

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(a) 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: 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

2. 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

3.—(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
- (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).

(a) 2011 asp 1.

(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

4.—(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

5.—(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

6. 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

7. 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

8.—(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

9.—(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.

St Andrew's House,
Edinburgh
6th December 2012

AILEEN CAMPBELL
Authorised to sign by the Scottish Ministers

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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