

POLICY NOTE

THE CHILDREN'S HEARINGS (SCOTLAND) ACT 2011 (SAFEGUARDERS PANEL) AMENDMENT REGULATIONS 2016

SSI 2016/61

The above instrument was made in exercise of the powers conferred by sections 32(2) and 204 of the Children's Hearings (Scotland) Act 2011 ("the 2011 Act"). The instrument is subject to negative procedure.

Policy Objectives

A safeguarder is appointed by a children's hearing, pre-hearing panel or a sheriff to safeguard the interests of the child in the case. The 2011 Act introduced significant changes to the management of safeguarders. In particular, the Act removed responsibility from each local authority to establish a local safeguarder panel and provided for the establishment of a national Safeguarders Panel ("the Panel"). Section 32 of the 2011 Act provides that Scottish Ministers must establish the Safeguarders Panel and also gives them a power, by regulations, to make provision for or in connection with matters relating to the Panel. The Children's Hearings (Scotland) Act 2011 (Safeguarders Panel) Regulations 2012 ("the 2012 Regulations") include, among other things, provision on recruitment and selection, appointment and removal, training, fees and the operation and management of the Panel.

Scottish Ministers are required by the 2012 Regulations to keep under review the operation and management of the Panel. In particular, they are bound to ensure that membership of the Panel is adequate for the purposes for which it was established and to monitor the performance of members of the Panel. The purpose of the Amendment Regulations is to make amendments to the 2012 Regulations to reflect the developments in policy that have taken place since the 2012 Regulations were put in place. The Scottish Government and the organisation which manages the Safeguarders Panel on behalf of Ministers, Children 1st, have been working with safeguarders on matters such as the standards expected of safeguarders and the monitoring of safeguarders' performance and this work has informed policy in this field. This work culminated in the publication in July 2015 of new national Practice Standards for Safeguarders ("the Practice Standards") and the supporting Performance Support and Monitoring Framework ("the PSMF"). The Practice Standards set out the standards expected of all safeguarders. The PSMF establishes arrangements for the monitoring of safeguarders' performance against those standards and establishes a framework for training and support of safeguarders. The amendments made by these regulations ensure that these new arrangements are reflected in the statutory framework.

The amendments change the system of reappointment to the Safeguarders Panel by requiring Ministers, in considering a safeguarder for reappointment, to assess whether a safeguarder is fit to be a member of the Safeguarders Panel. The procedure for removal of a member from the Panel is also changed so that safeguarders who Ministers do not consider to be fit to be a member of the Panel may be removed by Ministers. In assessing whether a safeguarder is fit to be a member of the Panel, the amendments provide that Ministers may have regard to that safeguarder's conduct, any failure to comply with any requirements in the letter of appointment or reappointment and also whether the safeguarder has been able and willing to operate in accordance with the Practice Standards. In introducing these new procedures, we

wish to maintain and further build confidence and respect from children and families and system partners for the work of safeguarders. Training is an important feature of the new arrangements and the detailed training requirements as they apply to each safeguarder will be set out in their letter of appointment or reappointment. The monitoring system is further strengthened by adding that in monitoring the performance of safeguarders, Ministers may also assess whether a safeguarder operates in accordance with the Practice Standards. The system of monitoring the performance of safeguarders is also amended so that views on safeguarder practice may be sought from local authorities and from sheriffs. The 2012 Regulations already provide that views may be sought from the child, any relevant person, members of the Children's Panel and the Principal Reporter. The monitoring of performance should be drawn from a wide variety of sources to enable the best possible evidence to be gathered and the addition of local authorities and sheriffs to the list of those whose views may be sought will mean that feedback can be obtained from all of the main system partners. The Amendment Regulations also require SCRA to provide safeguarders' reports at the request of Scottish Ministers. Ministers may request such reports to assist them with monitoring safeguarders' performance, the investigation of complaints against a safeguarder or auditing of fees, expenses and allowances. The 2012 regulations provide that Scottish Ministers have duties to monitor performance, investigate complaints and provide fees, expenses and allowances and this power makes clear that SCRA are under a duty to share the information required to enable Scottish Ministers to fulfil these functions.

Consultation

The changes proposed to the regulations were subject to public consultation from 21 July to 9 October 2015. 37 responses were received from 26 individuals and 11 organisations. A significant majority of respondents were in favour of the proposed changes. A consultation report and a full list of those consulted and who agreed to the release of this information can be found on the Scottish Government website.

Impact Assessments

A Privacy Impact Assessment has been completed and has been published on the Scottish Government Website. Other impact assessments (equality, environmental and children's rights and wellbeing) are not required.

Financial Effects

A Business and Regulatory Impact Assessment has not been completed in relation to this instrument. The Minister for Children and Young People does not consider that a BRIA is necessary as the regulations do not place additional burdens or costs on the Scottish Government, local authorities or on business.

**Scottish Government
Children and Families Directorate**

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