



**THE LAW SOCIETY**  
**of SCOTLAND**  
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**Scottish Government  
Consultation on the draft Children's Hearings (Scotland) Act 2011  
Safeguarders Regulations**

**The Law Society of Scotland's response**

**December 2011**

## **INTRODUCTION**

The Family Law sub-committee (“the committee”) of the Law Society of Scotland (“the Society”) welcomes the opportunity to respond to the Scottish Government consultation on the draft Children’s Hearing (Scotland) Act 2011 Safeguarders Panel Regulations 2012 and has the following comments to make.

## **GENERAL COMMENTS**

The committee is concerned about the proposed intention that Scottish Ministers will use the power under Section 32(3) of the 2011 Act to contract with an external organisation to manage the Safeguarders Panel.

In the committee’s view, this raises serious questions about consistency, standards and accountability and is not the appropriate approach for improving quality and consistency. The committee would also question what the benefit would be of paying a body without safeguarding expertise to manage a panel of individuals with that expertise and would suggest that consideration be given to forming a National Council of Safeguarders, which would regulate and set standards for safeguarders and which the Scottish Government could then contract with. The Council could then be held to account by Children’s Hearings Scotland (CHS) with a monitoring and review function to be carried out by the Scottish Government.

## **SPECIFIC COMMENTS**

**1. For draft Regulation 3, do you agree with the proposed arrangements for the recruitment and selection of members of the Safeguarders Panel?**

In respect of our suggestion for a National Council of Safeguarders, we accept that there would need to be a start-up process and that this would be best carried out by the Scottish Government. Thereafter recruitment and selection of members should be the responsibility of

the proposed Council.

**2. In respect of draft regulation 5(2) and 5(3), do you agree with the suggested prerequisites for appointment to the safeguarders panel?**

No. The committee is of the view that the suggested prerequisites do not go far enough and require to be extended significantly. The following additional prerequisites should be considered:

- Commitment to the paramountcy of interests of the child
- In-depth knowledge of children's hearings system and its interaction with the court system
- Understanding of law relating to children, including parental rights and responsibilities and the UNCRC
- An ability to listen to, communicate with and take instruction from children and to advocate on their behalf
- An ability to comply with a prescribed set of standards
- An understanding of social work and child welfare systems
- Good oral and written communication skills.

**3. In respect of draft regulation 5(4), do you agree with the proposed classes of persons disqualified from appointment, or from continuing as a member of the Safeguarders Panel?**

Yes.

**4. Based on draft regulation 7(1) & 7(2), do you agree with the basis on which the Scottish Ministers must appoint and reappoint a person as a member of the Safeguarders Panel?**

The committee is of the view that the timescales are appropriate provided that there is the facility to extend the termination period beyond three years in order to allow panel members

to conclude their involvement with a particular case or child.

**5. In considering draft regulation 7(4), do you conclude that the grounds on which a person may be removed from the Safeguarders Panel are sufficiently wide?**

Yes, however there will need to be a clear system of evaluation and complaint that is robust enough to deflect complaints by aggrieved parents while still allowing access by relevant individuals within the children's hearings system.

**6. Do you support the requirements set out in draft regulation 8 – that mean that members and prospective members of the safeguarders panel must attend (and successfully complete) training required by the Scottish Ministers?**

Yes, however the training will need to be targeted and effective.

**7. Do you support the proposals set out at draft regulation 10 for the payment of fees, expenses and allowances to members and potential members of the Safeguarders Panel?**

There needs to be an obligation to pay *reasonable* fees, expenses and allowances. This should be reviewed on a regular basis (the committee would suggest every 2/3 years).

**8. Do you agree with the proposed arrangements set out at draft regulation 11(4) and (5) for the monitoring and assessment of the performance of members of the safeguarders panel? Are they realistic and proportionate?**

The committee has some concerns about this proposal. Information relating to children is by its very nature sensitive, and accordingly so must the role of the safeguarder be carried out sensitively. There would need to be adequate protections in place for the confidentiality of the child and his or her personal information and anyone involved in the monitoring and assessment of safeguarders should not intrude into private interviews between safeguarders and children.

If regulation 11(5)(c) has to remain, then the committee is of the view that “public” should be inserted before “functions” to ensure that the proposed arrangements do not result in intrusion into private interviews.

The committee’s proposal for a National Council of Safeguarders would help to alleviate the committee’s concerns.

**For further information and alternative formats please contact:**

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