

CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 15 – Appeals

Appeal against decision of children's hearing

Section 154 – Appeal to sheriff against decision of children's hearing

222. This section provides for a child, relevant person or Safeguarder to appeal to the sheriff against decisions made by a Children's Hearing within 21 days of the hearing making the decision. Subsection (3) lists those decisions which are appealable. Decisions which are procedural steps in the process towards the making of a dispositive decision are not appealable. For example, where the hearing directs an application to the sheriff for the establishment of grounds for referral.

Section 155 – Procedure

223. This section makes clear that when an appeal is made the Principal Reporter must lodge the documents set out in subsection (2) with the sheriff clerk. The sheriff may hear the appeal based on the papers lodged (subsection (4)) or the sheriff may hear oral evidence from any party listed under subsection (5). Subsection (6) provides that the sheriff may also require additional reports to assist in hearing the appeal. Subsection (7) provides that such reports may only be required from Safeguarders if enabled by regulations under section 32.

Section 156 – Determination of appeal

224. This section provides that if the sheriff is satisfied that the decision appealed against is justified, the sheriff must confirm the decision (subsection (1)(a)) and may take one or more of the steps mentioned in subsection (3) if satisfied that the child's circumstances have changed since the decision, which was under appeal, was made (subsection (1)(b)). The steps available to the sheriff under subsection (3) are: to require the Principal Reporter to arrange a Children's Hearing for any purpose that a hearing could be arranged under the Act (this reflects the fact that the case may be at different stages in the process – for example, a grounds hearing, subsequent hearing or review hearing); the continuation, variation or termination of any order, interim variation or warrant which is in effect; discharge the child from any further hearings or proceedings in relation to the grounds of referral which stimulated the referral to the Children's Hearing; or to make an interim compulsory supervision order, interim variation or warrant to secure attendance.
225. Subsection (2) applies where the sheriff is not satisfied that the decision under appeal is justified. If the decision under appeal relates to a warrant to secure attendance the sheriff must recall that warrant. Where the decision under appeal is an interim compulsory supervision order or a medical examination order, the sheriff must terminate that order. Otherwise the sheriff may also take one or more of the steps set out in subsection (3).

*These notes relate to the Children's Hearings (Scotland) Act
2011 (asp 1) which received Royal Assent on 6 January 2011*

Subsection (4) ensures that, where a child is discharged under those powers, all existing orders and warrants in effect in relation to that child also terminate at that point. Subsection (5) provides that the fact that the sheriff continues or varies an order, or grants a warrant, under subsection (1)(b) or (2)(b) does not prevent a subsequent Children's Hearing from continuing, varying or terminating any order or warrant issued by the sheriff under this section.

Section 157 – Time limit for disposal of appeal against certain decisions

226. This section applies where there is an application to appeal the decision of a Children's Hearing to make a compulsory supervision order including a secure accommodation authorisation or movement restriction condition, make an interim compulsory supervision order, make an interim variation of a compulsory supervision order, make a medical examination order or to grant a warrant to secure attendance. Subsection (2) provides that the application must be heard and disposed of by the sheriff before the expiry of the period of three days beginning with the day after the day on which the appeal under section 154 is made. If this time limit is not met then the order, warrant, authorisation or condition ceases to have effect (subsection (3)).