The Children's Hearings (Scotland) Act 2011
Safeguarder Panel Regulations 2012

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

SSA

Title **Mr** ☒ **Ms** ☐ **Mrs** ☐ **Miss** ☐ **Dr** ☐ ***Please tick as appropriate***

Surname

Stuart

Forename

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2. Postal Address

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3. Permissions - I am responding as…

Individual ☐ / **Group/Organisation** ☒

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate ☒ **Yes** ☐ **No**

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available ☒

or

Yes, make my response available, but not my name and address ☐

or

Yes, make my response and name available, but not my address ☐

(c) The name and address of your organisation ***will be*** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your ***response*** to be made available?

Please tick as appropriate ☒ **Yes** ☐ **No**

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate ☒ **Yes** ☐ **No**

CONSULTATION QUESTIONS

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

Comments An additional sub para (c) should read 'consider self nominations from persons as potential members of the Safeguarders Panel.'

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

Comments Agreed

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?

Comments There should be an additional catch all sub para that would disqualify persons where there is an actual or perceived conflict of interest.

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?

Comments Agreed

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?

Comments It is assumed that removal would not be an arbitrary process but would be the ultimate sanction following the application of an agreed complaints and disciplinary process. 'Reasonable excuse' will require clarification and definition.

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?

Comments Regulation 8(4) seems an unnecessary duplication of 7(4). Regulation 9 seems unnecessarily specific. Reference need only be made to appropriate training deemed necessary to perform the function of a safeguarder. e.g. Eliciting the views of the child is and has always been an integral part of the role and function of safeguarders.

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?

Comments Agreed

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?

Comments Regulation 11 (4) and (5) concerns monitoring and specifically the monitoring of safeguarders carrying out their functions.

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It is accepted that there has existed a certain 'looseness' in the ways some safeguarders have gone about their task. The way to eliminate poor practice however is not by applying layers of external controls – particularly those that do not apply to other professional groups working within the children's hearing system.

Deficiencies in practice invariably stem from poor selection. This in turn highlights how opaque and inconsistent local authorities have been in recruiting safeguarders. These practices do not require to be re-visited here. A simple example however concerns failure to carry out disclosure checks. This indicates incompetence on the part of the local authority – not the safeguarder.

The way to ensure consistently high standards of practice is to apply high standards to the recruitment and selection practice and subsequently to training. While these draft regulations provide the opportunity for that Regulation 11(5) seems unnecessarily detailed.

SSA finds Regulation 11(4) and (5) to be very concerning for the following reasons:

- The whole tone of this Regulation appears to depict safeguarders as lay employees, subject to employer/employee relationships rather than self employed and experienced professionals.
- If sensibly selected and effectively trained, safeguarders will bring to the national panel an extensive and highly relevant range of skills e,g solicitors well versed in family law or former social workers with a wealth of child protection experience etc.
- Having someone in the hearing room observing/monitoring them is unnecessary, demeaning and fairly pointless.
- Social workers, legal representatives, reporters, head teachers etc do not have their performance observed/monitored in this way. Why then discriminate against safeguarders?
- Children's panel members are the only persons who are observed and monitored at hearings but as they are lay persons operating outside their previous experience this is wholly appropriate and is indeed welcomed by most panel members.
- It is difficult to see what an observer/monitor would observe/monitor at a hearing. The safeguarder simply takes part in the discussion in the same

way as any other professional attending the hearing and unless he/she says or does something outrageous it is hard to see what an observer would take from the hearing. Merely disagreeing with the safeguarder is subjective and worthless as an assessment tool. If the safeguarder says or does something that goes beyond expressing a view, makes an unreasonable or illogical recommendation or contravenes a rule, a regulation or a an aspect of a code of conduct/practice this must be dealt with as a complaint and would be reflected in the hearing's decision or in the minutes of the proceedings. Apart from these considerations the monitor would have no means of assessing how the safeguarder actually conducted the enquiries that informed the report.

- If observation of safeguarders at hearings and courts is adopted the questions that then arise are: Who is to carry out this task? What benchmarks are to be applied? Who is to set these benchmarks?
- In monitoring by observation the person observed has the right to expect the observer to have the same level of knowledge – and preferably at least a marginally higher level - as the person under scrutiny.
- In Regulation 11(5)(c) The word 'included' occurs. What does this mean? This implies that there will be other ways of observing safeguarders carrying out their functions. If so what are they?

SSA re-affirms its belief that safeguarders must be accountable for the service provided to children's hearings, to courts and to the children whose interests they are appointed to safeguard.

In considering this three factors underpin the appointment of a safeguarder and any proposals affecting safeguarders must be tested against these factors.

The first is that the only remit of the safeguarder is to safeguard the interests of the child in the proceedings. This is not going to change under the CHS (Scotland) Act 2011.

The second is that safeguarders must discharge this remit without fear or favour. Up until now this has been implied and possibly not widely understood. In our view however, and for the avoidance of all doubt, this now requires to be clearly stated in such a way that participants in the children's hearings system are fully aware of it.

The third is that the safeguarder must at all times be independent and be seen to be so.

In order to preserve the transparency independence safeguarders must be completely separate from other components of the children's hearing system. This has been acknowledged by Scottish Government in the way the national panel of safeguarders is to be managed and administered in order to comply with ECHR.

Court proofs and appeals are worth a separate comment. The basic - and practical - reason why monitoring cannot take place is that such hearings are held in chambers and
no one except the parties, their representatives and the sheriff clerk is permitted to be present during these proceedings. It is perhaps unlikely that a sheriff is going to permit an assessor to be present in order to observe and monitor an officer of his

court. It is also more than possible that solicitors representing parents, relevant persons and children will also object. There is little point in including a regulation that cannot be enforced.

SSA maintains its objections to draft rule 11 (4) as it stands and suggests that it be re-worded to reflect the minister's need to ensure that the service provided by safeguarders meets the expectations of the appointment.

SSA also reiterate its view that the first sentence of draft rule 11 be reworded to take account of our proposal regarding 11(4) above. Where 11(5)(b) is concerned SSA has no objection to attendance being recorded at hearings or courts for the reasons stated. It is doubtful however if sheriff clerks would agree to do this so presumably, SCRA permitting, the reporter would carry out this function.

SSA is clear and firm in its view however that draft rule 11(5) (a) and (c) must be removed.

There has been a suggestion that feedback from panel members would meet the minister's needs but SSA has concluded that anything other than feedback of factual information from panel members would conflict with the safeguarder's need to discharge the remit without fear of favour and would clearly compromise the safeguarder's independence. It is unfair to require a safeguarder to be critical of a hearing or a member's actions or statements when that safeguarder is then to be the subject of critical appraisal by the same panel. There may well be an ECHR issue here. Perhaps a good example of this is a recent incident where a hearing attempted to insist that the safeguarder left the room to allow members to speak to the child alone. The safeguarder, quite properly declined and it was only after the reporter's advice was sought that the hearing, with some ill grace, agreed to the safeguarder's remaining.

The only comments a panel can or should make concern the factual questions.

Did the safeguarder provide a report?

Did the safeguarder attend the hearing?

We suggest therefore that if feedback by panel members is to be considered it must be restricted to basic factual information. Whether this can or should be done after each hearing is a moot point but however it is done the collated results could be applied in some way to whatever re-appointment process is eventually adopted.

Although robust and professional recruitment along with appropriate core and in service training will contribute to improvements in performance this would not in itself be sufficient for the purpose.

It is the view of SSA that safeguarders require a comprehensive Code of Practice linked to a robust and independent complaints procedure overseen by an appropriate and independent external agency. We feel that this will eliminate the need for intrusive and offensive on site monitoring and satisfy the minister's need regarding the standard of service being provided by safeguarders.