



SCOTTISH  
**CHILDREN'S REPORTER**  
ADMINISTRATION

# Practice Direction 21

## Safeguarders

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## Summary

- A safeguarder can be appointed by a pre-hearing panel, children's hearing or a sheriff in children's hearing proceedings.
- A children's hearing and a sheriff must consider appointing a safeguarder unless a safeguarder is already appointed in relation to the child. A pre-hearing panel may appoint but is not obliged to consider the matter.
- If appointed by a pre-hearing panel or children's hearing the safeguarder remains appointed throughout any subsequent court proceedings. If appointed by a court the safeguarder is treated as being appointed by the children's hearing and remains appointed for any related children's hearings.
- If a safeguarder is appointed, whether by a hearing or a sheriff, and further proceedings arise (for example, a new statement of grounds is considered at a grounds hearing or a review hearing takes place), the reporter is to assume that the safeguarder is also appointed for the child in those proceedings.
- A safeguarder appointed by a hearing has a duty to attend all hearings so far as reasonably practicable.
- A safeguarder appointed by a hearing is required to provide a report, subject to exceptions for appointments by certain types of hearing (including a grounds hearing which directs a proof application, 2<sup>nd</sup> working day hearing and hearing to consider further ICSO or interim variation during proof). Where there is a duty to provide a report, the safeguarder must do so within 35 days of appointment ,
- Where the safeguarder has a duty to provide a report within 35 days and is unable to provide a complete report, she is required to provide an interim report within that timescale. This interim report must include an estimated timescale for completion of the report, and reasons why the report is not yet available.

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## **1. Introduction**

- 1.1 The main statutory provisions in relation to safeguarders are contained in:
- Children's Hearings (Scotland) Act 2011, sections 30-34
  - The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013, Rules 55 & 56
  - The Children's Hearings (Scotland) Act 2011 (Safeguarders Panel) Regulations 2012
  - The Children's Hearings (Scotland) Act 2011 (Safeguarders: Further Provision) Regulations 2012
  - Act of Sederunt (Children's Hearings (Scotland) Act 2011) (Miscellaneous Amendments) 2013, Rules 3.06 - 3.09
- 1.2 The Children's Hearings (Scotland) Act 2011 (Safeguarders Panel) Regulations 2012 are concerned with the recruitment, appointment, training, tenure, management and payment of Safeguarders by the Safeguarders Panel. As such, the Regulations have limited application to the exercise of the Reporter's functions.
- 1.3 Children 1<sup>st</sup> is currently contracted to assist Scottish Ministers with the operation and management of the Safeguarders Panel established under section 32. SCRA has entered into a Memorandum of Understanding (MoU) with Children 1<sup>st</sup> which covers the exchange of information between SCRA and Children 1<sup>st</sup> in relation to:
- The allocation of safeguarders;
  - The provision of information to safeguarders;
  - Information exchanged between SCRA and Children 1<sup>st</sup> in the operation of the Safeguarders Panel.

## **2. Appointment of Safeguarder**

- 2.1 A safeguarder may be appointed by a pre-hearing panel (section 82), by a children's hearing (section 30) or by the sheriff in relation to court proceedings (section 31). References in the Act to a safeguarder appointed by a children's hearing includes any safeguarder appointed by a pre-hearing panel.
- 2.2 Each children's hearing must consider whether to appoint a safeguarder, unless a safeguarder has already been appointed. (section 30(1) and (5)).
- 2.3 A pre-hearing panel is not obliged to consider the appointment of a safeguarder but may do so (provided one has not already been appointed for the child). Although a pre-hearing panel may appoint a safeguarder, the reporter cannot arrange a pre-hearing panel for the purpose of considering whether to appoint a safeguarder.

- 2.4. The sheriff in children's hearing proceedings (whether a proof application, appeal or application under section 110 for a review of a grounds determination) is required to consider the appointment of a safeguarder, except where a safeguarder has already been appointed. (section 31). The sheriff must consider the matter on the lodging of a proof application or at the commencement of any proceedings, and may appoint a safeguarder at that stage or at any later stage.<sup>1</sup>
- 2.5. A safeguarder appointed by a children's hearing remains appointed until after the period for an appeal against a final hearing decision has expired without an appeal being lodged, or upon the final conclusion of any appeal proceedings. Therefore a hearing appointed safeguarder will remain appointed throughout any related court proceedings, and the sheriff will require to recognise this appointment. The sheriff cannot appoint another safeguarder. Section 31(1)(b) provides that the sheriff shall appoint a safeguarder only where a safeguarder has not already been appointed,<sup>2</sup> and Rule 3.7 (1) of the Child Care and Maintenance Rules likewise provides the Sheriff with a power to appoint a safeguarder only where a safeguarder has not already been appointed.
- 2.6. Any pre-hearing panel, children's hearing or sheriff appointing a safeguarder must give reasons for this decision.<sup>3</sup> In the case of a Sheriff appointing a safeguarder, the appointment and reasons for the appointment must be recorded in an interlocutor.<sup>4</sup>

### **3. Duration of Appointment**

- 3.1 Regulations 3-6 of the Children's Hearing (Scotland) Act 2011 (Safeguarders: Further Provision) Regulations 2012 (the "Safeguarders Further Provision Regulations") deal with the duration of the appointment of the safeguarder. The Appendix to this Practice Direction provides a reference table setting out the duration of the safeguarder's appointment in various situations.
- 3.2 The general rule is that, once a safeguarder is appointed, she remains appointed until there is a final disposal of the child's case. This includes final disposal of any appeal.

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<sup>1</sup> Rule 3.7(2) of the Act of Sederunt (Child care and Maintenance Rules) 1997 as amended by the Act of Sederunt (Child Care and Maintenance Rules) (Amendment) (Children Hearings (Scotland) Act 2011) 2013.

<sup>2</sup> Section 31 (the sheriff's duty to consider appointing a safeguarder) applies where "a safeguarder has not been appointed for the child in relation to proceedings under those Parts." The reference is to Parts 10 and 15, which cover all proceedings before the sheriff in relation to applications to establish grounds, review of the sheriff's determination, applications to vary or extend an ICSO, and in relation to appeals.

<sup>3</sup> Sections 30 (4), 31 (6) & 82 (3) impose this duty respectively on children's hearings, sheriffs and pre-hearing panels appointing safeguarders.

<sup>4</sup> Rule 3.7(2) of the Act of Sederunt (Child care and Maintenance Rules) 1997 as amended by the Act of Sederunt (Child Care and Maintenance Rules) (Amendment) (Children Hearings (Scotland) Act 2011) 2013.

- 3.3 The exception to this is where a safeguarder is appointed by the sheriff in a specific issue appeal (appeals in relation to relevant person status, a review of a contact direction or the implementation of a secure accommodation authorisation) or a review under section 166 in relation to local authority duties. These situations are considered at paragraphs 3.9 - 3.12 below.

#### *Hearing appointed*

- 3.4 A safeguarder appointed by a pre hearing panel or by a children's hearing will continue as safeguarder in any related proof application or appeal proceedings. The appointment ends after the period for an appeal against a final hearing decision<sup>5</sup> has expired without an appeal being lodged, or upon the final conclusion of any appeal proceedings, whichever occurs first.
- 3.5 There is no provision for a children's hearing to terminate a safeguarder's appointment.
- 3.6 If a safeguarder has been appointed for a child and the appointment has not come to an end, there may be further proceedings in relation to the child (for example, the reporter arranges a grounds hearing or a review hearing). In these circumstances, the reporter is to consider the safeguarder as being appointed for the child for the further proceedings and notify the safeguarder of the hearing<sup>6</sup>.

#### *Sheriff appointed in proofs or standard appeals*

- 3.7 A safeguarder appointed by the sheriff in relation to court proceedings will be treated as having been appointed by the children's hearing (section 31). This means that the safeguarder will remain appointed until the conclusion of the proceedings at any subsequent remit hearing for established grounds, including any appeal period or appeal proceedings.<sup>7</sup>
- 3.8 Where a safeguarder has been appointed in relation to a statement of grounds which are not established at court, the appointment ends after the period for an appeal against the sheriff's determination has expired without an appeal against that decision being lodged.<sup>8</sup>
- 3.9 Where a sheriff directs the reporter following an appeal to arrange a children's hearing under section 156(3), the safeguarder will remain appointed in relation to that hearing.

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<sup>5</sup> i.e. a substantive decision to make a CSO, terminate a CSO or discharge a referral.

<sup>6</sup> Although the legislation is not clear on this point, this appears to be the position.

<sup>7</sup> Regulation 3 of the Safeguarders Further Provision Regulations.

<sup>8</sup> Regulation 3(2)(e) of the Safeguarders Further Provision Regulations.

- 3.10 If a safeguarder has been appointed by the sheriff and the appointment has not come to an end, there may be further proceedings in relation to the child (for example, the reporter arranges a grounds hearing or a review hearing). In these circumstances, the reporter is to consider the safeguarder as being appointed for the child for the further proceedings and notify the safeguarder of the hearing.

*Sheriff appointed in specific issue appeals or reviews of local authority duties*

- 3.11 Regulations 4-6 of the Safeguarders Further Provisions Regulations make provision for the duration of the appointment of safeguarders appointed by the sheriff in the course of specific issue appeals:

- against a relevant person determination under section 160;
- against a decision of a section 126 contact direction review hearing under section 161;
- against a decision in relation to a secure accommodation authorisation under section 162; and
- a review under section 166 of a requirement imposed on a local authority.

- 3.12 In the case an appeal against a relevant person determination or an appeal against the decision of a section 126 contact direction review hearing, the safeguarder's appointment expires either upon:

- the expiry of the time allowed for appeal of the sheriff's decision on the appeal, or
- on the final determination of any appeal to the sheriff principal or Court of Session against the sheriff's decision.

- 3.13 In the case of an appeal against a decision in relation to a secure accommodation authorisation the safeguarder's appointment ends with the giving of the sheriff's decision on the appeal<sup>9</sup>.

- 3.14 In the case of a review under section 166 of a duty imposed on the local authority, the safeguarder's appointment ends upon:

- the expiry of the appeal period without an appeal having been made, or
- on the final determination of any appeal.

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<sup>9</sup> Regulation 4(4) and (5) of the Safeguarders Further Provisions Regulations provide an exception to the general rule following an appeal against a decision in relation to a secure accommodation authorisation. However, the regulation does not make sense, and therefore the appointment will end with the giving of the sheriff's decision.

## 4. Reporter's Duties

### *Notification of safeguarder and provision of papers*

- 4.1 When a pre-hearing panel or children's hearing appoints a safeguarder, within 2 working days of the date of the pre-hearing panel that appointed a safeguarder, the reporter is to notify Children 1<sup>st</sup> (as the manager of the Safeguarder's Panel) of the appointment<sup>10</sup>.
- 4.2 Within 3 working days<sup>11</sup> of being informed by Children 1<sup>st</sup> of the safeguarder allocated to the child's case, the reporter will send to the allocated safeguarder:
- a copy of the decision and reasons of the hearing or pre-hearing panel, and the reasons for the safeguarder's appointment; and
  - all information that was given to the children's hearing under the rules.<sup>12</sup>
- 4.3 The reporter must inform the safeguarder of:
- the time, date and place (if at that time known) of the next children's hearing for the child, or
  - the date, time and place of the proof hearing, if applicable<sup>13</sup>. In addition, the safeguarder is entitled to be notified of any children's hearing for the child and to receive a copy of all papers for a hearing.<sup>14</sup>

### *Duty to inform safeguarder of any previous safeguarder report*

- 4.4 The reporter must inform the safeguarder of any previous safeguarder's report which has been prepared in the child's case. If the safeguarder requests a copy of any previous safeguarder's report, the reporter must provide the safeguarder with a copy. The reporter must also include a copy of the report in the papers for the next children's hearing provided to:
- The child<sup>15</sup>;
  - Any relevant persons; and
  - the panel members.<sup>16</sup>

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<sup>10</sup> As agreed in the MoU with Children 1<sup>st</sup>.

<sup>11</sup> As agreed in the MoU with Children 1<sup>st</sup>. Rule 56(2)(b) of The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 requires that the reporter provide this information as soon as practicable and no later than 7 days before the intended date of the next hearing. However, the MoU agrees that SCRA will provide the safeguarder with the information at an earlier stage.

<sup>12</sup> Rule 56(3) of The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013. For details of the information to be provided to hearings in terms of the Children's Hearing Rules, see Rule 27, and see Practice Direction 14 on Notifications and Papers

<sup>13</sup> Rule 56(1) of The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013

<sup>14</sup> Practice Direction 14 on Notifications and Papers

<sup>15</sup> Subject to the terms of rule 18 of The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 which allow the reporter to not provide a document to a child when the child would not be capable of understanding it.

<sup>16</sup> Regulation 9 of the Safeguarders Further Provision Regulations.

In doing so, the reporter is to be alert to the possible need to make a non-disclosure request in relation to any information in the report.

#### *Arranging hearing after receipt of report*

4.5 Rule 56(5) of The Children’s Hearings (Scotland) Act 2011 (Rules of Procedure in Children’s Hearings) Rules 2013 (the “Rules of Procedure in Children’s Hearings”), requires the safeguarder to provide the reporter with a report or interim report within 35 days of being appointed. Rule 57 then requires the reporter to arrange a children’s hearing as soon as possible after receiving the report.<sup>17</sup>

4.6 However, in order to avoid delay in the children’s hearing taking place, the reporter does not require to receive the report before arranging the hearing. The reporter is to arrange the children’s hearing to take place after the 35 days have elapsed, leaving sufficient time to send out the safeguarder’s report prior to the hearing.

#### *Provision of papers to Safeguarder appointed by Court*

4.7 When a safeguarder is appointed by the sheriff, the reporter must provide a safeguarder with:

- copies of the papers before the children’s hearing,
- the application to court, and
- all productions in relation to the matter before the court.<sup>18</sup>

## **5. Safeguarder’s Duties where appointed by a Hearing**

5.1. The Safeguarder must inform the child and relevant persons of their role.<sup>19</sup>

5.2. The Safeguarder must, so far as practicable and taking into account the age and maturity of the child, include the views of the child in any report.<sup>20</sup>

5.3. The safeguarder appointed by a hearing has the following duties:

- attend the children’s hearing so far as reasonably practicable (section 33(1)(b))
- provide a report setting out anything that, in the safeguarder’s opinion, is relevant to the matter under consideration by the children’s hearing (section 33(1)(a)) unless this obligation is specifically excluded (see 5.4 below).

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<sup>17</sup> See paragraph 5.3 – 5.6 in relation to the provision of reports to the Reporter by the Safeguarder.

<sup>18</sup> Rule 3.8(b) of the Child Care and Maintenance Rules as amended.

<sup>19</sup> Regulation 8, Safeguarders Further Provision Regulations

<sup>20</sup> Regulation 7, Safeguarders Further Provision Regulations

- prepare any report which the children’s hearing has required the safeguarder to provide (section 33(1)(c)).

5.4 However, a safeguarder is not required to provide a report under section 33(1)(a) where the appointment was made by one of the following hearings:

- a grounds hearing which also directed the reporter to make an application to the sheriff in relation to a statement of grounds not accepted or not understood by the child or relevant person(s)<sup>21</sup>;
  - a second working day hearing
  - a CPO advice hearing
  - a hearing to consider a further ICSO or interim variation during a proof
  - a contact direction review hearing, or
  - a suspension hearing

Note that while there is no automatic obligation on a safeguarder appointed by one of these hearings to prepare a report, the same or a subsequent hearing can require the safeguarder to prepare a report in terms of section 33(1)(c).

*Time Limits*

5.5 Any safeguarder’s report to be provided under section 33(1)(a) is to be provided within 35 days of the safeguarder’s appointment to the Reporter.<sup>22</sup> Where a full report is not available an interim report is to be provided within 35 days together with:

- a statement of reasons to the reporter for the provision of an interim report;
- details of further investigation required; and
- an estimate of how much more time is required to provide a full report.

5.6 The 35 day timescale for provision of a report does not apply to reports required by a children’s hearing under section 33(1)(c).

5.7 All papers are to be returned by the safeguarder to the reporter after the safeguarder’s involvement in the case has finished.<sup>23</sup>

## **6. Safeguarder’s Duties where appointed by a Sheriff**

6.1 The Safeguarder must inform the child and relevant persons of their role.<sup>24</sup>

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<sup>21</sup> Section 33(2)

<sup>22</sup> Rule 56(4)

<sup>23</sup> Rule 9(1).

<sup>24</sup> Regulation 8, Safeguarders Further Provision Regulations

- 6.2 The Safeguarder must, so far as practicable and taking into account the age and maturity of the child, include the views of the child in any report.<sup>25</sup>
- 6.3 Rules 3.06 – 3.09 of the Act of Sederunt (Child Care and Maintenance Rules) 1997 as amended make provision in relation to safeguarders appointed under the Children’s Hearings (Scotland) Act 2011 in the course of any sheriff court proceedings.
- 6.4 In sheriff court proceedings the safeguarder:
- may appear personally or instruct a solicitor or advocate to appear on their behalf (rule 3.9(1));
  - has the powers and duties at common law of a curator ad litem in relation to the child<sup>26</sup> ( rule 3.8(a));
  - must make such enquiry as far as relevant to the application as he considers appropriate. (rule 3.8(d));
  - may convey the views of the child (subject to any order made by the child as to the steps to be taken to ascertain the views of a child who has indicated a wish to express views) (Rule 3.5(1)(a)).
- 6.5 In an appeal the sheriff may require a safeguarder to provide a report to assist the sheriff in determining the appeal (Regulation 6 of the Safeguarders Further Provision Regulations).
- 6.6 Section 33 does not apply to a safeguarder appointed by a sheriff. Such a safeguarder therefore does not have a duty to prepare a report under section 33(1) or (3) or to attend a children’s hearing. However the safeguarder has a right to attend any children’s hearing (section 78(1)) and may provide a report if requested by the hearing.

## **7. Safeguarder’s Right of Appeal**

- 7.1 A safeguarder can appeal in his own right:
- A “relevant decision” of a children’s hearing as defined in section 154; and
  - A decision of a sheriff or sheriff principal, other than a decision of the sheriff:
    - In relation to an application to determine whether a section 67 ground is established;
    - In relation to an application under section 110 for the review of a finding that a section 67 ground is established;
    - To make an interim compulsory supervision order; or
    - To make an interim variation of a compulsory supervision order<sup>27</sup>.

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<sup>25</sup> Regulation 7, Safeguarders Further Provision Regulations

<sup>26</sup> The common law duty of a curator ad litem is to protect or safeguard the interests of the person for whom they are appointed in the proceedings in which the curator has been appointed.

- 7.2 A safeguarder can sign an appeal on behalf of a child (rule 3.53(3) of the Child Care and Maintenance Rules 1997 as amended).

### **Response to Case Practice Enquiries Since Publication of Practice Direction**

#### Provision of Previous Reports to Safeguarder

A safeguarder requested previous social work and other reports from an earlier period when the child had been subject to a supervision requirement. The supervision requirement had been terminated before the current referral was received. The safeguarder has no right to receive these reports. (Note the position is different in relation to previous *safeguarder* reports). If the reporter's assessment is that the previous reports are not relevant and material to the current proceedings, and therefore does not include them in the hearing papers, the safeguarder has no right to obtain the reports nor the reporter any power to provide them.

## APPENDIX

This table shows the duration of the safeguarder's appointment in various situations.

Safeguarder appointed by	End of appointment
<ul style="list-style-type: none"> <li>• Children's hearing;</li> <li>• Pre-hearing panel, or</li> <li>• Sheriff, in relation to:               <ul style="list-style-type: none"> <li>○ an application to establish grounds,</li> <li>○ an application to review grounds determination, or</li> <li>○ an appeal under section 154.</li> </ul> </li> </ul>	<p>Appointment ends with whichever of the following occurs first:<sup>28</sup></p> <ul style="list-style-type: none"> <li>• On the expiry of the time allowed to appeal against a substantive decision of the hearing without an appeal being lodged;</li> <li>• On the expiry of the time allowed to appeal against the decision of the Sheriff to discharge the child's referral without an appeal being lodged;</li> <li>• On the expiry of the time allowed to appeal against the sheriff's decision on any appeal under section 154 of the Act without an appeal against the sheriff's decision having been lodged - <b>except</b> an appeal which results in the sheriff requiring the reporter to arrange a further hearing<sup>29</sup>; or</li> <li>• On the final disposal of any appeal to the Sheriff Principal or Court of Session (including the expiry of the time allowed for any further appeal) against a sheriff's decision on an appeal under Section 154.</li> </ul>
<p>Sheriff in relation to an appeal under section 160 against relevant person status determination.</p>	<p>Appointment ends with whichever of the following occurs first:<sup>30</sup></p> <ul style="list-style-type: none"> <li>• On the expiry of the time allowed to appeal against the decision of the Sheriff on the appeal under s160 without an appeal having been lodged.</li> <li>• On the final disposal of any appeal to the Sheriff Principal or Court of Session (including the expiry of the time allowed for any further appeal) against a Sheriff's decision on an appeal under Section 160</li> </ul>

<sup>28</sup> Regulation 3 of Safeguarders Further Provision Regulations

<sup>29</sup> If the Sheriff requires the Reporter to arrange a further hearing for any purpose following upon a section 154 appeal, then the safeguarder will remain appointed at that further hearing.

<sup>30</sup> Regulation 4(1) of Safeguarders Further Provision Regulations

<b>Safeguarder appointed by</b>	<b>End of appointment</b>
<p>Sheriff in relation to an appeal under section 161 against the decision of a section 126 contact direction review hearing.</p>	<p>Appointment ends with whichever of the following occurs first:<sup>31</sup></p> <ul style="list-style-type: none"> <li>• On the expiry of the time allowed to appeal against the decision of the Sheriff on the appeal under s161 without an appeal having been lodged.</li> <li>• On the final disposal of any appeal to the Sheriff Principal or Court of Session (including the expiry of the time allowed for any further appeal) against a Sheriff's decision on an appeal under Section 161</li> </ul>
<p>Sheriff in relation to an appeal under section 162 against a decision relating to a secure accommodation authorisation.</p>	<p>Either:<sup>32</sup></p> <ul style="list-style-type: none"> <li>• On the giving of the decision on the appeal by the Sheriff; or</li> <li>• Where the Sheriff requires the Reporter to arrange a further hearing for any purpose, the safeguarder will remain appointed at that hearing, and the appointment will end when substantive decision is reached/ any appeal is disposed of (as in the case of any safeguarder appointed by a hearing, as set out above).</li> </ul>
<p>Sheriff in relation to an application under section 166 for a review of a requirement imposed on a local authority.</p>	<p>Appointment ends with whichever of the following occurs first:<sup>33</sup></p> <ul style="list-style-type: none"> <li>• On the expiry of the time allowed to appeal against the decision of the sheriff on the review without an appeal having been lodged; or</li> <li>• On the final disposal of any appeal by the local authority to the Sheriff Principal.</li> </ul>

<sup>31</sup> Regulation 4(2) of the Safeguarders Further Provision Regulations

<sup>32</sup> Regulation 4 (3) – (5) of the Safeguarders Further Provision Regulations

<sup>33</sup> Regulation 5 of the Safeguarders Further Provision Regulations