

## **EXECUTIVE NOTE**

### **THE CHILDREN'S HEARINGS (SCOTLAND) ACT 2011 (SAFEGUARDERS PANEL) REGULATIONS 2012**

#### **SSI 2012/54**

The above instrument is made in exercise of the powers conferred by section 32(2) of the Children's Hearings (Scotland) Act 2011.

These Regulations place duties on the Scottish Ministers to establish and maintain a panel of persons (to be known as the Safeguarders Panel) from which any appointment under the Children's Hearings (Scotland) Act 2011 (the 2011 Act) of a safeguarder is to be made. Under the 2011 Act children's hearings or court proceedings must consider appointing a safeguarder and all such appointments must be from members of the Safeguarders Panel.

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 the child's best interest. Safeguarders are independent from all other agencies involved in the Children's Hearings system - that independence is a crucial feature of the role.

These regulations will replace the Panels of Persons to Safeguard the Interests of Children (Scotland) Regulations 2001 (SSI No. 476), which will be revoked when the 2011 Act is fully in force.

#### **Policy objectives**

The policy on the overall role and detailed functions of the safeguarder, within the children's hearings system, has not changed with the introduction of these Regulations. The overarching theme of these regulations is to establish a national safeguarder service to replace the existing local safeguarder panels managed by each local authority under the 2001 Regulations. The intention in moving to the national Safeguarders Panel is to introduce clear and consistent arrangements for the management and oversight of the safeguarder service across Scotland, in key areas such as recruitment, appointments, training and monitoring.

Scottish Ministers intend to use the power under section 32(3) of the 2011 Act to contract with an external organisation to manage the Safeguarders Panel. Scottish Ministers will keep statutory responsibility for the Safeguarders Panel and the contractor will be responsible for the operation and management of the panel.

Regulation 3 covers the recruitment and selection of members to the Safeguarders Panel and provides that Ministers must in particular publicly advertise for persons to apply to the Safeguarders Panel. This will allow the Panel to have as wide a variety of skilled persons as possible as members.

Scottish Ministers may also seek nominations for potential members of the safeguarders panel from bodies or persons. This is a failsafe against the eventuality that public advertising does not accrue sufficient numbers or specific areas of Scotland are not fully covered by safeguarders to the extent required. Children's Hearings Scotland and the Scottish Children's Reporter Administration would not be asked to provide nominations due to those

organisations having a significant role in the children's hearings system and to avoid potential conflicts of interest. This position will reinforce the independence of safeguarders within the children's hearings system.

Regulation 4 covers safeguarders who were appointed under the Panels of Persons to Safeguard the Interests of Children (Scotland) Regulations 2001. The regulations provide that Scottish Ministers must inform all current safeguarders of the establishment of, and the arrangements for the recruitment and selection to, the Safeguarders Panel. It would be open for current safeguarders to apply to join the new panel.

Regulation 5 covers criteria for appointment to and disqualification from the Safeguarders Panel. In particular there is a need for potential members of the panel to be capable of demonstrating key competencies and experience. Further, provision is made that a person must successfully complete pre-appointment training before appointment as a member of the Safeguarders Panel. The pre-appointment training will ensure a consistency of awareness of the safeguarder role and demonstrable knowledge of the legislation governing children's hearings.

The regulation also lists those persons automatically disqualified from appointment to the Safeguarders Panel due to their involvement or employment in other organisations involved in the children's hearings system.

Regulation 6 directs Scottish Ministers that they must take action to remove a person from the Safeguarders Panel if at any stage notification is received that - by virtue of the Protection of Vulnerable Groups (Scotland) Act 2007- the person is barred from regulated work with children. The provision is required to avoid any risk to vulnerable children given the nature of the safeguarder role.

Regulation 7 details the tenure of appointment to the Safeguarders Panel, reappointment and removal from the Panel. Normal practice will be that a safeguarder is appointed for a period of 3 years and will subsequently be reappointed for further 3 year blocks. The regulation provides some flexibility to make re-appointments for a minimum of 1 year where necessary in relation to an individual's practice, participation, preparation or other issues.

The regulation also lists the conditions where Scottish Ministers may remove a member from the Safeguarders Panel. The conditions mirror those for Children's Panel members and respond to requests to bring consistency to the various appointments in children's hearings.

Under Regulation 8 members and potential members of the Safeguarders Panel must be provided with pre-appointment and in-service training. Safeguarders will not, under regulation 5, be able to take up appointments with children until the pre-appointment training is successfully completed. Failure to complete the required training enables the Scottish Ministers to remove the person as a member of the Safeguarders Panel. This is covered in the conditions listed in regulation 7.

Regulation 9 specifies particular themes that the training must address. It is our intention to involve children and young people in the development of the training.

Regulation 10 provides that Scottish Ministers must pay safeguarders fees and that expenses and allowances may be paid. Expenses and allowances, but not fees, may also be paid to

potential members of the Safeguarders Panel. The national rates for fees, expenses and allowances will be published. At present the 32 local authorities all pay different rates to safeguarders and this inconsistency will not be carried forward to the national Safeguarders Panel.

Regulation 11 makes provision for reviewing the operation and management of the Safeguarders Panel. In particular the Scottish Ministers must ensure at all times that overall membership of the Panel is adequate to meet demands for safeguarders throughout Scotland and endeavour to ensure that persons living in all local authority areas are members of the Panel.

The regulation provides for the monitoring of the performance of the Safeguarders Panel and lists some of the methods that may be used, on an inclusive rather than an exhaustive basis. The monitoring will be used to establish overall improvements throughout the Safeguarders Panel and also to assist in driving up practice and performance standards for individual safeguarders.

The regulation also requires that a procedure is published to allow for complaints against the Safeguarders Panel and individual members in performing their functions. It is extremely important that complainants have a robust and fair process for raising a complaint and that those complained against also benefit from fair treatment and within clearly set standards.

### **Commencement Date**

The date for the commencement of these regulations is 26<sup>th</sup> March 2012.

### **Consultation**

There has been an open public consultation on this instrument which ran for 12 weeks from 12 September to 6 December 2011. A total of 32 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**

Local authorities currently receive funding from the Scottish Government to cover the fees, expenses and training for safeguarders. With the introduction of the new legislation the full cost of the Safeguarders Panel will fall to the Scottish Government. The regulations would not impose any additional costs on local authorities or any other bodies, individuals or businesses.

Detailed negotiations with local authorities have still to take place on the overall funding of the modernised children's hearings system and negotiations will include managing the implications of the financing of safeguarders. Initial discussions between officials established an acceptance that local authorities would no longer finance the safeguarders on introduction of the new arrangements and a funding agreement could be negotiated.

Funding has been made available for 2011/12 to cover set up and running costs for the new Safeguarders Panel. It is anticipated that the financial effect of establishing the Safeguarders Panel to business will be neutral overall.

**Scottish Government  
Children and Families Directorate.**

**February 2012**