

Developments in the Law and Practice relating to the Children's Hearings System

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- Children's Hearings (Scotland) Act 2011
- Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013
- Act of Sederunt (Children's Hearings (Scotland) Act 2011)(Miscellaneous Amendments) 2013

Topics

- Interim Decisions
- Expeditious Management of Court Proceedings
- Relevant Persons
- Legal Representation and Duty Scheme

- Questions

Context 2014/15

- 15,858 children referred to reporter
- 36,904 children's hearings
- 4,305 pre-hearing panels
- 3,054 proof applications concluded
- 8,522 hearings to consider an interim order
- 10,733 compulsory supervision orders

1. Interim Decisions

- ICSOs and interim variations
- Broad range of measures possible
- Urgent necessity
- 2,670 children in 2014/15

Impact of Deferred Decisions and Interim Orders

- Number of Children's Hearings
- Number of Appeals

Timescales for Appeal

- Appeal before expiry of 21 days beginning with day of decision s.154
- Appeal must be heard and disposed of before expiry of 3 days beginning with day after the day appeal made s.157
- If not, the Order ceases to have effect
- No days are excluded

ICSO Applications to Sheriff

- Sections 98 and 99
- CCMR 'light touch'
- Duration of hearings
- Information taken into account by sheriffs

Appeal against ICSO made by Sheriff

- Appeal against ICSOs made under section 98, 99 or 100 s.163
- Before expiry of period of 28 days beginning with day of sheriff's determination
- Stated case procedure
- Point of law or procedural irregularity

2. Expedious Determination of Applications

- Rule 3.46A – role of sheriff
 - examples:*
 - Instructing single expert
 - Using affidavits
 - Restricting issues for proof
 - Restricting witnesses
 - Evidence by live link
- Rule 3.47(4A) – may call witnesses with approval of the sheriff
- Sheriff Principal Practice Note

Expectations on Reporters

- Disclosure
- Witness list and inventory of productions
- Seek similar from other parties
- Promote joint minute of agreement
- Promote case summaries by parties
- Promote joint instruction of experts
- Use of signed witness statements
- Promote pre-proof orders by sheriff

3. Relevant Persons

- Deemed relevant person – current or recent significant involvement in the upbringing of the child
- Facts and circumstances
- Range of factors to take into consideration
- Does the relationship call for the procedural protection of being a party to the proceedings

Decision Makers

- Reporter role re notifications
- Pre-hearing Panel or Children's Hearing makes decision
- Sheriff role in appeals

4. Legal Representation

- For child and relevant persons to seek own legal representation via ABWOR
- Duty scheme for child where automatic entitlement (and not already ABWOR)
- Children's Hearing can trigger contact via SLAB:
 - legal representation necessary for effective participation
 - unlikely child/relevant person will arrange themselves

Automatic Legal Aid

- Second working day hearing (CPO)
- Custody Hearing
- Hearing likely to consider secure accommodation
- CPO and CAO proceedings before the sheriff

- Reporter contacts SLAB if:
 - arranging hearing of type above
 - child aged 8 or over
 - child not already instructing a solicitor under ABWOR

Process

- SLAB informs reporter of name of duty solicitor
- Reporter provides papers once solicitor confirms child is instructing them to act
- The appointment is specific to the individual duty solicitor
- If duty solicitor is unable to represent child at a deferred hearing, duty solicitor alerts SLAB

Questions ?