



SCOTTISH  
**CHILDREN'S REPORTER**  
ADMINISTRATION

# Practice Direction 24

## Appeals

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## SUMMARY

- Section 154 specifies which decisions of a children's hearing are appealable. In general terms these appealable decisions are substantive or dispositive decisions.
- The child, relevant person and a safeguarder have the right to appeal against decisions of hearings under section 154.
- An appeal under section 154 must be lodged within 21 days beginning on the day the hearing made its decision.
- Certain appeals under section 154 must be disposed of within 3 days beginning the day after the appeal is made (e.g. an appeal against the making of a ICSO and decisions to make a CSO that includes a secure accommodation authorisation or a movement restriction condition).
- The test for an appeal is whether the decision of the hearing is justified.
- In a section 154 appeal, if the sheriff decides the hearing's decision is justified they must confirm the hearing's decision.
- In a section 154 appeal, if the sheriff decides the hearing's decision is not justified the sheriff has a range of discretionary disposal options available. If the appeal is against a decision to make a ICSO, the sheriff must terminate the ICSO. If the appeal is against a decision to grant a warrant to secure attendance, the sheriff must recall the warrant. However, having made this mandatory disposal, the sheriff may also make one of the discretionary disposals.
- Even where the sheriff has found the hearing's decision is justified, if he considers that the child's circumstances have changed since the hearing's decision was made, the sheriff may make one of the discretionary disposals.
- An appellant can request a children's hearing to consider suspension of the hearing's decision pending an appeal.
- Sections 160 - 162 introduce a number of specific issue appeals - against a relevant person determination, against a decision of a contact direction review hearing and against a decision of the chief social work officer whether or not to implement a secure accommodation authorisation. Each of these sections specifies who has rights of appeal, the timescales for making or disposing of the appeal and the disposal options for the sheriff.
- If a reporter receives notice of an appeal to the Sheriff Appeal Court or Court of Session, they are to contact the Practice Team as soon as possible.

## CONTENTS

<b>1</b>	<b>Introduction</b>	<b>5</b>
<b>2</b>	<b>Appealable Decisions</b>	<b>5</b>
<b>3</b>	<b>Principles applicable to appeals</b>	
3.1	Welfare of the child	6
3.2	Views of the child	6
<b>4</b>	<b>Section 154 Appeals</b>	
4.1	Appellants	6
4.2	Timescales for section 154 Appeal	7
4.3	Pre-court Procedure	7
4.3.1	<i>The Appeal</i>	7
4.3.2	<i>Notification</i>	8
4.3.3	<i>Lodging Papers</i>	9
4.3.4	<i>Answers</i>	10
4.3.5	<i>Citation of Witnesses</i>	11
4.4	Procedure within section 154 appeal	11
4.4.1	<i>General</i>	11
4.4.2	<i>Additional Reports Requested by Sheriff</i>	12
4.4.3	<i>Evidence in Appeals</i>	13
4.5	Disposal of section 154 Appeals	14
4.5.1	<i>Disposals</i>	14
4.5.2	<i>Requiring the Reporter to Arrange a Hearing</i>	15
4.5.3	<i>Decision</i>	15
4.6	Role of Reporter in section 154 Appeals	17
4.7	Scope of Appeal	17
4.8	Academic Appeals	19
4.9	Return of Papers	19
4.10	Suspension of Hearing's Decision Pending Appeal	19
4.11	Frivolous and Vexatious Appeals	20
<b>5</b>	<b>Section 160 Appeal - Relevant Person Determination</b>	
5.1	Right of appeal and appellants	21
5.2	Timescale	21
5.3	Procedure	21
5.4	Disposal by Sheriff	22
<b>6</b>	<b>Section 161 Appeal - Decision on Review of a Contact Direction</b>	
6.1	Right of Appeal and Appellants	23
6.2	Timescale	24
6.3	Procedure	24
6.4	Disposal by Sheriff	24

<b>7</b>	<b>Section 162 Appeal - Implementation of Secure Authorisation</b>	
7.1	Right of Appeal and Appellants	25
7.2	Timescale	25
7.3	Procedure	26
7.4	Disposal by Sheriff	26
<b>8</b>	<b>Appeals to the Sheriff Appeal Court and Court of Session</b>	
8.1	Appealable Decisions and Appellants	27
8.1.1	<i>Section 163 appealable decisions</i>	28
8.1.2	<i>Section 163 Appellants</i>	28
8.1.3	<i>Specific Issue Appeals – relevant person determination</i>	29
8.1.4	<i>Specific Issue Appeals – decision in contact direction review</i>	29
8.1.5	<i>Further appeal to the Court of Session against Sheriff Appeal Decision</i>	30
8.2	Timescale for appeals to the Sheriff Appeal Court / Court of Session	31
8.3	Procedure for Appeals to the Sheriff Appeal Court / Court of Session	31
<b>9</b>	<b>Safeguarder in appeal proceedings</b>	31
<b>Appendix 1</b>		33
<b>Appendix 2</b>		34
<b>Appendix 3</b>		35

## **1 Introduction**

This Practice Direction addresses appeals relating to children's hearing decisions. It focuses primarily on appeals to the sheriff. Appeals to the Sheriff Appeal Court and Court of Session are dealt with briefly in Section 8.

The relevant statutory provisions are contained in:

- Part 15 of the Children's Hearings (Scotland) Act 2011, and
- Part VIII of the Act of Sederunt (Child Care and Maintenance Rules) 1997 as amended - Procedure in Appeals to the Sheriff Against Relevant Decisions.

Practice Notes that are relevant are:

- Practice Note on Deciding whether or not to oppose an appeal
- Practice Note on Drafting answers in appeals.

## **2 Appealable Decisions**

The main appeal provision is section 154. Section 154(3) explicitly sets out the decisions that are appealable under section 154. These are decisions:

- a) to make, vary or continue a compulsory supervision order (CSO);
- b) to discharge a referral by the Principal Reporter;
- c) to terminate a CSO;
- d) to make an interim compulsory supervision order (ICSO);
- e) to make an interim variation of a CSO;
- f) to make a medical examination order (MEO);
- g) to grant a warrant to secure attendance.

There are also a number of specific issue appeals:

- an appeal against a relevant person determination - section 160;
- an appeal against the decision of a contact direction review hearing - section 161;
- an appeal against the decision of a chief social work officer to implement a secure accommodation authorisation - section 162.

Procedure in relation to these specific issue appeals are dealt with later in this Practice Direction (at sections 5 – 7).

Any other decisions of a children's hearing, for example decisions to appoint a safeguarder or to defer a decision, are not appealable.

### **3 Principles applicable to appeals**

#### **3.1 Welfare of the child**

In considering any appeal under the Act, the court (which includes the Sheriff Appeal Court and Court of Session) is to regard the need to safeguard and promote the welfare of the child throughout the child's childhood as the paramount consideration (section 25).

#### **3.2 Views of the child**

In considering any appeal under the Act, the sheriff must, so far as practicable and taking account of the age and maturity of the child, give the child an opportunity to indicate whether he or she wishes to express his or her views (section 27). A child aged 12 or over is presumed to be of sufficient age and maturity to form a view.

If the child wishes to express any views, the sheriff must give the child an opportunity to do so, and must have regard to those views.

### **4 Section 154 Appeals**

#### **4.1 Appellants**

An appeal under section 154 can be made jointly<sup>1</sup> or individually<sup>2</sup> by:

- a) the child;
- b) a relevant person in relation to the child;
- c) a safeguarder appointed to the child.

When a review children's hearing decides that a person is no longer to be deemed a relevant person, the person is still considered to be a relevant person for the purposes of having a right to appeal the decision of that hearing<sup>3</sup>.

In addition to the independent right of appeal, rule 3.53(3) says that an appeal by a child can be signed by a safeguarder.

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<sup>1</sup> s.154(4)

<sup>2</sup> S.154(1)

<sup>3</sup> Section 142(4)(b)

## 4.2 Timescales for section 154 Appeal

Care must be exercised in dealing with timescales for appeals as the time limits vary for different types of appeal. Refer to Appendix 1 for the timescales in different types of appeals.

An appeal under section 154 must be made before the expiry of 21 days *beginning with the day on which the hearing's decision was made*.<sup>4</sup> Therefore if the hearing makes a decision on Tuesday 25 June, the last day to lodge an appeal would be Monday 15 July.

There is no authority for an appeal to be lodged late and nor is there any discretion for the sheriff to allow an appeal to be lodged late<sup>5</sup>. If it is not possible for the appellant to lodge the appeal on the 21st day as the court is closed, there is no authority that enables the court to allow the appeal to be lodged on the next day on which the court is open<sup>6</sup>.

In addition to the time limit for lodging appeals, section 157 specifies that appeals against the following hearing decisions must be disposed of before the expiry of 3 days *beginning the day after the day on which the appeal is made*:

- a) to make a CSO including a secure accommodation authorisation or movement restriction condition (MRC);
- b) to make an ICSO;
- c) to make an interim variation of a CSO;
- d) to make a MEO; or
- e) to grant a warrant to secure attendance.

In terms of section 157(3), if any of these appeals is not disposed of within the 3 days then the authorisation, condition, order, variation or warrant ceases to have effect.

## 4.3 Pre-court Procedure

### 4.3.1 The Appeal

An appeal should be lodged with the sheriff clerk of the sheriff court district if the child is habitually resident, or on

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<sup>4</sup> s.154(5)

<sup>5</sup> Y v Law Society of Scotland 2009 SLT 593.

<sup>6</sup> Previous versions of this Practice Direction said that it is likely that the court would allow the appeal to be lodged on the next day on which the court is open. Macphail's Sheriff Court Practice (4<sup>th</sup> edition at paragraph 27.21) says this is the position only where the appellant requires the co-operation of the court in lodging the appeal (such as paying a fee). That approach was followed by Sheriff Komorowski in refusing to allow the reporter to lodge an application for a stated case on a Monday when the final day of the appeal period was the previous day, a Sunday (Scottish Children's Reporter Administration, Applicant 2024 SLT (Sh Ct) 54).

cause shown, to any other court.<sup>7</sup> Any appeal received by the reporter should be immediately re-directed and passed on to the court by the reporter.

An appeal must be in correct form<sup>8</sup>, although the sheriff is unlikely to insist on this if the appellant is unrepresented. The forms to be used by appellants are as follows<sup>9</sup>:

- a) Section 154(1) appeal against decision of children's hearing - Form 61.
- b) Section 160(1) appeal against relevant person determination - Form 62.
- c) Section 161(1) appeal against decision of a contact direction review hearing - Form 63.
- d) Section 162(3) appeal against decision to implement secure accommodation authorisation - Form 63A.

#### 4.3.2 Notification

The sheriff clerk is responsible for fixing a date for the hearing of the appeal, notifying all parties of an appeal and supplying them with a copy of the appeal.

The parties are:

- the appellant,
- the Principal Reporter,
- the child,
- the relevant persons,
- the safeguarder (either appointed by the sheriff for the purposes of the appeal or appointed by the children's hearing),
- any person the sheriff thinks necessary (including authors or compilers of reports provided to the children's hearing, and if the appeal relates to secure accommodation, the person in charge of the secure accommodation and the chief social work officer, and potentially persons with participation rights – see paragraph below), and
- where the appeal is under section 162(3) and relates to the implementation of a secure accommodation authorisation, the chief social work officer of the relevant local authority.<sup>10</sup>

A person with participation rights (a participation individual) does not have a right to be notified of the appeal (nor do

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<sup>7</sup> Child Care & Maintenance Rules 1997 (as amended) Rule 3.53(1A)(c)

<sup>8</sup> Child Care & Maintenance Rules 1997 (as amended) Rule 3.53(1A)(a)

<sup>9</sup> Child Care & Maintenance Rules 1997 (as amended) Rule 3.53(1B)

<sup>10</sup> Child Care & Maintenance Rules 1997 (as amended) Rule 3.54(1)



they have a right to appeal against the hearing's decision). However, as with applications to the sheriff for an ICSO, the article 8 rights of the participation individual may be engaged in the appeal.

Following what was said by the Supreme Court in *ABC v Principal Reporter*<sup>11</sup>, there may be a requirement for the participation individual to be notified of the appeal. That will particularly be the case where there is a likelihood that the sheriff will make (or continue or vary) a decision significantly affecting contact or the possibility of contact with the participation individual. What is required in any particular appeal will depend on the nature of the participation individual's relationship with the child and is likely to involve the sort of "bespoke enquiry" envisaged by the Supreme Court. The reporter is to inform the sheriff clerk that the person was notified of the children's hearing as someone with participation rights, and may include other information relevant to the issue of whether they should be notified of the appeal, thus giving the sheriff clerk and the sheriff the opportunity to consider the matter (the sheriff being able to order notification on any person they think necessary)<sup>12</sup>.

The sheriff may dispense with intimation on a child where they consider this appropriate.<sup>13</sup> The child is entitled to express a view and the procedure is in rule 3.5.

The sheriff clerk fixes the appeal diet which shall be within the time limits set down in the 2011 Act and, in any event, no later than 28 days after the lodging of the appeal.<sup>14</sup>

The reporter is not responsible for any travelling expenses incurred by the child or relevant persons when attending the appeal.

#### **4.3.3 Lodging Papers**

Rule 3.53(1A)(b) requires appellants to lodge with their appeal a copy of the decision complained of and any document relevant to it that was before the children's hearing.

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<sup>11</sup> 2020 SC (UKSC) 4 at paragraphs 52 and 53.

<sup>12</sup> This approach is consistent with the principles underlying our approach to the involvement of others in an ICSO application but reflects our role as respondent in an appeal, the generally longer timescale for appeals and the role of the sheriff clerk in notifying an appeal.

<sup>13</sup> Child Care & Maintenance Rules 1997 (as amended) Rule 3.54(4)

<sup>14</sup> Child Care & Maintenance Rules 1997 (as amended) Rule 3.54(5)

The reporter is also required to lodge papers with the sheriff court. In particular, the reporter is to lodge with the sheriff clerk copies of:

- the papers that were before the panel members at the hearing (in terms of section 177);
- the decision and reasons for decision of the children's hearing; and
- the report of the children's hearing.<sup>15</sup>

In the unlikely event that the reasons are handwritten, the reporter is to re-type the reasons before sending the document to the court. This will assist the sheriff in reading the reasons. The reporter is to add the following statement to the foot of the document:

"Certified that this is an accurate copy of the attached statement of reasons.

Signed.....  
Reporter

Date: ....."

The reporter is to lodge an inventory of papers with the papers.

#### 4.3.4 Answers

Any person on whom service of the appeal is made may lodge answers to the appeal.<sup>16</sup> Where possible, the reporter is to prepare and lodge answers to the appeal.

Such answers should:

- clarify what is agreed, what is disputed or what requires explanation;
- clarify, expand on and promote the hearing's decision;
- outline any legal arguments on competency or substance of the appeal;
- indicate (where appropriate) how the sheriff should dispose of the appeal.

See the Practice Note on Drafting answers in an appeal for practical guidance on this.

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<sup>15</sup> Children's Hearings (Scotland) Act 2011 s.155(2)

<sup>16</sup> Child Care & Maintenance Rules 1997 (as amended) Rule 3.55(1)

Answers must be lodged no later than seven days before the diet fixed for the hearing of the appeal<sup>17</sup> unless the appeal is one of the following:

- an appeal referred to in section 157(1) being an appeal against decisions:
  - a) to make a CSO including a secure authorisation or MRC;
  - b) to make an ICSO;
  - c) to make an interim variation of a CSO;
  - d) to make a MEO; or
  - e) to grant a warrant to secure attendance.
- Section 160(1) appeal against a relevant person determination.
- Section 161(1) appeal against the decision of a contact direction review hearing.
- Section 162(3) appeal against a decision to implement secure authorisation.

Answers must also be intimated on the other parties who have been notified of the appeal.<sup>18</sup>

#### **4.3.5 Citation of Witnesses**

It is the sheriff's decision as to which persons they wish to examine<sup>19</sup> and the sheriff clerk's duty to cite them<sup>20</sup>.

If the reporter cites any witnesses, the reporter is to send a list of witnesses to the court and to other parties as early as possible.

### **4.4 Procedure within section 154 appeal**

#### **4.4.1 General**

Every effort should be made for the reporter who was present at the hearing to conduct the appeal. If the reporter who was present at the hearing is not the reporter who is conducting the appeal, the reporter (or assistant reporter) present at the hearing should be available for the sheriff to examine, if at all possible.

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<sup>17</sup> Child Care & Maintenance Rules 1997 (as amended) Rule 3.55(1)

<sup>18</sup> Child Care & Maintenance Rules 1997 (as amended) Rule 3.55(2)

<sup>19</sup> Children's Hearings (Scotland) Act 2011 s.155(5)

<sup>20</sup> Child Care & Maintenance Rules 1997 (as amended) Rule 3.16(3)

For section 154 appeals there is a specific requirement that appeals are not heard in open court.<sup>21</sup>

The reporter is to endeavour to persuade sheriffs to adopt the following procedure:

- The appellant must be heard first<sup>22</sup>. It is important that the sheriff is aware of any competency issues before this point – written answers by the reporter would ensure this.
- The sheriff examines the reporter<sup>23</sup>. It is for the sheriff to decide whether to examine the reporter and what is to be asked of the reporter.
- The sheriff examines the author/compiler of any report<sup>24</sup>. Again, the sheriff must conduct the examination.
- Further reports may be called for by the sheriff<sup>25</sup>.
- Where evidence is to be heard this is a matter for the sheriff as to when and how<sup>26</sup>. However, the reporter is to encourage the sheriff to only hear evidence that is relevant to the sheriff's decision making at the particular stage of the appeal (for example, the sheriff should not hear evidence that is relevant to the question of how to dispose of an appeal, when the sheriff is at the stage of considering whether the hearing's decision is justified and therefore whether to allow the appeal).

The sheriff may exclude “any” child or exclude a relevant person and/or representative during the appeal<sup>27</sup>.

The sheriff may adjourn the hearing of the appeal where appropriate.<sup>28</sup>

#### *4.4.2 Additional Reports Requested by Sheriff*

The sheriff is entitled to require a report from any person for the purpose of assisting the sheriff in determining the appeal.<sup>29</sup> Neither the act nor the rules state who will pay for any report requested by the sheriff. In the absence of any specific rule, the reporter is to submit that the court

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<sup>21</sup> Children's Hearings (Scotland) Act 2011 s.155(3)

<sup>22</sup> Child Care & Maintenance Rules 1997 (as amended) Rule 3.56(1)

<sup>23</sup> Children's Hearings (Scotland) Act 2011 s.155(5)(d) and Child Care & Maintenance Rules 1997 (as amended) Rule 3.56(1)

<sup>24</sup> Children's Hearings (Scotland) Act 2011 s.155(5)(c) and Child Care & Maintenance Rules 1997 (as amended) Rule 3.56(1)

<sup>25</sup> Children's Hearings (Scotland) Act 2011 s.155(6)

<sup>26</sup> Children's Hearings (Scotland) Act 2011 s.155(4) and Child Care & Maintenance Rules 1997 (as amended) Rule 3.56(3)

<sup>27</sup> Child Care & Maintenance Rules 1997 (as amended) Rule 3.56(4) – (6)

<sup>28</sup> Child Care & Maintenance Rules 1997 (as amended) Rule 3.57

<sup>29</sup> Children's Hearings (Scotland) Act 2011 s.155(6)

should pay for the report as the report was requested by the sheriff.

On receiving the report, the sheriff must direct the reporter to send a copy of the further report to every party in the appeal.<sup>30</sup>

A safeguarder can also be appointed to produce a report.<sup>31</sup>

#### 4.4.3 Evidence in Appeals

The sheriff has discretion to hear evidence in appeals under section 154<sup>32</sup>. The reporter is to ensure that sheriffs appreciate they are not required to hear evidence. The sheriff may hear evidence from a number of different people set out in the Act <sup>33</sup> as follows:-

- The child.
- A relevant person in relation to the child.
- An author or compiler of a report or statement provided to the children's hearing that made the decision.
- The Principal Reporter.
- For appeals in relation to secure authorisations, the person in charge of the secure accommodation and the chief social work officer.
- Any other person who the sheriff considers may give material additional evidence.

The Sheriff has discretion to hear evidence in any circumstances that he considers it appropriate to do so<sup>34</sup>. The reporter is to encourage sheriffs to restrict evidence to that which is necessary for the sheriff's decision-making. Further direction in this is included in paragraph 4.7 below.

The reporter is to resist any attempt to turn an appeal against a hearing's decision into a re-examination of established grounds for referral. It is usually inappropriate for an appeal to be used as the forum for scrutiny of significant new areas of concern; in such circumstances the preparation of a new statement of grounds is generally preferable.

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<sup>30</sup> Child Care & Maintenance Rules 1997 (as amended) Rule 3.56(2)

<sup>31</sup> Children's Hearings (Scotland) Act 2011 s.155(7) and Regulation 6 of The Children's Hearings (Scotland) Act 2011 (Safeguarders: Further Provisions) Regulations 2012

<sup>32</sup> Children's Hearings (Scotland) Act 2011 s.155(4)

<sup>33</sup> Children's Hearings (Scotland) Act 2011 s.155(5)

<sup>34</sup> Child Care & Maintenance Rules 1997 (as amended) Rule 3.56(3)(b)

The reporter should consider citing witnesses where this would assist the sheriff's decision-making. This will most often arise in relation to a procedural irregularity but may also arise where the sheriff is considering whether the child's circumstances have changed.

## 4.5 Disposal of section 154 Appeals

### 4.5.1 Disposals

The disposal options available to the sheriff in a section 154 appeal are contained within the Flowchart at Appendix 2.

The sheriff must first decide whether the decision of the hearing is justified<sup>35</sup>. The disposal options of the sheriff depend on whether or not the sheriff decides that the hearing's decision is justified.

If the sheriff decides the hearing's decision is justified, the sheriff must confirm the hearing's decision.<sup>36</sup>

If the sheriff decides the hearing's decision is **not** justified, in some cases the sheriff must take certain actions:

- Where the appeal is against a decision to grant a warrant to secure attendance, the sheriff must recall the warrant.<sup>37</sup>
- Where the appeal is against a decision to make a ICSO or MEO, the sheriff must terminate the order.<sup>38</sup>

If the sheriff decides the hearing's decision is **not** justified, the sheriff has a number of discretionary options for disposal of the appeal. These are set out in section 156(3) and are to:

- Require the reporter to arrange a hearing for any purpose for which a hearing can be arranged under the Act;
- Continue, vary, terminate any order, interim variation or warrant;

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<sup>35</sup> See the Practice Note on Deciding whether or not to oppose an appeal for further consideration of this test.

<sup>36</sup> Children's Hearings (Scotland) Act 2011 s.156(1)(a)

<sup>37</sup> Children's Hearings (Scotland) Act 2011 s.156(2)(a)(i)

<sup>38</sup> Children's Hearings (Scotland) Act 2011 s.156(2)(a)(ii)

- Discharge the child from any further hearing or other proceedings in relation to the grounds that gave rise to the decision;
- Make a ICSO / or interim variation of CSO; or
- Grant a warrant to secure attendance.

The sheriff may decide on one or more these options, and may do so even where the sheriff has to make a mandatory disposal in relation to an appeal against a decision to make a ICSO or MEO or to grant a warrant to secure attendance.

If the sheriff decides the hearing's decision is justified, having confirmed the hearing's decision, the sheriff may proceed to consider whether the circumstances of the child have changed since the hearing's decision was made. If the sheriff decides the child's circumstances have changed, the sheriff may take one or more of the steps in section 156(3).

However, the sheriff is not required to consider the question of whether there has been a change of circumstances and therefore whether to consider any of the discretionary disposals in section 156(3).

The reporter is to discourage the sheriff from considering this question unless there is a clear need for the sheriff to use one of the discretionary powers in order to safeguard or promote the child's welfare. Unless this is the case, the reporter is to submit that any change of circumstances is better considered by a review children's hearing requested by the child or a relevant person.

#### **4.5.2 Requiring the Reporter to Arrange a Hearing**

If the sheriff decides on the disposal option of requiring the reporter to arrange a hearing for any purpose for which a hearing can be arranged under the Act, the reporter must arrange a new hearing for that purpose. The reporter is to encourage the sheriff to specify the purpose of the hearing in the interlocutor.

The purpose of the hearing must be one that can be arranged under the Act. It is to be noted that a hearing cannot be arranged under the Act to reconsider a previous decision of a children's hearing.

#### **4.5.3 Decision**

The sheriff must give their decision orally at the end of the appeal or on such day as they may appoint<sup>39</sup>, subject to the

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<sup>39</sup> Child Care & Maintenance Rules 1997 (as amended) Rule 3.58(1)

provisions of the Act regarding the disposal of certain appeals within a specific timescale.

The sheriff may issue a note of the reasons for their decision and must do so where the sheriff takes any disposal option other than to confirm the hearing's decision. The reporter is to alert the sheriff to this duty unless the reporter is clear that the sheriff intends to issue a note.

Where the sheriff has required a children's hearing to be arranged as part of the disposal of the appeal, the reporter is to include the sheriff's note in the papers for the hearing along with the interlocutor. The sheriff must not give any direction to the hearing.<sup>40</sup> If the sheriff's note does include a direction (e.g. a direction that a safeguarder be appointed) the reporter is to add a note to the hearing papers saying that:

- a sheriff cannot direct a children's hearing in their decision making, and
- therefore the panel members do not require to follow the sheriff's direction.

(This note will be based on what was said in *Kennedy v A* but should not expressly refer to the case).

If the sheriff does not issue a note, the reporter is to include their own note in the papers for the subsequent hearing. The purpose of this note is to provide the children's hearing with a brief explanation of why the sheriff has required the hearing to be arranged. In most situations this will be an explanation of why the sheriff found the decision not to be justified. Where the reporter did not oppose the appeal and that resulted in the sheriff finding the decision to be not justified, the note will provide a brief explanation of why the reporter did not oppose the appeal.

#### **4.5.4 Disposal where the appeal was against a decision to terminate a CSO of someone over 16**

Where someone successfully appeals against a decision to terminate a CSO and the subject of the decision is over the age of 16, on a plain reading of section 156 the sheriff has none of the disposal options available as the subject is no longer a "child" in terms of the act.

The reporter is to argue that in order to avoid an incompatibility with the appellant's ECHR rights, and to

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<sup>40</sup> *Kennedy v A* 1986 SLT 358



make their right of appeal effective, that the sheriff can read in words to the definition of a child in section 199. Such a reading-in will mean that the subject of the appeal is a “child” for the purposes of the sheriff taking a disposal decision and any subsequent hearing that takes place.

#### **4.6 Role of Reporter in section 154 Appeals**

The role of the reporter in a section 154 appeal is to:

- assist the court to reach a well informed decision in the child’s interests;
- promote the children’s hearing as the appropriate decision-making forum;
- promote the hearing’s decision where that decision is supportable;
- encourage the sheriff to adopt an inquisitorial role;
- assist the court to manage the scope of the appeal (for example, encouraging the sheriff to focus on the particular decision making stage in the appeal).

The nature of the proceedings is intended to be inquisitorial and every effort must be made to encourage the sheriff to adopt such an approach.

Where the reporter considers that the hearing’s decision, in relation to which an appeal has been lodged, is not supportable he/she is to seek approval of the LRM<sup>41</sup> not to oppose the appeal. The reporter is to make clear to the sheriff the specific grounds on which the appeal is not being opposed.

The reporter is also to make submissions to the sheriff on the relevant disposal option that the sheriff should take. Unless there are exceptional circumstances, the reporter is to invite the sheriff to require the reporter to arrange a children’s hearing for the same purpose as the hearing that is the subject of the appeal (or to review the current compulsory supervision order if a review hearing has taken place in the meantime).

#### **4.7 Scope of Appeal**

Section 154 gives an unrestricted right of appeal against the specified decisions. If the child, relevant person or safeguarder is dissatisfied with the decision for any reason, they may appeal. The grounds of appeal are not prescribed other than the need for the

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<sup>41</sup> As required by the Scheme of Delegation

sheriff to determine whether the sheriff is satisfied that the decision of the children's hearing is justified.

See the Practice Note on Deciding whether or not to oppose an appeal for further consideration of this test.

The reporter is to seek to ensure that any appeal does not unnecessarily broaden in scope. In doing so, the reporter is to seek to ensure that:

- When drafting answers to the appeal, the answers reflect the statutory test in section 156(1) of whether the hearing's decision is justified, and where appropriate, encourage the sheriff to focus on the appropriate stage in his decision making<sup>42</sup>;
- At the outset of the appeal, the focus of the appeal is on the statutory test;
- The approach adopted by the sheriff should not amount to a re-hearing of the case;
- The approach adopted by the sheriff is a staged approach;
- The sheriff appreciates that he is not required to hear evidence;
- If any evidence is allowed to be led, only such evidence that is required to enable the sheriff to make the decision pertinent to the particular stage of the appeal is allowed.

There are 3 possible stages in a section 154 appeal:

1. Whether the decision being appealed is justified.
2. If the decision is justified, whether the circumstances of the child have changed.
3. If the decision is not justified, or it *is* justified but the circumstances of the child have changed, which disposal option(s) to choose.

The issues and evidence relevant to each may be quite different. The initial focus of the appeal must be on the statutory test of whether the hearing's decision is justified. If evidence is being led, the sheriff should allow only such evidence that is required to enable the sheriff to make this decision.

If the decision is not justified, other evidence may then become relevant to the decision on disposal. If the decision *is* justified, the sheriff must not consider any disposal beyond confirmation of the hearing's decision unless they are first be satisfied that the circumstances of the child have changed.

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<sup>42</sup> For example, identifying matters within the appeal that are not relevant to the decision of whether the hearing's decision is justified, but may be relevant only to a decision about whether there has been a change of circumstances.

Submissions and/or evidence on whether the child's circumstances have changed may be relevant at this stage if not all parties are agreed. However, the sheriff does not require to consider whether there is a change of circumstances.

Only after making a decision on whether the decision is justified, and being satisfied as to a change of circumstances where the decision *is* justified, should the sheriff hear evidence relating to disposal.

#### **4.8 Academic Appeals**

Where the hearing decision being appealed has been superseded by a subsequent decision, an appeal may be academic if the sheriff's decision in the appeal would not have any practical effect in relation to the child<sup>43</sup>. However, the sheriff has a range of disposal options available that would have a practical effect on the child, for example by varying the CSO currently in effect or by requiring the reporter to arrange a hearing to review the current CSO.

Therefore the reporter is only to argue that an appeal should be refused by the sheriff on the grounds that it is academic if it is clear that no possible disposal option available to the sheriff would have any practical effect on the order currently in place.

#### **4.9 Return of Papers**

After the appeal proceedings have concluded, the sheriff clerk must return the papers from the appeal to the reporter.<sup>44</sup>

#### **4.10 Suspension of Hearing's Decision Pending Appeal**

A person, once they have made an appeal against a decision to make, vary, continue or terminate a CSO<sup>45</sup>, can request a hearing to consider the suspension of the hearing's decision pending the appeal (section 158). Suspension of the hearing's decision means that the previous state of affairs comes back into effect.

For example, where the decision being appealed is a decision to vary a CSO and that decision is suspended, the previous version of the CSO will come back into effect. However, the hearing can only consider suspending the whole decision, not just part of it, for example the variation of a contact direction.

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<sup>43</sup> TB and AM v Authority Reporter, Aberdeen (Sheriff Principal Young, unreported)

<sup>44</sup> Child Care & Maintenance Rules 1997 (as amended) Rule 3.58(4)

<sup>45</sup> Children's Hearings (Scotland) Act 2011 s.158(1)(a)

However, in considering a request for the suspension of the decision, the hearing has no power to extend the duration of any previous CSO. Therefore if the previous CSO is due to lapse, the reporter is to draw this to the attention of the children's hearing considering the request for suspension.

In the event of a children's hearing suspending a hearing's decision and the previous CSO then being due to expire (for example, where there has been a delay in the sheriff disposing of the appeal), the reporter must arrange a children's hearing to review the CSO under section 133 (the annual review hearing).

The reporter must arrange the hearing to consider suspension of the decision as soon as practicable after the request is made<sup>46</sup>.

#### **4.11 Frivolous and Vexatious Appeals**

Where an appeal is disposed of by the sheriff upholding the hearing's decision, the Sheriff can decide that an appeal is frivolous or vexatious (section 159). An appeal is "frivolous" if it is time-wasting; an appeal is "vexatious" if it is designed to frustrate the process.

If the sheriff finds that the appeal was frivolous or vexatious, the sheriff can order that for 12 months the person who appealed must obtain the leave of the sheriff before making another appeal under section 154 against a decision of a children's hearing in relation to a CSO<sup>47</sup>. The order only relates to appeals in relation to a CSO, not any other decision of a children's hearing.

Such an order only prevents the frivolous or vexatious appellant from making further appeals. It does not prevent any other person with a right of appeal from appealing.

The procedure for applying for leave to appeal is set out in Rules 3.53(4), 3.54(5) and 3.54(6) of the Child Care and Maintenance Rules (as amended). If leave to appeal is granted the appeal proceeds in accordance with rule 3.54 like other appeals.<sup>48</sup>

### **5 Section 160 Appeal - Relevant Person Determination**

Appendix 3 is a table which summarises the timescales for lodging disposing of appeal under section 160 and the sheriff's disposal options.

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<sup>46</sup> Children's Hearings (Scotland) Act 2011 s.158(2)

<sup>47</sup> See CM Appellant 2017 Fam LR 151 for a helpful analysis of the meaning of frivolous and vexatious and the approach to be adopted by the sheriff.

<sup>48</sup> Child Care and Maintenance Rules (as amended) Rule 3.53(6).

## **5.1 Right of appeal and appellants**

An individual subject to the determination, the child, a relevant person in relation to the child or two or more of these acting jointly can appeal to the sheriff against:

- A determination of a PHP or hearing that an individual is or is not deemed to be a relevant person in relation to a child.
- A determination of a PHP or hearing that an individual is to continue to be deemed, or is no longer to be deemed, a relevant person in relation to a child.
- A determination of a review under section 142(2)<sup>49</sup> that an individual is to continue to be deemed, or no longer to be deemed, a relevant person in relation to a child.

## **5.2 Timescale**

An appeal under section 160 must be made before the expiry of 7 days beginning with the day on which the determination is made. The appeal requires to be disposed of “before the expiry of the period of 3 days beginning with the day on which the appeal is made”.

Unlike appeals against decisions of children’s hearing to make certain orders<sup>50</sup>, the Act is silent on the consequences of the court failing to dispose of such appeals within the timescale. Therefore the consequences are unclear. It may be that the court is willing to continue to hear the appeal but in that case, the reporter is to encourage the court to deal with the appeal as soon as possible, preferably the next working day<sup>51</sup>. The reporter is also to promote the view that late disposal of the appeal does not mean that the decision appealed against ceases to have effect. The basis for this view is that if parliament had intended this very serious consequence, there would have been specific provision for that. The reporter is to draw to the sheriff’s attention the fact that this contrasts with the specific provision in s.157(3).

## **5.3 Procedure**

The 2011 Act does not specify that this appeal must not be heard in open court but the reporter is to argue that it should not be heard in open court in line with practice in other appeals.

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<sup>49</sup> S.142(2) provides an obligation on the children’s hearing to review whether deemed relevant persons remain relevant persons after varying or continuing a CSO on review.

<sup>50</sup> For example a decision to make a ICSO or a CSO with a secure accommodation authorisation – see section 157. See also Section 4.2 above.

<sup>51</sup> See *R v Soneji and another* [2006] 1 AC 340

The procedural rules on appeals contained within the Child Care and Maintenance Rules as amended (Part VIII, rules 3.53 - 3.58) apply to section 160 appeals (rule 3.53(1)). Therefore the rules relating to notification and answers in paragraphs 4.3.2 – 4.3.4 above apply to appeals under section 160.

#### **5.4 Papers**

There is no requirement for the reporter to lodge papers in a section 160 appeal (unlike appeals under section 154 – the duty to lodge being in section 155). The appellant requires to provide a copy of the decision being appealed and any relevant document considered by the children's hearing (rule 3.53(1A)(b)).

Where the appeal is against a decision of a children's hearing not to deem the appellant, they will only have a copy of the hearing papers that were relevant to that decision. Therefore it would not be appropriate for the reporter to lodge all of the hearing papers, thus giving the appellant access to all papers.

The reporter is to identify the information in the hearing papers that was relevant to the consideration of the deeming request and have a full set of papers and the relevant extracts available for the appeal, including copies for the sheriff and other parties. It is not necessary to have a copy of full set of papers for parties who have already had full papers.

The reporter is to address the sheriff at the outset of the appeal on the papers that are available and it will be for the sheriff to decide whether to direct the reporter to lodge either the full set of papers or the relevant extracts. The reporter's position is to be that the extract information strikes the right balance between the article 6 rights of the appellant and the article 8 rights of the people whose personal information is in the papers. The reporter could invite the sheriff to look at the full set of papers before deciding.

#### **5.5 Evidence**

Section 160 does not provide for evidence to be heard in these appeals. However, rule 3.56(3) provides that at any appeal the sheriff may hear evidence (this rule applies to section 160 appeals by virtue of rule 3.53(1) as amended).

#### **5.6 Disposal by Sheriff**

The test the sheriff must apply to the section 160 appeal is the same as in section 154 appeals – whether the determination to

which the appeal relates is justified<sup>52</sup>. If the sheriff decides it is justified the sheriff must confirm the determination.

If not satisfied it is justified the sheriff must:

- quash the determination, and
- where the determination is under section 81 that an individual is not a relevant person, the sheriff must make an order deeming that individual to be a relevant person in relation to the child.

Decisions of the sheriff in appeals under section 160 against relevant person determinations by a pre-hearing panel or hearing can be appealed by stated case to the Sheriff Appeal Court or Court of Session. Please see section 8 below.

## **6 Section 161 Appeal - Decision on Review of a Contact Direction**

Appendix 3 is a table which summarises the timescales for lodging disposing of appeal under section 161 and the sheriff's disposal options.

### **6.1 Right of Appeal and Appellants**

An individual<sup>53</sup> (other than a relevant person to the child):

- (a) in relation to whom a contact order is in force regulating contact between the individual and the child,
- (b) in relation to whom a permanence order is in force which specifies arrangements for contact between the individual and the child, or
- (c) who claims to have or recently have had significant involvement in the upbringing of the child, can appeal to the sheriff against a decision under section 126(6) against the decision of a contact direction review hearing<sup>54</sup>.

Neither the child or any relevant person has a right of appeal under section 161. However, they have a right of appeal under section 154 against the decision of the initial children's hearing that made the order containing the contact direction.

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<sup>52</sup> See Section C of the Practice Note on Deciding whether or not to oppose an appeal for further consideration of this test in relation to a section 160 appeal.

<sup>53</sup> Children's Hearings (Scotland) Act 2011 s.161(2).

<sup>54</sup> Children's Hearings (Scotland) Act 2011 s.161(1) and s.161(3).

## **6.2 Timescale**

An appeal under section 161 must be made before the expiry of 21 days beginning with the day on which the decision is made. It requires to be disposed of “before the expiry of the period of 3 days *beginning with the day on which the appeal is made*”.

Unlike appeals against decisions of children’s hearing to make certain orders<sup>55</sup>, the Act is silent on the consequences of the court failing to dispose of such appeals within the timescale. Therefore the consequences are unclear. It may be that the court is willing to continue to hear the appeal but in that case, the reporter is to encourage the court to deal with the appeal as soon as possible, preferably the next working day<sup>56</sup>. The reporter is also to promote the view that late disposal of the appeal does not mean that the decision appealed against ceases to have effect. The basis for this view is that if parliament had intended this very serious consequence, there would have been specific provision for that. The reporter is to draw to the sheriff’s attention the fact that this contrasts with the specific provision in s.157(3).

## **6.3 Procedure**

The 2011 Act does not specify that this appeal must not be heard in open court but the reporter is to argue that it should not be heard in open court in line with practice in other appeals.

The procedural rules on appeals contained within the Child Care and Maintenance Rules as amended (Part VIII, rules 3.53- 3.58) apply to section 161 appeals. Therefore the rules relating to notification, lodging papers and answers in paragraphs 4.3.2 – 4.3.4 above apply to appeals under section 161.

Section 161 does not provide for evidence to be heard in these appeals. However, rule 3.56(3) provides that at any appeal the sheriff may hear evidence (this rule applies to section 161 appeals by virtue of rule 3.53(1) as amended).

## **6.4 Disposal by Sheriff**

The test the sheriff must apply to the section 161 appeal is the same as in section 154 appeals – whether the relevant decision to which the appeal relates is justified. If the sheriff decides it is justified, the sheriff must confirm the decision.

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<sup>55</sup> For example a decision to make a ICSO or a CSO with a secure accommodation authorisation – see section 157. See also section 4.2 above.

<sup>56</sup> See *R v Soneji and another* [2006] 1 AC 340



If the sheriff is not satisfied it is justified, the sheriff must vary the CSO by varying or removing the measure contained in the order under s.83(2)(g) (the direction regulating contact between the child and a person / persons).

Decisions of the sheriff in appeals under section 161 can be appealed by stated case to the Sheriff Appeal Court or Court of Session. Please see section 8 below.

## **7 Section 162 Appeal - Implementation of Secure Authorisation**

Appendix 3 is a table which summarises the timescales for lodging disposing of appeal under section 162 and the sheriff's disposal options.

### **7.1 Right of Appeal and Appellants**

The child or a relevant person in relation to the child<sup>57</sup> may appeal to the sheriff against a decision of the chief social work officer to<sup>58</sup>:

- (a) implement a secure accommodation authorisation (SAA);
- (b) not to implement a SAA; or
- (c) to remove the child from secure accommodation.

### **7.2 Timescale**

An appeal under section 162 must be made before the expiry of 21 days beginning with the day on which the decision appealed against is made. The appeal requires to be disposed of “before the expiry of the period of 3 days *beginning with the day on which the appeal is made*”<sup>59</sup>.

Unlike appeals against decisions of children's hearing to make certain orders<sup>60</sup>, the Act is silent on the consequences of the court failing to dispose of such appeals within the timescale. Therefore the consequences are unclear. It may be that the court is willing to continue to hear the appeal but in that case, the reporter is to encourage the court to deal with the appeal as soon as possible, preferably the next working day<sup>61</sup>. The reporter is also to promote the view that late disposal of the appeal does not mean that the decision appealed against ceases to have effect. The basis for

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<sup>57</sup> Children's Hearings (Scotland) Act 2011 s.162(3). The appeal may be made jointly by the child and one or more relevant persons or two or more relevant persons – s.162(5).

<sup>58</sup> Children's Hearings (Scotland) Act 2011 s.162(4).

<sup>59</sup> The Act does not prescribe time limits for s.162 appeals. Instead s.162(7) and s.162(8) provide for regulations to be made. The Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013 provide for timescales at regulation 11(2).

<sup>60</sup> For example a decision to make a ICSO or a CSO with a secure accommodation authorisation – see section 157. See also section 4.2 above.

<sup>61</sup> See *R v Soneji and another* [2006] 1 AC 340

this view is that if parliament had intended this very serious consequence, there would have been specific provision for that. The reporter is to draw to the sheriff's attention the fact that this contrasts with the specific provision in s.157(3).

### **7.3 Procedure**

This appeal must not be heard in open court.<sup>62</sup>

The procedural rules on appeals contained within the Child Care and Maintenance Rules as amended (Part VIII, rules 3.53- 3.58) apply to section 162 appeals. Therefore the rules relating to notification, lodging papers and answers in paragraphs 4.3.2 – 4.3.4 above apply to appeals under section 162.

Rule 3.54(1)(f) provides for intimation of these appeals on the chief social work officer of the relevant local authority for the child in addition to the other parties usually notified of an appeal. As the appeal is against the decision of the chief social work officer, it is likely that the local authority will be the principal respondent to the appeal.

The sheriff can require a report to help him determine the appeal<sup>63</sup> and evidence may be heard before determining the appeal<sup>64</sup> from<sup>65</sup>:-

- (a) the child;
- (b) each relevant person in respect of the child;
- (c) the chief social work officer;
- (d) the head of unit;
- (e) the Principal Reporter;
- (f) any other person who the sheriff considers may give additional material evidence.

### **7.4 Disposal by Sheriff**

The test for the appeal is whether the decision appealed against is justified. The options for disposal are shown in the table below.

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<sup>62</sup> Children's Hearings (Scotland) Act 2011 s.162(6).

<sup>63</sup> The Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013 regulation 11(5).

<sup>64</sup> The Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013 regulation 11(3).

<sup>65</sup> The Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013 regulation 11(4).

<b>Decision Appealed Against</b>	<b>Disposal where decision justified</b>	<b>Disposal options for Sheriff where decision not justified</b>
To implement a SAA <sup>66</sup>	The sheriff must confirm the decision.	One or both of: (1) direct the CSWO to remove the child from secure accommodation; (2) require the reporter to arrange a children's hearing for any purpose under the Act.
Not to implement a SAA <sup>67</sup>	The sheriff: (1) must confirm the decision, and (2) may require the reporter to arrange a children's hearing for any purpose under the Act.	One or both of: (1) direct the CSWO to place the child in secure accommodation; (2) require the reporter to arrange a children's hearing for any purpose under the Act.
To remove a child from secure accommodation <sup>68</sup>	The sheriff:- (1) must confirm the decision, and (2) may require the reporter to arrange a children's hearing for any purpose under the Act.	One or both of:- (1) direct the CSWO to place the child in secure accommodation and vary the order or warrant to include a SAA; (2) require the reporter to arrange a children's hearing for any purpose under the Act.

## **8 Appeals to the Sheriff Appeal Court and Court of Session**

### **8.1 Appealable Decisions and Appellants**

An appeal to the Sheriff Appeal Court or Court of Session under section 163 may be made only on a point of law or a procedural irregularity<sup>69</sup>. An appeal to the Sheriff Appeal Court or Court of Session against a Sheriff's decision in a specific issue appeal must also be on a point of law or procedural irregularity.<sup>70</sup>

<sup>66</sup> The Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013 regulation 12.

<sup>67</sup> The Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013 regulation 13.

<sup>68</sup> The Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013 regulation 14.

<sup>69</sup> Children's Hearings (Scotland) Act 2011 s.163(9).

<sup>70</sup> Children's Hearings (Scotland) Act 2011 s.164(5) and s.165(5).

### 8.1.1 Section 163 appealable decisions

In terms of section 163 an appeal by stated case to the Sheriff Appeal Court or Court of Session can be made against the following decisions of the Sheriff:

- A determination by the Sheriff of an application to determine whether a section 67 ground is established.<sup>71</sup>
- A determination by the Sheriff of an application under section 110(2) for review of a finding that a section 67 ground is established.<sup>72</sup>
- A determination by the Sheriff of an appeal against a decision of a children's hearing.<sup>73</sup>
- A determination by the Sheriff of an application under section 98 for extension of an ICSO.<sup>74</sup>
- A determination by the Sheriff of an application under section 99 for a further extension of an ICSO.<sup>75</sup>
- A decision of the Sheriff under section 100 to make an ICSO.<sup>76</sup>
- A decision of the Sheriff under section 100 to make an interim variation of a CSO.<sup>77</sup>

### 8.1.2 Section 163 Appellants

The above appeals under section 163 by stated case to the Sheriff Appeal Court or Court of Session can be made by<sup>78</sup>:

- (a) the child;
- (b) a relevant person in relation to the child;
- (c) a safeguarder appointed in relation to the child by a children's hearing or sheriff;
- (d) two or more of the child, relevant person or safeguarder acting jointly; and
- (e) the Principal Reporter.

There are certain restrictions on this right of appeal to both the Sheriff Appeal Court and Court of Session for safeguarders and the Principal Reporter. The reporter cannot appeal against the decision of a sheriff confirming

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<sup>71</sup> Children's Hearings (Scotland) Act 2011 s.163(1)(a)(i).

<sup>72</sup> Children's Hearings (Scotland) Act 2011 s.163(1)(a)(ii).

<sup>73</sup> Children's Hearings (Scotland) Act 2011 s.163(1)(a)(iii).

<sup>74</sup> Children's Hearings (Scotland) Act 2011 s.163(1)(a)(iv).

<sup>75</sup> Children's Hearings (Scotland) Act 2011 s.163(1)(a)(v).

<sup>76</sup> Children's Hearings (Scotland) Act 2011 s.163(1)(b)(i).

<sup>77</sup> Children's Hearings (Scotland) Act 2011 s.163(1)(b)(ii).

<sup>78</sup> Children's Hearings (Scotland) Act 2011 s.163(3).

the decision of a children's hearing.<sup>79</sup> A safeguarder cannot appeal against<sup>80</sup>:

- A determination by the Sheriff of an application to determine whether a section 67 ground is established.
- A determination by the Sheriff of an application under section 110(2) for review of a finding that a section 67 ground is established.
- A decision of the Sheriff under section 100 to make an ICSO.
- A decision of the Sheriff under section 100 to make an interim variation of a CSO.

#### 8.1.3 Specific Issue Appeals – relevant person determination

In terms of section 164 it is possible to appeal by stated case to the Sheriff Appeal Court or Court of Session against a decision of the Sheriff in an appeal against a determination of a pre-hearing panel or children's hearing that an individual is or is not to be deemed a relevant person in relation to the child<sup>81</sup>.

This appeal is open to<sup>82</sup>:

- (a) the individual in question
- (b) the child
- (c) a relevant person in relation to the child
- (d) two or more of the above acting jointly
- (e) the Principal Reporter (but not against a decision of a sheriff to confirm the determination of a PHP or hearing).

Safeguarders have no right of appeal in relation to this specific issue.

#### 8.1.4 Specific Issue Appeals – decision in contact direction review

In terms of section 165 it is possible to appeal by stated case to the Sheriff Appeal Court or Court of Session against a decision of the Sheriff in an appeal against the decision of a contact direction review hearing (a section 161 appeal)<sup>83</sup>.

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<sup>79</sup> Children's Hearings (Scotland) Act 2011 s.163(5).

<sup>80</sup> Children's Hearings (Scotland) Act 2011 s.163(4). In addition safeguarders cannot appeal to the Court of Session against a decision of the Sheriff Appeal Court in relation to any of these appeals – Children's Hearings (Scotland) Act 2011 s.163(4)(b).

<sup>81</sup> Children's Hearings (Scotland) Act 2011 s.164(1).

<sup>82</sup> Children's Hearings (Scotland) Act 2011 s.164(3).

<sup>83</sup> Children's Hearings (Scotland) Act 2011 s.165(1).

This appeal is open to an individual (other than a relevant person to the child):

- (a) in relation to whom a contact order is in force regulating contact between the individual and the child;
- (b) in relation to whom a permanence order is in force which specifies arrangements for contact between the individual and the child; or
- (c) who claims to have or recently have had significant involvement in the upbringing of the child<sup>84</sup>.

The Principal Reporter and safeguarders have no right of appeal in relation to this specific issue.

#### **8.1.5 Further appeal to the Court of Session against Sheriff Appeal Court Decision**

Further appeal by stated case to the Court of Session against the Sheriff Appeal Court's decision in any appeal requires the leave of the Sheriff Appeal Court.<sup>85</sup> The following persons can seek leave to appeal:

- (a) the child;
- (b) a relevant person in relation to the child;
- (c) a safeguarder appointed in relation to the child by a children's hearing (but not if appointed by the sheriff);
- (d) two or more of the child, relevant person or safeguarder acting jointly; and
- (e) the Principal Reporter.

However, the safeguarder can not appeal against a Sheriff Appeal Court's decision in an appeal against:

- A determination by the Sheriff of an application to determine whether a section 67 ground is established.
- A determination by the Sheriff of an application under section 110(2) for review of a finding that a section 67 ground is established.
- A decision of a sheriff under section 100 to make an ICSO or make an interim variation of a CSO<sup>86</sup>.

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<sup>84</sup> Children's Hearings (Scotland) Act 2011 s.165(3). S.126(2)(b) provides for secondary legislation to be made specifying criteria for individuals to have the right to request a review of a contact direction.

<sup>85</sup> Children's Hearings (Scotland) Act 2011 s.163(2). This also applies to specific issue appeals – relevant person determinations - Children's Hearings (Scotland) Act 2011 s.164(2) and decisions in contact direction reviews - Children's Hearings (Scotland) Act 2011 s.165(2).

<sup>86</sup> Children's Hearings (Scotland) Act 2011 s.163(4).

## **8.2 Timescale for appeals to the Sheriff Appeal Court / Court of Session**

An appeal by stated case to the Sheriff Appeal Court or Court of Session must be made before the expiry of 28 days beginning with the day on which the determination or decision appealed against was made.<sup>87</sup>

## **8.3 Procedure for Appeals to the Sheriff Appeal Court / Court of Session**

Procedure for appeals to the Sheriff Appeal Court is contained within the Child Care & Maintenance Rules 1997 Part IX. Procedure for appeals to the Court of Session is contained with Chapter 41 of the Rules of the Court of Session. .

Practice Direction 1 at Appendix 1 Section 3, and the Casework Scheme of Delegation, provide detailed information about the roles of the case reporter, the Locality Reporter Manager and the Practice Team in relation to such appeals. In particular:

- Any request to the Sheriff or Sheriff Appeal Court to state a case which is notified to the reporter or being considered by any reporter must be notified immediately to the Practice Team.
- Where it is considered necessary to appeal the decision of a sheriff further the matter must be discussed with the Practice Team.

## **9 Safeguarder in appeal proceedings**

Where a safeguarder has not already been appointed for the child, the Sheriff must consider whether to appoint a safeguarder for the child when an appeal is made under Part 15. The sheriff must do so as soon as reasonably practicable after the commencement of the proceedings.<sup>88</sup> The Sheriff may appoint a safeguarder then or later in the proceedings.

If a safeguarder is appointed and becomes a party to the appeal after an appeal has been heard in part the sheriff may order the hearing of the appeal to commence of new.<sup>89</sup> If the Sheriff appoints a safeguarder the Sheriff must give reasons for the decision and record the appointment and the reasons in the interlocutor.<sup>90</sup>

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<sup>87</sup> Children's Hearings (Scotland) Act 2011 s.163(8). Time limit is the same for relevant person determinations - Children's Hearings (Scotland) Act 2011 s.164(4) and for decisions on contact direction reviews - Children's Hearings (Scotland) Act 2011 s.165(4).

<sup>88</sup> Section 31(1) and (2) and Rule 3.7 of the Child Care & Maintenance Rules 1997 (as amended)

<sup>89</sup> Child Care & Maintenance Rules 1997 (as amended) Rule 3.56(7)

<sup>90</sup> s.31(6) and Child Care & Maintenance Rules 1997 (as amended) Rule 3.7

If safeguarder was previously appointed to child (for example by the hearing whose decision is the subject of the appeal), the appeal will be notified to the safeguarder<sup>91</sup>.

The rights, powers and duties of a safeguarder on appointment are in Rules 3.8 and 3.9. The safeguarder has the powers and duties of a curator ad litem, is entitled to receive from the reporter copies of the applications, all of the productions in the proceedings and a set of the hearing papers.

The safeguarder has to find out whether the child wishes to express a view in relation to the application and if the child does and wants the safeguarder to transmit them to the Sheriff, the safeguarder must do so. This is all subject to Rule 3.5(1)(a) which permits the Sheriff to order such steps as he consider appropriate to ascertain the views of the child.

The safeguarder shall make such relevant enquiries as he considers appropriate and without delay intimate in writing to the sheriff clerk whether or not he intends to become a party to the proceedings.<sup>92</sup>

If a safeguarder intends to become a party, they may appear personally or instruct an advocate or solicitor to appear on their behalf. An advocate or solicitor cannot be both a safeguarder and solicitor to the child.<sup>93</sup>

Any safeguarder appointed is permitted to remain in the hearing if the child is excluded because the Sheriff is satisfied that due to the nature of the appeal or of any evidence the child should not be present at any stage of the appeal.<sup>94</sup>

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<sup>91</sup> Child Care & Maintenance Rules 1997 (as amended) Rule 3.54(1)

<sup>92</sup> Child Care & Maintenance Rules 1997 (as amended) Rule 3.8 and 3.9

<sup>93</sup> Child Care & Maintenance Rules 1997 (as amended) Rule 3.9

<sup>94</sup> Child Care & Maintenance Rules 1997 (as amended) Rule 3.56(4)



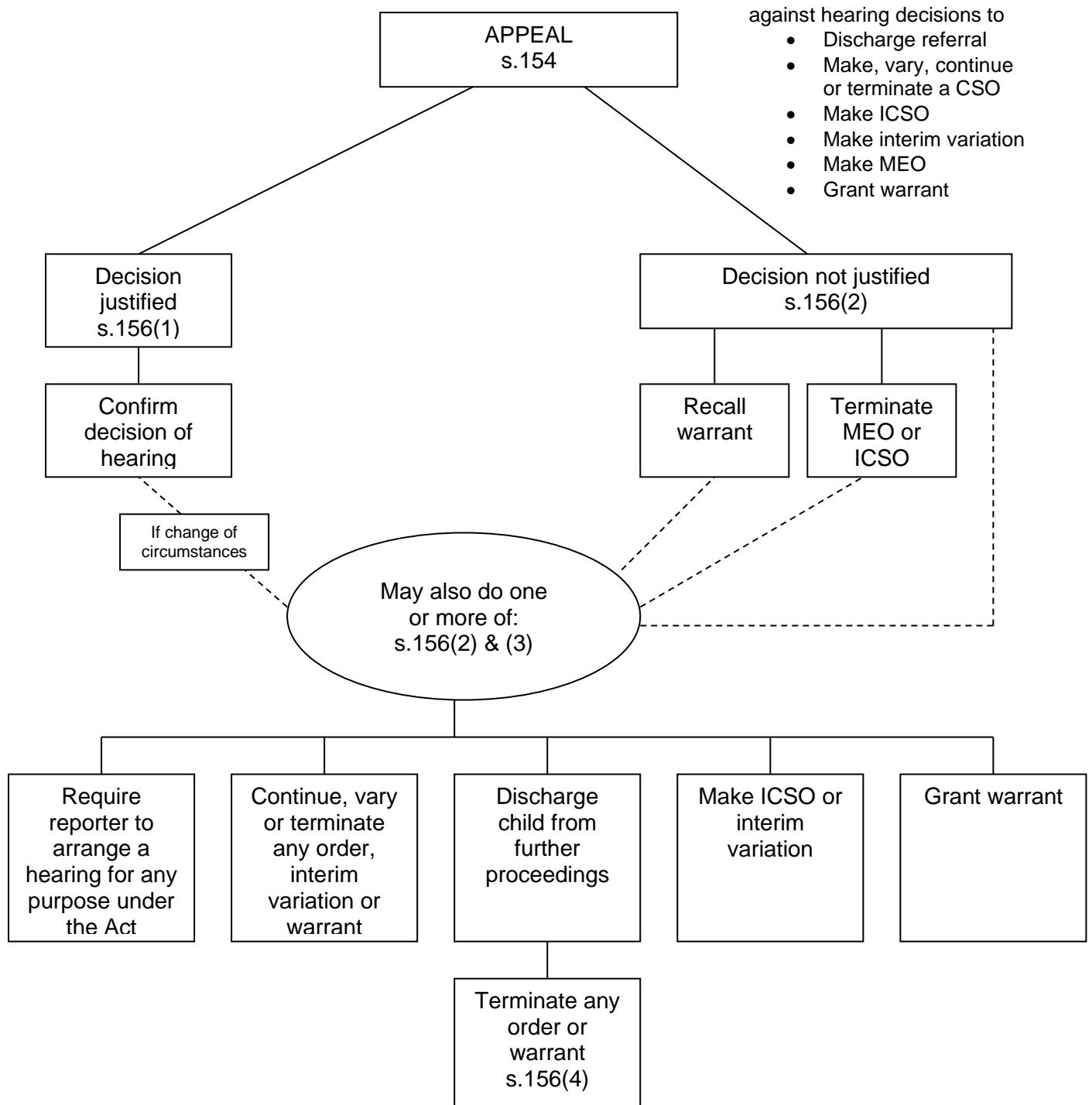
## Appendix 1

### Appeal time limits under the Children's Hearings (Scotland) Act 2011

TYPE OF DECISION APPEALED	DEADLINE FOR LODGING APPEAL AT COURT	DEADLINE FOR DISPOSAL OF APPEAL AT COURT
Make, vary or continue a CSO (except secure authorisation / MRC)	21 days beginning with the day the hearing's decision was made	None but a hearing must be fixed no later than 28 days after the lodging of the appeal <sup>95</sup>
Discharge referral of the Principal Reporter	21 days beginning with the day the hearing's decision was made	None but a hearing must be fixed no later than 28 days after the lodging of the appeal
Terminate the CSO	21 days beginning with the day the hearing's decision was made	None but a hearing must be fixed no later than 28 days after the lodging of the appeal
Make a CSO including a secure authorisation	21 days beginning with the day the hearing's decision was made	3 days beginning the day <b>after</b> the appeal is made.
Make a CSO including an MRC	21 days beginning with the day the hearing's decision was made	3 days beginning the day <b>after</b> the appeal is made.
Make an ICSO	21 days beginning with the day the hearing's decision was made	3 days beginning the day <b>after</b> the appeal is made.
Make an interim variation of a CSO	21 days beginning with the day the hearing's decision was made	3 days beginning the day <b>after</b> the appeal is made.
Make an MEO	21 days beginning with the day the hearing's decision was made	3 days beginning the day <b>after</b> the appeal is made.
Grant warrant to secure attendance	21 days beginning with the day the hearing's decision was made	3 days beginning the day <b>after</b> the appeal is made.
Determination of relevant person status	7 days beginning with the day the determination was made	<i>3 days beginning the day the appeal is made.</i>
Decision affecting a contact order / permanence order	21 days beginning with the day the decision is made	<i>3 days beginning the day the appeal is made.</i>
Implementation of secure authorisation / failure to implement	21 days beginning with the day the decision is made	<i>3 days beginning the day the appeal is made.</i>
Appeal by stated case to the Sheriff Appeal Court or Court of Session	28 days beginning with the day on which the determination / decision appealed against was made	

<sup>95</sup> Child Care and Maintenance Rules (as amended) Rule 3.54(5).

## Appendix 2



## Appendix 3

### Specific Issue Appeals

Decision appealed against	Days to lodge appeal	Days to dispose of appeal	Sheriff's disposal options	
			<i>Decision justified</i>	<i>Not justified</i>
Determination of relevant person status	7	3	Confirm determination	Must quash determination and deem RP (if decision of hearing/PHP not to deem)
Contact direction review hearing	21	3	Confirm decision	Must vary CSO by varying or removing the contact direction
To implement secure authorisation	21	3	Confirm decision	May (1) direct the CSWO to remove the child from secure; and/or (2) require reporter to arrange a children's hearing for any purpose.
To not implement secure authorisation	21	3	Confirm decision/may require reporter to arrange a children's hearing for any purpose	May (1) direct the CSWO to place the child in secure; and/or (2) require reporter to arrange a children's hearing for any purpose
To remove from secure	21	3	Confirm decision/may require reporter to arrange a children's hearing for any purpose	May (1) direct the CSWO to place the child in secure and vary the order to include a SAA; and/or (2) require reporter to arrange a children's hearing for any purpose