

## **POLICY NOTE**

### **THE CHILDREN'S HEARINGS (SCOTLAND) ACT 2011 (RULES OF PROCEDURE IN CHILDREN'S HEARINGS) AMENDMENT RULES 2015**

#### **SSI 2015/21**

1. The above instrument (“the Amendment Rules”) is made in exercise of the powers conferred by section 177 of the Children’s Hearings (Scotland) Act 2011 (“the 2011 Act”). The instrument is subject to affirmative procedure. The primary purpose of the Amendment Rules is to make consequential amendments to the Children’s Hearings (Scotland) Act 2011 (Rules of Procedure in Children’s Hearings) Rules 2013 (“the 2013 Rules”) as a result of provisions contained in the Children and Young People (Scotland) Act 2014 (“the 2014 Act”).

#### **Legislative Background**

2. Section 54 of the 2011 Act makes provision about termination of a child protection order. Section 83 of the 2014 Act amended this provision in order that the timescales in section 54 are the same as those which had previously been in place under the Children (Scotland) Act 1995. Rule 3 of the Amendment Rules brings the timescales regarding child protection orders mentioned in Rule 29(1)(b) of the 2013 Rules into line with the timescales in section 54 as amended.

3. Section 84 of the 2014 Act amends section 79 of the 2011 Act and adds a new section (81A) into that Act. These changes, along with the consequential amendments made by paragraphs 12(2), (3) and (7) of Schedule 5 to the 2014 Act, will provide for a pre-hearing panel to determine whether an individual previously deemed for the purposes of the 2011 Act to be a “relevant person” in relation to a child should continue to be deemed a “relevant person” in relation to the child. Paragraph 12(8) of Schedule 5 to the 2014 Act amends the provision for appeal to the sheriff against a determination of the pre-hearing panel so that an appeal may be made against a determination of a pre-hearing panel that a person should no longer be deemed a relevant person. Rule 4 therefore makes procedural amendments to Part 12 of the 2013 Rules which makes provision about pre-hearing panels and the determination of matters which may be referred to these panels to reflect the amendments made by section 84 of the 2014 Act.

4. Section 85 of the 2014 Act amends section 90 of the 2011 Act to enable a hearing to respond to a situation where a child/relevant person at a grounds hearing does not accept all of the facts which underpin a ground for referral (“section 67 ground”) but they indicate that they accept the ground itself. The amendments oblige the chairing member of a grounds hearing to explain all the supporting facts set out in the statement of grounds as well as explaining each ground for referral. Where the child or relevant person accepts the section 67 ground but does not accept all of the supporting facts, the amendments allow the section 67 ground to be taken as having been accepted if the hearing is satisfied that sufficient of the supporting facts have been accepted to support the conclusion that the section 67 ground applies in relation to the child and it is appropriate to proceed on the basis of only those supporting facts which have been accepted. Where a section 67 ground is taken to be accepted under this procedure, the amendments require the hearing to amend the statement of grounds to delete facts which are not accepted. Rule 5 of the Amendment Rules makes

procedural changes to Rule 59 of the 2013 Rules to reflect the amendments made to section 90 of the 2011 Act.

5. Section 86 of the 2014 Act amends section 95 of the 2011 Act to enable a children's hearing (known as a "grounds hearing") arranged under section 69(2) or section 95(2) of the 2011 Act to make an interim compulsory supervision order (ICSO) where a child fails to attend that hearing and was not excused from attending and the hearing, as a result, has required the Principal Reporter to arrange another grounds hearing. In these circumstances, the power to make an ICSO is available if the hearing considers that the nature of the child's circumstances is such that for their protection, guidance, treatment or control it is necessary for an ICSO to be made as a matter of urgency. Rule 6 therefore amends Rule 64 of the 2013 Rules to make procedural requirements for where these circumstances arise.

6. Rule 7 addresses an issue which has been raised in relation to the non-disclosure of information contained in reports prepared by a children's hearing for a court under section 95(2) of the Adoption and Children (Scotland) Act 2007 (the 2007 Act).

7. Rule 77 of the 2013 Rules sets out the procedure at a children's hearing where a report is required under section 95(2). The Reporter must, within 5 days of the hearing, give the report to the court dealing with the permanence order application and other specified relevant parties. Part 19 of the 2013 Rules also make provision to allow any person to make a "non-disclosure request" that any document or part of a document or information contained in a document relating to a pre-hearing panel or a children's hearing should be withheld from a specified person on the grounds that disclosure of that document (or part of it) or any information contained in it would be "likely to cause significant harm to the child to whom the hearing relates."

8. If a hearing accepts such a request and determines that the information should be withheld, rule 15 provides that the Reporter must ensure that the relevant information must be removed from the report or other document or information to be given under the 2011 Act, or 2013 Rules, to the person from whom that information is to be withheld. We understand from SCRA that this is achieved by the Reporter redacting the relevant information from the report or other document.

9. Rule 51(1) of the Act of Sederunt (Sheriff Court Rules Amendment) (Adoption and Children (Scotland) Act 2007) 2009 (the court rules) provides that on receipt of a section 95(2) report from a children's hearing, the sheriff clerk shall lodge the report in the process of the application and send a copy of the report together with the relevant Notice to the parties to the application, any relevant person in relation to the child and such other persons as the sheriff considers appropriate.

10. The practical concern is that potentially sensitive information in relation to the child contained in the full 95(2) report which goes to the court might, by operation of rule 51 of the court rules, get into the hands of people whom the hearing has previously determined (by virtue of a non-disclosure request under the 2013 Rules) shouldn't see such information e.g. a particular relevant person in relation to the child shouldn't see the address of the proposed new carers for the child as it would put the child at significant risk of harm.

11. Rule 7 amends Rule 77 of the 2013 Rules to oblige the Reporter to, at the same time as sending full and redacted versions of the section 95(2) report to the court, also send to the

court a copy of any relevant non-disclosure determination made by the hearing to the court. We are aware that, subject of course to approval by the Scottish Civil Justice Council, amendments to rule 51 of the court rules are being pursued which will allow the sheriff to determine which persons should be sent a copy of the redacted report in place of a copy of the full report which should deal with the practical concern that has been raised.

### **Consultation**

12. The amendments made to the 2011 Act by the 2014 Act were the subject of extensive engagement and discussion with the Scottish Children's Reporter Administration (SCRA), Children's Hearings Scotland (CHS) and Children's Hearings Training Units. The draft Amendment Rules were also the subject of detailed discussion with SCRA and CHS.

**Scottish Government  
Children and Families Directorate  
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