

2011 No. 143

CHILDREN AND YOUNG PERSONS

The Children's Hearings (Scotland) Act 2011 (National Convener Appeal against Dismissal) Regulations 2011

Made - - - - - *22nd February 2011*

Laid before the Scottish Parliament *24th February 2011*

Coming into force - - - *18th April 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by schedule 1, paragraph 8(10) of the Children's Hearings (Scotland) Act 2011^(a) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Children's Hearings (Scotland) Act 2011 (National Convener Appeal against Dismissal) Regulations 2011 and come into force on 18th April 2011.

Interpretation

2. In these Regulations—

“communication” means any notice, statement, report, reasons representation, comment or information made or given under these Regulations;

“electronic communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000^(b);

“Ministers” means the Scottish Ministers;

“National Convener” means the officer appointed under section 1(1) of the Children's Hearings (Scotland) Act 2011.

Lodging of appeal by National Convener

3.—(1) The National Convener may appeal to Ministers under schedule 1, paragraph 8(8) to the Children's Hearing (Scotland) Act 2011 against dismissal by CHS by giving to Ministers a statement setting out the grounds upon which the appeal is made and any accompanying information the National Convener may wish to submit.

(2) The National Convener must give the statement and accompanying information referred to in paragraph (1) to Ministers before the expiry of the period of 21 days from the day the National Convener received notification of dismissal by CHS.

(a) 2011 asp 1.

(b) 2000 c.7; section 15 is amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

(3) The National Convener must at the same time as giving the statement and accompanying information to Ministers give a copy to CHS.

Response by CHS

4.—(1) CHS must, before the expiry of the period of 21 days from the day of receipt of the statement and accompanying information under regulation 3(3), give to Ministers notification as to whether or not the appeal is opposed.

(2) If the appeal is opposed CHS must, at the same time as notifying Ministers under paragraph (1), give to Ministers—

- (a) the reasons for opposing the appeal;
- (b) the reasons for dismissing the National Convener and details of all information taken into account by CHS in determining to do so; and
- (c) any representations CHS wish to submit regarding the statement and information provided by the National Convener under regulation 3.

(3) CHS must, at the same time as notifying Ministers under paragraph (1), and, where applicable, giving Ministers the reasons, information and representations under paragraph (2), give the National Convener confirmation as to whether the appeal is opposed and, where applicable, give the National Convener a copy of all the reasons, information and representations provided to Ministers under paragraph (2).

(4) The National Convener may, before the expiry of the period of 21 days from the day of receipt of the reasons, information and representations in paragraph (3), give Ministers any comments on the reasons, information and representations supplied by CHS to Ministers under paragraph (2) that the National Convener wishes to make.

(5) Where the National Convener gives any comments to Ministers under paragraph (4) the National Convener must, at the same time, give a copy of those comments to CHS.

Further representations etc.

5.—(1) Following receipt of the material given under regulations 3 and 4, Ministers may, for the purposes of enabling or assisting them to determine the National Convener's appeal, invite, by notice, further representations, comments or information from the National Convener or CHS.

(2) Any further representations, comments or information given in response to the notice sent under paragraph (1) are to be supplied within such time as Ministers may specify in the notice.

Notification of further representations etc. upon which Ministers intend to rely

6.—(1) Ministers must give to the National Convener and CHS—

- (a) details of any further representations, comments or information sent by the other party to Ministers under regulation 5(1) upon which Ministers intend to rely in determining the National Convener's appeal; and
- (b) a notice inviting the National Convener or CHS (or both as the case may be) to give any comments on the further representations, comments or information supplied by the other party as the National Convener or CHS, as the case may be, wish to make.

(2) Any comments given in response to the notice sent under paragraph (1)(b) are to be supplied within such time as Ministers may specify in the notice.

(3) Where the National Convener or CHS, as the case may be, gives to Ministers any comments under paragraph (1)(b) they must, at the same time, give CHS or the National Convener, as the case may be, a copy of those comments.

Further procedure

7.—(1) Ministers may, where they consider it appropriate, constitute a panel to conduct an inquiry for the purposes of the appeal and to report to them.

(2) Where Ministers decide to constitute a panel under paragraph (1) they must notify the National Convener and CHS of that decision.

(3) The Schedule to these Regulations makes further provision about the constitution of the panel and the procedure relating to the inquiry by the panel.

(4) Ministers must give to the National Convener and CHS a copy of the report provided to them by the panel.

(5) The National Convener and CHS may, before the expiry of the period of 21 days from the day of receipt of the copy of the report under paragraph (4), give to Ministers any comments relating to the report they wish to make.

Determination of appeal

8.—(1) Ministers may on determining the appeal allow the appeal or dismiss it.

(2) Where Ministers allow the appeal, they may—

(a) where the dismissal of the National Convener has already taken effect—

(i) direct CHS to reinstate the National Convener with effect from such date as Ministers specify;

(ii) direct that CHS make payment to the National Convener of such sum as Ministers consider appropriate taking into account any loss sustained by the National Convener in relation to benefits to which the National Convener would otherwise have been entitled had the National Convener's appointment not been terminated; and

(iii) direct CHS as to the extent to which the National Convener is for the purposes of pay and other conditions of service to be treated as having served continuously in office from the date of dismissal appealed against to the date of reinstatement; or

(b) in any other case, direct that the dismissal of the National Convener by CHS will not take effect.

(3) CHS must comply with any directions under this regulation.

Time limits for disposal of appeal by Ministers

9.—(1) Where Ministers have neither invited further representations, comments or information under regulation 5 nor constituted a panel under regulation 7, Ministers must determine the appeal and notify the National Convener and CHS before the expiry of the period of 21 days from the last day for receipt by Ministers of any comments from the National Convener under regulation 4(4).

(2) Where Ministers have invited further representations, comments or information under regulation 5 but have not constituted a panel under regulation 7, Ministers must determine the appeal and notify the National Convener and CHS before the expiry of the period of 21 days from the last day for receipt by Ministers of any comments from either, or both of, the National Convener and CHS under regulation 6(1).

(3) Where Ministers have constituted a panel under regulation 7, Ministers must determine the appeal and notify the National Convener and CHS before the expiry of the period of 21 days from the last day for receipt by Ministers of any comments relating to the report under regulation 7(5).

Grant of further period of time

10.—(1) Where these Regulations require or authorise the National Convener or CHS, as the case may be, to do something within a specified period, Ministers may, on application by the National Convener or CHS, as the case may be, grant a further period of time, not exceeding 21 days from the last day of the original period.

(2) Where Ministers have granted a further period of time under paragraph (1) they may, on application by the National Convener or CHS, as the case may be, grant a further period, or periods, of time, not exceeding 21 days from the last day of any extended period.

(3) Ministers may only grant further periods of time under paragraph (1) or (2) where satisfied that there are special circumstances to justify them doing so.

(4) Where Ministers have granted any further period of time, any reference in these Regulations to that period of time is to be construed as a reference to the period of time as so extended or further extended, as the case may be.

Withdrawal of appeal

11.—(1) The National Convener may withdraw an appeal at any time prior to the disposal of it by Ministers by so notifying Ministers.

(2) CHS may withdraw their opposition to an appeal at any time prior to the disposal of it by Ministers by so notifying Ministers.

Giving notice etc.

12.—(1) The date of giving of any communication under these Regulations which is sent by—

(a) (i) a registered post service (as defined in section 125(1) of the Postal Services Act 2000)^(a); or

(ii) a postal service which provides for the delivery of the document to be recorded, is the date of sending;

(b) electronic communication, is the date of transmission.

(2) Where any communication is sent by electronic communication, it is to be treated as received on the day of its transmission.

(3) Where these Regulations authorise or require something to be done within a specified period of time and that period expires on a non-working day, the period of time is to be treated as expiring on the next working day after that day.

ADAM INGRAM

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
22nd February 2011

(a) 2000 c.26.

SCHEDULE

Regulation 7(3)

1. Ministers shall appoint to the panel constituted under regulation 7—
 - (a) as chairing member of the panel, a practising solicitor or advocate who has been qualified for at least 10 years; and
 - (b) 2 further persons as members of the panel, being persons of such qualifications and experience as Ministers consider appropriate.
2. Ministers must pay to the chairing member and other members of the panel such remuneration and allowances towards expenses properly incurred as Ministers determine.
3. Ministers may make such administrative arrangements as they consider necessary for the purposes of the inquiry.
4. Ministers must give to the panel a copy of all statements, reasons, representations and other information given to them under these Regulations in connection with the appeal (other than comments given under regulation 7(5)).
5. The inquiry shall be held in private.
6. The panel may, for the purposes of enabling or assisting them to make their report to Ministers under paragraph 8, invite the National Convener or CHS to give such comments, representations or information to the panel as the National Convener or CHS may wish to make.
7. The National Convener and CHS may be assisted in presenting their case for the purposes of the appeal, and be represented at the inquiry, by a solicitor, advocate, trade union representative or other representative.
8. The panel must make a report to Ministers before the expiry of the period of 14 days from the last day on which the inquiry was conducted.
9. The report must include—
 - (a) a statement of the facts found by, or admitted to, the panel;
 - (b) the opinion of the panel as to whether the dismissal was just and proper having regard to the facts; and
 - (c) appropriate recommendations, where appropriate, in relation to reinstatement of the National Convener, the date on which this should take effect and the payment to the National Convener of any sum referred to in regulation 8(2)(a)(ii).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, make provision in connection with the appeal to the Scottish Ministers under schedule 1, paragraph 8(8) to the Children's Hearings (Scotland) Act 2011, by the National Convener against dismissal by CHS.

Regulations 3 to 6 provide for the submission to Ministers of grounds of appeal and supporting information by the National Convener and the provision by CHS of reasons for the dismissal, reasons for opposing the appeal (if applicable) and such other comments as CHS and the National Convener wish to submit for the purposes of the appeal.

Regulation 7 and the Schedule provide for Ministers to constitute a panel to conduct an inquiry for the purposes of the appeal and to make a report to Ministers of their recommendations.

Regulation 8 makes provision relating to the powers of Ministers on determination of the appeal.

Regulations 9 to 12 make provision in connection with the time limit for disposal by Ministers of the appeal, the granting of further time to the National Convener or CHS to provide information under the Regulations, withdrawal of the appeal by the National Convener and the giving of notice and other information under the Regulations.

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