

CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 15 – Appeals

Appeals to the sheriff principal and Court of Session

Section 163 – Appeals to the sheriff principal and Court of Session: children's hearings etc.

233. Subsections (1) and (3) provide for the child, relevant person, Safeguarder (the appeal may also be made jointly by any of these parties) or the Principal Reporter, to appeal to the sheriff principal or the Court of Session by stated case against a determination by the sheriff of: an application to establish the grounds for referral under section 67; (other than 67(2)(j) if the case was remitted under the Criminal Procedure (Scotland) Act), an application for a review of a grounds determination; an appeal against a decision of the Children's Hearing; an application under section 98 for an extension of an interim compulsory supervision order or an application under section 99 for a further extension of an interim compulsory supervision order. Appeals under subsection (1) may also be made against the decision of a sheriff to make an interim compulsory supervision order and make an interim variation of a compulsory supervision order.
234. Subsections (2) and (3) provide for the child, their relevant person, Safeguarder (the appeal may also be made jointly by any of these parties) or the reporter, to appeal to the Court of Session by stated case and with the leave of the sheriff principal, against the sheriff principal's decision under subsection (1). Subsection (4) makes clear that a Safeguarder appointed by a Children's Hearing may not appeal against the decision of the sheriff in relation to a grounds determination or the review of a grounds determination. Subsection (5) provides that the reporter may not appeal against a determination by the sheriff confirming a decision of a Children's Hearing.
235. Subsections (6) and (7) provide for the references to "child" and "relevant person" in subsection (3) to be adjusted in line with section 110(2) which provides for circumstances where the review of the grounds determination occurs when the person who was the subject of the grounds determination is no longer a "child" and the person who was a relevant person in relation to the child is no longer a "relevant person". Subsection (8) provides that an appeal made under this section must be made within 28 days of the determination or decision being appealed. Subsection (9) provides that an appeal under this section may be made on a point of law or in respect of any procedural irregularity. Subsection (10) provides that, on deciding the appeal, the sheriff principal or Court of Session must remit the case back to the sheriff for disposal. Subsection (11) provides that a determination of an appeal by the Court of Session made under subsections (1) or (2) is final. Subsection (12) makes clear that appeal rights under this section also cover a review of a finding that a ground is established where that is a new ground originally established by the sheriff under section 117.

Section 164 – Appeals to the sheriff principal and Court of Session: relevant persons

236. This section provides a right of appeal against a decision of a sheriff in an appeal against a determination by a Pre-Hearing Panel or Children's Hearing as to whether or not a person should be deemed to be a relevant person. The individual claiming deemed relevant person status, the child and the child's relevant person have the right of appeal. The appeal may also be made jointly by the child and the relevant person or jointly by two or more relevant persons.
237. Subsection (2) allows an appeal to be made to the Court of Session against the decision of the sheriff principal under subsection (1). The leave of the sheriff principal must first be obtained.
238. Subsection (4) provides that an appeal made under this section must be made within 28 days of the decision made by the sheriff or sheriff principal. Subsection (5) provides that an appeal under this section may be made on a point of law or in respect of any procedural irregularity. Subsection (6) provides that the sheriff principal or Court of Session must remit the case back to the sheriff for disposal after the decision. Unlike the first level appeal under section 160 (to the sheriff against the determination by the hearing as to whether a person should be deemed to be a relevant person) the court will not substitute its own decision and must remit the case to the sheriff for disposal. The court may give directions when remitting the case. Subsection (7) provides that a decision in an appeal by the Court of Session is final.

Section 165 – Appeals to the sheriff principal and Court of Session: contact and permanence orders

239. This section provides a further appeal, by stated case, to the sheriff principal or the Court of Session, against the decision of the sheriff under section 161 (an appeal against the decision of a contact review hearing for persons who are not relevant persons but hold a contact or permanence order in respect of the child, or a person who meets the conditions specified using the order-making power in section 126(2)(b)). This mirrors the appeal route for other appeals against decisions of the sheriff throughout the Act. The decision of the sheriff principal may be appealed to the Court of Session but leave to appeal must first be granted. The appeal may be made on a point of law or in respect of any procedural irregularity. Subsection (6) provides that the court must remit the case back to the sheriff for disposal. Subsection (7) provides that a determination of an appeal by the Court of Session is final.