



EDUCATION AND CULTURE COMMITTEE

AGENDA

1st Meeting, 2013 (Session 4)

Tuesday 15 January 2013

The Committee will meet at 10.00 am in Committee Room 1.

1. **Decision on taking business in private:** The Committee will decide whether to take item 5 in private.
2. **Post-16 Education (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Michael Cross, Deputy Director, Colleges and Adult Learning Division, Col Baird, Policy Executive, College Governance, Gavin Gray, Team Leader, Ailsa Heine, Senior Principal Legal Officer, Directorate for Legal Services, Danielle Hennessy, College Regionalisation, Governance Team Leader, and Tracey Slaven, Deputy Director, Higher Education and Learner Support, Scottish Government.

3. **Inquiry into decision making on whether to take children into care:** The Committee will take evidence from—

Bernadette Monaghan, National Convener and Chief Executive, Children's Hearings Scotland;

Hugh McNaughtan, Deputy Chair, Children's Panel Chairmen's Group;

Barbara Reid, Children's Hearings Training Officer, Children's Hearings Training Unit;

Malcolm Schaffer, Head of Policy, Scottish Children's Reporter Administration.

4. **Subordinate legislation:** The Committee will consider the following negative instruments—

Children's Hearings (Scotland) Act 2011 (Child Protection Emergency

Measures) Regulations 2012 (SSI 2012/334)
Children's Hearings (Scotland) Act 2011 (Rights of Audience of the
Principal Reporter) Regulations 2012 (SSI 2012/335)
Children's Hearings (Scotland) Act 2011 (Safeguarders: Further Provision)
Regulations 2012 (SSI 2012/336)
Children's Hearings (Scotland) Act 2011 (Appeals against Dismissal by
SCRA) Regulations 2012 (SSI 2012/337)

5. **Standards, Procedures and Public Appointments Committee inquiry into post-legislative scrutiny:** The Committee will consider how it will respond to the Standards, Procedures and Public Appointments Committee's inquiry into post-legislative scrutiny.

Terry Shevlin
Clerk to the Education and Culture Committee
Room T3.60
The Scottish Parliament
Edinburgh
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The papers for this meeting are as follows—

Agenda Item 2

Written Evidence	EC/S4/13/1/1
PRIVATE PAPER	EC/S4/13/1/2 (P)

Agenda Item 3

PRIVATE PAPER	EC/S4/13/1/3 (P)
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Agenda Item 4

Paper by the Clerk	EC/S4/13/1/4
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Agenda Item 5

Note by the Clerk	EC/S4/13/1/5
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Education and Culture Committee

1st Meeting, 2013 (Session 4), Tuesday, 15 January 2013

Post-16 Education (Scotland) Bill

Clerk's note

The Committee will take evidence from Scottish Government officials on the Post-16 Education (Scotland) Bill. The Bill team has submitted the following documents in advance—

- An overview of college regionalisation plans (page 2)
- An update on the higher education governance review, (page 18 – a hard copy of this document has already been circulated to members).

**Jonas Rae
Committee assistant
10 January 2013**

OVERVIEW OF COLLEGE REGIONALISATION PLANS

Purpose

1. This document provides a broad overview of our college regionalisation plans. It reflects what we intend the position will be once our plans have been taken forward and, in particular, proceeds on the assumption that the Bill¹, which is currently subject to consideration by the Scottish Parliament, will be enacted (in the form it was introduced) and that the Scottish Ministers exercise key powers which the Bill seeks to confer on them.

Introduction

2. Our college regionalisation plans are based on two types of college region – single and multi-college regions². Single college regions will have one regional college, receiving funding directly from the SFC. Some of the identified college regions already have one college, others will become single-college after planned college mergers take place.

3. In multi-college regions, there would be a regional strategic body. This would either be a regional board or another existing body specified as a regional strategic body. Our plans are proceeding on the basis that there would be four multi-college regions. In three of these there would be a regional board. In the fourth, the Highlands and Islands college region, the University of the Highlands and Islands³ would be the regional strategic body. These regional strategic bodies would fund colleges ‘assigned’ to them (assigned colleges). They would also have other functions with respect to their assigned colleges.

[Annex A - A general overview of college regionalisation plans]

Accountability

4. In single-college regions, the SFC would enter into an outcome agreement with the regional college as part of its conditions of grant. The regional college would then be accountable to the SFC for the delivery of the outcome agreement.

5. In multi-college regions, the SFC would enter into a regional outcome agreement with the regional strategic body as part of the SFC’s conditions of grant to it. The regional strategic body would then be accountable to the SFC for the delivery of the regional outcome agreement. The regional strategic body would, in turn, fund its assigned colleges, entering into an outcome agreement with each of its assigned colleges, as a condition of grant to them. This would cover, among other things, the contribution the assigned college would make to the delivery of the regional outcome

¹ The Bill is the Post-16 Education (Scotland) Bill as introduced into the Scottish Parliament on 27 November 2012. A glossary of key terms, including some which are used in this document, is at the end of the document.

² Newbattle Abbey College and Sabhal Mòr Ostaig (for further education) would continue to be funded by the SFC. They are not affected by the reform plans.

³ At present, colleges in the Highlands and Islands deliver higher education as academic partners on behalf of UHI, which receives funding from the SFC for delivery of higher education. It is intended that UHI would continue to be funded by SFC as a higher education institution for this purpose. Going forward, UHI would also, as regional strategic body, receive funding from SFC for further education in the region.

agreement. The assigned college would then be accountable to the regional strategic body for the delivery of its outcome agreement.

6. In addition to lines of accountability through funding, members of the board of management of an incorporated college and members of regional boards, including chairs, would be personally accountable to the person/body who appoints them. In most instances, the person/body making the appointment would also be responsible for determining the terms and conditions of the appointment⁴. They would therefore have a role in determining whether those terms and conditions continue to be met. They would also have a role in determining whether an appointment should be extended.

[**Annex B** - College regionalisation: proposed structures for public funding and appointments]

Composition and functions of college sector boards

7. Incorporated colleges would have different duties and other functions depending on whether they were regional colleges or assigned colleges. Board provisions for incorporated colleges (board size, board composition and appointments) would also differ depending on whether they were regional colleges or assigned colleges.

8. Regional strategic bodies would have many similar functions to the SFC because they would perform a similar role – to fund colleges. The effect of this is that when, as would be the case, the SFC loses functions over colleges they currently fund, the regional strategic boards would in many respects be stepping into the SFC's shoes.

9. Regional strategic bodies would also have a regional planning role. Assigned colleges would have corresponding duties to support the regional planning function of regional strategic bodies (e.g. to have regard to regional planning). Regional colleges would perform a similar planning role for their college region. That is why the Bill proposes that they are given similar duties to those of the regional strategic bodies particularly relevant to this role.

10. In addition, regional strategic bodies would have a role in making certain appointments to the board of their assigned colleges (where such colleges are incorporated colleges).

11. Also, the Bill makes specific provision for regional boards to have certain 'general powers' (e.g. to acquire and dispose of land and other property, enter into contracts etc), to have the power to provide goods or services to their assigned colleges and to delegate certain of their functions. The extent to which other regional strategic bodies would have similar powers will differ depending on the type of body and the terms of its constitution.

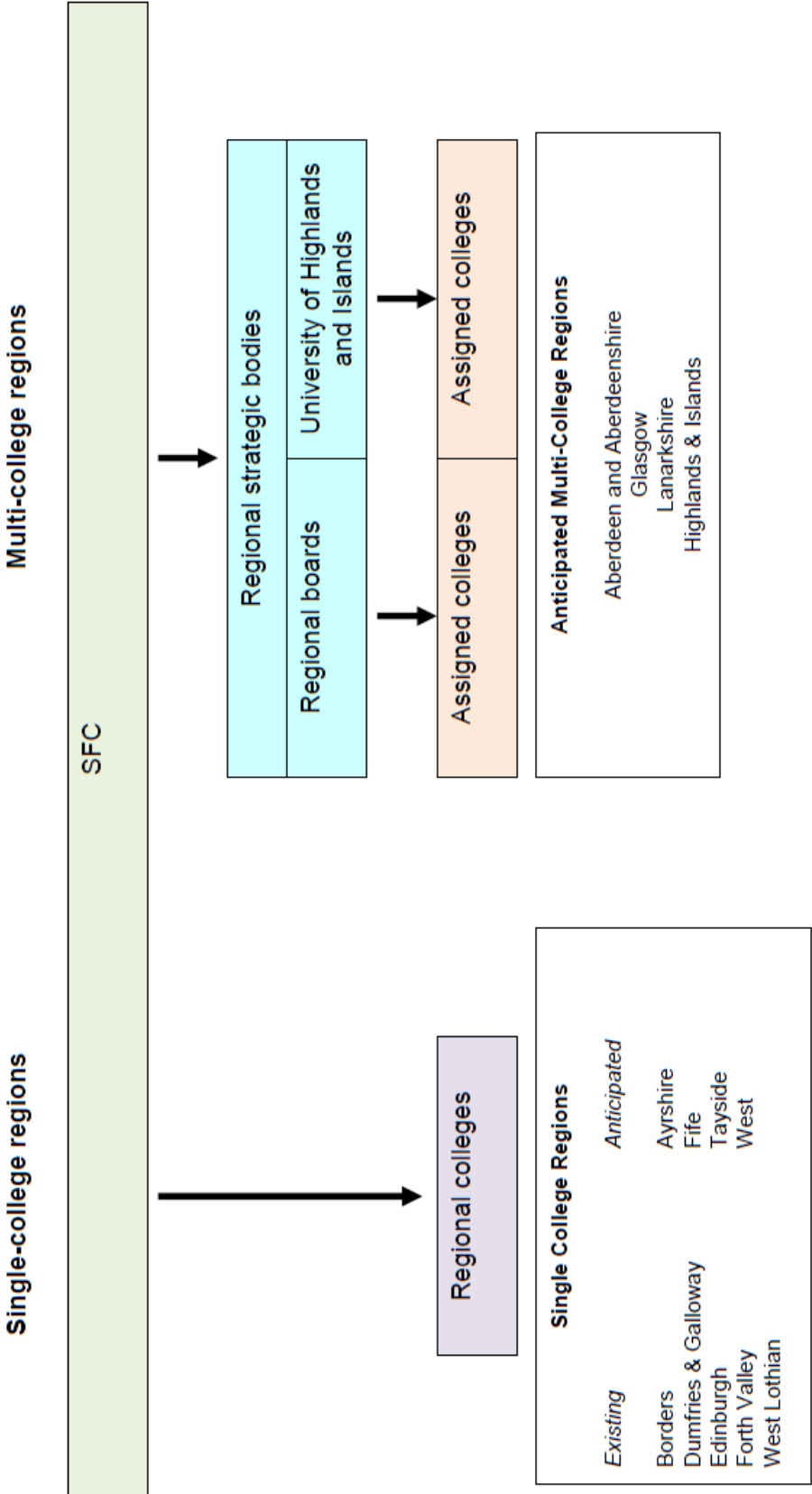
[**Annex C** – Summary comparison of college sector boards and **Annex D** – Key proposed functions of college sector boards]

Scottish Government
January 2013

⁴ The exceptions are the appointment of staff and student members. There would be no terms and conditions associated with these appointments.

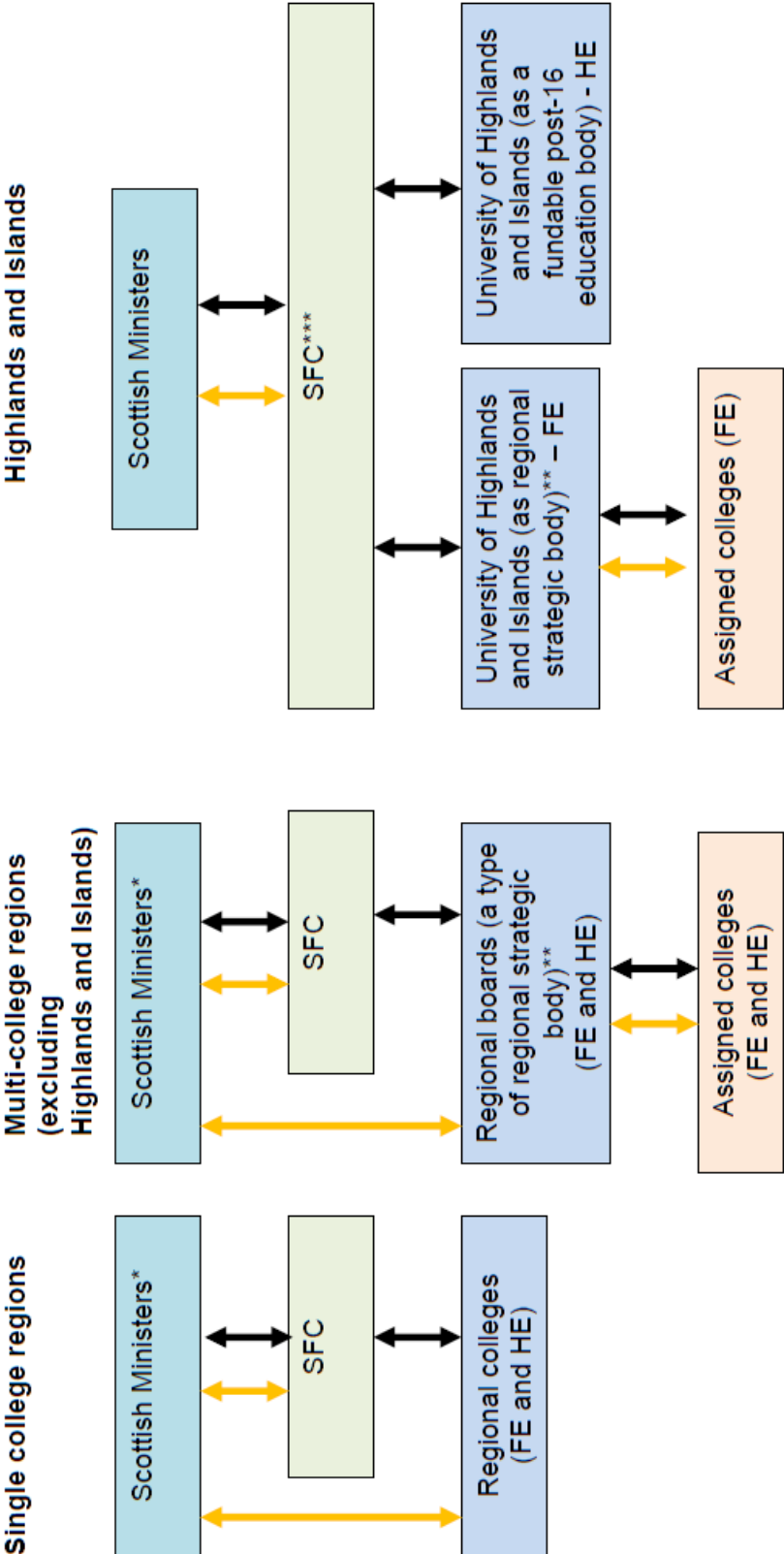
ANNEX A

GENERAL OVERVIEW OF COLLEGE REGIONALISATION PLANS



ANNEX B

COLLEGE REGIONALISATION: PROPOSED STRUCTURES FOR PUBLIC FUNDING AND APPOINTMENTS



Lines
Orange = appointment/accountability
Black = funding/accountability

Notes

Scottish Ministers would also have powers to:

- **remove board members** of regional colleges, regional boards and any assigned college which is an incorporated college in certain circumstances [see sections 7 and 12 of the Bill – section 7 of the Bill would substitute a new section 24 of the 1992 Act and section 12 of the Bill would insert a new section 25N into the 2005 Act]
- issue **guidance** on appointments to the boards of regional colleges, boards of assigned colleges which are incorporated colleges and regional boards [for regional colleges and assigned colleges which are incorporated colleges see section 6 of the Bill which would insert new paragraphs 3 to 3C into Schedule 2 to the 1992 Act – see, in particular, new paragraph 3C; for regional boards see paragraph 3(5) and (6) of new schedule 2B to the 2005 Act which would be inserted by section 11(2) of the Bill]
- give **directions** to the SFC and regional strategic bodies if an assigned college is being mismanaged financially [see section 10(2) of the Bill which would insert a new section 25A into the 2005 Act]

References

* Scottish Ministers would appoint only the **chair** of the board of regional colleges and of regional boards.

** Regional strategic bodies would appoint the **chair and other members (with the exception of staff and student members)** of boards of assigned colleges which are incorporated colleges.

*** SFC would exercise its powers under the 2005 Act to fund UHI in two different capacities.

ANNEX C

SUMMARY COMPARISON OF COLLEGE SECTOR BOARDS

	Existing incorporated college board	Proposed in Bill			Other types of regional strategic body
		Board of management of regional college	Board of management of assigned college which is an incorporated college ⁵	Regional boards	
Key Duties	Managing and conducting their college – section 12(1) of the 1992 Act	Managing and conducting their college – existing section 12(1) of the 1992 Act	Managing and conducting their college – existing section 12(1) of the 1992 Act	Coherent, high quality provision	Coherent, high quality provision
		Coherent, high quality provision	Have regard to plans of regional strategic body ⁶	Consultation	Consultation
		Collaboration	Provide regional strategic body with such information as it may reasonably require ⁷	Collaboration	Collaboration
		Planning, including economy, efficiency and effectiveness	Comply with directions issued to it by regional	Planning, including economy, efficiency and effectiveness	Planning, including economy, efficiency and effectiveness
				Have regard to particular matters (e.g. skills needs, support needs of students)	Have regard to particular matters (e.g. skills needs, support needs of students)
				Promotion of credit and	Promotion of credit and

⁵ This table is generally not relevant to assigned colleges which are not incorporated colleges. However, some of the duties do apply to assigned colleges which are not incorporated colleges. These are indicated.

⁶ This duty applies to both assigned colleges which are incorporated colleges and to assigned colleges which are not incorporated colleges.

⁷ This duty applies to both assigned colleges which are incorporated colleges and to assigned colleges which are not incorporated colleges.

			strategic body Comply with any requirement made by regional board concerning the transfer of staff and property etc. ⁸	qualification framework	qualification framework
Powers	As outlined in section 12(2) of 1992 Act.	As outlined in section 12(2) of 1992 Act. Not amended by Bill.	As outlined in section 12(2) of 1992 Act. Not amended by Bill.	Similar to SFC Administration of funds Funding of colleges Efficiency studies Right to address meetings of college governing body Information <u>Other</u> Appointments to assigned colleges	Similar to SFC Administration of funds Funding of colleges Efficiency studies Right to address meetings of college governing body Information <u>Other</u> Appointments to assigned colleges

⁸ On regional strategic bodies' powers in relation to transfer of staff and property etc. see proposed new section 23L of the 2005 Act which would be inserted by section 10(1) of the Bill. This duty applies to both assigned colleges which are incorporated colleges and to assigned colleges which are not incorporated colleges (albeit with some differences). Regional boards would have powers to make requirements of assigned colleges which are incorporated colleges without their consent.

⁹ The Bill makes provision for regional boards to have certain general powers – see paragraph 14 of new schedule 2B to the 2005 Act which would be inserted by section 11(2) of the Bill.

					which are incorporated colleges Performance monitoring Directions Transfer of staff and property etc.	which are incorporated colleges Performance monitoring Directions Transfer of staff and property etc.	which are incorporated colleges Performance monitoring Directions Transfer of staff and property etc.
Board size	10-16	12-18	7-10	12-18	No provision in Bill ¹⁰		
Chair	Appointed by board from among their number. Not remunerated Not student, college employee, principal or member or employee of local authority	Appointed by Scottish Ministers. Remunerated Not principal, MSP, MP, MEP or member of House of Lords	Appointed by regional strategic body Not remunerated Not principal Ministerial guidance on how appointment is made and skills and experience	Appointed by Scottish Ministers Remunerated Not MSP, MP, MEP or member of House of Lords			
Staff members	One teaching staff	One teaching staff	One staff member	One teaching staff			

¹⁰ Size, composition etc. of the governing body of any other body specified as a regional strategic body will vary depending on the type of body and the terms of its constitution.

	One non-teaching staff	One non-teaching staff	One non-teaching staff	One non-teaching staff
Student members	One student member	Two student members	One student member	Two student members
Other members	<p>One member appointed by local enterprise company</p> <p>Other members appointed by board</p> <p>At least half of board members (not being staff or full-time students) to have experience are shown capacity in “industrial, commercial or employment matters or the practice of any profession”</p>	<p>Appointed by regional college board with approval of chair and of Scottish Ministers</p>	<p>Appointed by regional strategic body</p>	<p>Appointed by regional board with approval of chair and of Scottish Ministers</p>
Principal	<p>Principal appointed (and terms and conditions set) by college board.</p> <p>Principal employed</p>	<p>Ministerial guidance on how relevant appointments are made and skills and experience of board members</p> <p>Principal appointed (and terms and conditions set) by college board.</p> <p>Principal employed by</p>	<p>Ministerial guidance on how relevant appointments are made and skills and experience of board members</p> <p>Principal appointed (and terms and conditions set) by regional strategic body</p> <p>Principal employed by</p>	<p>Ministerial guidance on how relevant appointments are made and skills and experience of board members</p>

	by college board	college board	college board		
	Principal is a member of college board by right of their position	College board able to appoint principal to board	College board able to appoint principal to board	College board able to appoint principal to board	
		If not a board member, principal able to attend board meetings	If not a board member, principal able to attend board meetings	Principals of assigned colleges able to attend meetings of regional board	
Periods of office of board members	[See paragraph 5 of Schedule 2 to the 1992 Act]	[See paragraph 5 of Schedule 2 to the 1992 Act as it would be amended by the Bill]	[See paragraph 5 of Schedule 2 to the 1992 Act as it would be amended by the Bill]	[See paragraph 7 of Schedule 2B to the 2005 Act which would be inserted into the 2005 Act by the Bill]	
	Appointments are generally for a fixed period of 4 years	Appointments are generally for up to 4 years. They can be extended up to another 4 years	Appointments are generally for up to 4 years. They can be extended up to another 4 years	Appointments are generally for up to 4 years. They can be extended up to another 4 years	
	Student member – hold office until 31 August following appointment	Student members – hold office until 31 August following appointment	Student member – hold office until 31 August following appointment	Student members – hold office until 31 August following appointment	
	Staff members - fixed length of 4 years	Staff members – fixed length of 4 years	Staff member – fixed length of 4 years	Staff members – fixed length of 4 years	
	If someone leaves office before their period expires, their replacement can only be appointed for the	After appointment, a person is eligible for re-appointment. There is no overall bar on the length of time a person	After appointment, a person is eligible for re-appointment. There is no overall bar on the length of time a person	After appointment, a person is eligible for re-appointment. There is no overall bar on the length of time a person	

	remainder of that four year term. After appointment, someone is eligible for re-appointment. However, a person cannot serve on a college board for more than 12 years.	may serve on a board	may serve on a board	may serve on a board	
	Principal - In office while principal	Where principal appointed board member this would be for up to 4 years; can be extended or re-extended for periods of up to 4 years, ceases at any time when not principal	Where principal appointed board member this would be for up to 4 years; can be extended or re-extended for periods of up to 4 years, ceases at any time when not principal	Where principal appointed board member this would be for up to 4 years; can be extended or re-extended for periods of up to 4 years, ceases at any time when not principal	
Age limits of board members	Chair and board members cannot be under 16 or over 70 when appointed.	None	None	None	
Removal of board members	With the exception of the principal, board members can be removed by Scottish Ministers on grounds of mismanagement – section 24 of 1992 Act.	Board members can be removed by Scottish Ministers on grounds of failure or mismanagement as set out in proposed new section 24 of the 1992 Act (section 7 of the Bill would substitute a new section 24 of the 1992 Act)	Board members can be removed by Scottish Ministers on grounds of failure or mismanagement as set out in proposed new section 24 of the 1992 Act (section 7 of the Bill would substitute a new section 24 of the 1992 Act)	Board members can be removed by Scottish Ministers on grounds of failure or mismanagement as set out in proposed new section 23N of the 2005 Act (section 12 of the Bill would insert a new section 23N into the 2005 Act)	
	Principal cannot be removed from board	Principal can be removed from board	Principal can be removed from board	Principal can be removed from board	

ANNEX D

KEY PROPOSED FUNCTIONS OF COLLEGE SECTOR BOARDS CONFERRED BY THE BILL

References to section numbers in the table below are references to sections of the 2005 Act – some of which would be amended by the Bill – which set out broadly equivalent functions of the SFC.

Regional college	Regional strategic body			Assigned college
	Planning	Funding	Accountability	
		General powers ¹¹ (s.23)		
				Duty to provide information required by regional strategic body in connection with exercise of functions
Duty to plan, having regard to economic, efficient and effective use of funds				Duty to have regard to regional strategic body's plan
Duty to exercise functions with a view to securing coherent, high quality provision (s.3)				
Duties to consult and collaborate (s.22)				
		Duty to monitor performance ¹²		
		Administration of funds (s.11)	Appoint assigned college board chair and non-staff/student members ¹³	
		Funding of assigned colleges (s.12)	Appoint principal ¹⁴	
		Credit and qualifications framework promotion (s.14)		
		Efficiency studies (s.15)		
		Right to address meetings of		

¹¹ Regional board only.

¹² The duty to monitor performance contains some elements of the SFC's duty with respect to quality (section 13 of the 2005 Act).

¹³ Incorporated colleges only.

¹⁴ Incorporated colleges only.

		governing body of assigned college (s.16)	Duty to have regard to particular matters (s.20)			Duty to comply with direction ¹⁵
		Direction	Requirement in relation to transfer of staff etc.			Duty to comply with requirement in relation to transfer of staff etc. ¹⁶

¹⁵ Incorporated college only

¹⁶ On regional strategic bodies' powers in relation to transfer of staff and property etc see proposed new section 23L of the 2005 Act which would be inserted by section 10(1) of the Bill. Regional boards would have powers to make requirements of assigned colleges which are incorporated colleges without their consent.

ANNEX E

GLOSSARY OF TERMS

In this document references to –

- “the 1992 Act” are references to the Further and Higher Education (Scotland) Act 1992;
- “the 2005 Act” are references to the Further and Higher Education (Scotland) Act 2005;
- “the Bill” are references to the Post-16 Education (Scotland) Bill as introduced into the Scottish Parliament on 27 November 2012;¹⁷
- “the SFC” are references to the Scottish Further and Higher Education Funding Council established under section 1 of the 2005 Act;
- an “incorporated college” is a reference to a college of further education which has a board of management established under the 1992 Act;
- an “assigned college” is a reference to a college of further education assigned to a regional strategic body by order made under section 7C(1) of the 2005 Act (section 8(3) of the Bill would insert section 7C into the 2005 Act) .

¹⁷ <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/56717.aspx>

In addition, the Bill would introduce a number of new terms to describe particular bodies or types of body in the 'post-16 education system' (or would amend such existing terms). The table below sets out such terms. Where these terms are used in this document they have the meaning given in the table below.

Term	Meaning	Relevant Provisions of Legislation
College of further education	The governing body of a body – (a) by which fundable further education or fundable higher education is provided; and (b) which is not a higher education institution	Section 35(1) of the 2005 Act as it would be amended by paragraph 6(21)(a)(i) of the schedule to the Bill.
Fundable body	<ul style="list-style-type: none"> Any body specified in schedule 2 to the 2005 Act (i.e. a learning provider that is eligible for funding by SFC) Any regional strategic body 	Section 35(1) of the 2005 Act (definition of "fundable body"), as it would be amended by paragraph 6(21)(a)(ii) of the schedule to the Bill; and section 6(1) of the 2005 Act, as it would be amended by paragraph 6(4)(a) of the schedule to the Bill.
Fundable post-16 education body	A body specified in schedule 2 to the 2005 Act (i.e. a learning provider that is eligible for funding by SFC)	Section 35(1) of the 2005 Act as it would be amended by paragraph 6(21)(a)(iii) of the schedule to the Bill; and section 6(2) of the 2005 Act, as it would be amended by paragraph 6(4)(b) of the schedule to the Bill.
Higher education institution	An institution which is— (a) a university; or (b) a designated institution (within the meaning of section 44(2) of the 1992 Act)	Section 35(1) of the 2005 Act as it would be amended by paragraph 6(21)(a)(iii) of the schedule to the Bill.
Post-16 education body	<ul style="list-style-type: none"> Any fundable post-16 education body (i.e. a learning provider that is eligible for funding by SFC) Any college of further education assigned to a regional strategic board by order made under section 7C(1) of the 2005 Act (i.e. college that is eligible for funding by a regional strategic body) 	Section 35(1) of the 2005 Act as it would be amended by paragraph 6(21)(a)(iv) of the schedule to the Bill.

Regional board	A body specified in part 1 of schedule 2A to the 2005 Act	Section 35(1) of the 2005 Act, as it would be amended by paragraph 6(21)(a)(iv) of the Bill; and section 7B(1)(b) of the 2005 Act, which would be inserted by section 8(1) of the Bill.
Regional college	A college of further education designated as a regional college by order made under section 7A(1) of the 2005 Act	Section 36(1) of the 1992 Act, as it would be amended by paragraph 2(3)(b) of the schedule to the Bill; and section 35(1) of the 2005 Act as it would be amended by paragraph 6(21)(a)(iv) of the Bill.
Regional strategic body	A body specified in schedule 2A to the 2005 Act	Section 35(1) of the 2005 Act, as it would be amended by paragraph 6(21)(a)(iv) of the Bill; and section 7B(1)(a) of the 2005 Act which would be inserted by section 8(1) of the Bill.

Relationships between different terms set out above

Fundable bodies		Assigned colleges	
Regional strategic bodies Regional boards	'Other' regional strategic bodies (e.g. UHI)	Fundable post-16 education bodies	
		Higher education institutions ¹⁸	Other learning providers (not a term set out above – those would be Newbattle Abbey College and Sabhal Mòr Ostaig)
		Post-16 education bodies	

¹⁸ including UHI delivering HE & research.

HIGHER EDUCATION GOVERNANCE REVIEW – IMPLEMENTATION OF RECOMMENDATIONS

In June 2011 the Cabinet Secretary asked the Principal of Robert Gordon University, Professor Von Prondzynski to Chair an independent Review Panel, which while observing the benefits of an autonomous sector, would look to ensure an appropriate level of democratic accountability and transparency, in the sector, given the significant level of public funds being invested.

The framework for the Review was developed by the Scottish Government and agreed by the Cabinet Secretary. The remit of the panel was to consider whether current institutional governance arrangements in the HE sector in Scotland delivered an appropriate level of democratic accountability given the level of public funding the institutions received; and to identify and examine proposals for change which observed the benefits of an autonomous sector.

The panel membership comprised:

- President of the NUS
- A University Rector
- A University Chair
- A Trade Union Rep

The commissioned Review began in September 2011 with the call for evidence. The panel took evidence from a wide range of interests and experience from across the sector in Scotland, as well as from academics, staff and student representatives from across Europe and the USA.

The panel reported their findings to Ministers in January 2012. The report contained a number of recommendations including:

- a single act setting out the key principles of governance and management, simplifying the current complex legal structures.
- removing the role of the Privy Council in university governance.
- more transparency around senior management pay.
- Creation of an Advisory Forum to inform ministerial direction to the sector.
- draft new Scottish Code of Good Governance for HEIs.

A link to the report can be found below:

<http://www.scotland.gov.uk/Resource/0038/00386780.pdf>

Following on from the publication of the recommendations the Cabinet Secretary for Education and Lifelong Learning announced to Parliament on 28 June that he broadly accepted all of the recommendations in the report and that he intended that the recommendations should be taken forward in three distinct ways.

These were by;

- engaging key sector stakeholders as implementing partners,
- engaging the sector itself in implementing recommendations by agreement, and
- employing legislation where necessary.

To date, in terms of implementation of recommendations by key sector stakeholders, we have had discussions with the Scottish Funding Council with regard to their taking forward the Higher Education Advisory Forum. The terms of reference for the forum, including priorities and membership, are currently being developed but haven't yet been finalised. It is hoped that this forum will be operational in the early part of 2013.

With regard to the new Scottish Code of Good Governance, the Chairs Group has been asked by the Cabinet Secretary to take forward this recommendation. A steering group has been established to develop the new code and they have engaged two consultants to support their work.

In terms of engaging the sector in implementing recommendations by agreement and adapting them as necessary to reflect existing good practice, this work will be undertaken in the course of 2013. The purpose will be to better align the sector and the aim is to secure implementation of as many of the recommendations as we can by agreement.

With regard to implementation by legislation, any outstanding recommendations may, if necessary, be implemented by legislation. It is hoped that Bill will be introduced within the lifetime of this Parliament. The scope of the Bill will be determined by range of recommendations that are implemented by key sector stakeholders and by the sector itself.

Education and Culture Committee

1st Meeting, 2013 (Session 4), Tuesday, 15 January 2013

Subordinate legislation

Introduction

1. This paper seeks to inform members' consideration of the following items of subordinate legislation:

Children's Hearings (Scotland) Act 2011 (Child Protection Emergency Measures) Regulations 2012 (SSI 2012/334) (Page 3);

Children's Hearings (Scotland) Act 2011 (Rights of Audience of the Principal Reporter) Regulations 2012 (SSI 2012/335) (Page 10);

Children's Hearings (Scotland) Act 2011 (Safeguarders: Further Provision) Regulations 2012 (SSI 2012/336) (Page 15);

Children's Hearings (Scotland) Act 2011 (Appeals against Dismissal by SCRA) Regulations 2012 (SSI 2012/337) (Page 24).

2. Copies of the instruments and accompanying documentation are annexed to this paper.

Background

3. The instruments were laid on 10 December 2012 and the Education and Culture Committee was designated the lead committee. They are subject to negative procedure and no motion to annul has been lodged.

4. The Subordinate Legislation Committee considered SSI 2012/334, SSI 2012/335 and SSI 2012/337 at its meeting on 18 September 2012 and determined that it did not need to draw the attention of the Parliament to the instruments.

5. The Subordinate Legislation Committee considered the SSI 2012/336 at its meeting on 8 January 2013 and determined that it did not need to draw the attention of the Parliament to the instruments. The Subordinate Legislation Committee did agree to raise the instrument with the Minister for Parliamentary Business. The relevant excerpt from the Official Report of the Subordinate Legislation Committee meeting can be found in the Annexe, page 34.

6. If the Education and Culture Committee wishes to report on any of the instruments it must do so by 28 January 2013.

Policy Objectives

7. The accompanying documents provided by the Scottish Government, give more detailed information on the policy objectives of the instruments.

Procedure in Committee

8. As these are negative instruments and no motion to annul has been lodged, the Convener will ask members if they have any comments to make on the instruments.

Action

9. The Committee is invited to consider whether it is content with the instrument.

**Jonas Rae
Committee Assistant
10 January 2013**

SCOTTISH STATUTORY INSTRUMENTS

2012 No. 334

CHILDREN AND YOUNG PERSONS

The Children's Hearings (Scotland) Act 2011 (Child Protection
Emergency Measures) 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 57 of the Children's Hearings (Scotland) Act 2011⁽¹⁾ 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 (Child Protection Emergency Measures) Regulations 2012 and come into force on the same day as section 57 (sections 55 and 56: regulations) of the Children's Hearings (Scotland) Act 2011.

Interpretation

2. In these Regulations—

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

“applicant” means the person who applied to a justice of the peace for an order in respect of a child under section 55(1) (application to justice of the peace) of the Act; and

“specified person” means a person specified in an order made under section 55 of the Act.

Implementation

3. Notwithstanding section 55(4) of the Act (order not implemented within 12 hours), an order made by a justice of the peace under section 55(2) of the Act must be implemented as soon as practicable.

Notification of persons

4. As soon as practicable after implementing an order made under section 55(2) of the Act the specified person, or if there is no specified person, the applicant, must inform the following persons of the matters in regulation 5—

(a) any relevant person in relation to the child;

⁽¹⁾ 2011 asp 1.

- (b) any person, other than a relevant person, with whom the child was residing immediately before the making of the order;
- (c) the relevant local authority in relation to the child, where neither the specified person nor the applicant are the relevant local authority;
- (d) the local authority for the area in which the place of safety or other place in which the child is being kept is situated, where that local authority is not the specified person, the applicant or the relevant local authority;
- (e) the local authority for the area in which the child was residing immediately before the making of the order, where that local authority is not the specified person, the applicant, the relevant local authority or the local authority under paragraph (d); and
- (f) the Principal Reporter.

Matters to be notified

5. The persons in regulation 4 must be informed of—

- (a) the steps taken to implement the order;
- (b) the location of the place of safety where the child is being kept under section 55(1)(b) of the Act or, as the case may be, the place where the child is staying under section 55(1)(c);
- (c) the reasons for the making of the order; and
- (d) any other steps which the specified person or the applicant has taken or is taking to safeguard the welfare of the child.

Withholding information

6. When informing the persons in regulation 4(a) and (b) the specified person or the applicant may withhold, from any of the persons being informed, any of the information in regulation 5(b) and (d) where they consider it necessary to do so in order to safeguard the welfare of the child.

Notice where order ceases to have effect

7. Where an order made under section 55(2) of the Act ceases to have effect by virtue of section 55(4) (order not implemented within 12 hours), the specified person or the applicant must as soon as practicable inform—

- (a) the justice of the peace who made the order; and
- (b) the persons notified in accordance with regulation 4.

Notice where Principal Reporter terminates order

8. Where an order made under section 55(2) of the Act is terminated by the Principal Reporter by virtue of section 55(6), the Principal Reporter must as soon as practicable inform the specified person, if different from the applicant.

Duties to child

9.—(1) After the making of an order under section 55(2) of the Act the specified person, or if there is no specified person, the applicant, must regard the need to safeguard the welfare of the child as the paramount consideration.

(2) As soon as practicable on or after implementing an order the specified person, or if there is no specified person, the applicant, must so far as practicable and taking account of the age and maturity of the child—

- (a) inform the child of the reasons for the making of the order;
- (b) inform the child of any other steps which the specified person or the applicant has taken or is taking to safeguard the welfare of the child;

- (c) give the child an opportunity to express the child's views; and
- (d) have regard to any views expressed by the child.

(3) After implementing an order the specified person, or if there is no specified person, the applicant, may—

- (a) permit contact between the child and any person; and
- (b) subject any such contact to any conditions which the specified person or the applicant consider appropriate to safeguard the welfare of the child.

Constable's power - notification of persons

10. As soon as practicable after a child has been removed by a constable to a place of safety under section 56(1) (constable's power to remove child to place of safety) of the Act, a constable must take such steps as are practicable to inform the following persons of the matters in regulation 11—

- (a) any relevant person in relation to the child;
- (b) any person, other than a relevant person, with whom the child was residing immediately before being removed to the place of safety;
- (c) the relevant local authority in relation to the child;
- (d) the local authority for the area in which the place of safety to which the child was removed is situated, where that local authority is not the relevant local authority;
- (e) the local authority for the area in which the child was residing immediately before being removed to the place of safety, where that local authority is not the relevant local authority nor the local authority under paragraph (d); and
- (f) the Principal Reporter.

Constable's power - matters to be notified

11. The persons in regulation 10 must be informed of—

- (a) the removal of the child by a constable to a place of safety;
- (b) the location of the place of safety where the child is being kept;
- (c) the reasons for the removal of the child to a place of safety; and
- (d) any other steps which a constable has taken or is taking to safeguard the welfare of the child while in a place of safety.

Constable's power - withholding information

12. When informing the persons in regulation 10(a) and (b) a constable may withhold, from any of the persons being informed, any of the information in regulation 11(b) and (d) where the constable considers it necessary to do so in order to safeguard the welfare of the child.

Constable's power - continued keeping of child

13. Where a child has been removed to a place of safety by a constable under section 56(1) of the Act, a constable keeping the child in a place of safety can only continue to do so if satisfied—

- (a) of the matters mentioned in section 39(2)(a) (consideration by sheriff: application by local authority or other person) of the Act; and
- (b) that it is necessary to keep the child in a place of safety to protect the child from the harm mentioned there or from further harm.

Constable's power - duties to child

14.—(1) After the removal of a child by a constable to a place of safety under section 56(1), the constable must regard the need to safeguard the welfare of the child as the paramount consideration.

(2) As soon as practicable on or after the removal of a child by a constable to a place of safety the constable, must so far as practicable and taking account of the age and maturity of the child—

- (a) inform the child of the reasons for the removal to a place of safety;
- (b) inform the child of any other steps which the constable has taken or is taking to safeguard the welfare of the child;
- (c) give the child an opportunity to express the child's views; and
- (d) have regard to any views expressed by the child.

(3) After the removal of a child by a constable to a place of safety the constable may—

- (a) permit contact between the child and any person; and
- (b) subject any such contact to any conditions which the constable considers appropriate to safeguard the welfare of the child.

AILEEN CAMPBELL

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
6th December 2012

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision concerning the duties of any person removing a child to, or keeping a child in, a place of safety under the Children's Hearings (Scotland) Act 2011 ("the 2011 Act"). Regulations 3 to 9 make provision in respect of an order made by a justice of the peace under section 55 of the 2011 Act and regulations 10 to 14 make provision in respect of a constable's power to remove a child under section 56 of the 2011 Act.

Regulation 3 requires that an order made by a justice of the peace under section 55(2) of the 2011 Act (authorising the removing of a child to, or keeping of a child in, a place of safety) is implemented as soon as practicable (under section 55(4) of the 2011 Act any such order requires to be implemented within 12 hours failing which it ceases to have effect).

Regulations 4, 5 and 6 make provision in connection with the sharing of information with, or withholding of information from, certain persons following implementation of a justice of the peace order.

Regulation 7 requires that the justice of the peace and certain other persons are informed when an order made by the justice of the peace is not implemented.

Where the applicant for a justice of the peace order is not also the person specified to implement the order, and under section 55(6) of the 2011 Act the Principal Reporter has terminated the order (by giving notice of such to the applicant), regulation 8 requires the Principal Reporter to inform the specified person that the order has been terminated.

Regulation 9(1) provides that the person implementing the justice of the peace order is to regard the need to safeguard the welfare of the child as the paramount consideration.

Regulation 9(2) makes provision in connection with information to be shared with the child on implementation of a justice of the peace order.

Regulation 9(3) makes provision in connection with contact with a child following implementation of a justice of the peace order.

Regulations 10, 11 and 12 make provision in connection with the sharing of information with, or withholding of information from, certain persons following removal of a child to a place of safety by a constable.

Regulation 13 provides that a constable may only continue to keep a child in a place of safety where satisfied of the matters mentioned in section 39(2)(a) of the 2011 Act (including that the child is suffering from or is likely to suffer significant harm) and that it is necessary to keep the child in a place of safety to protect the child from such harm or from further harm.

Regulation 14(1) provides that after the removal of a child to a place of safety by a constable, the constable must regard the need to safeguard the welfare of the child as the paramount consideration.

Regulation 14(2) makes provision in connection with information to be shared with the child removed to a place of safety by a constable.

Regulation 14(3) makes provision in connection with contact with a child following their removal to a place of safety by a constable.

POLICY NOTE**THE CHILDREN'S HEARINGS (SCOTLAND) ACT 2011 (CHILD PROTECTION EMERGENCY MEASURES) REGULATIONS 2012****SSI 2012/334**

The above instrument is made in exercise of the powers conferred by section 57 of the Children's Hearings (Scotland) Act 2011 ('the 2011 Act').

These regulations make provision concerning the duties of any person removing a child to, or keeping a child in, a place of safety under sections 55 or 56 of the Children's Hearings (Scotland) Act 2011. These Regulations specify the persons who should be notified and the information about which they should or may be notified where a child has been removed to a place of safety by a constable using section 56 or where a justice of the peace has granted an authorisation under section 55 to remove a child.. The Regulations provide arrangements for giving notice where an authorisation ceases to have effect or is terminated. They also detail the duties that those involved in these processes have towards the child for example keeping them informed on what is happening and taking their views into account.

Policy Objectives

The 2011 Act makes provision for various child protection measures. Among these are the emergency measures procedures provided for at sections 55 and 56.

Section 55 – gives power to a Justice of the Peace to grant an order which will allow the removal of a child from a situation where, for example, the child is being harmed or at risk of harm.

Section 56 – gives power to a police constable to remove a child quickly from a situation where the child is thought to be at harm or risk of harm and to keep them in a place of safety for a period of up to 24 hours.

Similar provision is currently made in this respect under the Emergency Child Protection Measures (Scotland) Regulations 1996 (1996 Regulations). These regulations will be revoked under the 2011 Act.

Where a child is removed to a place of safety following an order of a JP under section 55 or is removed by a police constable using the power at section 56, these regulations make provision about what happens next. The policy intent is to ensure that when the 1996 Regulations are revoked, similar processes are undertaken when carrying out an emergency measure under section 55 or 56 of the 2011 Act as would previously have been carried out under the 1996 Regulations.

Commencement Date

The date for commencement of these regulations is 24 June 2013.

Consultation

A small consultation on these instruments was carried out with the Scottish Child Protection Committee Chairs Forum and the Association of Chief Police Officers in Scotland (ACPOS). A total of 10 responses were received and the instrument was re-drafted as appropriate to take account of the comments made.

Impact Assessments

There are no equality impact issues.

Financial effect

There are no likely financial effects on organisations or individuals from these regulations.

**Scottish Government
Children and Families Directorate**

6th December 2012

SCOTTISH STATUTORY INSTRUMENTS

2012 No. 335

CHILDREN AND YOUNG PERSONS**The Children's Hearings (Scotland) Act 2011 (Rights of Audience of the Principal Reporter) 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 sections 19(1) and 195(2) of the Children's Hearings (Scotland) Act 2011⁽²⁾ 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 (Rights of Audience of the Principal Reporter) Regulations 2012 and come into force on the same day as section 19 (rights of audience) of the Act.

Interpretation

2. In these Regulations—

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

references to “the Principal Reporter” include references to a person carrying out a function on behalf of the Principal Reporter by virtue of paragraph 10(1) of schedule 3 (delegation of Principal Reporter's functions) to the Act.

Power to conduct proceedings before the sheriff and experience required

3.—(1) The Principal Reporter is empowered to conduct proceedings before the sheriff which require to be conducted by virtue of the Act.

(2) The Principal Reporter is so empowered whether or not the Principal Reporter is an advocate or a solicitor.

(3) For the purposes of section 19(1)(b) of the Act, the prescribed experience that must be acquired by the Principal Reporter before conducting such proceedings before the sheriff is the experience of having been the Principal Reporter for any period, or periods, amounting in total to a minimum of 1 year.

(4) Paragraph (3) does not apply where the Principal Reporter is an advocate or a solicitor.

⁽²⁾ 2011 asp 1.

Power to conduct proceedings before the sheriff principal and experience required

4.—(1) The Principal Reporter is empowered to conduct proceedings before the sheriff principal which require to be conducted by virtue of the Act.

(2) The Principal Reporter is so empowered whether or not the Principal Reporter is an advocate or a solicitor.

(3) For the purposes of section 19(1)(b) of the Act, the prescribed experience that must be acquired by the Principal Reporter before conducting such proceedings before the sheriff principal is the experience of having been the Principal Reporter for any period, or periods, amounting in total to a minimum of 2 years.

(4) Paragraph (3) does not apply where the Principal Reporter is an advocate or a solicitor.

Training required to conduct proceedings before the sheriff or sheriff principal

5.—(1) For the purposes of section 19(1)(b) of the Act the prescribed training that must be undertaken by the Principal Reporter before conducting such proceedings before the sheriff or the sheriff principal is training in court skills and advocacy.

(2) Paragraph (1) applies whether or not the Principal Reporter is an advocate or a solicitor.

AILEEN CAMPBELL

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
6th December 2012

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision concerning the rights of audience of the Principal Reporter in proceedings before the sheriff and sheriff principal. The Principal Reporter includes any reporter to whom the functions of the Principal Reporter have been delegated in accordance with paragraph 10 of schedule 3 to the Children's Hearings (Scotland) Act 2011 ("the Act").

Regulation 3 empowers the Principal Reporter, whether or not the Principal Reporter is an advocate or a solicitor, to conduct proceedings required by virtue of the Act before the sheriff. Where the Principal Reporter is not an advocate or a solicitor, regulation 3 provides that the Principal Reporter must have 1 year's experience of being the Principal Reporter before conducting such proceedings.

Regulation 4 empowers the Principal Reporter, whether or not the Principal Reporter is an advocate or a solicitor, to conduct proceedings required by virtue of the Act before the sheriff principal. Where the Principal Reporter is not an advocate or a solicitor, regulation 4 provides that the Principal Reporter must have 2 years' experience of being the Principal Reporter before conducting such proceedings.

Regulation 5 requires that the Principal Reporter, whether or not the Principal Reporter is an advocate or a solicitor, must have undertaken training in court skills and advocacy before conducting proceedings before the sheriff or sheriff principal.

EXECUTIVE NOTE

THE CHILDREN'S HEARINGS (SCOTLAND) ACT 2011 (RIGHTS OF AUDIENCE OF THE PRINCIPAL REPORTER) REGULATIONS 2012

SSI 2012/335

The above instrument is made in exercise of the powers conferred by section 19 of the Children's Hearings (Scotland) Act 2011.

These Regulations make provision empowering the Principal Reporter (and any reporter carrying out functions on behalf of the Principal Reporter under paragraph 10 of Schedule 3 of the 2011 Act) to conduct proceedings before the Sheriff or Sheriff Principal. They also set out the qualifications, experience and training required before conducting those proceedings.

These regulations will replace the Reporters (Conduct of Proceedings before the Sheriff) (Scotland) Regulations 1997 (SI No. 714), which will be revoked when the 2011 Act is fully in force.

Policy objectives

Under the 1997 regulations, all reporters, whether legally qualified or not, are empowered to conduct proceedings before the sheriff or sheriff principal where they have the requisite experience of having been a reporter for one year. The new regulations introduce changes to the level of experience required, as well as a new requirement for reporters to have undertaken training in court skills and advocacy.

Where a reporter is not an advocate or a solicitor, regulation 3(3) provides that experience of being a reporter for one year must have been gained before appearing before a sheriff. Regulation 4(3) provides that where a reporter is not an advocate or solicitor, experience of being a reporter for 2 years must have been gained before appearing before a sheriff principal.

Previously, reporters who were advocates or solicitors also had to have been a reporter for one year before appearing before the sheriff or sheriff principal. This is no longer considered appropriate. Under regulations 3(4) and 4(4), reporters who are legally qualified are no longer required to have gained experience as a reporter before appearing before a sheriff or sheriff principal.

Regulation 5 provides that all reporters, irrespective of whether they are legally qualified or not, must have undertaken training in court skills and advocacy before appearing before a sheriff or sheriff principal.

Commencement Date

These regulations will come into force at the same time as s.19 of the 2011 Act.

Consultation

There has been an open public consultation on this instrument which ran for 13 weeks from 31 October 2011 to 27 January 2012. A total of 5 responses were received to that consultation and the instrument was re-drafted, as appropriate, to take account of comments made.

Impact assessments

There are no equality impact issues.

Financial effects

The regulations would not impose any additional costs on local authorities or any other bodies, individuals or businesses.

**Scottish Government
Children and Families Directorate.**

6th December 2012

SCOTTISH STATUTORY INSTRUMENTS

2012 No. 336**CHILDREN AND YOUNG PERSONS****The Children's Hearings (Scotland) Act 2011 (Safeguarders:
Further Provision) 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 sections 34 and 195 of the Children's Hearings (Scotland) Act 2011⁽³⁾ 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 (Safeguarders: Further Provision) Regulations 2012 and come into force on the same day as section 34 (safeguarders: regulations) of the Children's Hearings (Scotland) Act 2011.

Interpretation

2. In these Regulations—

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

“the Reporter” means the Principal Reporter or any person carrying out a function on behalf of the Principal Reporter by virtue of paragraph 10(1) of schedule 3 to the Act.

Termination of safeguarders' appointments – appointment by children's hearing, pre-hearing panel or sheriff

3.—(1) This regulation applies where a safeguarder is appointed in relation to a child by—

- (a) a children's hearing or pre-hearing panel under section 30 (children's hearing: duty to consider appointing safeguarder) or section 82 (appointment of safeguarder), as the case may be, of the Act;
- (b) a sheriff under section 31 of the Act (sheriff: duty to consider appointing safeguarder) in respect of proceedings before the sheriff under Part 10 of the Act; or
- (c) a sheriff under section 31 of the Act in respect of an appeal made under section 154 of the Act (appeal to sheriff against decision of children's hearing).

⁽³⁾ 2011 asp 1.

(2) The appointment of the safeguarder ceases on the occurrence of whichever of the following events first occurs—

- (a) the expiry of the time allowed to appeal against the decision of a children's hearing to discharge the referral of the child without an appeal being lodged by any person entitled under section 154 of the Act to appeal that decision;
- (b) the expiry of the time allowed to appeal against the decision to make a compulsory supervision order in respect of the child without an appeal having been lodged by any person entitled under section 154 of the Act to appeal that decision;
- (c) where a compulsory supervision order is varied or continued in respect of the child by virtue of section 138 of the Act (powers of children's hearing on review), the expiry of the time allowed to appeal against the decision to vary or continue the order without an appeal having been lodged by any person entitled under section 154 of the Act to appeal that decision;
- (d) where a compulsory supervision order is terminated in respect of the child by virtue of section 138 of the Act, the expiry of the time allowed to appeal against the decision to terminate the order without an appeal having been lodged by any person entitled under section 154 of the Act to appeal that decision;
- (e) the expiry of the time allowed to appeal against the determination by a sheriff under sections 108 (determination: ground established) or 114 (sheriff's powers on review of grounds determination) of the Act which results in the discharge of the child's referral to a children's hearing, without an appeal having been lodged by any person entitled under section 163 (appeals to sheriff principal and Court of Session: children's hearings etc.) of the Act to appeal that determination;
- (f) the expiry of the time allowed to appeal against the determination of the sheriff of an appeal under section 154 of the Act in relation to a decision of the children's hearing to make, vary or continue a compulsory supervision order, discharge the referral of the child or terminate the compulsory supervision order in respect of the child without an appeal having been lodged by any person entitled under section 163 of the Act to appeal that determination, except where paragraph (3) applies;
- (g) the expiry of the time allowed to appeal against the decision of the sheriff principal of an appeal under section 163(1) of the Act in relation to the determination of the sheriff of an appeal under section 154 of the Act of the type mentioned in sub paragraph (f), by any person entitled under section 163(2) of the Act to appeal that decision except where paragraph (3) applies; or
- (h) where any person entitled under section 163 of the Act appeals to the Court of Session against the determination of the sheriff of an appeal under section 154 of the Act of the type mentioned in sub-paragraph (f), or the decision of the sheriff principal in an appeal under section 163(1) of the Act of the type mentioned in sub-paragraph (g), the giving of the decision in the appeal except where paragraph (3) applies.

(3) This paragraph applies where the sheriff requires the Reporter under section 156(3) of the Act to arrange a children's hearing for any purpose for which a hearing can be arranged under the Act.

(4) Where paragraph (3) applies the appointment of the safeguarder will cease on the occurrence of whichever of the events mentioned in paragraph (2) next occurs.

Termination of safeguarders' appointments – appointment by sheriff in respect of certain proceedings under Part 15 of the Act

4.—(1) Where a safeguarder is appointed in relation to a child by a sheriff under section 31 of the Act in respect of an appeal made under section 160 of the Act (appeal to sheriff against relevant person determination) the appointment of the safeguarder ceases on the occurrence of whichever of the following events first occurs—

- (a) the expiry of the time allowed to appeal against the determination of the sheriff of an appeal under section 160 of the Act in relation to a decision of a children's hearing or pre-hearing panel mentioned in section 160(1) without an appeal having been lodged by any person entitled under section 164(3) of the Act (appeals to sheriff principal and Court of Session: relevant persons) to appeal that decision;
- (b) the expiry of the time allowed to appeal against the decision of the sheriff principal of an appeal under section 164 of the Act in relation to the determination of the sheriff of an appeal under section 160 of the Act without any persons entitled under section 164(3) of the Act to appeal that decision; or
- (c) where any person entitled under section 164(3) of the Act appeals to the Court of Session against the determination of the sheriff of an appeal under section 160 of the Act or the decision of the sheriff principal in an appeal under section 164 of the Act, the disposal of the case by the sheriff after the Court of Session or the sheriff principal has remitted the case to the sheriff under section 164(6) of the Act.

(2) Where a safeguarder is appointed in relation to a child by a sheriff under section 31 of the Act in respect of an appeal made under section 161 of the Act (appeal to sheriff against decision affecting contact or permanence order) the appointment of the safeguarder ceases on the occurrence of whichever of the following events first occurs—

- (a) the expiry of the time allowed to appeal against the determination of the sheriff of an appeal under section 161 of the Act in relation to a decision of the children's hearing under section 126(6) of the Act (review of contact direction) without an appeal having been lodged by any person entitled under section 165(3) of the Act to appeal that decision;
- (b) the expiry of the time allowed to appeal against the determination of the sheriff principal of an appeal under section 165(1) of the Act in relation to the determination of the sheriff of an appeal under section 161 of the Act without an appeal having been lodged by any person entitled under section 165(3) of the Act to appeal that decision; or
- (c) where any person entitled under section 165(3) of the Act appeals to the Court of Session against the determination of the sheriff of an appeal under section 160 of the Act or the decision of the sheriff principal in an appeal under section 161 of the Act, the disposal of the case by the sheriff after the Court of Session or the sheriff principal has remitted the case to the sheriff under section 165(6) of the Act (appeals to sheriff principal and Court of Session: contact and permanence orders).

(3) Where a safeguarder is appointed in relation to a child by a sheriff in respect of an appeal under section 162 of the Act (appeal to sheriff against decision to implement secure accommodation authorisation) the appointment of the safeguarder ceases on the giving of the decision by the sheriff in the appeal except where paragraph (4) applies.

(4) This paragraph applies where the sheriff requires the Reporter under regulation 15, 16 or 17 of the Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2012 to arrange a children's hearing for any purpose for which a hearing can be arranged under the Act.

(5) Where paragraph (4) applies the appointment of the safeguarder will cease on the occurrence of whichever of the events mentioned in paragraph (2) next occurs.

Termination of safeguarders' appointments – appointment in respect of proceedings under section 166 of the Act

5.—(1) This regulation applies where a safeguarder is appointed in relation to a child by a sheriff under section 31 of the Act in respect of proceedings under section 166 of the Act (review of requirement imposed on local authority).

(2) The appointment of the safeguarder ceases on the occurrence of whichever of the following events first occurs—

- (a) the expiry of the time allowed to appeal against the determination of the sheriff under section 167 of the Act (appeals to sheriff principal: section 166) without an appeal having been lodged by the local authority; or
- (b) where the local authority appeals to the sheriff principal against the determination of the sheriff under section 167 of the Act, the disposal of the case by the sheriff after the sheriff principal has remitted the case to the sheriff under section 167(6).

Reports by safeguarders in appeal proceedings under section 154 of the Act

6. A sheriff may require a safeguarder appointed in relation to a child to give a report to the sheriff for the purpose of assisting the sheriff in determining an appeal under section 154 of the Act.

Views of the child

7. Where a safeguarder appointed in relation to a child provides a report or makes a recommendation to the children's hearing or the sheriff for the purpose of assisting the children's hearing, or the sheriff, to determine any matter under the Act, the safeguarder must, so far as practicable and taking account of the age and maturity of the child—

- (a) give the child an opportunity to express their views;
- (b) have regard to any views expressed by the child; and
- (c) include the views of the child, and the means by which the child's views were obtained, in any report prepared for the children's hearing or the sheriff.

Role of the safeguarder

8.—(1) A safeguarder appointed in relation to a child must inform that child, taking account of the age and maturity of the child, any relevant person and any other person whom the safeguarder interviews in pursuance of their functions under the Act, of the safeguarder's functions and powers under the Act and any other enactment.

(2) In particular, under paragraph (1), the safeguarder must inform the child, any relevant person and any other person that the role of a safeguarder is to safeguard the interests of the child.

Access to reports of safeguarders

9.—(1) Where a safeguarder is appointed in relation to a child the Reporter must—

- (a) inform the safeguarder whether the Reporter has a copy of any report prepared in relation to the child by any other safeguarder; and
- (b) provide the persons mentioned in paragraph (2) with a copy of any such report which the safeguarder requests be provided.

(2) Those persons are—

- (a) the safeguarder;
- (b) the child;
- (c) any relevant person; and

- (d) the three members of the children's hearing selected under section 6 of the Act to form the next children's hearing to be held in relation to the child.

St Andrew's House,
Edinburgh
6th December 2012

AILEEN CAMPBELL
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision imposing additional requirements on safeguarders and in relation to the termination of safeguarders' appointments under section 34 of the Children's Hearings (Scotland) Act 2011 ("the Act").

Regulations 3, 4 and 5 make provision about the termination of safeguarders' appointments where a safeguarder is appointed by a children's hearing, a pre-hearing panel or sheriff.

Regulation 6 provides that a sheriff may require a safeguarder to give a report to assist the sheriff in determining an appeal under section 154 of the Act.

Regulation 7 requires safeguarders to seek the views of the child when preparing any report or making any recommendation to the children's hearing or sheriff.

Regulation 8 requires that safeguarders explain their role to the child, any relevant person and any other person whom the safeguarder interviews in pursuance of their functions.

Regulation 9 makes provision in relation to the accessing of reports of safeguarders.

POLICY NOTE

**THE CHILDREN'S HEARINGS (SCOTLAND) ACT 2011 (SAFEGUARDERS:
FURTHER PROVISION) REGULATIONS 2012**

SSI 2012/336

The above instrument is made in exercise of the powers conferred by section 34(1) of the Children's Hearings (Scotland) Act 2011 ("the 2011 Act").

That section enables the Scottish Ministers to make further provisions about safeguarders. In particular, the Regulations make provision for additional requirements on safeguarders and the termination of safeguarders' appointments.

Safeguarders are appointed by children's hearings and sheriffs in certain cases to provide an independent assessment at hearings or in court of what is in a child's best interest. Safeguarders are independent from all other agencies involved in the children's hearings system.

Policy objectives

The policy on the overall role and detailed functions of the safeguarder within the children's hearings system will not change with the introduction of these Regulations. The intention is to further strengthen the role of the safeguarders by introducing clarity and consistency to their involvement in children's hearings cases.

Regulations 3, 4 and 5 provide for the circumstances in which a safeguarder's appointment will be terminated. The policy objective is to ensure continuity of a safeguarder's appointment throughout a child's time within the children's hearings system, ensuring that each child's best interests and wellbeing are better protected. There should be considerable benefits to the child of continuing to be supported by someone with whom they already have an established relationship, especially where that safeguarder is familiar with the child's circumstances and history.

In relation to the proceedings to which regulation 3 applies, a safeguarder's appointment, whether made by a children's hearing or by a sheriff, will not be terminated until a final decision is made on that child's case. Termination will only occur once (i) a compulsory supervision order is in place, (ii) a compulsory supervision order is terminated or (iii) the referral is discharged (following the conclusion of any appeal or further appeal as the case may be). Where the decision of a children's hearing is appealed, the appointment of the safeguarder will continue until the end of the appeal process, even if the safeguarder raises the appeal. Regulations 4 and 5 make provisions for the termination of safeguarders' appointments in certain other proceedings and ensure that the safeguarder's appointment lasts for the duration of those proceedings (including for any appeal in relation to those proceedings).

Regulation 6 allows for a safeguarder to be designated as a person who can provide a report to the Sheriff to assist them with determining an appeal. This can apply whether the safeguarder is appointed either by a court or a Children's Hearing.

Regulation 7 requires that a child be given the opportunity to have their views heard by a safeguarder. The central importance of obtaining, and hearing, children's views is reflected throughout the modernised children's hearings legislation. Safeguarders must seek the child's views and use such views to establish any recommendations in the best interest of the child. While the children's hearing's rules associated with the 2011 Act will provide that all documents given to a hearing should contain any views expressed by the child, it was important to make specific provision in relation to safeguarders. In doing so, it is recognised that some children may not be of the age or maturity to provide a view.

Regulation 8 provides that safeguarders must inform children and relevant persons and any other person they interview in carrying out their functions, about the role and purpose of safeguarders. Similar provision has been built into the Regulation in respect of the requirement, acknowledging that some children may not be of the age or maturity to understand.

It is the intention that a safeguarder will be given all information that has been given to the children's hearing. However, a safeguarder may need to have access to safeguarder reports made to previous children's hearings. Regulation 9 provides for this situation. Should the safeguarder use any such report to form a view or make recommendations, that previous report must also be copied to the child, relevant persons and panel members. The Regulation contains an option to not disclose certain parts of reports if that disclosure could cause issues or concerns.

Commencement Date

The regulations will come into force at the same time as section 34 of the 2011 Act

Consultation

There has been an open public consultation on this instrument which ran for 12 weeks from 9 December 2011 to 2 March 2012. A total of 9 responses were received to that consultation and the instrument was re-drafted, as appropriate, to take account of comments made.

Impact assessments

There are no equality impact issues.

Financial effects

The regulations would not impose any additional costs on any other bodies, individuals or businesses.

**Scottish Government
Children and Families Directorate**

6th December 2012

SCOTTISH STATUTORY INSTRUMENTS

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⁽⁴⁾ 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.

⁽⁴⁾ 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⁽⁵⁾; or

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

⁽⁵⁾ 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.

POLICY NOTE**THE CHILDREN'S HEARINGS (SCOTLAND) ACT 2011 (APPEALS
AGAINST DISMISSAL BY SCRA) REGULATIONS 2012**

SSI 2012/337

The above instrument is made in exercise of the powers conferred by section 195 (2) , paragraphs 8 (6) to 8(8) and paragraph 12 of Schedule 3 to the Children's Hearings (Scotland) Act 2011 (the 2011 Act), as introduced by section 15 of that Act. The instrument will govern the initiation and process of appeals to the Scottish Ministers against dismissal by specified employees of the Scottish Children's Reporter Administration (SCRA). The instrument specifies the employees who can make such an appeal, the procedure for the making of an appeal, the effect of making an appeal, the powers of Ministers to deal with an appeal and the effect of exercising those powers. The instrument will be subject to the negative procedure.

Policy objectives

It is intended that that the officer known as the Principal Reporter of the Scottish Children's Reporter Administration (SCRA), and other senior officers of that body being the Assistant Principal Reporter and Senior Operational Managers, can access fair, transparent and robust procedures in relation to their employment.

As senior officers of the SCRA, their duties involve them in making quasi-prosecutorial decisions on professionally difficult and politically sensitive cases and issues. They need to be supported to make decisions focused solely on the best interests of individual children in the children's hearings system. This instrument will ensure that the specified SCRA employees are subject to appropriate procedures, and benefit from appropriate rights and protections, in line with similar officers in other public bodies.

Under paragraph 8(6) of schedule 3 to the 2011 Act the Principal Reporter may appeal to the Scottish Ministers against dismissal by SCRA. In implementing paragraph 12 of Schedule 3 to the 2011 Act, it is considered that the further descriptions or classes of persons known as the Assistant Principal Reporter (of whom there is 1) and Senior Operational Managers (of whom there are 2) should also be able to appeal to the Scottish Ministers against dismissal by SCRA.

These officers are all responsible for the operational and practice framework governing the professional and casework aspects of the Children's Reporter service. The instrument sets in place a timed and rigorous process of notification, consideration and appeal. It reflects, for the SCRA, the policy intention and the processes set out in the Children's Hearings (Scotland) Act 2011 (National Convener Appeal against Dismissal) Regulations 2011.

The Principal Reporter is accountable to the Chair of the board of SCRA. Persons employed by SCRA who are of the description or class known as Assistant Principal Reporter or Senior Operational Manager ('senior staff' hereinafter) are accountable to the SCRA Chief Executive and have a right of appeal to the SCRA Board. This instrument operates independently of any internal SCRA process which need not have been exhausted before an appeal to Ministers could be taken.

The individual wishing to submit an appeal does so by giving to Ministers a statement setting out the grounds upon which the appeal is made and any accompanying information, copying that information to SCRA..

If SCRA wish to oppose the appeal , they must respond to Ministers, setting out the reasons for opposing it; the reasons for dismissing the appellant, and any other representations.

All the relevant information required under these Regulations can be sent by way of electronic communication. Scottish Ministers, or an inquiry panel constituted by Scottish Ministers, can seek further information as required .

Scottish 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. The Schedule makes further provision about the constitution of the panel and its procedure. In addition, the Schedule regulates the qualification requirements of the panel chair, the report and the prescribed timescales. The appellant may make arrangements for legal representation.

Alternatively , Ministers may wish to decide an appeal directly where an inquiry panel would be unnecessary.

The instrument provides that the Scottish Ministers may ; (i) allow, or (ii); dismiss the appeal.

Where the appeal is allowed, Ministers may direct that the appellant be reinstated ; and direct payment to the appellant of such sum as seems appropriate to the Scottish Ministers . In any other case, Ministers can direct that the dismissal should not take effect.

Commencement Date

The date for the commencement of the regulations is 24 June 2013 .

Consultation

There has been full public consultation on this instrument between November 2011 and January 2012 . No substantive comments or suggestions were received in response to the formal consultation. SCRA and relevant trade

unions were also contacted during the preparation of the instrument and both are content.

Impact assessments

There are no equality impact issues.

Financial effects

The Minister for Children and Young People confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or business.

**Scottish Government
Children and Families Directorate.
6th December 2012**

ANNEXE E

Excerpt of the Official Report

Subordinate Legislation Committee

8 January 2013

Column 699-700

The Convener: No points have been raised on any reporting grounds, but the committee may wish to consider writing to the Minister for Parliamentary Business to highlight a number of matters relating to the Government undertaking that was given in session 3 concerning the laying of packages of instruments, and to seek comments on how instrument planning could be improved to avoid any adverse effect on scrutiny.

Both this instrument and the Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2012 (SSI 2012/325), which were considered by the committee on 18 December 2012, have raised a number of general issues about the programming of subordinate legislation. Better planning in the preparation of SSI 2012/325 could have avoided the need for a separate instrument and the potential anomaly of determining whether consequential provisions are satisfactory prior to approving the super-affirmative instruments to which they relate.

Regulation 4(4) of SSI 2012/336 refers to provisions in the Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2012, which have not yet been made. Without sight of that further instrument, the Parliament is not able to be wholly clear about the application and effect of regulation 4(4) in the period permitted for scrutiny of these regulations. In this case it would have been preferable to have avoided making the cross-reference as it appears that these regulations could have omitted regulations 4(4) and 4(5), which could then have been added by amendment when the subsequent regulations were made.

Last session, the Minister for Parliamentary Business gave an undertaking to the committee with regard to the handling of packages of instruments, and the Scottish Government undertook to try to avoid where possible staggering the laying of instruments that cross-refer to each other and—again where possible—to provide the committee with a copy of draft related instruments that are not ready for making. That did not happen in this case.

Does the committee agree to write to the Minister for Parliamentary Business regarding this matter and to reinforce the view that we want this to be done properly?

Members indicated agreement.

Education and Culture Committee

1st Meeting, 2013 (Session 4), Tuesday, 15 January 2013

Request for Information from Standards, Procedures and Public Appointments Committee

Purpose

1. This paper invites the Committee to consider a letter from the Standards, Procedures and Public Appointments Committee requesting comment on its inquiry into post-leg scrutiny. The letter and call for views are annexed to this paper.

**Jonas Rae
Committee Assistant
10 January 2013**

ANNEXE A

Standards, Procedures and Public Appointments Committee

26 November 2012

Dear Stewart

The Standards, Procedures and Public Appointments Committee has begun an inquiry into post-legislative scrutiny.

The remit for the inquiry is—

“To consider possible approaches to carrying out post-legislative scrutiny in the Scottish Parliament, and consider what changes are required to Standing Orders and the Parliament’s procedures.

The Committee has issued a call for views as part of the inquiry, which it has circulated to all members as well as individuals and organisations with an interest in post-legislative scrutiny. The call for views has also been placed online. Further details can be found at the annexe to this letter.

The Committee is particularly interested in the views of committee members and conveners on the list of issues highlighted by the Committee in its call for views.

If you or your committee would like to respond to the call for views, please be aware that the deadline for responses is 25 January 2013.

Yours sincerely

Dave Thompson MSP

Convener

Standards, Procedures and Public Appointments Committee

ANNEXE

Call for views

Inquiry into post-legislative scrutiny

The Standards, Procedures and Public Appointments Committee has agreed to conduct an inquiry into post-legislative scrutiny.

The remit for the inquiry is—

“To consider possible approaches to carrying out post-legislative scrutiny in the Scottish Parliament, and consider what changes are required to Standing Orders and the Parliament’s procedures.

The Committee is interested in receiving views as part of this inquiry.

Details of how to submit your views can be found below. The deadline for responses is Friday 25 January 2013.

Background

The Committee heard evidence on post-legislative scrutiny from a number of witnesses during its [inquiry into parliamentary reform](#), and received several written submissions on this subject.

Some reasonably clear views emerged from this evidence—

- The concept of post-legislative scrutiny was widely supported, as improving the scrutiny function of the Parliament and the legislative process.
- There was a general acceptance that this is an area in which the Scottish Parliament could perform better.
- A number of witnesses considered that the Parliament’s committees have a key role to play in taking forward post-legislative scrutiny.

The Committee is taking these views as the starting point for the current inquiry.

Rather than concentrating on whether there is a need for more post legislative scrutiny (which appears to be generally accepted), the Committee is interested in focussing on practical ways in which the Parliament could carry out improved post-legislative scrutiny.

Key questions

The Committee is particularly interested in the following questions—

- What is the most appropriate format for post-legislative scrutiny in the Scottish Parliament and, in particular, its committees?
- What are some of the barriers to undertaking post-legislative scrutiny and how can they be overcome?

- Are there examples of good practice in carrying out post-legislative scrutiny inside and outside the Parliament which could be shared?
- What information and support is required by MSPs in order to carry out effective post-legislative scrutiny?
- What type of legislation should be the subject of post-legislative scrutiny?
- When should post-legislative scrutiny be carried out following the passage of legislation?
- Are changes needed to Standing Orders or other parliamentary procedures to facilitate improved post-legislative scrutiny?

You are invited to respond to as many or as few of these questions as you wish.

Next steps

The call for written views will help the Committee gather information and opinions about post-legislative scrutiny.

This will inform a decision by the Committee on whether to take oral evidence as part of the inquiry and, if so, from which individuals / organisations.

How to submit your views

The call for written views will close on **Friday 25 January 2013**.

Before making a submission, please read our [policy on treatment of written evidence by subject and mandatory committees](#).

Owing to the timescale required to process and analyse evidence, late submissions will only be accepted with the advance agreement of the Committee Convener. Responses should be no more than four sides of A4 in length.

We welcome written views in English, Gaelic, Scots or any other language.

Responses should be sent, where possible, electronically in Word format to the following address:

sppa.committee@scottish.parliament.uk

You may also make hard copy written submissions to:

Standards, Procedures and Public Appointments Committee
TG.01
Scottish Parliament
EH99 1SP