



Children (Scotland) Act 1995

1995 CHAPTER 36

PART II

PROMOTION OF CHILDREN'S WELFARE BY LOCAL AUTHORITIES AND BY CHILDREN'S HEARINGS ETC.

CHAPTER 2

CHILDREN'S HEARINGS

Appeals

51 Appeal against decision of children's hearing or sheriff

- (1) Subject to subsection (15) below, a child or a relevant person (or relevant persons) or both (or all)—
 - (a) may, within a period of three weeks beginning with the date of any decision of a children's hearing, appeal to the sheriff against that decision; and
 - (b) where such an appeal is made, shall be heard by the sheriff.
- (2) The Principal Reporter shall, in respect of any appeal under subsection (1) above, ensure that all reports and statements available to the hearing, along with the reports of their proceedings and the reasons for the decision, are lodged with the sheriff clerk.
- (3) The sheriff may, on appeal under subsection (1) above, hear evidence from, or on behalf of, the parties in relation to the decision; and, without prejudice to that generality the sheriff may—
 - (a) examine the Principal Reporter;
 - (b) examine the authors or compilers of any reports or statements; and
 - (c) call for any further report which he considers may assist him in deciding the appeal.

Status: This is the original version (as it was originally enacted).

- (4) Where the sheriff decides that an appeal under this section has failed, he shall confirm the decision of the children’s hearing.
- (5) Where the sheriff is satisfied that the decision of the children’s hearing is not justified in all the circumstances of the case he shall allow the appeal, and—
 - (a) where the appeal is against a warrant to find and keep or, as the case may be, to keep a child in a place of safety, he shall recall the warrant;
 - (b) where the child is subject to a supervision requirement containing a condition imposed under section 70(9) of this Act, he shall direct that the condition shall cease to have effect; and
 - (c) in any case, he may, as he thinks fit—
 - (i) remit the case with reasons for his decision to the children’s hearing for reconsideration of their decision; or
 - (ii) discharge the child from any further hearing or other proceedings in relation to the grounds for the referral of the case; or
 - (iii) substitute for the disposal by the children’s hearing any requirement which could be imposed by them under section 70 of this Act.
- (6) Where a sheriff imposes a requirement under subsection (5)(c)(iii) above, that requirement shall for the purposes of this Act, except of this section, be treated as a disposal by the children’s hearing.
- (7) Where the sheriff is satisfied that an appeal under subsection (1) above against the decision of a children’s hearing arranged under section 73(8) of this Act is frivolous, he may order that no subsequent appeal against a decision to continue (whether with or without any variation) the supervision requirement in question shall lie until the expiration of twelve months beginning with the date of the order.
- (8) An appeal under subsection (1) above in respect of the issue of a warrant by a children’s hearing shall be disposed of within three days of the lodging of the appeal; and failing such disposal the warrant shall cease to have effect at the end of that period.
- (9) Where a child or a relevant person appeals under subsection (1) above against a decision of a children’s hearing in relation to a supervision requirement, the child or the relevant person may make application to a children’s hearing for the suspension of the requirement appealed against.
- (10) It shall be the duty of the Principal Reporter forthwith to arrange a children’s hearing to consider the application under subsection (9) above, and that hearing may grant or refuse the application.
- (11) Subject to subsections (13) and (15) below, an appeal shall lie by way of stated case either on a point of law or in respect of any irregularity in the conduct of the case—
 - (a) to the sheriff principal from any decision of the sheriff—
 - (i) on an appeal under subsection (1) of this section;
 - (ii) on an application made under section 65(7) or (9) of this Act; or
 - (iii) on an application made under section 85(1) of this Act; and
 - (b) to the Court of Session from any decision of the sheriff such as is mentioned in sub-paragraphs (i) to (iii) of paragraph (a) above and, with leave of the sheriff principal, from any decision of the sheriff principal on an appeal under that paragraph; and the decision of the Court of Session in the matter shall be final.
- (12) An appeal under subsection (11) above may be made at the instance of—

- (a) the child or any relevant person, either alone or together; or
 - (b) the Principal Reporter on behalf of the children’s hearing.
- (13) An application to the sheriff, or as the case may be the sheriff principal, to state a case for the purposes of an appeal under subsection (11)(a) or (b) above shall be made within a period of twenty-eight days beginning with the date of the decision appealed against.
- (14) On deciding an appeal under subsection (11) above the sheriff principal or as the case may be the Court of Session shall remit the case to the sheriff for disposal in accordance with such directions as the court may give.
- (15) No appeal shall lie under this section in respect of—
- (a) a decision of the sheriff on an application under section 57 of this Act; or
 - (b) a decision of a children’s hearing continuing a child protection order under section 59(4) of this Act.