

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).

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)).

Compulsory supervision order: suspension pending appeal

Section 158 # Compulsory supervision order: suspension pending appeal

227. This section provides that the child, a relevant person or Safeguarder who appeals against a decision of the Children's Hearing to make, vary, or continue a compulsory supervision order may also request the Principal Reporter to arrange a hearing to consider whether the decision should be suspended pending the determination of the appeal. Subsection (2) places the reporter under a duty to arrange a Children's Hearing to consider the request for suspension as soon as practicable after the request is made. The duty only applies where the appeal is against a decision to make a compulsory supervision order and where the person making the appeal makes the request to the reporter.

Frivolous and vexatious appeals

Section 159 – Frivolous and vexatious appeals

228. This section applies where the sheriff confirms a decision of the Children's Hearing to vary or continue a compulsory supervision order and is satisfied that the application for appeal was frivolous or vexatious. The sheriff may make an order which prevents the applicant from making further applications for appeal, unless the leave of the sheriff is obtained, for a period of 12 months beginning on the day the order is made.

Other appeals

Section 160 – Appeal to sheriff against relevant person determination

229. This section applies when a Pre-Hearing Panel or Children's Hearing has determined, under section 81, whether a particular person is or is not to be deemed to be a relevant person in relation to the child or has determined under section 142 that an individual continues to be deemed or no longer be deemed a relevant person. It provides a right of appeal to the sheriff for those persons listed in subsection (2). Subsection (6) provides that an application for appeal under this section must be made within 7 days of the determination; and the sheriff must hear and dispose of the appeal within 3 days of the appeal being made. Under subsection (3) the sheriff must confirm the determination under appeal if satisfied that it is justified. Subsection (4) places a duty on the sheriff to either quash the determination of the hearing or make an order if not satisfied that the decision of the hearing is not justified. Subsection (5) provides that where the sheriff decides that the original determination is not justified and that the individual *should* be

a deemed relevant person, then that person is considered to be a deemed relevant person as set out in section 81(4) as if the pre-hearing panel had made the decision.

Section 161 – Appeal to sheriff against decision affecting contact or permanence order

230. This section relates to section 126 (which creates a separate review process of contact directions where a contact or permanence order is in force and the holder of that order is not a relevant person). This section provides a separate appeal right to the sheriff against the decision of that review hearing for persons who are not relevant persons but who hold a contact or permanence order in respect of the child, or a person who meets the conditions specified by the order-making power under section 126(2)(b). The appeal is only applicable against the hearing's review of the contact direction. Subsection (6) provides that the appeal must be made within 21 days of the date the decision under appeal is made and it must be heard within 3 days. The sheriff must either confirm the decision of the review hearing if satisfied that it is justified or vary the compulsory supervision order by varying or removing the contact direction contained in it if not satisfied that the decision of the review hearing was justified.

Section 162 – Appeal to sheriff against decision to implement secure accommodation authorisation

231. This section applies where a compulsory supervision order, interim compulsory supervision order, medical examination order or a warrant to secure attendance includes a secure accommodation authorisation. Subsection (3) provides that the child or their relevant person may appeal to the sheriff against a "relevant decision" in relation to the secure accommodation authorisation. Subsection (4) defines "relevant decision" as a decision by the chief social work officer to implement the secure accommodation authorisation, not to implement the authorisation or to remove the child from secure accommodation. Subsection (5) provides that an appeal under subsection (3) may be made jointly by the child and one or more relevant persons in relation to the child, or two or more relevant persons in relation to the child. Subsection (6) makes clear that the appeal hearing is closed to the public and may not be heard in open court.
232. Subsections (7) and (8) enable the Scottish Ministers to make further provision in regulations about appeals under this section. Regulations made under this provision may in particular specify the period within which an appeal may be made, make provision about the hearing of evidence, make provision about the powers of the sheriff on determining the appeal, and provide for appeals to the sheriff principal and Court of Session against the determination of an appeal. Such regulations will be subject to the affirmative procedure.

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.

Requirement imposed on local authority: review and appeal

Section 166 – Review of requirement imposed on local authority

240. This section applies where a duty is imposed on a local authority under a compulsory supervision order, interim compulsory supervision order or a medical examination order by a Children's Hearing or by the sheriff. If the local authority on which the duty is imposed is satisfied that it is not the relevant local authority for that particular child then the local authority may apply to the sheriff for a review of the decision to impose the duty upon it. The term "relevant local authority" for the child is defined in section 201.
241. Subsection (3) gives the sheriff discretion as to whether to hear evidence from any of the persons listed in subsection (4). Subsections (6) and (7) provide that the sheriff must determine which local authority is the relevant local authority for the child and if the local authority that made the application for review is the relevant local authority for the child then the sheriff must confirm the original decision of the hearing or sheriff. Subsection (8) provides that if the sheriff finds that another local authority is the relevant local authority for the child, the sheriff must vary the order so that the duty imposed by it falls on that other local authority. The sheriff may also make an order for that local authority to reimburse such sums as the sheriff may determine to the local authority which make the application for review for any costs incurred in relation to the duty.

Section 167 – Appeals to the sheriff principal: section 166

242. This section provides for a right of appeal on the part of a local authority from the decision of the sheriff under section 166(6) or (8)(b). The child to whom the determination relates, a relevant person in relation to that child and persons representing the child or relevant person may also appeal the decision of the sheriff under section 166(6). This appeal is by stated case to the sheriff principal and must be made within 28 days from the making of the determination or order under section 166. The appeal may be on a point of law or in respect of any procedural irregularity. After determining the appeal the sheriff principal must remit the case to the sheriff for disposal and the sheriff principal's determination is final.