

2012 No. 337

CHILDREN AND YOUNG PERSONS

The Children’s Hearings (Scotland) Act 2011 (Appeals against Dismissal by SCRA) Regulations 2012

Made - - - - - *6th December 2012*

Laid before the Scottish Parliament *10th December 2012*

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 195(2) of, and paragraphs 8(8) and 12(1) and (3) of schedule 3 to, 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 (Appeals against Dismissal by SCRA) Regulations 2012 and come into force on the same day as paragraphs 8(8) (the Principal Reporter) and 12(1) and (3) (appeals against dismissal) of schedule 3 (the Scottish Children’s Reporter Administration) to the Act.

Interpretation and formal communications

2.—(1) In these Regulations—

“the Act” means the Children’s Hearings (Scotland) Act 2011;

“Ministers” means the Scottish Ministers;

“Principal Reporter” means the officer referred to in section 14 of the Act; and

“other SCRA employee” means persons specified by regulation 3.

(2) A notice, determination, report or statement required by virtue of these Regulations and any comment, representation, reason, information or any other type of communication made or given in pursuance of these Regulations is to be treated as if they were a formal communication under section 193(1) of the Act and section 193(2) to (4) applies to them.

Specified SCRA employees

3. Persons employed by SCRA who are of the description or class known as Assistant Principal Reporter or Senior Operational Manager are specified for the purposes of entitlement to appeal to Ministers against dismissal by SCRA under paragraph 12(1) of schedule 3 to the Act.

(a) 2011 asp 1.

Lodging of appeal by Principal Reporter or other SCRA employee

4.—(1) The Principal Reporter may appeal to Ministers under paragraph 8(6) of schedule 3 to the Act against dismissal by SCRA by giving to Ministers a statement setting out the grounds upon which the appeal is made and any accompanying information the Principal Reporter may wish to submit.

(2) Any other SCRA employee may appeal to Ministers under paragraph 12(1) of schedule 3 to the Act against dismissal by SCRA by giving to Ministers a statement setting out the grounds upon which the appeal is made and any accompanying information the employee may wish to submit.

(3) The Principal Reporter or other SCRA employee must give the statement and accompanying information referred to in paragraph (1) and (2) to Ministers before the expiry of the period of 21 days from the day the Principal Reporter or other SCRA employee received notification of dismissal by SCRA.

(4) The Principal Reporter or other SCRA employee must at the same time as giving the statement and accompanying information to Ministers give a copy to SCRA.

Response by SCRA

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

(2) If the appeal is opposed SCRA 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 Principal Reporter or other SCRA employee and details of all information taken into account by SCRA in determining to do so; and
- (c) any representations SCRA wish to submit regarding the statement and information provided by the Principal Reporter or other SCRA employee under regulation 4.

(3) SCRA 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 Principal Reporter or other SCRA employee, as the case may be, confirmation as to whether the appeal is opposed and, where applicable, give the Principal Reporter or other SCRA employee a copy of all the reasons, information and representations provided to Ministers under paragraph (2).

(4) The Principal Reporter or other SCRA employee 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 SCRA to Ministers under paragraph (2) that the Principal Reporter or other SCRA employee wish to make.

(5) Where the Principal Reporter or other SCRA employee gives any comments to Ministers under paragraph (4) the Principal Reporter or other SCRA employee must, at the same time, give a copy of those comments to SCRA.

Further representations etc.

6.—(1) Following receipt of the material given under regulations 4 and 5, Ministers may, for the purposes of enabling or assisting them to determine the appeal by the Principal Reporter or other SCRA employee, invite, by notice, further representations, comments or information from either, or both of the Principal Reporter or other SCRA employee, as the case may be, or SCRA.

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

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

7.—(1) Ministers must give to the Principal Reporter, other SCRA employee, as the case may be, and SCRA—

- (a) details of any further representations, comments or information sent by the other party to Ministers under regulation 6(1) upon which Ministers may intend to rely in determining the appeal of the Principal Reporter or other SCRA employee; and
- (b) a notice inviting the Principal Reporter, other SCRA employee or SCRA (or both parties as the case may be) to give any comments on the further representations, comments or information supplied by the other party as the Principal Reporter, other SCRA employee or SCRA, 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 specify in the notice.

(3) Where the Principal Reporter, other SCRA employee or SCRA, as the case may be, give to Ministers any comments under paragraph (1)(b) they must, at the same time, give SCRA or the Principal Reporter or other SCRA employee, as the case may be, a copy of those comments.

Further procedure

8.—(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 Principal Reporter or other SCRA employee, as the case may be, and SCRA 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 Principal Reporter or other SCRA employee, and SCRA a copy of the report provided to them by the panel.

(5) The Principal Reporter or other SCRA employee, and SCRA 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

9.—(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 Principal Reporter or other SCRA employee, as the case may be, has already taken effect—
 - (i) direct SCRA to reinstate the Principal Reporter or other SCRA employee with effect from such date as Ministers specify;
 - (ii) direct that SCRA make payment to the Principal Reporter or other SCRA employee of such sum as Ministers consider appropriate taking into account any loss sustained by the Principal Reporter or by other SCRA employee in relation to benefits to which the Principal Reporter or other SCRA employee would otherwise have been entitled had the appointment of the Principal Reporter or of other SCRA employee not been terminated;
 - (iii) direct SCRA as to the extent to which the Principal Reporter or other SCRA employee are 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 Principal Reporter or other SCRA employee by SCRA will not take effect.

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

Time limits for disposal of appeal by Ministers

10.—(1) Where Ministers have neither invited further representations, comments or information under regulation 6 nor constituted a panel under regulation 8, Ministers must determine the appeal and notify the Principal Reporter or other SCRA employee and SCRA before the expiry of the period of 21 days from the last day for receipt by Ministers of any comments from the Principal Reporter or other SCRA employee under regulation 5(4).

(2) Where Ministers have invited further representations, comments or information under regulation 6 but have not constituted a panel under regulation 8, Ministers must determine the appeal and notify the Principal Reporter or other SCRA employee and SCRA 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 Principal Reporter or other SCRA employee, as the case may be, and SCRA under regulation 7(1).

(3) Where Ministers have constituted a panel under regulation 8, Ministers must determine the appeal and notify the Principal Reporter or other SCRA employee, and SCRA 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 8(5).

Grant of further period of time

11.—(1) Where these Regulations require or authorise the Principal Reporter or other SCRA employee or SCRA, as the case may be, to do something within a specified period, Ministers may on application by the Principal Reporter or other SCRA employee or SCRA, 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 Principal Reporter or other SCRA employee or SCRA, 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

12.—(1) The Principal Reporter or other SCRA employee may withdraw an appeal at any time prior to the disposal of it by Ministers by so notifying Ministers.

(2) SCRA 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.

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

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

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

(a) 2000 c.26.

(2) 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.

St Andrew's House,
Edinburgh
6th December 2012

AILEEN CAMPBELL
Authorised to sign by the Scottish Ministers

SCHEDULE

Regulation 8(3)

1. Ministers must appoint to the panel constituted under regulation 8—
 - (a) as chairing member of the panel, a practising solicitor or advocate who has been qualified for at least 10 years; and
 - (b) two 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 8(5)).
5. The inquiry must 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 Principal Reporter or other SCRA employee or SCRA to give such comments, representations or information to the panel as the Principal Reporter or other SCRA employee or SCRA may wish to make.
7. The Principal Reporter or other SCRA employee or SCRA 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 Principal Reporter or other SCRA employee, the date on which this should take effect and the payment to the Principal Reporter or other SCRA employee of any sum referred to in regulation 9(2)(a)(ii).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in connection with appeals to the Scottish Ministers against dismissal under paragraphs 8(6) and 12(1) of schedule 3 to the Children's Hearings (Scotland) Act 2011, by the Principal Reporter or other specified employees of SCRA.

Regulation 3 specifies an Assistant Principal Reporter and Senior Operational Managers as the descriptions or classes of persons employed by SCRA who may appeal to the Scottish Ministers against dismissal by SCRA.

Regulations 4 to 7 provide for the submission to Ministers of grounds of appeal and supporting information by the Principal Reporter or specified SCRA employee, and the provision by SCRA of reasons for the dismissal, reasons for opposing the appeal (if applicable) and such other comments as SCRA and the Principal Reporter or other SCRA employee wish to submit.

Regulation 8 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 9 makes provision relating to the powers of Ministers on determination of the appeal.

Regulations 10 to 13 make provision in connection with the time limit for disposal by Ministers of the appeal, the granting of further time to the Principal Reporter or other SCRA employee or SCRA to provide information under the Regulations, withdrawal of the appeal by the Principal Reporter or other SCRA employee and the giving of notice and other information under the Regulations.

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