**Consultation Questions: Act of Sederunt (Child Care and Maintenance Rules) (Amendment)(Children’s Hearings (Scotland) Act 2011) 2012**

SECOND ADDENDUM

to

RESPONSE

by

Morag Driscoll, Lindsey Garden, Brian Kearney and Katy Macfarlane

[1] *Rule 3.46(1)*

Section 107(1)(b) 0f the new Act introduces ‘due to a change of circumstances or information or information becoming available to the reporter’ as a pre-requisite of withdrawal. The rule requires to be modified to reflect this.

[2] *Rule 3.63(2)*

This refers to ‘the provisions of rule 3.4 (service on child)’, but when one looks at r 3.4, it contains many Forms in relation to other applications, but no Form for this application. Rule 3.4 should be amplified to provided such a Form

[3] *Section 109 of the Act*

There are no procedural rules governing the operation of this section. The procedure where the sheriff is attaching a residential requirement is covered by subsection (7), but in any event, both where such a requirement is being considered and when this is not being considered, it is submitted that the sheriff, in order to achieve fairness and take account of the needs of the child, should take such steps as will secure that the needs of the child the demands of due process under Art 6 of the European Convention are attended to. It is to be expected that most sheriffs will devise appropriate methods of doing this but as these provisions, while having affinity with some of the ‘warrant’ provisions in the 1995 Act, are substantially new, and in the interests of promoting good and uniform practice, we consider that appropriate rules should be enacted along the following lines:

We recommend that that the sheriff should be required: (i) to intimate that she or he is considering making an interim compulsory supervision order; (ii) to intimate which of the measures within s 83(2) are in contemplation: (iii) to identify which local authority is to be the implementation authority; and (iv) to advise as to the duration of the interim compulsory supervision order in terms of s 86(3) of the Act. The sheriff should then invite submissions from all who are present, including the child and/or the child’s representative if present. The sheriff should be required to give his decision forthwith and to issue written reasons within, say, 72 hours.

[4] *Section 117(2)(a) – (Sheriff, where evidence to determine that a ground, not specified in original grounds for referral, has been established.) Rule 3.64 (‘After hearing evidence [in a review of grounds determination] and allowing such further procedure as the sheriff thinks fit …’)*

It is possible that the sheriff may conclude that a ground for referral involving a person not party to the proceedings so far and inferring fault on that person should be held as established – for example further evidence in the grounds determination review may have turned up evidence that such other person was responsible for ill-treatment of the child. In such circumstances the principles of natural justice and compliance with Art. 6(1) of the European Convention will require that that person be given a right of reply. It is to be expected that most sheriffs will use the court’s power to allow ‘such further procedure’ to intimate to such person and give him or her such right. However, in order to secure consistency we recommend that a provision be inserted in this rule along these lines:

Add after ‘such further procedure’ the words: ‘including, without prejudice to the generality, intimation to any person newly blamed for any misconduct and affording such person a hearing on this matter’.

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