

PAPER – 10 MARCH 2020

CHILDREN'S HEARINGS (SCOTLAND) ACT 2011 SECTION 122 - CHILDREN'S ADVOCACY SERVICES POLICY CONSIDERATIONS ON COMMENCEMENT AND REGULATIONS

1. PURPOSE

This paper has been prepared as a result of the discussions and engagement that took place with the [Advocacy in Children's Hearings Expert Reference Group \(ERG\)](#) at meeting in September and November 2019.

Within these meetings, the ERG and Regulations and Legislation sub-group members were invited to specifically assist Scottish Government with reviewing the key issues raised and encompassed in this paper. Some of the issues relate more broadly to practice and guidance needs, and this paper outlines the conclusions reached by the Expert Reference Group which were considered by Scottish Ministers in developing the policy position. The Scottish Government are introducing the changes in law necessary to enact, in full, section 122 of Children's Hearings (Scotland) Act 2011 to implement the policy by spring 2020.

2. APPROACH TO CONSULTATION

We consulted the ERG at the meeting on 25 September. We gathered oral feedback on what regulations would be necessary to ensure that children's advocacy services will operate effectively from the go-live date.

Following the meeting we issued a questionnaire, inviting further written feedback from the ERG Members by 24 October. We received submissions from five organisations.

A discussion paper that presented a summary of the collective feedback gathered through this engagement. In addition, views and comments sent by stakeholders in response to the discussion paper issued in the early part of 2019, and learned over the course of developing the [National Practice Delivery Model](#) was taken to the Regulations and Legislation sub-group members on 6 November.

Action Research

The Scottish Government has worked with partners to develop a sustainable model of Advocacy in the Children's Hearings System since its modernisation in 2013. This work includes action research and projects delivered by Barnardo's, Who Cares? Scotland, Your Voice, Inspiring Scotland and Griesbach & Associates.

The development of the provision was commissioned by the Scottish Government in order to develop a sustainable model of advocacy to realise the policy intention of Section 122 of the Children's Hearings (Scotland) Act 2011.

During the pilot phases, Action Research reports looked at advocacy service for children and young people involved in the Children's Hearings System.

In July 2017, Who Cares? Scotland reports were published. The reports are:

[Advocacy matters: an analysis of young people's views](#)

[Advocacy matters: an analysis of stakeholder views](#)

[Advocacy Action Research: final evaluation report](#)

In July 2016, Action Research project undertaken in Fife by Barnardo's to look at providing advocacy to children and young people attending a Children's Hearing for the first time. The reports are:

[Barnardo's Advocacy Research Report](#)

[Barnardo's Children's Hearing Advocacy Service Action Research Project: An Independent Evaluation](#)

3. SUMMARY – SECTION 122 CHILDREN'S ADVOCACY SERVICES

Section 122(2) of the Children's Hearings (Scotland) Act 2011 provides that where a children's hearing is being held, the chairing member has a duty to inform the child about the availability of children's advocacy services. This is qualified by section 122(3) which provides that the chairing member need not comply with section 122(2) if, taking account of the 'age and maturity' of the child would not be appropriate to provide this information.

Section 122(4) enables the Scottish Ministers, by regulations, to make provision for, or in connection with, children's advocacy services - including qualifications to be held by, training of, and the payment of expenses, fees and allowances to, persons providing the children's advocacy service. Under section 122(6), these regulations are subject to the affirmative procedure.

Section 122(5) provides that Scottish Ministers may enter into arrangements with any person other than a local authority, Children's Hearings Scotland (CHS) or Scottish Children's Reporter Administration (SCRA) to provide children's advocacy services.

"Children's advocacy services" is defined in section 122(5).

The Children's Hearings (Scotland) Act 2011, section 122 – children's advocacy services can be accessed here:

<http://www.legislation.gov.uk/asp/2011/1/part/12/crossheading/childrens-advocacy-services>

4. POINTS RAISED ON THE POLICY AND LEGISLATION BY THEME

DUTIES ON THE CHAIRING PANEL MEMBER

Summary of the policy issues

Section 122(2) provides that the chairing member of the children's hearing must inform the child of the availability of children's advocacy services.

The chairing member need not comply with section 122(2) if, taking account of the age and maturity of the child, the chairing member considers that it would not be appropriate to do so.

Points raised and considered

- Chairing panel members need to have access to accurate information on the level and type of children's advocacy services that operate in line with the [National Practice Model](#) and that are available in their local area for children / young people.
- Accessible information describing the level of 'children's advocacy services' that exists in a local area is needed. There may be roles for CHS, SCRA, Scottish Government and primary / alternate providers in providing this information.
- The chairing member has to be able to assess - ideally ahead of the Hearing or Pre-Hearing Panel - whether informing the child / young person of advocacy services available to them, is appropriate, taking into account their 'age and maturity'.
- Where the duty to inform is assessed as not appropriate by the chair at one Hearing or Pre-Hearing Panel meeting, then it will be considered ahead of subsequent Hearings and Pre-Hearing Panels by the chair whether the child / young person should be informed of the service available. The National Convener may wish to advise panel members that the presumption is that 5 year old children and older are of sufficient age and maturity.
- Chairing members will need to be accordingly trained, and supported to exercise their assessment of the child / young person's 'age and maturity' and be transparent in their decision making on this.
- Chairing members, panel members and panel practice advisors need to be supported to understand the role of advocacy services to children / young people in the hearings process.
- Panel members need to be able to talk to the child / young person about the role advocacy can play and available advocacy services.

Policy guidance

- In the main, these issues cover communications and engagement, and procedural needs to support effective delivery of the children's advocacy services. These matters are recognised and incorporated into the stands of work within the ERG workplans, including through the Communications and Engagement and CPD and Training strands.
- Partnership working is required between SG, CHS and SCRA to progress matters relating to the procedural handling. These provisions will be appropriately clarified in National Convener-driven procedural guidance and training arrangements.

Regulation need

- **These points above relate to operational handling to implement section 122. They do not require enforcement made in regulation.**

5. PROVISION AND MANAGEMENT OF SERVICES

Summary of the policy issue

The Scottish Ministers may enter into arrangements (contractual or otherwise) with any person other than a local authority, CHS or SCRA for the provision of children's advocacy services.

Points raised and considered

- Clarify who can provide a 'children's advocacy service'.
- Clarify how Scottish Ministers will manage these arrangements for the provision of children's advocacy services.

Policy guidance

- Matters relating to operational handling to implement section 122 will be developed, including the detail of grant terms and conditions, and guidance related to the process for spot-purchasing arrangements.
- Following concerns made by some stakeholders about plans to procure a national managing organisation, the Deputy First Minister and Cabinet Secretary for Education and Skills made clear early in 2019 the way forward. Scottish Ministers will enter into grant arrangements with a range of advocacy organisations – all independent of local authorities, CHS or SCRA.
- Scottish Ministers have established a Children's Hearings Advocacy Team (Advocacy Team) to take responsibility for managing arrangements and relationships through grant terms and conditions in order to ensure the effective delivery of advocacy provision.

- The [expressions of interest](#) criteria were discussed with the ERG in mid-2019. Applications were invited from interested organisations, with a closing date of 25 October 2019.
- It is recognised that adequate time prior to service-go live is given to organisations to ensure all pre-service preparations, including recruitment and training of advocacy workers, can be progressed successfully. This is to ensure readiness of the national service for full implementation on commencement of section 122 and of the regulations.
- Organisations were asked whether they wished to be considered as a primary provider and/or alternate provider in one or more local authority areas. This is to ensure there is an element of choice for children / young people in who provides their advocacy service. For example, the child may already have an existing relationship with another provider, or does not wish to work with the primary provider. Further detail on these arrangements is provided under the section on payment of expenses, fees and allowances (Page 14).
- These arrangements require flexibility in administrative arrangements set by the Advocacy Team, and working in collaboration with primary provider(s), alternate(s) and organisations with pre-existing relationships with children / young people.

Regulation need

- **The regulations will ensure that Scottish Ministers can make arrangements for the provision of children’s advocacy services. This will allow the flexibility for grant funding arrangements with primary providers. For alternate provision, this regulation allows Scottish Ministers to consent, subject to conditions, to spot-purchase services with providers for the purpose of assisting a child in their hearing. This allows the alternative provision to cover situations where children are already receiving advocacy support from another organisation, or in cases where a conflict may arise, and offers choice to the child / young person.**

6. MEANING OF CHILDREN’S ADVOCACY SERVICE PROVISION

Summary of the policy issue

“children's advocacy services” means services of support and representation provided for the purposes of assisting a child in relation to the child's involvement in a children's hearing.

We considered making the national advocacy service available to children and young people aged 5 years and above. This policy position is based on advice from advocacy service providers, with consideration given to the majority view that children aged 5 and over will normally have sufficient capacity to engage with, and give their views to an advocacy worker.

Points raised and considered

- Section 122 of the 2011 Act is clear that the legal provision of advocacy services potentially applies to any hearing for any child or young person.
- There is some disagreement that the proposed scope of the national advocacy service should be limited by a child's age (be that age 5 or any other age), and some opposition to such limitations appearing in regulations.
- One respondent pointed out that over 25% of children referred to SCRA were aged 0-4 (3,394) in 2018-19.¹ 'These children must not be discriminated against due to their age, and whilst meeting their advocacy needs may be complex, must be considered and provided for'.
- While there was a recognition that representation of the views of babies and very young children and providing independent advice about their best interests to a children's hearing may sometimes be best served by the appointment of a Safeguarder, but this is not the case for all, and 'advocacy must be an available option'.
- 'It is unhelpful to use chronological age alone as a benchmark in relation to ways in which children can give their views. To do so is overly simplistic, out of keeping with a rights-based approach, and fails to allow recognition of the developmental needs of individual children, which require careful consideration, particularly where children have experienced trauma and other adversity.'
- There was also some concern about the use of the language of 'sufficient capacity' in relation to a child's views being heard. All children have views, and it is the responsibility of the adults around them to ensure these views are listened to and taken into account. As well as older and more articulate children (with whom adults may find it more straightforward to communicate) this includes babies, very young children, non-verbal children, and children who have particular communication needs.

The Committee on the Rights of the Child clarify this in paragraph 20 of [General Comment 12](#) (2009): "*States parties should presume that a child has the capacity to form her or his own views and recognize that she or he has the right to express them... it is not up to the child to first prove her or his capacity*"

- Proposals have recently been announced under the Children (Scotland) Bill to remove existing presumptions from law relating to age and children's maturity to form and express views. To include age limitations within these regulations is considered a backwards step, out of keeping with the Scottish Government's direction of travel regarding children's rights.

¹ SCRA (2019) online statistics 2018-19 – Summary table 1c. retrieved from <https://www.scra.gov.uk/resources/articles/category/official-statistics/>

- The policy decision [making the national advocacy service available to children and young people aged 5 years and above] is sound and explained clearly however, it is at odds with section 122(3) which places the decision whether or not to inform the child of the advocacy provision with the chair of the hearing and their informed assessment of the child's individual age and maturity.

A child can be excused from a children's hearing (section 73 (3)(c)) when, based on their age and maturity, the child not be capable of understanding what happens at a hearing. Children's Hearings Scotland (CHS) has long maintained this must be assessed on the individual child's needs and has declined a 'blanket agreement' that any child under the age of 5 meets this test and should therefore be excused from attending.

- Clarification is required around the potential situation where a chair may inform a younger child of advocacy services which the child may accept - CHS would like clarification whether advocacy will be possible for children under age 5.
- Conversely, if a chairing member determines a child aged 5 or older would not be capable of engaging with an advocacy worker, the decision of the chairing member supersedes the policy decision.

Policy guidance

- However, in practice guidance based on advice of current practice provision from key stakeholders and advocacy service providers, we consider that children aged 5 and over will normally have sufficient capacity to engage with and give their views to an advocate. We have proposed making the national advocacy service available to children and young people aged 5 years and above, as routine. However, advocacy service providers will be required to treat all referrals/ approaches equally and process them through their developed case management system based on the National Practice Model guidance.
- There are a range of ways for a child's views to be given. For younger children, a Safeguarder, rather than advocacy worker, might be the more appropriate way. The important aspect of the children's advocacy services, is about empowering the child/young person with the choice to have support to help them have their views and wishes heard. It should never be the case of another adult being put 'by someone else's decision' upon the child/young person.

Regulation need

- **The legislation and regulations make clear that all children and young people referred to a children's hearing must be informed of the availability of advocacy services. Regulations will not make any change to this.**

7. QUALIFICATIONS TO BE HELD BY PERSONS PROVIDING CHILDREN'S ADVOCACY SERVICES

Summary of the policy issue

Under section 122(4)(b), Scottish Ministers will be able to set requirements via regulations, as to the qualification levels of individuals working in advocacy services.

Points raised and considered

- In order to support children effectively, advocacy workers who have not previously worked with the Children's Hearings System require appropriate preparation to understand the context in which they must fulfil their role. They require an understanding of the law, procedure and language used within hearings, the range of disposals and decisions which may be made, the rights of children, and how advocacy operates within this context. They also require an understanding of the roles of others (who likewise require an understanding of the role of advocacy workers). Opportunities for multi-agency participation and input into pre-service training should be maximised.
- It is appropriate that the need for qualifications for all persons providing advocacy services is carefully considered (including the need for formal, accredited qualifications) prior to setting this out in regulations.
- Further considerations should include the current availability of courses / learning opportunities / coaches / assessors to ensure practitioners are appropriately skilled, and arrangements to increase availability of these if necessary; requirements and timescales for securing qualifications by those working as advocates currently who do not hold formal qualifications; and projections and plans for the numbers of 'new' advocacy workers who will need to be recruited, qualified, and supported.
- As it appears likely that no requirement for formal qualifications will be in place prior to the commencement of section 122 in spring 2020, it is of vital importance that the capacity of local advocacy organisations is sufficient to ensure services will be delivered to a high quality, and in line with the Principles and Standards set out in the National Practice Model. This capacity will be robustly assessed as part of the grant application evaluation process.

Policy guidance

- We know from extensive engagement with the sector over the years that advocacy workers come from a wide range of backgrounds. We know things have moved on since section 122 of the Children's Hearings (Scotland) Act 2011 was drafted. At this stage, we do not consider it appropriate to stipulate a particular existing held qualification at this stage as none are extensively developed.

- Required training and subsequent qualifications will be detailed and monitored through the annual grant agreements between the Scottish Government Children’s Hearings Advocacy Team and the advocacy service provider organisations.
- All persons providing advocacy services to be competent and ‘qualified’ to a sufficient level through the framework of qualifications, skills and training standards within the [Practice Standards for Advocacy in the Children’s Hearings System](#). These were developed by partners currently represented on the ERG, and published by the Scottish Government in 2018. The Scottish Government will require successful completion, by advocacy providers, of pre-service training to be arranged by the Scottish Ministers before the service go-live date. The pre-service training “*making advocacy real in the modernised hearings system*” has been developed with members of the ERG and will be delivered by Clan Childlaw in conjunction with the Scottish Government.
- The [National Practice Model](#) includes a section on Qualifications, Skills and Training sets out the requirements on the providers to demonstrate its commitment to the ongoing learning and development needs of its staff and provide:
 - access to the national induction programme – *making advocacy real in the modernised hearings system*;
 - training on equality and diversity issues;
 - opportunities for continuous professional development of these staff
- Advocacy organisations will be required to ensure staff responsible for providing this service are supervised and professionally supported.
- We are working with, and providing funding to, Clan Childlaw to embed training on the law and legal updates within ongoing training for children’s hearings advocacy workers. This ensures that procedurally-safe and legally informed advocacy in children’s hearings for all children and young people is embedded into processes and practice.
- The Scottish Government through the process of assessing grant applications and agreeing grant terms and conditions will robustly monitor evidence provided by organisations on levels of training and CPD undertaken.
- We will be devising appropriate quality assurance tools, and working closely with the ERG, sector, providers and involving children / young people who have taken up the offer of advocacy, to create suitable advocacy qualifications, which could be offered to, or required of, providers in the future.
- With the ERG we will continue to discuss what, if any, formal qualification might be required. This may form part of a developing training package for the Children’s Hearings System. We expect to continue working on these issues and revise regulations as the service develops and qualifications emerge. This work will continue beyond commencement of initial regulations in spring 2020.

Regulation need

- **The regulations will make clear that persons qualified to act as child advocacy workers only when they have successfully completed training and qualifications in accordance with the regulations. This will detail the content of training including the legislation relating to children’s hearings, the rights of children and young people at a hearing, the role and functions of child advocacy workers, role and functions of other persons involved in hearings and in understanding the possible outcomes of hearings.**

8. TRAINING OF PERSONS PROVIDING CHILDREN'S ADVOCACY SERVICES

Summary of the policy issue

Section 122(4)(c) - Scottish Ministers will be able set requirements, via regulations, as to the training levels of individuals working in children’s advocacy services.

Points raised and considered

- There was broad support for the requirement for persons providing children’s advocacy services to ensure completion of pre-service training *“Making advocacy real in the modernised hearing system”*, and satisfactory completion of that course being a sufficient stipulation made in regulations.
- To ensure quality and consistency, it is vital that greater detail as to expectations, is agreed upon and outlined at the earliest possible opportunity. This will allow detailed plans for implementation and ensure that sufficient provision is in place for future years.
- The National Practice Model includes a section on Qualifications, Skills and Training sets out the requirements on the providers to demonstrate its commitment to the ongoing learning and development needs of its staff and provide:
 - access to the national induction programme – *making advocacy real in the modernised hearings system*;
 - training on equality and diversity issues;
 - opportunities for continuous professional development of these staff
- One respondent said that while ‘We understand the pre-service training to be largely focussed on the legal, procedural and technical aspects of the children’s hearing system critical to helping children and young people navigate an unknown and complex system, other important requirements must be fully incorporated in the training and qualification requirements. These include many complex skills, such as communicating with children across the age range; working with children whose first language may not be English; working with disabled children who may communicate in a wide range of ways; understanding the developmental needs of individual children, and communicating in accordance with these needs; understanding trauma (including developmental trauma) and working in a trauma informed way; developing trusting relationships;

and relationship-based practice. We are concerned about the level of resource and capacity required to develop, ensure provision of, and implement, such comprehensive training in general, and particularly within the timescales available prior to the implementation of section 122.’

- ‘We recognise it is planned that training and qualifications are areas which will continue to develop as the National Advocacy Service itself develops, however if in the shorter term it is left to individual advocacy organisations to ensure advocacy workers ‘*have adequate training and development*’ (p2 – Advocacy at Children’s Hearings Expert Reference Group: Paper for 25 September 2019, Scottish Government), plans to assess that such plans are suitable must form part of the [procurement] process.’
- It is perhaps worth noting some of the synergies in the developments around Child Welfare Reporters in the new Children (Scotland) Bill.
- Another respondent pointed out that ‘section 122 defines “children’s advocacy services” as “services of support and representation provided for the purposes of assisting a child in relation to the child’s involvement in a children’s hearing.” This is wider than simply advocating their views’.
- A substantial amount of training is required on the Children’s Hearings System for advocacy workers including, but not limited to:
 - Options available at each type of hearing
 - Grounds for referral
 - Rights of attendance
 - Review and appeal rights
 - Different possible orders and measures
- A comprehensive understanding of the legislation and rules will be required to not ‘over promise’ a child. For example, the child does not have an unqualified right to speak to the Panel Members alone; any written, or oral, views the child gives must be shared with all relevant persons, regardless of the child’s wishes, unless a high test is met for non-disclosure / withholding information.

Policy guidance

- We would expect all persons providing advocacy services to be qualified to a sufficient level through the framework of qualifications, skills and training standards within the [Practice Standards for Advocacy in the Children’s Hearings System](#). These were published by the Scottish Government in 2018.
- The pre-service and continuing in-service training of persons providing children’s advocacy services must include: (a) the role and functions of advocacy workers; (b) the standards expected of advocacy workers; and (c) how advocacy worker may best support a child to express their views, perceptions or wishes.

- We will require successful completion by spring 2020, by advocacy providers, of pre-service national initial training which will be arranged by Scottish Ministers and be in place prior to go-live in spring 2020. We have called the pre-service training “*making advocacy real in the modernised hearings system*”.
- Service providers will be required to ensure that its staff responsible for providing advocacy services are supervised and professionally supported.
- Advocacy organisations will be required to ensure staff have knowledge of the needs of children / young people who come into contact with the Children’s Hearings System and also of the hearings itself.
- Advocacy organisations will be required to ensure that individual advocacy workers providing children’s advocacy services have been adequately trained and also have access to development opportunities. The National Practice Model also sets out the requirements on the providers to demonstrate its commitment to the ongoing learning and development needs of its staff.
- Advocacy organisations will be required to ensure that individual advocacy workers providing children’s advocacy services have adequate training and development programmes in place to ensure that practice standards are met.
- It is therefore expected organisations providing children’s advocacy services will understand: the role and functions of advocacy workers; the standards expected of advocacy workers; and how the advocacy worker may best support a child to express their views, perceptions or wishes.

Regulation need

- **The regulations will make clear that persons qualified to act as child advocacy workers only when they have successfully completed the ‘*making advocacy real in the modernised hearings system*’ training and qualifications in accordance with the regulations. This will detail the content of training including the legislation relating to children’s hearings, the rights of children and young people at a hearing, the role and functions of child advocacy workers, role and functions of other persons involved in hearings and in understanding the possible outcomes of hearings.**

9. REGULATION OF PERSONS PROVIDING CHILDREN'S ADVOCACY SERVICES

Summary of the policy issue

Advocacy workers generally will not be regulated by a professional body. In cases where a person behaves in a manner which calls into question their suitability to be an advocacy worker what assurance and protection measures should be in place?

Points raised and considered

- Organisational scrutiny, including supervision arrangements and line management structures within organisations providing advocacy are critical to this, and should be assessed within the application process.
- Children (and their families) should have clear, transparent and easy access to complaints procedures in the event that they are not satisfied with the service they receive, and organisations must establish how complaints will be independently handled if they cannot be satisfactorily resolved internally.
- Given the importance and highly trusted nature of the advocacy worker's role, further consideration should be given as to whether external regulation by a professional body is required, for example by the Scottish Social Services Council (SSSC).
- Robust recruitment, selection and ongoing practice support is required to ensure quality is assured. A national code of conduct, and / or national complaints process, would provide a measure of reassurance that local suitability concerns are dealt with consistently across the country.
- Scottish Legal Aid Board's [Code of Practice](#) for solicitors registered on the Children's Legal Assistance Scheme may be a starting point for ensuring consistency of practice and to set national expectations of advocates.
- The advocacy agencies providing such services already monitor the quality of the representation delivered by their employees. Any complaints related to individual or systematic agency failure to adhere to the national standards could be directed to the government.

Policy guidance

- The organisations will be required to ensure that advocacy workers are appropriately regulated through the Protection of Vulnerable Groups (Scotland) Act 2007 to work with children and to notify Scottish Ministers if any issues arise.
- The minimum expectations of standards and skills currently recommended for all children's advocacy workers, and indeed all of the children's workforce, is established by the Scottish Government in The Common Core of Skills, Knowledge, Understanding and Values for the Children's Workforce in Scotland: <https://www.gov.scot/publications/common-core-skills-knowledge-understanding-values-childrens-workforce-scotland/>
- The Scottish Government is giving robust scrutiny to organisations' supervision arrangements and line management structures as part of the assessment of applications for grant funding. As mentioned already, we also specified criteria entailing immediate, quarterly and annual monitoring reporting to Scottish Government. On these matters, we expect reporting of: any unexpected problems and emergencies; comments on any service user complaints or compliments received; any results of satisfaction surveys; any proposed changes

to working practices that may lead to greater efficiencies, improved performance and enhanced value for public money. It is our intention to present any reported issues and successes to the ERG to ensure sufficient challenge to address any issues and support proper implementation across Scotland.

- It is expected grant terms will stipulate transparent and easy access to complaints procedures are in place in the event that people are not satisfied with the service they receive, and organisations must establish how complaints will be independently handled if they cannot be satisfactorily resolved internally.
- A summary of incidents will be requested as part of the grant arrangements. It will be expected that organisation provide these summaries in monitoring reports – highlighting the concern, action taken, outcome – so that Ministers can be satisfied that the organisations have followed procedures and dealt with any issues. Where appropriate, Scottish Government will facilitate the sharing of information for learning that can improve delivery on a national level.
- Within the grant arrangements, organisations will be required to inform Scottish Ministers via the Advocacy Team, if any complaints are raised and the organisations is placed under investigation by the Scottish Charity Regulator (OSCR).
- Assurance of organisations having safeguarding policies and clear practice procedures in place was also scrutinised via the assessment of applications.
- Requirements such as statutory child protection training and members of the [Protecting Vulnerable Groups \(PVG\) scheme](#) are also basic legal requirements.
- Some advocacy organisations state that they already expect staff to adhere to SSSC's [Codes of Practice](#). As there is no current legal basis for advocacy workers to register with the SSSC, it would not be appropriate to set this in these regulations.
- We are open to considering suggestions, now and post implementation, about future workforce regulation for advocacy workers - taking further and continued advice from the ERG, in collaboration with SSSC and potentially the Scottish Legal Aid Board.
- Section 122(2) only requires the chairing member of the children's hearing to inform the child of the availability of children's advocacy services. It is hoped that increased publicity and awareness of the children's advocacy services will mean that the majority of children and young people will be aware of the service in advance of the hearing.

- It is assumed that The National Convener may need to consider whether to deal with particular issues in the updated Practice and Procedure Manual, not in regulations. It is our initial view that this can be left to the chairing member's discretion over an issue where procedure is not prescribed (guided as necessary by resources provided by the National Convener). We will continue discrete discussion with CHS and SCRA on these matters, including:
 - where the child / young person had requested an advocacy worker for the hearing, but one had not been provided
 - deferring the hearing to allow an advocacy worker to be allocated

Regulation need

- **No regulations are required. These assurances regarding child advocacy workers fitness to work with children including being members of the PVG scheme, organisations complaints polices and safeguarding policies will all feature within the detail of grant arrangements with each of the provider organisations.**

10. PAYMENT OF EXPENSES, FEES AND ALLOWANCES BY THE SCOTTISH MINISTERS TO PERSONS PROVIDING CHILDREN'S ADVOCACY SERVICES

Summary of the policy issue

Scottish Ministers will be able to make provision, via regulations, as to the payment of expenses, fees and allowances to persons providing children's advocacy services, under section 122(4)(d).

The Scottish Government may pay expenses, fees, and allowances, which meet certain criteria, to persons providing children's advocacy services. This may include, within reason, the costs for staff and overheads a person / organisation incurs, and limits set by Scottish Ministers e.g. within average hourly rates, and paid subject to the necessary evidence costs have been incurred and appropriately submitted to Scottish Government at the time of claim.

Points raised and considered

- In undertaking a highly skilled role, we would expect advocacy workers to be in receipt of at least the Living Wage. The Scottish Government's expectations regarding the payment of the Living Wage by contractors who deliver public contracts are set out in statutory guidance '[Addressing Fair Work Practices, including the Living Wage, in Procurement](#)' (2015), which states that whilst it is not possible to reserve any elements of evaluation scoring specifically to the payment of the Living Wage, organisations' approaches to fair work practices (which includes payment of the Living Wage) can be taken into account.
- Providing relationship-based advocacy requires significantly more time than simply that which it takes to attend a children's hearing. Preparation time, including ensuring children have the opportunity to meet their advocate before their hearing (on more than one occasion if necessary) is crucial to a child feeling

safe and supported to express their view. Similarly, children may require support from their advocate after a hearing, to understand the decisions taken and to express their views about these. When considering the payment of fees, expenses and allowances, such matters must be taken into account.

- General concerns about the adequacy of budget to resource the implementation of section 122 and ensuring the availability of advocacy for every child involved in the children's hearing system, should they choose to access this. As the service develops, any unmet need requires careful assessment, attention and investment.
- In cases where a child has a continuing relationship with an advocate for additional meetings and reviews, for funding purposes, clarity is required as to when they are operating under the National Advocacy Service and when they are providing wider advocacy.
- Scottish Government may wish to consider what evidence they will require that costs have been incurred relating to advocacy within the hearing system rather than gathering views in advance of looked after children reviews etc.

Policy guidance

- During the grant application process the Scottish Government considered whether organisations pay staff the Living Wage. This was a desirable rather than mandatory criteria.
- **Funding to primary provider(s)** - We are proposing the Scottish Government Children's Hearings Advocacy Team will provide sufficient grant funding to individual primary advocacy provider organisations to ensure there is capacity to meet the estimated increased demand. This funding will cover the overall cost of fees, expenses, allowances and overheads. The primary provider(s) will enter into a grant funded relationship with the Scottish Government. There will not, therefore be individual fee based claims for the service.
- **Alternate and third party providers** - organisations have been asked to be considered as the alternate provider to ensure there is an element of choice for children and young people. It may be they do not wish to engage with the primary provider, or that the primary provider does not have capacity to help a child, or that there is already an existing relationship with another provider. Under these circumstances there is no expectation or requirement for the primary provider to sub-contract. Payment will be made, subject to prior approval, to alternate providers via the Scottish Government following receipt of correctly completed claims for payment. We envisage this to be up to a maximum of 10 hours per case (although longer hours can be agreed following discussion with Scottish Government). These monies would be paid at the hourly rate of £30.
- The Scottish Government will develop guidance and standard templates for agreeing alternative payments and assurances / evidence required for ensuring the advocacy the child / young person receives is independent. In addition, the

advocacy provided and practiced must comply with the National Practice Model for Children's Hearings Advocacy. We will take advice from the ERG on this and publish the information on the Scottish Government website before spring 2020.

Regulation need

- **The regulations will provide that service providers with whom Scottish Ministers enter into arrangements with for the purposes of children advocacy services for children's hearings will be entitled to payment of fees, expenses and allowances in accordance with these arrangements.**
- As explained above, these arrangements will either be grant arrangements or spot-purchased services from alternate / third party providers.

THE PROCEDURES FOR CHILDREN'S HEARINGS

The procedures for children's hearings are set out mainly in two pieces of legislation:

The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013

Link to the legislation:

<http://www.legislation.gov.uk/sdsi/2013/9780111020326/contents>

These rules give directions on all aspects of the children's hearings process including the arranging and notification of a children's hearing or Pre-Hearing Panel, the procedures supporting, during and following the various proceedings and how the notification of decisions are to be made. Provision for Pre-Hearing Panels is contained in Part 8 of the 2011 Act.

The Regulations ('the rules') are sub-divided into 22 Parts

Act of Sederunt (Children's Hearings (Scotland) Act 2011) (Miscellaneous Amendments) 2013

Link to the legislation:

<http://www.legislation.gov.uk/ssi/2013/172/made>

As with the procedural rules, these set out court procedures on aspects of the children's hearings process including arrangements for who can attend; applications for evidence; powers to make child protection orders; applications for review by a local authority; hearing the application; making orders under the Children's Hearings (Scotland) Act 2011; cases involving sexual behaviour; and referrals to principal reporter.

These Regulations are made in respect of the Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971, section 91 of the Children (Scotland) Act 1995 and section 43(1)(f) of the Children's Hearings (Scotland) Act 2011 and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the said Act of 1971.

The Act of Sederunt, particularly the [Child Care & Maintenance Rules 1997](#) (Chapter 3 Part 2 covers Children's Hearings Court procedures).

The Scottish Government asked:

Do you think any parts of the current children's hearings procedural arrangements would need to change to allow for the roll-out of the provision of children's advocacy services nationally?

Points to consider

- Consensus noted that from consideration of matters, changes are not required to the children's hearings procedural rules or Court Orders to enable the operation of the national advocacy service.
- There are however, a number of detailed processes and procedural issues that will need more in-depth consideration and any necessary clarifications required in practice guidance, and potentially training for Charing panel members.

Policy guidance

- The Scottish Government prepared a policy paper for the Courts to clarify our assessment and seek agreement and support of our understanding within the court procedures. The policy information paper was tabled at its meeting on 27 January 2020, see here: <https://www.scottishciviljusticecouncil.gov.uk/committees/family-law-committee/2020/27-january-2020-meeting-papers>
- Scottish Government assessed that there did not need to be any changes made to the Court Rules to allow section 122 to come into force. This section is focussed on the Charing member of the children's hearing making the child aware of the availability of advocacy services. Advocacy service provision exists already within the Courts and is working, it needs to be scaled up but there is currently no evidence to suggest that changes to Rules are necessary.
- In respect of operation, it is a matter for the Scottish Civil Courts to decide if changes need to be made to carry out such work, if they consider it necessary to support the policy operation.
- Engagement with the Scottish Courts Family Law Committee is continuing. The Scottish Government has invited views from the committee on this and we will continue to work with and support the Courts as necessary during the phases of implementation and monitor the effectiveness, and any issues should they arise that may need addressed.
- We intend to continue to present feedback and hold focussed discussions with individuals and the ERG to progress these matters by appropriate timescales.
- In considering how the children's advocacy service will operate, we have also given consideration to making any amendments to procedures for children's hearings. These matter continue to be worked on together with SCRA and CHS.

Regulation need

- **No changes required to procedural rules/regulations.**
- **It is a matter for the Scottish Civil Courts to determine whether they think it necessary to amend Court Rules.** We consider that any changes would be taken as a sensible rather than essential approach.