

Children's Hearings (Scotland) Act 2011

2011 asp 1

PART 15

APPEALS

Appeal against decision of children's hearing

154 Appeal to sheriff against decision of children's hearing

- (1) A person mentioned in subsection (2) may appeal to the sheriff against a relevant decision of a children's hearing in relation to a child.
- (2) The persons are—
 - (a) the child,
 - (b) a relevant person in relation to the child,
 - (c) a safeguarder appointed in relation to the child by virtue of section 30.
- (3) A relevant decision is—
 - (a) a decision to make, vary or continue a compulsory supervision order,
 - (b) a decision to discharge a referral by the Principal Reporter,
 - (c) a decision to terminate a compulsory supervision order,
 - (d) a decision to make an interim compulsory supervision order,
 - (e) a decision to make an interim variation of a compulsory supervision order,
 - (f) a decision to make a medical examination order, or
 - (g) a decision to grant a warrant to secure attendance.
- (4) An appeal under subsection (1) may be made jointly by two or more persons mentioned in subsection (2).
- (5) An appeal under subsection (1) must be made before the expiry of the period of 21 days beginning with the day on which the decision is made.

155 Procedure

- (1) This section applies where an appeal under section 154 is made.

- (2) The Principal Reporter must lodge with the sheriff clerk a copy of—
 - (a) the decision, and the reasons for the decision, of the children's hearing,
 - (b) all information provided by virtue of rules under section 177 to the children's hearing, and
 - (c) the report of the children's hearing.
- (3) The appeal must not be heard in open court.
- (4) The sheriff may (but need not) hear evidence before determining the appeal.
- (5) The sheriff may hear evidence from—
 - (a) the child,
 - (b) a relevant person in relation to the child,
 - (c) an author or compiler of a report or statement provided to the children's hearing that made the decision,
 - (d) the Principal Reporter,
 - (e) where the appeal is against a decision to make, grant, vary or continue an order or warrant including a secure accommodation authorisation in respect of the child—
 - (i) the person in charge of the secure accommodation specified in the secure accommodation authorisation, and
 - (ii) the chief social work officer, and
 - (f) any other person who the sheriff considers may give material additional evidence.
- (6) The sheriff may require any person to give a report to the sheriff for the purpose of assisting the sheriff in determining the appeal.
- (7) Subsection (6) applies in relation to a safeguarder only if regulations under section 32 so provide.

156 Determination of appeal

- (1) If satisfied that the decision to which an appeal under section 154 relates is justified, the sheriff—
 - (a) must confirm the decision, and
 - (b) may take one or more of the steps mentioned in subsection (3) if satisfied that the circumstances of the child in relation to whom the decision was made have changed since the decision was made.
- (2) In any other case, the sheriff—
 - (a) must—
 - (i) where the decision is a decision to grant a warrant to secure attendance, recall the warrant,
 - (ii) where the decision is a decision to make an interim compulsory supervision order or a medical examination order, terminate the order,
 - (b) may take one or more of the steps mentioned in subsection (3).
- (3) Those steps are—
 - (a) require the Principal Reporter to arrange a children's hearing for any purpose for which a hearing can be arranged under this Act,

- (b) continue, vary or terminate any order, interim variation or warrant which is in effect,
 - (c) discharge the child from any further hearing or other proceedings in relation to the grounds that gave rise to the decision,
 - (d) make an interim compulsory supervision order or interim variation of a compulsory supervision order, or
 - (e) grant a warrant to secure attendance.
- (4) If the sheriff discharges a child under subsection (3)(c), the sheriff must also terminate any order or warrant which is in effect in relation to the child.
- (5) The fact that a sheriff makes, continues or varies an order, or grants a warrant, under subsection (1)(b) or (2)(b) does not prevent a children's hearing from continuing, varying or terminating the order or warrant.

157 Time limit for disposal of appeal against certain decisions

- (1) This section applies where an appeal under section 154 relates to a decision of a children's hearing to—
- (a) make a compulsory supervision order including a secure accommodation authorisation or movement restriction condition,
 - (b) make an interim compulsory supervision order,
 - (c) make an interim variation of a compulsory supervision order,
 - (d) make a medical examination order, or
 - (e) grant a warrant to secure attendance.
- (2) The appeal must be heard and disposed of before the expiry of the period of 3 days beginning the day after the day on which the appeal is made.
- (3) If the appeal is not disposed of within that period, the authorisation, condition, order, variation or, as the case may be, warrant ceases to have effect.

Compulsory supervision order: suspension pending appeal

158 Compulsory supervision order: suspension pending appeal

- (1) This section applies where—
- (a) an appeal is made under section 154 against a decision to make, vary, continue or terminate a compulsory supervision order, and
 - (b) the person making the appeal requests the Principal Reporter to arrange a children's hearing to consider whether the decision should be suspended pending the determination of the appeal.
- (2) As soon as practicable after the request is made, the Principal Reporter must arrange a children's hearing to consider whether the decision should be suspended pending the determination of the appeal.

*Frivolous and vexatious appeals***159 Frivolous and vexatious appeals**

- (1) This section applies where the sheriff—
 - (a) determines an appeal under section 154 by confirming a decision of a children's hearing to vary or continue a compulsory supervision order, and
 - (b) is satisfied that the appeal was frivolous or vexatious.
- (2) The sheriff may order that, during the period of 12 months beginning on the day of the order, the person who appealed must obtain leave from the sheriff before making another appeal under section 154 against a decision of a children's hearing in relation to the compulsory supervision order.

*Other appeals***160 Appeal to sheriff against relevant person determination**

- (1) A person mentioned in subsection (2) may appeal to the sheriff against—
 - (a) a determination of a pre-hearing panel or children's hearing that an individual is or is not to be deemed a relevant person in relation to a child,
 - (b) a determination of a review under section 142(2) that an individual is to continue to be deemed, or no longer to be deemed, a relevant person in relation to a child.
- (2) The persons are—
 - (a) the individual in question,
 - (b) the child,
 - (c) a relevant person in relation to the child,
 - (d) two or more persons mentioned in paragraphs (a) to (c) acting jointly.
- (3) If satisfied that the determination to which the appeal relates is justified, the sheriff must confirm the determination.
- (4) If not satisfied, the sheriff must—
 - (a) quash the determination, and
 - (b) where the determination is a determination of a pre-hearing panel or children's hearing under section 81 that the individual should not be deemed a relevant person in relation to the child, make an order deeming the individual to be a relevant person in relation to the child.
- (5) Where the sheriff makes an order under subsection (4)(b), section 81(4) applies to the individual as if a pre-hearing panel had deemed the individual to be a relevant person.
- (6) An appeal under this section must be—
 - (a) made before the expiry of the period of 7 days beginning with the day on which the determination is made,
 - (b) heard and disposed of before the expiry of the period of 3 days beginning with the day on which the appeal is made.

161 Appeal to sheriff against decision affecting contact or permanence order

- (1) A person mentioned in subsection (2) may appeal to the sheriff against a relevant decision of a children's hearing in relation to a child.
- (2) The person is an individual (other than a relevant person in relation to the child) in relation to whom—
 - (a) a contact order is in force regulating contact between the individual and the child,
 - (b) a permanence order is in force which specifies arrangements for contact between the individual and the child, or
 - (c) the conditions specified for the purposes of section 126(2)(b) are satisfied.
- (3) A relevant decision is a decision under section 126(6) relating to a compulsory supervision order.
- (4) If the sheriff is satisfied that the relevant decision is justified, the sheriff must confirm the decision.
- (5) If not satisfied, the sheriff must vary the compulsory supervision order by varying or removing the measure contained in the order under section 83(2)(g).
- (6) An appeal under this section must be—
 - (a) made before the expiry of the period of 21 days beginning with the day on which the relevant decision is made,
 - (b) heard and disposed of before the expiry of the period of 3 days beginning with the day on which the appeal is made.

162 Appeal to sheriff against decision to implement secure accommodation authorisation

- (1) This section applies where a relevant order or warrant made in relation to a child includes a secure accommodation authorisation.
- (2) A relevant order or warrant is—
 - (a) a compulsory supervision order,
 - (b) an interim compulsory supervision order,
 - (c) a medical examination order,
 - (d) a warrant to secure attendance.
- (3) The child or a relevant person in relation to the child may appeal to the sheriff against a relevant decision in relation to the authorisation.
- (4) A relevant decision is a decision by the chief social work officer—
 - (a) to implement the authorisation,
 - (b) not to implement the authorisation,
 - (c) to remove the child from secure accommodation.
- (5) An appeal under subsection (3) may be made jointly by—
 - (a) the child and one or more relevant persons in relation to the child, or
 - (b) two or more relevant persons in relation to the child.
- (6) An appeal must not be held in open court.

- (7) The Scottish Ministers may by regulations make further provision about appeals under subsection (3).
- (8) Regulations under subsection (7) may in particular—
 - (a) specify the period within which an appeal may be made,
 - (b) make provision about the hearing of evidence during an appeal,
 - (c) make provision about the powers of the sheriff on determining an appeal,
 - (d) provide for appeals to the sheriff principal and Court of Session against the determination of an appeal.
- (9) Regulations under subsection (7) are subject to the affirmative procedure.

Appeals to sheriff principal and Court of Session

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

- (1) A person mentioned in subsection (3) may appeal by stated case to the sheriff principal or the Court of Session against—
 - (a) a determination by the sheriff of—
 - (i) an application to determine whether a section 67 ground (other than the ground mentioned in section 67(2)(j) if the case was remitted to the Principal Reporter under section 49 of the Criminal Procedure (Scotland) Act 1995) is established,
 - (ii) an application under section 110(2) for review of a finding that a section 67 ground is established,
 - (iii) an appeal against a decision of a children's hearing,
 - (iv) an application under section 98 for an extension of an interim compulsory supervision order,
 - (v) an application under section 99 for a further extension of an interim compulsory supervision order,
 - (b) a decision of the sheriff under section 100 to—
 - (i) make an interim compulsory supervision order,
 - (ii) make an interim variation of a compulsory supervision order.
- (2) A person mentioned in subsection (3) may, with leave of the sheriff principal, appeal by stated case to the Court of Session against the sheriff principal's decision in an appeal under subsection (1).
- (3) The persons are—
 - (a) the child,
 - (b) a relevant person in relation to the child,
 - (c) a safeguarder appointed in relation to the child by virtue of section 30,
 - (d) two or more persons mentioned in paragraphs (a) to (c) acting jointly, and
 - (e) the Principal Reporter.
- (4) Despite subsections (1) and (2), a safeguarder may not—
 - (a) appeal against a determination by the sheriff of a type mentioned in subsection (1)(a)(i) or (ii), or a decision of the sheriff of a type mentioned in subsection (1)(b),

- (b) appeal to the Court of Session against the sheriff principal's decision in such an appeal.
- (5) Despite subsection (1), the Principal Reporter may not appeal against a determination by the sheriff confirming a decision of a children's hearing.
- (6) Subsection (7) applies in relation to—
 - (a) an appeal against a determination by the sheriff of an application under section 110(2) for review of a finding that a section 67 ground is established,
 - (b) an appeal to the Court of Session against the sheriff principal's decision in such an appeal.
- (7) In subsection (3)(a) and (b)—
 - (a) the references to the child are to the person in relation to whom the section 67 ground was established (even if that person is no longer a child),
 - (b) the reference to a relevant person in relation to the child includes a person who was, at the time the section 67 ground was established, a relevant person in relation to the child.
- (8) An appeal under this section must be made before the expiry of the period of 28 days beginning with the day on which the determination or decision appealed against was made.
- (9) An appeal under this section may be made—
 - (a) on a point of law, or
 - (b) in respect of any procedural irregularity.
- (10) On deciding an appeal under subsection (1), the sheriff principal or the Court of Session must remit the case to the sheriff for disposal in accordance with such directions as the court may give.
- (11) A decision in an appeal under subsection (1) or (2) by the Court of Session is final.
- (12) In subsection (1)(a)(ii), the reference to a determination by the sheriff of an application under section 110(2) for review of a finding that a section 67 ground is established includes a reference to a determination under section 117(2)(a) that a ground is established.

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

- (1) A person mentioned in subsection (3) may appeal by stated case to the sheriff principal or the Court of Session against a decision of the sheriff in an appeal against a determination of a pre-hearing panel or children's hearing that an individual is or is not to be deemed a relevant person in relation to the child.
- (2) A person mentioned in subsection (3) may, with leave of the sheriff principal, appeal by stated case to the Court of Session against the sheriff principal's decision in an appeal under subsection (1).
- (3) The persons are—
 - (a) the individual in question,
 - (b) the child,
 - (c) a relevant person in relation to the child,
 - (d) two or more persons mentioned in paragraphs (a) to (c) acting jointly.

- (4) An appeal under this section must be made before the expiry of the period of 28 days beginning with the day on which the decision appealed against is made.
- (5) An appeal under this section may be made—
 - (a) on a point of law, or
 - (b) in respect of any procedural irregularity.
- (6) On deciding an appeal under subsection (1), the sheriff principal or the Court of Session must remit the case to the sheriff for disposal in accordance with such directions as the court may give.
- (7) A decision in an appeal under subsection (1) or (2) by the Court of Session is final.

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

- (1) A person mentioned in subsection (3) may appeal by stated case to the sheriff principal or the Court of Session against a decision of the sheriff in an appeal under section 161.
- (2) A person mentioned in subsection (3) may, with leave of the sheriff principal, appeal by stated case to the Court of Session against the sheriff principal's decision in an appeal under subsection (1).
- (3) The person is an individual (other than a relevant person in relation to the child) in relation to whom—
 - (a) a contact order is in force regulating contact between the individual and the child,
 - (b) a permanence order is in force which specifies arrangements for contact between the individual and the child, or
 - (c) the conditions specified for the purposes of section 126(2)(b) are satisfied.
- (4) An appeal under this section must be made before the expiry of the period of 28 days beginning with the day on which the decision appealed against was made.
- (5) An appeal under this section may be made—
 - (a) on a point of law,
 - (b) in respect of any procedural irregularity.
- (6) On deciding an appeal under subsection (1), the sheriff principal or the Court of Session must remit the case to the sheriff for disposal in accordance with such directions as the court may give.
- (7) A decision in an appeal under subsection (1) or (2) by the Court of Session is final.

Requirement imposed on local authority: review and appeal

166 Review of requirement imposed on local authority

- (1) This section applies where a duty is imposed on a local authority by virtue of—
 - (a) a compulsory supervision order,
 - (b) an interim compulsory supervision order, or
 - (c) a medical examination order.

- (2) If the local authority is satisfied that it is not the relevant local authority for the child in respect of whom the duty is imposed, the local authority may apply to the sheriff for a review of the decision or determination to impose the duty on it.
- (3) The sheriff may review the decision or determination to impose the duty with or without hearing evidence.
- (4) The sheriff may hear evidence from—
 - (a) any local authority,
 - (b) the National Convener,
 - (c) the child in respect of whom the duty is imposed,
 - (d) a person representing that child,
 - (e) a relevant person in relation to that child,
 - (f) a person representing that person.
- (5) Where the duty is imposed on the local authority by a children's hearing, the sheriff may require the Principal Reporter to lodge with the sheriff clerk a copy of the decision (and reasons) of the children's hearing.
- (6) The sheriff must determine which local authority is the relevant local authority for the child.
- (7) Where the local authority that made the application under subsection (2) is the relevant local authority for the child, the sheriff must confirm the decision of the children's hearing or the determination of the sheriff.
- (8) Where another local authority is the relevant local authority for the child, the sheriff—
 - (a) must vary the order which imposed the duty so that the duty falls on that local authority, and
 - (b) may make an order for that local authority to reimburse such sums as the sheriff may determine to the local authority which made the application under subsection (2) for any costs incurred in relation to the duty.

167 Appeals to sheriff principal: section 166

- (1) A local authority may appeal by stated case to the sheriff principal against—
 - (a) the determination by the sheriff under section 166(6) of which local authority is the relevant local authority for a child,
 - (b) the making of an order by the sheriff under section 166(8)(b).
- (2) A person mentioned in subsection (3) may appeal by stated case to the sheriff principal against the determination by the sheriff under section 166(6) of which local authority is the relevant local authority for a child.
- (3) The persons are—
 - (a) the child to whom the determination relates,
 - (b) a person representing that child,
 - (c) a relevant person in relation to that child,
 - (d) a person representing that person.
- (4) An appeal under this section must be made before the expiry of the period of 28 days beginning with the day on which the determination or, as the case may be, order was made.

Status: This is the original version (as it was originally enacted).

- (5) An appeal under this section may be made—
 - (a) on a point of law, or
 - (b) in respect of any procedural irregularity.
- (6) On determining an appeal under this section, the sheriff principal must remit the case to the sheriff for disposal in accordance with such directions as the court may give.
- (7) A determination of an appeal under this section is final.