

*(Paper 5.4B, Family Law Committee 27 October 2014)*

**ITEM 5.4: SHERIFF COURT ADOPTION RULES – SCOTTISH GOVERNMENT POLICY PAPER**

**SCOTTISH CIVIL JUSTICE COUNCIL: FAMILY LAW COMMITTEE  
POLICY PAPER BY THE SCOTTISH GOVERNMENT**

**Non-disclosure and reports under section 95(2) of the Adoption and Children (Scotland) Act 2007**

**Introduction**

1. The Scottish Government's aim is that we promote the need for early decisions to be taken about permanence, so that a young person is found a safe, stable, nurturing and permanent home with the least additional disruption in their lives. The Scottish Government have developed a Care and Permanence Plan to drive forward action in this area and as part of the plan we are looking at how we can improve timescales and decision making in relation to permanence.

2. As part of the development of the plan the Scottish Government consulted with a number of stakeholders. As part of that consultation, the Scottish Children's Reporters Administration ("SCRA") have raised an issue with us about 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.

3. This paper provides background to the issue and changes to court rules that the Scottish Government would like the Committee to consider. Scottish Courts Service have had the opportunity to comment on the paper and are content.

**Relevant current law**

4. Section 95(1) of the Adoption and Children (Scotland) Act 2007 provides that subsection (2) applies where there is an undetermined application for a permanence order (or variation of such an order) in respect of a child and a children's hearing proposes to make or vary a compulsory supervision order in respect of that child. Section 95(2) provides that in those circumstances the hearing must prepare a report for the court to which the application has been made and the report must contain such information as prescribed in regulations made by the Scottish Ministers.

5. By virtue of regulation 3(1) of S.S.I. 2014/113 a section 95(2) report must contain the terms of the proposed compulsory supervision order ("CSO") and the reason for making it, the terms of any current CSO, the terms of any proposed variation of any current CSO and the reasons for making it and a record of the proceedings of the children's hearing.

6. Rule 77 of the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 (S.S.I. 2013/194, "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 (containing all the

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information prescribed by S.S.I. 2013/194) to the court dealing with the permanence order application and other specified relevant parties.

7. Part 19 of the 2013 Rules (rules 84 to 87) also makes 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.” This can be used, for example, to ensure that sensitive information such as the proposed place of residence of the child under the CSO can, if the hearing accept the request, be withheld from certain people who may be likely to cause significant harm to that child. Information contained within a section 95(2) report may therefore also fall into this category and can be the subject of a non-disclosure request under Part 19 of the 2013 Rules.

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 (S.S.I. 2009/284, “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 a Form 23 Notice to the parties to the application, any relevant person in relation to the child and such other persons as the sheriff considers appropriate.

### **Practical concerns**

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 Part 19 of 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. At the moment, in the absence of any change to the court rules, SCRA operate a work around which involves redacting address information from the 95(2) report which goes to the court and providing address details to the sheriff on request. SCRA would prefer to give the full un-redacted version of the report to sheriff and for the sheriff clerk to either issue redacted or un-redacted versions to other parties or persons in a way which is in line with the hearing’s earlier non-disclosure determination. This would allow the sheriff to have address details which may have implication on their consideration (e.g. if new address is on the other side of the country from birth parents) as a matter of course whilst preventing that sensitive

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information getting into the hands of persons the hearing has previously determined shouldn't see such information.

### **Implications for court rules**

12. We are proposing to amend rule 77 of the Children's Hearings Procedural 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. The proposed amendment, which is of course subject to finalisation and may change slightly, is attached in the annex. It is proposed that this amendment be included in an instrument making other changes to the 2013 Rules in consequence of the children's hearings provisions in Part 16 of the Children and Young People (Scotland) Act 2014 which is currently proposed to be laid by end of October 2014 and to be in force on late December 2014/ early January 2015. The exact dates have still to be firmed up and confirmed, however, we will keep LPPO informed of this for the purposes of synchronising the in force date of the amendment to the court rules.

13. We would suggest that, in consequence of the proposed change to rule 77 of the 2013 Rules, rule 51 of the court rules should be changed to allow the sheriff clerk to send out redacted versions of the 95(2) report to specified persons so that the earlier non-disclosure determination of the hearing is not inadvertently frustrated. SCS have commented that in the interests of clarity it would be helpful to have a requirement in the rule that the sheriff direct which version of the report be issued and to which party. We would request that any change to rule 51 come into force at the same time as the amendment to rule 77.

**Care and Justice: Directorate for Children and Families  
SCOTTISH GOVERNMENT**

**23 September 2014**

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## ANNEX

### Proposed draft amendment to rule 77 of the 2013 Rules

*“Non-disclosure requests in relation to information contained in reports required under section 95(2) of the Adoption and Children (Scotland) Act 2007: duty of Reporter to give reports to certain persons*

1.—(1) In rule 77(6), at the beginning insert “Subject to paragraph (7),”.

(2) After paragraph (6) of rule 77 insert—

“(7) Where a non-disclosure request made under Part 19 of these Rules has been determined by the children’s hearing in relation to information contained in the report and in consequence the Reporter has, by virtue of rule 15, removed that information from the report to be given to a specified person, the Reporter must, within 5 days of the hearing, give to the court mentioned in sub-paragraph (6)(a)—

(a) the report;

(b) the redacted report; and

(c) the details of the determination of the children’s hearing of the non-disclosure request made under Part 19 of these Rules [and which the Reporter must keep a record of in accordance with rule 13].

(8) In paragraph (7)—

“non-disclosure request” has the meaning given by rule 84(1);

“redacted report” means the report which has had information removed from it by the Reporter, by virtue of rule 15, to give effect to a determination of the children’s hearing of a non-disclosure request made under Part 19 of these Rules; and

“specified person” is to be construed in accordance with rule 84(1).”.