

POLICY NOTE

THE CHILDREN'S HEARINGS (SCOTLAND) ACT 2011 (SAFEGUARDERS: FURTHER PROVISION) REGULATIONS 2012

SSI 2012/336

The above instrument is made in exercise of the powers conferred by section 34(1) of the Children's Hearings (Scotland) Act 2011 ("the 2011 Act").

That section enables the Scottish Ministers to make further provisions about safeguarders. In particular, the Regulations make provision for additional requirements on safeguarders and the termination of safeguarders' appointments.

Safeguarders are appointed by children's hearings and sheriffs in certain cases to provide an independent assessment at hearings or in court of what is in a child's best interest. Safeguarders are independent from all other agencies involved in the children's hearings system.

Policy objectives

The policy on the overall role and detailed functions of the safeguarder within the children's hearings system will not change with the introduction of these Regulations. The intention is to further strengthen the role of the safeguarders by introducing clarity and consistency to their involvement in children's hearings cases.

Regulations 3, 4 and 5 provide for the circumstances in which a safeguarder's appointment will be terminated. The policy objective is to ensure continuity of a safeguarder's appointment throughout a child's time within the children's hearings system, ensuring that each child's best interests and wellbeing are better protected. There should be considerable benefits to the child of continuing to be supported by someone with whom they already have an established relationship, especially where that safeguarder is familiar with the child's circumstances and history.

In relation to the proceedings to which regulation 3 applies, a safeguarder's appointment, whether made by a children's hearing or by a sheriff, will not be terminated until a final decision is made on that child's case. Termination will only occur once (i) a compulsory supervision order is in place, (ii) a compulsory supervision order is terminated or (iii) the referral is discharged (following the conclusion of any appeal or further appeal as the case may be). Where the decision of a children's hearing is appealed, the appointment of the safeguarder will continue until the end of the appeal process, even if the safeguarder raises the appeal. Regulations 4 and 5 make provisions for the termination of safeguarders' appointments in certain other proceedings and ensure that the safeguarder's appointment lasts for the duration of those proceedings (including for any appeal in relation to those proceedings).

Regulation 6 allows for a safeguarder to be designated as a person who can provide a report to the Sheriff to assist them with determining an appeal. This can apply whether the safeguarder is appointed either by a court or a Children's Hearing.

Regulation 7 requires that a child be given the opportunity to have their views heard by a safeguarder. The central importance of obtaining, and hearing, children's views is reflected throughout the modernised children's hearings legislation. Safeguarders must seek the child's views and use such views to establish any recommendations in the best interest of the child. While the children's hearing's rules associated with the 2011 Act will provide that all documents given to a hearing should contain any views expressed by the child, it was important to make specific provision in relation to safeguarders. In doing so, it is recognised that some children may not be of the age or maturity to provide a view.

Regulation 8 provides that safeguarders must inform children and relevant persons and any other person they interview in carrying out their functions, about the role and purpose of safeguarders. Similar provision has been built into the Regulation in respect of the requirement, acknowledging that some children may not be of the age or maturity to understand.

It is the intention that a safeguarder will be given all information that has been given to the children's hearing. However, a safeguarder may need to have access to safeguarder reports made to previous children's hearings. Regulation 9 provides for this situation. Should the safeguarder use any such report to form a view or make recommendations, that previous report must also be copied to the child, relevant persons and panel members. The Regulation contains an option to not disclose certain parts of reports if that disclosure could cause issues or concerns.

Commencement Date

The regulations will come into force at the same time as section 34 of the 2011 Act

Consultation

There has been an open public consultation on this instrument which ran for 12 weeks from 9 December 2011 to 2 March 2012. A total of 9 responses were received to that consultation and the instrument was re-drafted, as appropriate, to take account of comments made.

Impact assessments

There are no equality impact issues.

Financial effects

The regulations would not impose any additional costs on any other bodies, individuals or businesses.

**Scottish Government
Children and Families Directorate**

6th December 2012