

The Children's Hearings (Scotland) Act 2011 (Safeguarders Panel) Regulations 2012

CONSULTATION DOCUMENT

Consultation Note

The Children's Hearings (Scotland) Act 2011 (Safeguarders Panel) Regulations 2012

Purpose

The purpose of this consultation paper is to seek views on proposed amendments to The Children's Hearings (Scotland) Act 2011 (Safeguarders Panel) Regulations 2012.

Background

The Children's Hearings (Scotland) Act 2011 (the 2011 Act) introduced significant changes to the management of safeguarders. In particular, it removed responsibility from each local authority to establish a local safeguarder panel and provided for the establishment of a national Safeguarders Panel. Section 32 of the 2011 Act provides that Ministers must establish the Safeguarders Panel and also gives them a power, by regulation, to make provision in connection with this. Section 34 of the 2011 Act provides that Ministers may make further provision about safeguarders.

The Children's Hearings (Scotland) Act 2011 (Safeguarders Panel) Regulations 2012 (the 2012 regulations), along with the Children's Hearings (Scotland) Act 2011 (Safeguarders: Further Provision) Regulations 2012 (the Further Provision regulations) provide the statutory framework for the new arrangements, replacing The Panels of Persons to Safeguard the Interests of Children (Scotland) Regulations 2001. The 2012 regulations and Further Provision regulations include, among other things, provision on recruitment and selection, appointment and removal, training and the operation and management of the panel.

A safeguarder is a person appointed by a children's hearing, pre-hearing panel (PHP) or a sheriff to safeguard the interests of the child(ren) in the case. The appointed safeguarder provides the hearing or court with an independent report on any matters required by the hearing, PHP or sheriff or on anything that the safeguarder considers to be relevant to the hearing's or court's consideration of the matter. It is the safeguarder's role to safeguard the interests of the child.

Safeguarders have become a well-established element of the children's hearings system since 1985, providing independent scrutiny of assessments and plans for children and making their own recommendations. Children 1st is the appointed contractor, assisting the Scottish Ministers with the operation and management of the national Safeguarders Panel.

Recent policy and practice developments

Scottish Ministers are required by regulations to keep under review the operation and management of the panel. In particular, they are bound to ensure that membership of the national Safeguarders Panel is adequate for the purposes for

which it was established, and to monitor the performance of members of the national Safeguarders Panel.

The appointed contractor currently carries out certain aspects of the monitoring role on behalf of Ministers and also provides advice and recommendations to Ministers via the relevant Scottish Government policy officials. The appointed contractor will continue to play a critical role in selecting, training, supporting and monitoring the performance of safeguarders. Currently in the 4th year of a 5 year agreement, these contractual arrangements will be subject to a fresh public procurement exercise in the coming year.

The safeguarder's role is independent of other agencies. But the status of a safeguarder needs to be set within parameters of appropriate transparency and accountability.

A unique, intricate and highly – skilled role of this nature requires appropriate support and assurance measures. Safeguarders' work takes them into individual (often lone) contact with vulnerable children, families and a range of professions and disciplines. They have access to highly sensitive information. Their assessment, analysis and interpersonal skills need to be well-developed as their reports are very influential for decision-makers. Children, families - and Scottish Ministers - should have every confidence in the safety, rigour and appropriateness of safeguarder practice and conduct.

A key component of the overall children's hearings reform programme, modernising the safeguarder support arrangements aims to build and sustain internal and external confidence in the work of each safeguarder, and in the national Safeguarders Panel as a body of practitioners.

The 2012 regulations place a duty on Scottish Ministers to monitor the performance of members of the Safeguarders Panel (regulation 11(4)). On appointment to the national panel, in preparation for the main structural changes in June 2013, safeguarders were advised that the details of the monitoring arrangements were still in development, and that full monitoring arrangements would not be in place at that point. Safeguarders were advised that they would be consulted before full implementation of any scheme of that nature.

The recent adoption of national Practice Standards and the supporting Performance Support & Monitoring Framework (PSMF) now provides the structure for monitoring and assessing safeguarders' performance. The Practice Standards were co-produced by Scottish Government and appointed contractor Children 1st with a working group comprising mainly of serving safeguarders. Draft standards were then subject to consultation with all safeguarders and with national children's hearings system partners. Following this work, the group of safeguarders developed the PSMF. It is now anticipated that the monitoring arrangements required to assess performance against the standards will work through the staged application of this framework (PSMF).

The PSMF establishes arrangements for the monitoring of safeguarders' performance and also for the training and support of safeguarders, particularly on the

standards expected of safeguarders and the means by which performance against those standards can be assessed. Current safeguarders will now carry out their duties in accordance with the new Practice Standards, the PSMF and the existing regulations.

The PSMF and the recommendations initially presented to the Minister for Children and Young People contained elements that went further than the current 2012 regulations allow. Those recommendations included monitoring and assessment of whether safeguarders can demonstrate 'fitness to practice'. The current regulations provide for re-appointment unless a safeguarder is deemed to be unfit to be a member of the panel by reason of *inability, conduct or failure without reasonable excuse to comply with training requirements*. Those safeguarders that are up for reappointment in 2016 will have their suitability for reappointment considered under the tests in those existing 2012 regulations.

Importantly, regulation 9 of the 2012 regulations ('content of training') requires that a mandatory element of the training that must be successfully completed by any member or potential member of the Safeguarders Panel is to be 'the standards expected of safeguarders.' The standards are therefore integral to the performance of the role – safeguarders must successfully complete certain prescribed elements in their training and that training must cover the standards.

Following agreement of the new monitoring framework and standards, Ministers asked officials to review the current regulations to ensure that they offer the right regulatory regime in support of the current policy expectations, developed in the period since June 2013. Scottish Government officials and the appointed contractor have looked at how best to implement the PSMF in its first, second and third years of operation, and have sought the views of safeguarders at engagement events across the country in June and July 2015. It appears that most safeguarders welcome the planned approach.

This paper, building on that review of the regulations, seeks responses to a number of questions.

Consultation Questions and Respondent Information Form

Introduction

This paper follows a review of the extant regulations and seeks respondents' views on a number of questions. We want to ensure that the governing regulations offer the right framework to support the expectations associated with the standards and framework. Experience from the operation of the Safeguarders Panel since June 2013 - and the outputs from the more recent development work - now mean we can be clearer about what will be expected from safeguarders, and in turn what they can expect from the support and monitoring arrangements.

While we are happy to receive comments in any format, it would be helpful if you could complete the **Respondent Information Form and the template attached at Annex A**. That form asks you to respond to a number of set questions to aid fair, clear and rigorous analysis.

The following background material is intended to help you understand why the changes are being proposed. The form also gathers information to ensure that we know how you wish us to handle your response. In particular, we wish to know if you are willing for your response to be shared and published. The form provides a simple and consistent way of obtaining information which also allows us to meet Freedom of Information and Data Protection legislation requirements.

The development of national Practice Standards and the Performance Support & Monitoring Framework (PSMF) provide the structure for monitoring and assessing performance of members of the national safeguarders panel. The practice standards have been co-produced with a working group mainly comprising serving safeguarders, and were consulted on with all safeguarders and hearings system partners in Spring 2015. Following this, the group of safeguarders developed the PSMF. With both documents having received Ministerial approval in June 2015 for implementation, it is now anticipated that the required monitoring arrangements will work through the application of the framework in a staged manner. The PSMF also establishes arrangements for the training and support of safeguarders, particularly on the standards expected of safeguarders and the means by which performance against those standards can be assessed.

We wish to protect and promote the professionalism and standing of the safeguarder role. Safeguarders are a valued part of the children's hearings system – we expect that much of the planned activity will centre on recording and promoting existing excellence in safeguarder practice. A rigorous and transparent framework, giving full effect to the expectations set by the Scottish Parliament in passing the 2011 Act and also giving full effect to the expectations of Scottish Ministers, will help to maintain confidence in, and respect for, each member of the national Safeguarders Panel and for the role of the safeguarder itself.

We consider that safeguarders deserve recognition of the importance of their role, and this is an important part of a wider package. We are confident that a continuing commitment from safeguarders to work consistently and transparently will be welcomed by children, families and system partners.

Amendments proposed to regulations

For information, the current regulations are attached at **ANNEX B**.

Following review of the current regulations, we consider that some amendment is now appropriate. We have provided background and a question on each of the suggested amendments to the legislation.

Regulation 7 – Appointment and removal of members

Regulation 7 of the 2012 Regulations currently provides for an automatic reappointment process when a safeguarder's period of appointment comes to an end. Scottish Ministers are required to reappoint a safeguarder to the Panel unless that person is unfit to be a member of the Panel by reason of inability, conduct or failure to complete training.

We consider that safeguarders should be required to actively demonstrate their continuing fitness to practise. By introducing that dynamic, we wish to maintain and further build up confidence and respect from children and families and systems partners for the work of safeguarders, by ensuring that their performance is assessed actively and appropriately, with reference to the standards and PSMF.

We would also seek to encourage safeguarders to support the new national Practice Standards and to commit to a process of continuing development and improvement. The initial draft PSMF and associated recommendations presented to the Minister in Spring 2015 contained elements that went further than the current 2012 regulations allow, including an assessment of whether safeguarders can demonstrate continuing fitness to practice. Ministers have considered the recommendations, and while remaining clear about the ongoing independence of safeguarders, they wish to support adherence to the national standards.

We propose to move away from a presumption of reappointment and to replace this with a procedure where reappointment would only take place following an assessment of a safeguarder's fitness to practise throughout each term of appointment. The performance of safeguarders will be monitored in accordance with the PSMF.

Question 1: Do you agree that the regulations should be amended to remove the presumption of reappointment at the end of each term?

Regulation 8 - Training

Regulation 8 of the 2012 regulations provides that Scottish Ministers must train, or make arrangements for the training of, members and potential members of the Safeguarders Panel. Paragraph (2) provides that such training may be (a) pre-appointment training for those potential members who might be appointed to it following successful completion of that training; or (b) continuing training for members of the Safeguarders Panel. Paragraph (3) provides that members of the panel must attend and successfully complete continuing training requirements imposed by Scottish Ministers.

The PSMF sets out a cycle of pre-appointment training, continuing training, assessment of fitness to practice & reappointment training, and we want to amend the regulations to more closely reflect that approach.

Question 2: Do you agree that the presumption of reappointment should be replaced with an appropriate test based on a safeguarder's performance and completion of minimum training requirements, including pre-service and reappointment training?

Question 3: Do you agree that safeguarders should be expected to demonstrate an adherence to national standards?

Regulation 11 – Operation and Management

Regulation 11 of the 2012 regulations covers the operation and management of the Safeguarders Panel. Paragraph (4) provides that Scottish Ministers must monitor the performance of safeguarders. Paragraph (5) sets out that the monitoring of performance may be done in various particular ways, including by seeking the views of certain specified persons. We would wish to make paragraph 5 more reflective of proposed performance monitoring activity under the PSMF and the Practice Standards.

We propose to seek the views of local authorities and other system partners – for example, local authorities represented in hearings, Sheriffs, the Scottish Courts and Tribunals Service, children's hearings system advocates or legal representatives appointed under the SLAB Children's Legal Assistance Scheme. These additional views would enable a more rounded, inclusive approach to recording, assessing and responding to perspectives on safeguarder practice – reaching out, where necessary and proportionate, to other key participants.

Question 4: Do you agree that feedback on safeguarder performance should be sought from system partners other than children's panel members and Children's Reporters?

**ANNEX A
Consultation Paper**

**The Children's Hearings (Scotland) Act 2011 (Safeguarders Panel)
Regulations 2012**

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Title Mr Ms Mrs Miss Dr **Please tick as appropriate**

Surname

Forename

2. Postal Address

| | | |
|----------------------|--------------|--------------|
| <input type="text"/> | | |
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| <input type="text"/> | | |
| <input type="text"/> | | |
| Postcode | Phone | Email |

3. Permissions - I am responding as:...

Individual / Group/Organisation

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick **ONE** of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate

Yes No

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

Please complete and return the **Respondent Information Form** along with the Consultation to:

Childrens.hearings@scotland.gsi.gov.uk by 9 October 2015.

Alternatively please post to:

The Children's Hearings Team
Area 2B North
Victoria Quay
Edinburgh
EH6 6QQ

Respondent form - The Children's Hearings (Scotland) Act 2011 (Safeguarders Panel) Regulations 2012

Question 1: Do you agree that the regulations should be amended to remove the presumption of reappointment at the end of each term?

Answer: Yes / No

Please give reasons for your answer.

Question 2: Do you agree that the presumption of reappointment should be replaced with an appropriate test based on a safeguarder's performance and completion of minimum training requirements, including pre-service and reappointment training?

Answer: Yes / No

Please give reasons for your answer.

Question 3: Do you agree that safeguarders should be expected to demonstrate an adherence to national standards?

Answer: Yes / No

If your answer is yes, please provide your views on why it should be included.

Question 4: Do you agree that feedback on safeguarder performance should be sought from system partners other than children's panel members and Children's Reporters?

Answer: Yes / No

Please give reasons for your answer.

Current Regulations

SCOTTISH STATUTORY INSTRUMENTS

2012 No. 54

CHILDREN AND YOUNG PERSONS

The Children's Hearings (Scotland) Act 2011 (Safeguarders Panel) Regulations 2012

Made - - - - - 21st February 2012

Laid before the Scottish Parliament 23rd February 2012

Coming into force - - - 26th March 2012

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 32(2) of the Children's Hearings (Scotland) Act 2011⁽¹⁾ and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Children's Hearings (Scotland) Act 2011 (Safeguarders Panel) Regulations 2012 and come into force on 26th March 2012.

Interpretation

2. In these Regulations—

“the Act” means the Children's Hearings (Scotland) Act 2011; and

“the Safeguarders Panel” means the panel of persons established and maintained under section 32(1) of the Act.

Recruitment and selection of members of the Safeguarders Panel

3.—(1) The Scottish Ministers must make arrangements for the recruitment and selection of persons as members of the Safeguarders Panel.

(2) The Scottish Ministers must in particular, in such ways as they think fit, publicly advertise for persons to apply to become members of the Safeguarders Panel.

(3) The Scottish Ministers may in particular—

⁽¹⁾ 2011 asp 1.

- (a) invite nominations for persons as potential members of the Safeguarders Panel from such bodies or persons, other than CHS or SCRA, as they consider appropriate; or
- (b) make nominations themselves for persons as potential members of the Safeguarders Panel.

Safeguarders under 2001 Regulations: recruitment to the Safeguarders Panel

4. The Scottish Ministers must inform all members of panels established under the Panels of Persons to Safeguard the Interests of Children (Scotland) Regulations 2001⁽²⁾ of—

- (a) the establishment of the Safeguarders Panel; and
- (b) the arrangements for the recruitment and selection of persons as members of the Safeguarders Panel.

Appointment of members to, and disqualification from, the Safeguarders Panel

5.—(1) It is for the Scottish Ministers to appoint persons as members of the Safeguarders Panel from those recruited and selected under regulation 3.

- (2) The Scottish Ministers may only appoint persons as members of the Safeguarders Panel who—
 - (a) are capable of satisfying the key competencies; and
 - (b) have experience,

which the Scottish Ministers consider appropriate for safeguarders.

(3) The Scottish Ministers may only appoint persons as members of the Safeguarders Panel who have successfully completed such pre-appointment training under regulation 8 as Ministers think fit.

(4) A person is disqualified from appointment as a member of the Safeguarders Panel or from continuing as a member of the Safeguarders Panel, if the person is or becomes—

- (a) a member of CHS;
- (b) employed by CHS;
- (c) a member of an area support team;
- (d) a member of SCRA;
- (e) employed by SCRA;
- (f) a member of the Children's Panel; or
- (g) directly involved in the establishment, maintenance, operation or management of the Safeguarders Panel.

Barred persons

6. The Scottish Ministers must, on being notified that a person is barred from regulated work with children by virtue of the Protection of Vulnerable Groups (Scotland) Act 2007⁽³⁾—

- (a) refuse to appoint that person as a member of the Safeguarders Panel; or
- (b) where already appointed, remove that person from the Safeguarders Panel.

Tenure of appointment and removal of members

7.—(1) The period for which a person is appointed as a member of the Safeguarders Panel is 3 years.

(2) The period for which a person is reappointed as a member of the Safeguarders Panel is to be determined by the Scottish Ministers but must be for a minimum of 1 year and a maximum of 3 years.

⁽²⁾ S.S.I. 2001/476, as amended by regulation 4 of the Curators ad Litem and Reporting Officers (Panels) and the Panels of Persons to Safeguard the Interests of Children (Scotland) Amendment Regulations 2011 (S.S.I. 2011/320).

⁽³⁾ 2007 asp 14.

(3) The Scottish Ministers must reappoint as a member of the Safeguarders Panel a person whose appointment has ceased unless—

- (a) the person declines to be reappointed; or
- (b) the Scottish Ministers are satisfied that paragraph (4) applies.

(4) This paragraph applies if the person is unfit to be a member of the Safeguarders Panel by reason of—

- (a) inability;
- (b) conduct; or
- (c) failure without reasonable excuse to comply with any training requirements imposed by the Scottish Ministers under regulation 8.

(5) The Scottish Ministers may remove a member from the Safeguarders Panel during the periods mentioned in paragraphs (1) and (2) if satisfied that paragraph (4) applies.

Training of members and potential members of the Safeguarders Panel

8.—(1) The Scottish Ministers must train, or make arrangements for the training of, members and potential members of the Safeguarders Panel.

(2) Such training may be—

- (a) pre-appointment training for those potential members of the Safeguarders Panel who might be appointed to it following successful completion of that training; or
- (b) continuing training for members of the Safeguarders Panel.

(3) Members of the Safeguarders Panel must attend and successfully complete continuing training requirements imposed by the Scottish Ministers.

Content of Training

9. The training of members and potential members of the Safeguarders Panel must include—

- (a) the role and functions of safeguarders;
- (b) the standards expected of safeguarders; and
- (c) how safeguarders may best elicit the views of a child.

Payment of fees, expenses and allowances to members and potential members of the Safeguarders Panel

10.—(1) The Scottish Ministers must pay fees to members of the Safeguarders Panel.

(2) The Scottish Ministers may pay expenses and allowances, as they think fit, to members and potential members of the Safeguarders Panel.

(3) The Scottish Ministers must publish the rates of fees, expenses and allowances payable to members and potential members of the Safeguarders Panel.

Operation and management of the Safeguarders Panel

11.—(1) The Scottish Ministers must keep under review the operation and management of the Safeguarders Panel.

(2) In particular the Scottish Ministers must ensure that at all times the membership of the Safeguarders Panel is adequate for the purposes for which it is established.

(3) The Scottish Ministers must endeavour to ensure that the Safeguarders Panel includes persons from all local authority areas.

(4) The Scottish Ministers must monitor the performance of members of the Safeguarders Panel.

- (5) Monitoring the performance of members of the Safeguarders Panel may include—
- (a) assessing any report prepared by a safeguarder;
 - (b) recording the attendance of a safeguarder at children’s hearings or court proceedings under Part 10 or 15 of the Act;
 - (c) observing a safeguarder carrying out their functions, including at children’s hearings or court proceedings under Part 10 or 15 of the Act; and
 - (d) seeking the views of—
 - (i) a child in relation to whom a safeguarder was appointed;
 - (ii) a relevant person in relation to that child;
 - (iii) members of the Children’s Panel; and
 - (iv) the Principal Reporter.
- (6) The Scottish Ministers must establish and publish procedures for complaints against—
- (a) the operation and management of the Safeguarders Panel; and
 - (b) members of the Safeguarders Panel in the performance of their functions.

AILEEN CAMPBELL

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
21st February 2012

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in connection with the establishment and maintenance of the Safeguarders Panel under section 32(2) of the Children's Hearings (Scotland) Act 2011.

Regulation 3 places duties on the Scottish Ministers to make arrangements for the recruitment and selection of members of the Safeguarders Panel. Under regulation 4, members of the existing panels (in terms of the Panels of Persons to Safeguard the Interests of Children (Scotland) Regulations 2001) must be informed of those arrangements.

Regulation 5 sets out the criteria for appointment to membership of the Safeguarders Panel in terms of competence, experience and the completion of training requirements; it also specifies certain persons who are disqualified from membership. Regulation 6 provides that persons barred from regulated work with children cannot be members of the Safeguarders Panel. Regulation 7 makes provision concerning: the tenure of appointment to the Safeguarders Panel; reappointment; and removal from the Panel.

Under regulation 8 members and potential members of the Safeguarders Panel must be provided with training, and such training must be successfully completed. Regulation 9 specifies particular matters that training must be provided on.

Regulation 10 provides that: members of the Safeguarders Panels must be paid fees for their work as safeguarders; and members and potential members may be paid expenses and allowances.

Regulation 11 makes provision about reviewing the operation and management of the Safeguarders Panel. The Scottish Ministers must: ensure adequate membership of the Panel; try to have members from all council areas; monitor the performance of members; and establish a complaints procedure.

2012 No. 336

CHILDREN AND YOUNG PERSONS

**The Children’s Hearings (Scotland) Act
2011 (Safeguarders: Further Provision)
Regulations 2012**

Made - - - - - *6th December 2012*

Laid before the Scottish Parliament *10th December 2012*

Coming into force in accordance with regulation 1

The Scottish Ministers make the following regulations in exercise of the powers conferred by sections 34 and 195 of the Children’s Hearings (Scotland) Act 2011⁽⁴⁾ and all other powers enabling them to do so.

Citation and commencement

12. These Regulations may be cited as the Children’s Hearings (Scotland) Act 2011 (Safeguarders: Further Provision) Regulations 2012 and come into force on the same day as section 34 (safeguarders: regulations) of the Children’s Hearings (Scotland) Act 2011.

Interpretation

13. In these Regulations—

“the Act” means the Children’s Hearings (Scotland) Act 2011; and

“the Reporter” means the Principal Reporter or any person carrying out a function on behalf of the Principal Reporter by virtue of paragraph 10(1) of schedule 3 to the Act.

Termination of safeguarders’ appointments – appointment by children’s hearing, pre-hearing panel or sheriff

14.—(1) This regulation applies where a safeguarder is appointed in relation to a child by—

- (a) a children’s hearing or pre-hearing panel under section 30 (children’s hearing: duty to consider appointing safeguarder) or section 82 (appointment of safeguarder), as the case may be, of the Act;
- (b) a sheriff under section 31 of the Act (sheriff: duty to consider appointing safeguarder) in respect of proceedings before the sheriff under Part 10 of the Act; or

⁽⁴⁾ 2011 asp 1.

- (c) a sheriff under section 31 of the Act in respect of an appeal made under section 154 of the Act (appeal to sheriff against decision of children's hearing).

(2) The appointment of the safeguarder ceases on the occurrence of whichever of the following events first occurs—

- (a) the expiry of the time allowed to appeal against the decision of a children's hearing to discharge the referral of the child without an appeal being lodged by any person entitled under section 154 of the Act to appeal that decision;
- (b) the expiry of the time allowed to appeal against the decision to make a compulsory supervision order in respect of the child without an appeal having been lodged by any person entitled under section 154 of the Act to appeal that decision;
- (c) where a compulsory supervision order is varied or continued in respect of the child by virtue of section 138 of the Act (powers of children's hearing on review), the expiry of the time allowed to appeal against the decision to vary or continue the order without an appeal having been lodged by any person entitled under section 154 of the Act to appeal that decision;
- (d) where a compulsory supervision order is terminated in respect of the child by virtue of section 138 of the Act, the expiry of the time allowed to appeal against the decision to terminate the order without an appeal having been lodged by any person entitled under section 154 of the Act to appeal that decision;
- (e) the expiry of the time allowed to appeal against the determination by a sheriff under sections 108 (determination: ground established) or 114 (sheriff's powers on review of grounds determination) of the Act which results in the discharge of the child's referral to a children's hearing, without an appeal having been lodged by any person entitled under section 163 (appeals to sheriff principal and Court of Session: children's hearings etc.) of the Act to appeal that determination;
- (f) the expiry of the time allowed to appeal against the determination of the sheriff of an appeal under section 154 of the Act in relation to a decision of the children's hearing to make, vary or continue a compulsory supervision order, discharge the referral of the child or terminate the compulsory supervision order in respect of the child without an appeal having been lodged by any person entitled under section 163 of the Act to appeal that determination, except where paragraph (3) applies;
- (g) the expiry of the time allowed to appeal against the decision of the sheriff principal of an appeal under section 163(1) of the Act in relation to the determination of the sheriff of an appeal under section 154 of the Act of the type mentioned in sub paragraph (f), by any person entitled under section 163(2) of the Act to appeal that decision except where paragraph (3) applies; or
- (h) where any person entitled under section 163 of the Act appeals to the Court of Session against the determination of the sheriff of an appeal under section 154 of the Act of the type mentioned in sub-paragraph (f), or the decision of the sheriff principal in an appeal under section 163(1) of the Act of the type mentioned in sub-paragraph (g), the giving of the decision in the appeal except where paragraph (3) applies.

(3) This paragraph applies where the sheriff requires the Reporter under section 156(3) of the Act to arrange a children's hearing for any purpose for which a hearing can be arranged under the Act.

(4) Where paragraph (3) applies the appointment of the safeguarder will cease on the occurrence of whichever of the events mentioned in paragraph (2) next occurs.

Termination of safeguarders' appointments – appointment by sheriff in respect of certain proceedings under Part 15 of the Act

15.—(1) Where a safeguarder is appointed in relation to a child by a sheriff under section 31 of the Act in respect of an appeal made under section 160 of the Act (appeal to sheriff against relevant person determination) the appointment of the safeguarder ceases on the occurrence of whichever of the following events first occurs—

- (a) the expiry of the time allowed to appeal against the determination of the sheriff of an appeal under section 160 of the Act in relation to a decision of a children's hearing or pre-hearing panel mentioned in section 160(1) without an appeal having been lodged by any person entitled under section 164(3) of the Act (appeals to sheriff principal and Court of Session: relevant persons) to appeal that decision;
- (b) the expiry of the time allowed to appeal against the decision of the sheriff principal of an appeal under section 164 of the Act in relation to the determination of the sheriff of an appeal under section 160 of the Act without any persons entitled under section 164(3) of the Act to appeal that decision; or
- (c) where any person entitled under section 164(3) of the Act appeals to the Court of Session against the determination of the sheriff of an appeal under section 160 of the Act or the decision of the sheriff principal in an appeal under section 164 of the Act, the disposal of the case by the sheriff after the Court of Session or the sheriff principal has remitted the case to the sheriff under section 164(6) of the Act.

(2) Where a safeguarder is appointed in relation to a child by a sheriff under section 31 of the Act in respect of an appeal made under section 161 of the Act (appeal to sheriff against decision affecting contact or permanence order) the appointment of the safeguarder ceases on the occurrence of whichever of the following events first occurs—

- (a) the expiry of the time allowed to appeal against the determination of the sheriff of an appeal under section 161 of the Act in relation to a decision of the children's hearing under section 126(6) of the Act (review of contact direction) without an appeal having been lodged by any person entitled under section 165(3) of the Act to appeal that decision;
- (b) the expiry of the time allowed to appeal against the determination of the sheriff principal of an appeal under section 165(1) of the Act in relation to the determination of the sheriff of an appeal under section 161 of the Act without an appeal having been lodged by any person entitled under section 165(3) of the Act to appeal that decision; or
- (c) where any person entitled under section 165(3) of the Act appeals to the Court of Session against the determination of the sheriff of an appeal under section 160 of the Act or the decision of the sheriff principal in an appeal under section 161 of the Act, the disposal of the case by the sheriff after the Court of Session or the sheriff principal has remitted the case to the sheriff under section 165(6) of the Act (appeals to sheriff principal and Court of Session: contact and permanence orders).

(3) Where a safeguarder is appointed in relation to a child by a sheriff in respect of an appeal under section 162 of the Act (appeal to sheriff against decision to implement secure accommodation authorisation) the appointment of the safeguarder ceases on the giving of the decision by the sheriff in the appeal except where paragraph (4) applies.

(4) This paragraph applies where the sheriff requires the Reporter under regulation 15, 16 or 17 of the Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2012 to arrange a children's hearing for any purpose for which a hearing can be arranged under the Act.

(5) Where paragraph (4) applies the appointment of the safeguarder will cease on the occurrence of whichever of the events mentioned in paragraph (2) next occurs.

Termination of safeguarders' appointments – appointment in respect of proceedings under section 166 of the Act

16.—(1) This regulation applies where a safeguarder is appointed in relation to a child by a sheriff under section 31 of the Act in respect of proceedings under section 166 of the Act (review of requirement imposed on local authority).

(2) The appointment of the safeguarder ceases on the occurrence of whichever of the following events first occurs—

- (a) the expiry of the time allowed to appeal against the determination of the sheriff under section 167 of the Act (appeals to sheriff principal: section 166) without an appeal having been lodged by the local authority; or
- (b) where the local authority appeals to the sheriff principal against the determination of the sheriff under section 167 of the Act, the disposal of the case by the sheriff after the sheriff principal has remitted the case to the sheriff under section 167(6).

Reports by safeguarders in appeal proceedings under section 154 of the Act

17. A sheriff may require a safeguarder appointed in relation to a child to give a report to the sheriff for the purpose of assisting the sheriff in determining an appeal under section 154 of the Act.

Views of the child

18. Where a safeguarder appointed in relation to a child provides a report or makes a recommendation to the children's hearing or the sheriff for the purpose of assisting the children's hearing, or the sheriff, to determine any matter under the Act, the safeguarder must, so far as practicable and taking account of the age and maturity of the child—

- (a) give the child an opportunity to express their views;
- (b) have regard to any views expressed by the child; and
- (c) include the views of the child, and the means by which the child's views were obtained, in any report prepared for the children's hearing or the sheriff.

Role of the safeguarder

19.—(1) A safeguarder appointed in relation to a child must inform that child, taking account of the age and maturity of the child, any relevant person and any other person whom the safeguarder interviews in pursuance of their functions under the Act, of the safeguarder's functions and powers under the Act and any other enactment.

(2) In particular, under paragraph (1), the safeguarder must inform the child, any relevant person and any other person that the role of a safeguarder is to safeguard the interests of the child.

Access to reports of safeguarders

20.—(1) Where a safeguarder is appointed in relation to a child the Reporter must—

- (a) inform the safeguarder whether the Reporter has a copy of any report prepared in relation to the child by any other safeguarder; and
- (b) provide the persons mentioned in paragraph (2) with a copy of any such report which the safeguarder requests be provided.

(2) Those persons are—

- (a) the safeguarder;
- (b) the child;
- (c) any relevant person; and

- (d) the three members of the children's hearing selected under section 6 of the Act to form the next children's hearing to be held in relation to the child.

AILEEN CAMPBELL

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
6th December 2012

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision imposing additional requirements on safeguarders and in relation to the termination of safeguarders' appointments under section 34 of the Children's Hearings (Scotland) Act 2011 ("the Act").

Regulations 3, 4 and 5 make provision about the termination of safeguarders' appointments where a safeguarder is appointed by a children's hearing, a pre-hearing panel or sheriff.

Regulation 6 provides that a sheriff may require a safeguarder to give a report to assist the sheriff in determining an appeal under section 154 of the Act.

Regulation 7 requires safeguarders to seek the views of the child when preparing any report or making any recommendation to the children's hearing or sheriff.

Regulation 8 requires that safeguarders explain their role to the child, any relevant person and any other person whom the safeguarder interviews in pursuance of their functions.

Regulation 9 makes provision in relation to the accessing of reports of safeguarders.



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