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

ADDENDUM to RESPONSE

by

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*Preamble*

Section 100 of the 2011 Act empowers the sheriff, where a child is not subject to an interim compulsory supervision order, to make such an order when necessary. The proposed C & M Rules provide no procedures for the sheriff in this regard and appropriate rules should be enacted. Since in most cases where the circumstances have indicated that an interim compulsory supervision order is necessary this will have been noted by the children's hearing and an interim compulsory supervision order imposed by the children's hearing. Consequently it may be that the exercise by the sheriff of this power will not be frequent and will generally result from a development after the child’s case was considered by the children's hearing which directed the reporter to make the application to the sheriff. Accordingly the procedure must allow for the sheriff to make an interim compulsory supervision order without hearing parties (until later) where the degree of urgency so requires – when this is not the case the sheriff should hear parties before deciding the matter.. The rules should allow for both situations. We accordingly recommend the enactment of the following in Part VII:

In 3.45 insert:

(3) Where the children's hearing has not made an interim compulsory supervision order in relation to the child and the reporter believes that the nature of the child’s circumstances is such that for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that an interim compulsory supervision order be made the reporter shall in Form 60 [or Form 60A] request the sheriff either, (a) where the degree of urgency is such that an interim compulsory supervision order is necessary without any delay, to make an interim compulsory supervision order forthwith and, that having been done, to fix a hearing thereon *or*, (b) where the degree of urgency is not such that an interim compulsory supervision order is made without any delay, to fix a hearing on the matter and, (c) in any event, give the reasons for the reporter’s belief and attach any report(s) thought to justify this belief.

At the end of rule 3.45 add:

(8) On receipt of any application under section 93(2)(a) or section 94(2)(a) of the 2011 Act the sheriff, where the reporter has requested that the sheriff make an interim compulsory supervision order forthwith, must (a) consider whether the sheriff is satisfied that an interim compulsory supervision order should be granted forthwith and, where the sheriff does so consider, forthwith make an interim compulsory supervision order and fix a hearing thereon on a date before the expiry of three days after the making of such order; (b) where the sheriff does not consider it necessary that an interim compulsory supervision order be made forthwith, or where the reporter has not requested that an interim compulsory supervision order be made forthwith, fix a hearing on a date before the expiry of four days after the receipt of the application; (c) where a safeguarder in relation to the child has not been appointed by the children's hearing, consider whether to appoint a safeguarder; and (d) in any event consider whether to appoint a curator *ad litem* in relation to the child.

Adapt Form 60 accordingly, or create a new Form 60A.

*MD, LG, BK, KMcF*.

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