

SCRA response to the Scottish Government's consultation

Background

The Children's Hearings System is Scotland's distinct system of child protection and youth justice. Among its fundamental principles are:

- That children who offend and children who are in need of care and protection are dealt with in the same system
- That the welfare of the child remains at the centre of all decision making

SCRA operates the Reporter service which sits at the heart of the system. SCRA employs Children's Reporters who are located throughout Scotland, working in close partnership with other professionals such as social work, education, the police, the health service and the courts system.

SCRA's vision is that vulnerable children and young people in Scotland are safe, protected and offered positive futures. We will seek to achieve this by adhering to the following key values:

- The voice of the child must be heard.
- Our hopes and dreams for the children of Scotland are what unite us.
- Children and young people's experiences and opinions guide us.
- We are approachable and open.
- We bring the best of the past with us into the future to meet new challenges.

Summary response

SCRA welcomes the opportunity to respond to this consultation, which covers the following pieces of secondary legislation:

- Definition of relevant persons and review of contact directions regulations
- Compulsory Supervision Orders etc Further provision regulations
- Principal Reporter – Rights of audience regulations
- Principal Reporter/specified SCRA staff appeal against dismissal regulations

The bulk of our comments are focused on the first of these sets of regulations and should be read in conjunction with our response to the Procedural Rules consultation where we discuss the Scottish Government's response to the K case in more detail. It is imperative that the different sets of SSIs are consistent in their approach and we believe that more discussion is needed on the issue of relevant persons.

Definition of relevant persons and review of contact directions regulations

S.126 of the 2011 Act provides that where a Hearing makes or varies a CSO, an ICSO or an MEO which contains a condition regulating contact, the Reporter must arrange a further Hearing within 5 days to review that condition if:

- There exists a contact order or permanence order regulating contact between the child and an individual (other than a RP)
- Requested to do so by an individual who has established family life with the child (as specified in these Regulations)

This is regardless of whether the Hearing's decision has affected either the order that exists, or the rights of the individual with established family life. And regardless of whether the individual affected was actually at the Hearing and had an opportunity to have their views considered at that point. It appears again to be a disproportionate response to a relatively minor and infrequently occurring issue and creates a potentially significant administrative burden on the Hearings system. It will also result in additional stress on the child as they are required to attend this further hearing at very short notice while the issue of contact is effectively left in limbo.

It is our view that only those whose rights are impacted by the Hearing's decision should have a right to call a Contact Review (and only if they were not present at the Hearing that made the decision). And that the automatic review should only be triggered if the Hearing's decision affects the existing order in some way (and again, if the individual concerned was not at the Hearing). We recognise however that this problem has been caused by an amendment to the Act that was brought in very late at Stage 3 and it may not be possible to change it. We would strongly suggest however that those with established family life (who are not relevant persons) should not have the right to call a Contact Review Hearing unless their rights are actually impacted by the Hearing's decision. As noted in our response to the Procedural Rules, we do not believe that the Supreme Court's judgement in the K case should be interpreted as broadly as the Government has done.

The regulations also define all parents as relevant persons (unless they have had their parental rights removed by a court). While we agree with the policy intent to try to ensure that those with a legitimate interest and right to be involved in discussions about a child's life are included, we do have a concern about the unintended consequences of this regulation. It is significantly less simple than it might appear at first glance. For example, there is the issue of disputed parentage – how is the Reporter to determine who is the real biological parent? There might also be circumstances where the mother refuses to reveal (or doesn't know) who the father is.

It would also mean, for instance, that a rapist who fathered a child on his victim would be a relevant person. He would therefore be entitled to be notified of the Hearing, to receive all the papers and would have a right to attend. We recognise that this would be a very infrequent occurrence but it is nonetheless a possibility and the potential consequences for the victim are hugely significant.

More discussion is needed on this area before the regulations are finalised and they must be considered alongside the Procedural Rules and other relevant SSIs to ensure a consistency of approach.

Compulsory Supervision Orders etc Further provision regulations

We note that if the child is not placed at end of 22 days, there is no provision for a Hearing to be held in the next 7 days as there currently is. We believe that such a provision is necessary and would like to see the regulations redrafted to include it.

We believe that Regulations 3, 4 and 5 should allow for the local authority to only provide a report in part if the rest of the report is not relevant.



Principal Reporter – Rights of audience regulations

We have only one comment on these regulations. Paragraph 3(3) provides that all Reporters must have at least one year's experience before appearing in front of the Sheriff. However, currently that one year requirement only applies to those Reporters without a current Practising certificate. To extend it to all Reporters would cause severe operational problems, particularly given the trend of increasing volumes and complexity of court work. We are unaware of any need to change the current arrangements and would suggest that the regulations are redrafted to restore the status quo.

Principal Reporter/specified SCRA staff appeal against dismissal regulations

We are content with, and have no comment to make on, these regulations.

SCRA
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