

Briefing for the Public Petitions Committee

Petition Number: [PE1675](#)

Main Petitioner: James Mackie

Subject: Attendance at Children's Hearings

Calls on the Parliament to urge the Scottish Government to urgently change the requirement that all children from birth to 18 years of age have to attend children's hearings, unless the Panel agrees to excuse them.

Background

Section 73 of the Children's Hearings (Scotland) Act 2011 requires children to attend a hearing. The Panel can excuse the child on the following grounds, but does not have to do so.

- (a) the hearing relates to the ground mentioned in [section 67\(2\)\(b\), \(c\), \(d\) or \(g\)](#) and the attendance of the child at the hearing, or that part of the hearing, is not necessary for a fair hearing,
- (b) the attendance of the child at the hearing, or that part of the hearing, would place the child's physical, mental or moral welfare at risk, or
- (c) taking account of the child's age and maturity, the child would not be capable of understanding what happens at the hearing or that part of the hearing.

Professor Kenneth Norrie describes the right of the child to attend the hearing:

"The most important person at any children's hearing is the child. It is the child's hearing, and it is the question of whether the child should be made subject to a compulsory supervision order that the children's hearing is being asked to determine. The child's right to participate in proceedings concerning his or her family life is a central element of both art. 6 (right to a fair hearing) and art 8(right to respect for private and family life) of the European Convention on Human Rights. It follows that in most cases the child ought to be present at all stages of the procedure." (Norrie, K. *Children's Hearings*. 3rd ed. para 6.-02).

The SCRA (Scottish Children's Reporter Administration) has [published research](#) on the experience of children and young people in the hearings system. This research found that:

“Being able to take part in hearings is more important to young people than what is said in reports, and there can be barriers to young people's participation.”

A [survey, also by the SCRA](#), of children and young people's views of their experiences included that:

“Eighty one per cent of young children (three to six years) indicated that they were 'happy' to be at their Hearing, 12% said they were 'OK' and 7% said they were 'sad'. Of children aged seven to 11 years, 63% said they felt 'OK' to be at the Hearing, 33% felt 'happy', and 4% felt 'sad'.”

In 2016, the Children's Hearings Improvement Partnership published [a report](#) on improvements to processes.

Scottish Parliament Action

In April this year, the [Education and Skills Committee held a short inquiry](#) on children's hearings system. The report made a number of recommendations on improving participation, but did not address directly the issue of required attendance. However, one of the written submissions, ([NSPCC](#)) queried the value of very young children attending a hearing.

Scottish Government Action

The Scottish Government and others have initiated a series of initiatives to improve the way that the children's hearings process works. This includes the formation of the Children's Hearings Improvement Partnership. Part of this work included the publication in October 2016 of a research report on 'The Next Steps towards Better Hearings'. The Child Protection Improvement Programme focused on child protection, but also considered children's hearings. It [reported](#) in March this year. Section 5.6 of the report considers children's hearings. One of the actions was to consider the experiences of very young children in the system:

“CHIP have considered safeguarders and advocacy development for young children (and others) and will assess whether the system experiences and processes could be improved for these children. This will build on evaluation work expected to conclude in 2017, and will relate to the circumstances in which children's cases must be sent to the sheriff for proof.”

One of the priority areas for improvement identified was:

“Developing advocacy services for children and young people to improve rights and participation for children, especially younger

children and those who have been excused from attendance at hearings.”

In its [response \(June 2017\) to the Education and Skills Committee](#) short inquiry on the implementation of children’s hearings reforms, the Scottish Government referred to the possibility of legislative change on the requirement to attend a hearing. After setting out progress in exploring how digital technology can aid participation, the response stated:

“At the right time, the Scottish Government will consider the case for making legislative change to current requirements around report notification and physical attendance, by reviewing whether the existing rules inhibit partners taking a more child-centred, child-led approach.”

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Senior Researcher
14 November 2017

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