



# Children's Hearings (Scotland) Act 2011

## 2011 asp 1

### PART 5

#### CHILD ASSESSMENT AND CHILD PROTECTION ORDERS

##### *Variation or termination of order by sheriff*

#### **48 Application for variation or termination**

- (1) An application may be made by any of the following persons to the sheriff to vary a child protection order—
  - (a) the child in respect of whom the order is made,
  - (b) a relevant person in relation to the child,
  - (c) a person not falling within paragraph (b) who has (or recently had) a significant involvement in the upbringing of the child,
  - (d) the person who applied for the child protection order,
  - (e) the person specified in the child protection order under section 37(2)(a),
  - (f) the Principal Reporter,
  - (g) any other person prescribed by rules of court.
- (2) An application may be made by any of the persons mentioned in subsection (1)(a) to (g) (other than the Principal Reporter) to the sheriff to terminate a child protection order.
- (3) An application under this section may be made only—
  - (a) before the commencement of a children's hearing arranged under section 45 or 46, or
  - (b) if the children's hearing arranged under section 45 or 46 continues the child protection order (with or without variation), within 2 working days after the day on which the child protection order is continued.

#### **49 Notice of application for variation or termination**

A person applying under section 48 for variation or termination must, as soon as practicable after making the application, give notice of it to—

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- (a) the person who applied for the child protection order (unless the person is the applicant),
- (b) the person specified in the child protection order under section 37(2)(a) (unless the person is the applicant),
- (c) the child (unless the child is the applicant),
- (d) each relevant person in relation to the child (unless the relevant person is the applicant),
- (e) the relevant local authority for the child (unless the local authority is the applicant),
- (f) the Principal Reporter (unless the Principal Reporter is the applicant), and
- (g) any other person to whom the applicant is required to give notice under rules of court.

## **50 Children's hearing to provide advice to sheriff in relation to application**

The Principal Reporter may arrange a children's hearing for the purpose of providing any advice the children's hearing may consider appropriate to assist the sheriff in the determination of an application under section 48.

## **51 Determination by sheriff**

- (1) This section applies where an application is made under section 48 in relation to a child protection order.
- (2) The sheriff must, before determining the application, give the following persons an opportunity to make representations—
  - (a) the applicant,
  - (b) the child in respect of whom the child protection order is made,
  - (c) each relevant person in relation to the child,
  - (d) any person not falling within paragraph (c) who the sheriff considers to have (or to recently have had) a significant involvement in the upbringing of the child,
  - (e) the applicant for the child protection order,
  - (f) the relevant local authority for the child (if the authority did not apply for the child protection order),
  - (g) the Principal Reporter.
- (3) The application must be determined within 3 working days after the day on which it is made.
- (4) The child protection order ceases to have effect at the end of that period if the application is not determined within that period.
- (5) The sheriff may—
  - (a) terminate the child protection order if the sheriff is not satisfied of—
    - (i) where the order was made under section 38, the matters mentioned in subsection (2)(a) to (d) of that section, or
    - (ii) where the order was made under section 39, the matters mentioned in subsection (2)(a) and (b) of that section,

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- (b) vary the child protection order (including by terminating, varying or including an information non-disclosure direction, a contact direction or a parental responsibilities and rights direction), or
  - (c) confirm the child protection order.
- (6) If the sheriff orders that the child protection order is to be terminated, the order ceases to have effect at the end of the hearing before the sheriff.