require the parties to attend such a meeting.
- (2) The terms of the pilot scheme are to be determined by the Scottish Ministers, but the scheme—
 - (a) must be time limited, and
 - (b) must not apply to proceedings in which there is a proven or alleged history of abuse between some or all of the parties.
- (3) Having fulfilled their duty under subsection (1), the Scottish Ministers must lay before the Scottish Parliament a statement—
 - (a) describing the pilot scheme,
 - (b) if the application of the scheme is subject to exceptions (other than an exception required by subsection (2)(b)), an explanation of why the Scottish Ministers consider those exceptions to be appropriate, and
 - (c) how the Scottish Ministers intend to evaluate—
 - (i) the scheme's outcomes for—

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- (A) the children in respect of whom the making of an order under section 11(1) of the Children (Scotland) Act 1995 was considered in proceedings to which the scheme applies,
 - (B) the parties to proceedings to which the scheme applies, and
- (ii) where the scheme has led to a dispute being resolved without an order under section 11(1) of the Children (Scotland) Act 1995 being made, whether regard was had to the child's views in the resolution of the dispute to at least the same extent as a court would have had regard to the child's views when making such an order.
- (4) If, at the end of a period described by subsection (5), the Scottish Ministers have not fulfilled their duty under subsection (1), they must lay before the Scottish Parliament a statement explaining why not and stating when they expect to fulfil it.
 - (5) For the purposes of subsection (4)—
 - (a) the first period begins on Royal Assent,
 - (b) after that, a new period begins with the last day of the previous period,
 - (c) each period ends with the day falling 6 months after it began,
 - (d) if the previous period ended on the 29th, 30th or 31st of a month and the month falling 6 months later has no such day, the period ends on the last day of that month.
 - (6) The Scottish Ministers may by regulations make any provision that they consider necessary or appropriate for the purpose of fulfilling their duty under subsection (1).
 - (7) Regulations under subsection (6) may—
 - (a) make different provision for different purposes or areas,
 - (b) modify any enactment.
 - (8) Regulations under subsection (6) are subject to the affirmative procedure.
 - (9) As soon as practicable after the pilot scheme ends, the Scottish Ministers must lay before the Scottish Parliament a report setting out—
 - (a) their findings about—
 - (i) the scheme's outcomes for the persons mentioned in subsection (3)(c)(i),
 - (ii) whether, in cases where the scheme has led to a dispute being resolved without an order under section 11(1) of the Children (Scotland) Act 1995 being made, regard was had to children's views in the resolution of those disputes to at least the same extent as a court would have had regard to their views when making such an order, and
 - (b) what (if anything) they intend to do in light of those findings.>

Group 9: Duty to ensure availability of child advocacy services

Ash Denham

- 27** In section 15A, page 23, line 30, leave out <11E (which is inserted by section 15(2) of this Act)> and insert <100>

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Ash Denham

- 28 In section 15A, page 23, line 31, leave out <11EA> and insert <100A>

Ash Denham

- 29 In section 15A, page 23, line 33, leave out <proceedings for an order under section 11(1)> and insert <relevant proceedings>

Ash Denham

- 30 In section 15A, page 23, line 37, leave out <proceedings under section 11(1)."> and insert <relevant proceedings,

“relevant proceedings” means proceedings in which the court is considering making an order under section 11(1).”>

Group 10: Duty to ensure system of redress

John Finnie

- 47 After section 16, insert—

<Duty to ensure system of redress

Duty to ensure system of redress

- (1) The Children (Scotland) Act 1995 is modified as follows.
- (2) After section 11F (which is inserted by section 16 of this Act) insert—

“11FA Duty to ensure system of redress

- (1) The Scottish Ministers must by regulations make such provision as they consider necessary and expedient to establish an effective, child-sensitive redress scheme for children who are the subject of proceedings where the court is deciding whether an order should be made under section 11(1).
- (2) The regulations must include provision to ensure redress where duties and obligations under this Act to the child in question in relation to—
 - (a) participating in court proceedings,
 - (b) the process by which an order under section 11(1) is made,
 - (c) expressing views in regard to court proceedings,
 - (d) breach of duty to provide feedback to the child,
 - (e) any other matter that the Scottish Ministers consider necessary or appropriate,

have not been complied with.

- (3) The regulations must include provision to ensure that the person making a decision about redress is able, when considering whether duties and obligations have been complied with, to take into account whether actions have been taken for the purpose of securing the child’s best interests.
- (4) Regulations under subsection (1) are subject to the affirmative procedure.

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- (5) For the avoidance of doubt, the scheme referred to in this section does not affect any right of appeal under this Act.”>

Group 11: Children’s hearings: opportunity to participate

Ash Denham

34 Before section 17, insert—

<Opportunity to participate in hearing

- (1) The Children’s Hearings (Scotland) Act 2011 is modified as follows.
- (2) In section 79 (referral of certain matters for pre-hearing determination)—
 - (a) after subsection (2)(b) insert—
 - “(ba) must, if requested to do so by an individual, refer for determination by a pre-hearing panel the matter of whether the individual meets the criteria specified in rules under section 177 to be afforded the rights mentioned in subsection (5ZA) in relation to the children’s hearing,
 - (bb) must refer for determination by a pre-hearing panel the matter of whether subsection (2) of section 132A applies to an individual if—
 - (i) the individual has requested a review of a compulsory supervision order under that section, and
 - (ii) the Principal Reporter is not satisfied that the subsection applies to the individual.”,
 - (b) after subsection (4) insert—

“(5ZA) The rights referred to in subsection (2)(ba) are the following rights, as provided for in rules under section 177 and subject to such conditions and limitations as the rules specify—

 - (a) the right to be notified of the hearing,
 - (b) the right to provide a report or other document to the hearing,
 - (c) the right to be provided with documents specified in the rules,
 - (d) authorisation to attend the hearing,
 - (e) the right to be represented at the hearing.”.
- (3) After section 81A insert—

“81B Determination of claim that opportunity to participate not afforded

 - (1) Subsection (2) applies where the Principal Reporter has referred to a meeting of a pre-hearing panel the matter of whether subsection (2) of section 132A applies to an individual, or individuals, who have requested a review of a compulsory supervision order under that section.
 - (2) The pre-hearing panel must discharge the children’s hearing that is to be arranged as a result of the request if—
 - (a) there is no reason for the children’s hearing to be arranged besides the request from the individual, or individuals, in question, and

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- (b) the pre-hearing panel determines—
 - (i) that section 132A(2) does not apply to the individual, or
 - (ii) where its application to more than one individual is in question, that it applies to none of them.”.
 - (4) In section 132 (right of child or relevant person to require review)—
 - (a) after subsection (3) insert—

“(3A) An individual who is entitled to do so by subsection (6) may by giving notice to the Principal Reporter require a review of the order.”,
 - (b) after subsection (5) insert—

“(6) An individual is entitled to require a review under subsection (3A) if—

 - (a) the Principal Reporter was satisfied at the relevant time, or
 - (b) a pre-hearing panel or children’s hearing determined,

that the individual met the criteria to be afforded an opportunity to participate in relation to the children’s hearing that most recently made a decision in respect of the order (whether that was a decision to make, vary or continue it).
 - (7) Where a children’s hearing is arranged as a result (solely or partly) of an individual requiring a review under subsection (3A), the individual is to be treated as an individual whom a pre-hearing panel has determined meets the criteria to be afforded an opportunity to participate in relation to the children’s hearing.
 - (8) For the purposes of subsections (6) and (7)—
 - (a) “the criteria to be afforded an opportunity to participate” means the criteria specified in rules under section 177 to be afforded the rights mentioned in section 79(5ZA) in relation to a children’s hearing,
 - (b) “the relevant time” means—
 - (i) the time when the children’s hearing referred to in subsection (6) began, or
 - (ii) if more than one children’s hearing is to be regarded as a single children’s hearing by virtue of paragraph (c), the time when any one of them began,
 - (c) if the children’s hearing that most recently made a decision in respect of the order was a subsequent children’s hearing arranged as a result of an earlier children’s hearing deferring making a decision, they are to be regarded as a single children’s hearing.”,
 - (c) the title of the section becomes “Right to require review: child, relevant person and person afforded opportunity to participate”.
- (5) After section 132 insert—

“132A Right of person not afforded opportunity to participate to require review

 - (1) The Principal Reporter must initiate a review of a compulsory supervision order in relation to a child if requested to do so by an individual who claims to be an individual to whom subsection (2) applies.
 - (2) This subsection applies to an individual if—

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- (a) the individual did not attend the children's hearing that most recently made a decision in respect of the order (whether that was a decision to make, vary or continue it), and
 - (b) either—
 - (i) the conditions in subsection (3) are met, or
 - (ii) the conditions in subsection (4) are met.
- (3) The conditions referred to in subsection (2)(b)(i) are—
- (a) neither a pre-hearing panel nor a children's hearing made a determination about whether the individual met the criteria to be afforded an opportunity to participate in relation to the children's hearing referred to in subsection (2)(a),
 - (b) it is more likely than not that had a pre-hearing panel or children's hearing made a determination about that matter at the relevant time, it would have determined that the individual met those criteria in relation to the children's hearing, and
 - (c) the individual was not afforded the rights mentioned in section 79(5ZA) in relation to the children's hearing as the Principal Reporter either did not consider whether, or was not satisfied that, the individual met those criteria in relation to the children's hearing.
- (4) The conditions referred to in subsection (2)(b)(ii) are—
- (a) the Principal Reporter was satisfied at the relevant time, or a pre-hearing panel or children's hearing determined, that the individual met the criteria to be afforded an opportunity to participate in relation to the children's hearing referred to in subsection (2)(a), and
 - (b) the individual was not able to participate properly in the children's hearing's decision making as a result of—
 - (i) a material failure to treat the individual, or any representative of the individual, in accordance with the rules, or
 - (ii) exceptional circumstances.
- (5) For the purposes of this section—
- (a) "the criteria to be afforded an opportunity to participate" means the criteria specified in the rules to be afforded the rights mentioned in section 79(5ZA) in relation to a children's hearing,
 - (b) "the relevant time" means—
 - (i) the time when the children's hearing referred to in subsection (2)(a) began, or
 - (ii) if more than one children's hearing is to be regarded as a single children's hearing by virtue of paragraph (d), the time when any one of them began,
 - (c) "the rules" means rules under section 177,
 - (d) if the children's hearing referred to in subsection (2)(a) was a subsequent children's hearing arranged as a result of an earlier children's hearing deferring making a decision, they are to be regarded as a single children's hearing.".>

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