

Practice Direction 25

Adoption and Permanence Orders

Date Issued:	26 January 2015
Date Implemented:	26 January 2015
Date Last Revised:	4 July 2023

SUMMARY

Adoption

- Prospective adopters apply for an adoption order. An adoption order removes parental rights and responsibilities from parents and vests these rights and responsibilities in the adopter(s).
- A permanence order may contain a provision granting authority for the child to be adopted. This means that during any subsequent application for an adoption order the agreement of the parent does not need to be considered again.

Permanence Order

- Local authorities apply for a permanence order. A permanence order gives the local authority certain rights and responsibilities. It does not automatically remove *all* parental rights from parents. It will remove the parents' right to regulate the child's residence, and it may remove other parental rights and responsibilities.

Advice Hearings

- The local authority must refer a child to the reporter when it intends to apply for a permanence order (or variation, amendment etc.), or place the child for adoption, or is aware that an adoption application has been made or is about to be made. The reporter is required to arrange a hearing to review the compulsory supervision order (CSO) and provide a report of advice regarding the placing or application.

Hearing Decisions while Permanence Order Application in Progress

- Once an application for a permanence order has been lodged, a hearing cannot make or vary a CSO (other than by interim variation), unless the court hearing the permanence order application authorises it. If the hearing wants to make or vary a CSO, the hearing must prepare a section 95 report. The court must consider that report and decide whether or not to refer the child's case to the reporter
- The court's decision must be notified to the reporter using Form 25 and the reporter must arrange a hearing (whatever the court's decision).
- If the court has decided to refer the child's case to the reporter, the hearing can proceed to make or vary the CSO in the manner set out in the section 95 report. If the court has decided not to refer the child's case to the reporter, the hearing cannot make or vary the CSO but can continue or terminate it.
- There is no restriction on other decisions by a hearing.
- There is no restriction on a hearing's decision making during adoption order proceedings.

Interaction between Adoption/Permanence Order Decisions and CSO

- The court hearing a permanence order application may make such interim orders as it thinks fit. An interim order takes precedence over the CSO.
- Where a court makes an interim order, permanence order or adoption order it may terminate the CSO. If terminated, the court must intimate this to the reporter.
- An appeal against an adoption order or permanence order suspends the termination of the CSO and any impact on relevant person status.
- Reporters should avoid arranging a hearing during the period in which an appeal could be made, unless the CSO is due to lapse.

Contents

1. Introduction.....	4
2. Adoption Orders	4
3. Permanence Orders	5
4. Permanence Order With Authority to Adopt	5
5. Duties on Adoption Agencies	6
6. Review and Advice Hearing	7
7. Hearing Decisions while Permanence Order Application in Progress	9
8. Interaction between Permanence/Adoption Orders and CSO/Hearing...	13
Appendix 1.....	15
Flow Chart 1	18
Explanatory notes for Flow Chart 1	19
Flow Chart 2	21

1. Introduction

1.1 This Practice Direction addresses the interaction between children's hearings and proceedings in relation to adoption orders and permanence orders. Statutory references are to the Adoption and Children (Scotland) Act 2007, unless otherwise specified.

1.2 Reporters will most often come across permanence orders and adoption orders in the context of permanence planning for a looked after child. The aim of permanence planning is to secure long-term stability for a child in an environment where they are safe and their developmental needs met.

This could mean permanent rehabilitation home, but may also mean finding a suitable long term family or other placement for a child outwith the care of his/her parents.

1.3 There are a number of legal routes to secure long-term security for a child (for example, a relative pursuing a section 11 order). However, this direction will focus on the following orders:

- adoption orders
- permanence orders with authority to adopt
- permanence orders without authority to adopt.

2. Adoption Orders

2.1 Prospective adopters must apply directly to the appropriate court¹ for an adoption order under section 29 or 30 of the 2007 Act. Adoption is only complete when the court grants an adoption order.

2.2 Often an adoption agency matches and places the child with adopters, and gives the adopters help and support in making an application for an adoption order. This is often referred to as a "direct adoption" (contrast with local authority applying for permanence order with authority to adopt as a route to adoption, see section 4 below).

2.3 The effect of an adoption order is that the person adopted is treated in law as if the person were not the child of any person other than the adopter(s) (section 40). An adoption order extinguishes the parental rights and responsibilities of anyone other than the adoptive parents. (section 35).

2.4 A person who has had parental rights and responsibilities extinguished by an adoption order can apply for a contact order with leave of the court section 11(3)(aa) Children (Scotland) Act 1995) ("1995 Act").

¹ Either the Court of Session or the sheriff court of the sheriffdom within which the child is, section 118 2007 Act

- 2.5 Where a permanence order with authority to adopt is in force, the court can grant an adoption order without the need to examine parental consent (section 31(1) and (7)).

3. Permanence Orders

- 3.1 Only a local authority can apply for a permanence order².
- 3.2 A permanence order must contain certain mandatory provisions. Section 87 provides that a permanence order must remove the right to regulate residence in terms of section 2(1)(a) of the 1995 Act from the child's parent(s). Section 80 provides that a permanence order must give the local authority:-
- the right to regulate the child's residence in terms of section 2(1)(a) of the 1995 Act. This ends when the child reaches 16.
 - the responsibility to provide guidance appropriate to the child's stage of development in terms of section 1(1)(b)(ii) of the 1995 Act. This ends when the child reaches 18.
- 3.3 A permanence order may (but need not necessarily) also contain ancillary provisions which:
- give other parental rights and responsibilities to the local authority or other person(s), and
 - remove those parental rights and responsibilities from the child(s) parents.
section 82(1)(a)-(d).
- 3.4 A permanence order may specify arrangements for contact between the child and any other person the court considers appropriate and in the best interests of the child, section 82(1)(e). So, even if the parental right and responsibility to maintain personal relations and direct contact with the child is removed from the parents, the court may still specify contact arrangements between the child and the parent.
- 3.5 If a new permanence order is granted this revokes any existing permanence order or section 11 Order. Section 88.

4. Permanence Order With Authority to Adopt

- 4.1 A permanence order may contain authority for the child to be adopted if the conditions in section 83 are met. (section 80(2)(c)). The court will also take account of the considerations in section 84. The local authority may either apply for authority to adopt in the application for the permanence order (section 83(1)(a)) or may apply to amend the permanence order to include such authority (section 93).

² The appropriate court is as set out above in section 118

- 4.2 A local authority will apply for a permanence order for authority to adopt where it considers adoption is in the best interests of the child, but prospective adopters have not yet been identified, or an adoption application would be strongly contested. If a permanence order with authority to adopt is granted, the court does not need to consider the consent of the parents during any subsequent application for an adoption order. Section 31(1) and (7)
- 4.3 Where a permanence order with authority to adopt is granted, the expectation would be that the local authority would also ask the court to remove all parental rights and responsibilities from the parents³.

5. Duties on Adoption Agencies

- 5.1 When an adoption agency⁴ has decided to pursue adoption for a child, The Adoption Agencies (Scotland) Regulations 2009 (“the 2009 Regulations”) apply. These set out strict procedures and time limits with which an adoption agency must comply⁵. Some procedures interrelate to children’s hearings. However, the 2009 Regulations also set out much broader duties on adoption agencies which have no direct relevance to the hearing or the reporter. Please see **Flow Chart 1** and **explanatory notes**, for an overview.
- 5.2 The 2009 Regulations apply where an adoption agency is pursuing adoption either by:
- placing a child for adoption with a view to supporting adopters to apply for an adoption order (called a “direct adoption”) or
 - applying for a permanence order with authority to adopt (as a route to an adoption order).
- 5.3 The 2009 Regulations do not apply:
- if the local authority decides to apply for a permanence order without authority to adopt, and
 - where no adoption agency is involved, for example where a step-parent or other relative intends to adopt a child. This is known as a “non-agency adoption”.
- 5.4 If a local authority is not involved in deciding to pursue adoption, it does have certain duties to investigate and report to the court on the welfare of

³ See Guidance on the Looked After Children (Scotland) Regulations 2009 and the Adoption and Children (Scotland) Act 2007, March 2011, Chapter 21, page 184 onwards

⁴ “adoption agency” means (i) a local authority, or (ii) a registered adoption service. s.119. Most of the time, reporters will be dealing with the local authority as an “adoption agency”. A local authority has a duty under s.1 of the 2007 Act to provide an adoption service and s.2 enables the local authority to use a registered adoption service to provide or help provide their services under s.1.

the child when notified that a non-agency adoption is in prospect section 18, 19. However, the duties in the 2009 Regulations do not apply.

6. Review and Advice Hearing

- 6.1 Where a child is subject to a compulsory supervision order (CSO), section 131(2)(c)-(e) of the 2011 Act states that the implementation authority must require a review of a CSO by giving notice to the reporter where the implementation authority:
- intends to apply for a permanence order (or a variation, amendment or revocation of a permanence order). This applies whether the permanence order is to be with or without authority to adopt.
 - intends to place the child for adoption. This includes a placement for adoption in England.
 - is aware that adopters are about to apply for or have applied for an adoption order under section 29 or 30 of the 2007 Act. In this case the local authority is to refer the child to the reporter “as soon as practicable after becoming aware of the application”, section 131 (5).
- 6.2 The implementation authority may be obliged to require a review under section 131(2)(e) even when the implementation authority is not acting as an adoption agency, i.e. where there is a non-agency adoption⁶.
- 6.3 The implementation authority may be obliged to require a review of a CSO on more than one occasion. For example, there will be a review when the implementation authority places a child for adoption (section 131(2)(c) 2011 Act). When the implementation authority is aware that the adopters are about to apply or have applied for an adoption order, this triggers a further review, (section 131(2)(e) 2011 Act).
- 6.4 When the implementation authority intends to pursue adoption (whether by means of permanence order with authority to adopt or placing a child for adoption), it may use the form set out in Schedule 8 of the 2009 Regulations or a form of like effect (Rule 22(3)) to refer to the reporter. The implementation authority should be encouraged to use the form set out in Schedule 8 as this ensures that all of the necessary points are covered.
- 6.5 When the implementation authority intends to apply for a permanence order without authority to adopt or is aware that an application for an

⁶ When there is a non-agency adoption, section 18 requires prospective adopters to notify the local authority where the adopters live that they intend to apply for an adoption order. The court cannot make an adoption order unless such notice has been given at least 3 months before the date of the adoption order. Section 19 puts a duty on that local authority to investigate and report to the court on the welfare of the child when notified that a non-agency adoption is in prospect. The local authority which receives notice must also within 7 days give a copy of the notice to the local authority which is looking after the child (this would be the implementation authority on the child's CSO).

adoption order has been or is about to be made, there is no specific form for making the referral nor are there specific timescales.

- 6.6 If parents do not consent to adoption, the implementation authority must refer the child to the reporter within 7 days⁷ of the authority determining to proceed as though there is no parental consent (6, 13 and 23 of the 2009 Regulations). If the parents consent, there is no specific timescale for the referral.
- 6.7 A registered adoption service (i.e. an adoption agency which is not a local authority) must refer a child to the reporter when it intends to place the child for adoption (section 106).
- 6.8 The reporter must arrange a hearing to review the CSO when a review is required by virtue of section 131 of the 2011 Act or section 106 of the 2007 Act, (section 137).
- 6.9 There is no specific timescale within which the reporter must arrange the hearing. In light of the benefits of progressing permanence cases without delay, reporters are to arrange all hearings review hearings where advice for permanence is required within 21 days of receiving the notice from the implementation authority or registered adoption service, unless exceptional circumstances apply.
- 6.10 The hearing carries out a review of the CSO and prepares a report for the court and for the implementation authority providing advice in respect of the proposed application. Rule 65 of the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 ("the Hearing Rules") sets out the procedure which such hearings are to follow. There is no statutory form of advice report, but reporters are to encourage panel members to use the form of advice which has been agreed between agencies.
- 6.11 The hearing does not need to provide advice under section 141 when the application for the permanence or adoption order has been made prior to the CSO coming in to force.
- 6.12 The review hearing can competently be deferred under section 138(2) of the 2011 Act and if so, the hearing may issue an interim variation of the CSO and/or continue until the next hearing a CSO that will otherwise expire (section 139, 2011 Act). If the review hearing is deferred, the advice part of the hearing must also be deferred, as it is only competent for the hearing to provide the report of advice on determination of the review (section 141(2), 2011 Act). There is no power to defer the advice part of the hearing if the review is determined.

⁷ If the reporter becomes aware of a failure by the local authority to comply with a specific timescale, the reporter is to alert the local authority to this, but it is a matter for the local authority whether to take any action in relation to this. The reporter is to arrange a review hearing requested by the local authority despite any irregularity in the process.

- 6.13 The reporter must within 5 days of the hearing give the report of advice to the child, each relevant person, any appointed safeguarder, the court, the implementation authority, and, if applicable, the couple or person making the application under section 29 or 30. Rule 65(4).

7. Hearing Decisions while Permanence Order Application in Progress

- 7.1 Where an application for a permanence order or variation of a permanence order has been lodged and not yet determined, a hearing cannot make or vary a CSO other than by interim variation of the CSO, unless the court considering the permanence order application refers the case to the reporter (section 96). A hearing which is prevented from making or varying a CSO in the terms it considers appropriate should defer its decision on the making or review of the CSO⁸. Please see Flow Chart 2
- 7.2 The rules of court⁹ set out that the clerk must inform the reporter when any application in relation to a permanence order has been made in respect of a child who has been referred to a hearing or is subject to a CSO. Rule 50, Rule 67.42.
- 7.3 It may be that the prohibition in section 96 also applies to a sheriff varying a CSO as a disposal in an appeal against a children's hearing decision¹⁰. However, that has not been judicially determined.
- 7.4 Section 96 does not prevent a hearing deciding at any time to:
- continue a CSO without variation
 - terminate a CSO
 - issue an ICSO
 - issue an interim variation of a CSO.

In addition, section 96 does not apply:

- prior to an application for a permanence order being lodged or after the application has been determined, withdrawn or abandoned

⁸ Although it is technically competent for a review hearing to continue the CSO unvaried, this would not be an appropriate or justifiable decision, as the hearing at the same time is clearly stating that it believes a CSO in different terms is in the best interests of the child.

⁹ Act of Sederunt (Sheriff Court Rules Amendment)(Adoption and Children (Scotland) Act 2007) 2009 ("AS Adoption") and Act of Sederunt (Rules of the Court of Session Amendment No.7)(Adoption and Children (Scotland) Act 2007) 2009 ("RCS Adoption"). References in the following paragraphs are references to the AS Adoption and RCS Adoption respectively.

¹⁰ Section 96(2) simply states that "A compulsory supervision order may not be made or variedin respect of the child, until the application is determined". However, section 95 does not appear to apply to a sheriff, therefore there does not seem to be any mechanism for the sheriff in the appeal to involve the court dealing with a permanence order application. As with a hearing, section 96(2) certainly does not prevent the sheriff making an interim variation of the CSO, and/or the sheriff can require the reporter to arrange a review hearing. Any such review hearing would also be subject to the prohibition in section 96(2).

- where an application for an adoption order has been made.
- 7.5. In order to make or vary a CSO when section 96 applies, the hearing must prepare a report¹¹ (referred to in this document as “the section 95 report”) for the court which is considering the application for a permanence order (section 95). Rule 77 of the Hearing Rules sets out the procedure to be followed when such a report is required. The section 95 report is required to contain the following:
- the terms of the proposed 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 that variation; and
 - the record of the proceedings of the children’s hearing prepared in accordance with rule 13 of the Hearing Rules.
- 7.6 Where the reporter has withheld information from a person because of a non-disclosure request that the children’s hearing has then accepted, rule 77(6) enables the withheld information to be redacted from the ‘section 95 report’. Such a situation will most often arise when the local authority has recommended that the child’s CSO is varied to move the child to a new placement and the withheld information is the detail of that placement. In these circumstances the reporter is to send to the court:
- The full section 95 report;
 - The section 95 report with the ‘non-disclosure information’ redacted; and
 - The details of the hearing’s determination of the non-disclosure request from the record of proceedings¹².
- 7.7 The reporter must give the section 95 report to the child, the relevant persons, any safeguarder and the implementation authority within five days of the hearing. If a redacted version has been required under rule 77 the reporter must give the redacted version to the person to whom the non-disclosure request applied.
- 7.8 The rules of court set out that:
- the clerk must send a copy of any section 95 report with a form of notice to the parties to the application, to any relevant person and such other person as the sheriff/court considers appropriate. Rule 51(1), Rule 67.43(1)

¹¹ The form of report is set out in The Adoption and Children (Scotland) Act 2007 (Compulsory Supervision Order Reports in Applications for Permanence Orders) Regulations 2014. This includes a copy of the record of proceedings for the hearing.

¹²As the statutory form includes a copy of the record of proceedings, this is not an additional requirement.

- where the hearing has determined a non-disclosure request, the court must consider which of the above persons should receive only a redacted copy of the report in place of the full report, and the clerk must send only the redacted report to such persons.
- Any person who wishes to oppose the proposals of the children's hearing must lodge a response within 7 days of the date notice was given. Rule 51(2), Rule 67.43(2).
- Thereafter the court considers the section 95 report and any response lodged and decides whether to refer the child's case to the reporter as mentioned in section 96(3).¹³ Rule 51(3), Rule 67.43(2).
- The court may order a hearing to be held to assist this decision. Rule 51(6), Rule 67.43(6). If the court decides to hold a hearing, the date fixed for this must be no more than 7 days after the date of the court's order to hold the hearing. Rule 51(7), Rule 67.43(7). The court may allow a continuation of a hearing on two occasions only, each for a period not exceeding 14 days. Rule 51(9), Rule 67.43(9).

- 7.9 Sometimes the court will order intimation of the section 95 report hearing to the reporter. The reporter is not to attend the hearing, and may not have a right of audience to do so¹⁴. The legislation does not envisage the reporter attending this court hearing as there is no requirement that the clerk notify the reporter of the hearing. Therefore, if asked to attend, the reporter is to notify the clerk that the reporter will not do so. If the interlocutor requires the reporter to attend, the reporter is to notify the clerk that the reporter will be unable to take an active part in the proceedings due to having no right of audience.
- 7.10 The reporter is to be alert to the consequences of any delay in the court's consideration of the section 95 report and in particular must arrange a further hearing if the CSO would otherwise lapse before the court has decided whether to refer the case to the reporter. Any such hearing can continue (including by way of interim continuation by virtue of section 139 of 2011 Act) or terminate the CSO but cannot vary it.
- 7.11 The court may decide (1) to refer the child's case to the reporter under section 96(3) or (2) not to do so. In either case, the clerk must send a notice of the sheriff's decision in Form 25 (sheriff court) or Form 67.43-C (Court of Session) to the reporter. Rule 51(10), Rule 67.43(10). If the court decides to refer the child's case the court must pronounce an order to this effect. Rule 51(4), Rule 67.43(4).

¹³ There have been two cases reported in the Scottish Court Service website in which sheriffs (both in Edinburgh) have considered section 95 reports and have considered whether to refer the child's case to the reporter under s96(3) or not to do so. In both cases, the sheriff has also considered whether to make an interim order (see Interim Orders in Permanence Applications below). The cases are City of Edinburgh Council Petitioner (No. 1)), and City of Edinburgh Council Petitioner. Both sheriffs agreed that there was no express guidance on how the court should exercise its discretion as to whether to refer the child's case to the reporter and that whilst a Permanence Order is being considered, it is the court which is the principal forum for making decisions in relation to a child.

¹⁴ A reporter without a legal practising certificate has no right of audience for these proceedings.

- 7.12 If the court decides not to refer the child's case to the reporter, the court may make such other order it considers appropriate for the expeditious progress of the case. 51(5), 67.43(5).
- 7.13 At any point in a permanence order application process, the court can make an interim order under section 97. A trigger point for such an order may be when the court decides not to refer the case to the reporter, but the court is not restricted to making an interim order at that time. See section 8 below.
- 7.14 When the Form 25 or Form 67.43-C is received the reporter must arrange a hearing¹⁵. There is no statutory timescale for arranging the hearing, but this is to be arranged within 21 days wherever possible. The reporter is to include the Form 25 or Form 67.43-C in the hearing papers.
- 7.15 If the court has referred the child's case to the reporter under section 96(3) the hearing can proceed to make or vary the CSO in the terms set out in the section 95 report. The hearing is not bound to make or vary the CSO in those terms. A hearing cannot make or vary a CSO in a manner not contemplated by the terms of the section 95 report, but it is not clear if the hearing may make or vary a CSO partially in line with the section 95 report.¹⁶.
- 7.16 If the court decides not to refer the child's case to the Principal Reporter, the hearing cannot make or vary the CSO. If the deferred hearing arranged by the reporter still wishes to make or vary a CSO, it is competent for the hearing to complete a further section 95 report. However, the reporter is to express a view that this is unlikely to be justifiable¹⁷ unless:
- there has been a change of circumstances, and/or
 - there has been a significant flaw in the earlier section 95 report which is likely to have had an impact on the sheriff's decision, and/or
 - the hearing wishes to make or vary a CSO in different terms from what was set out in the first section 95 report.

¹⁵ Either under section 119 (a child not already subject to a CSO) or section 138 (a child subject to a CSO)

¹⁶ It is not clear whether the hearing can choose to make some variations specified in the section 95 report and not make others. Therefore, the reporter is not to express a view about the competency of this. On the one hand it could be argued that, in referring the child under section 96, the sheriff is approving the variations as a package – therefore the hearing can continue the CSO unvaried or make the package of variations. However, it could also be argued that, so long as the hearing only makes a variation that was in the section 95 report and so “approved” by the sheriff, the hearing can make some but not all of those variations. As the legislation and precise policy intention are not clear, and as there are good arguments for both approaches, we don't think we can adopt a strict approach.

¹⁷ The legislation clearly envisages that the court is the principal forum for making decisions in relation to a child once a permanence order application is being considered. To resubmit a section 95 report without any justification could be seen by the court as the hearing challenging its authority.

- 7.17 If a hearing makes a decision to make or vary a CSO when section 96 prohibits this, the decision is incompetent but will remain in place.

If this happens, the reporter is to write to the child, relevant persons (or agents) and the implementation authority to let them know of this procedural irregularity. The child or relevant persons may wish to appeal the decision, if within the time limit for doing so. The reporter should not oppose an appeal in these circumstances, but should make it clear that opposition is not sustained solely because of the procedural irregularity.

If the issue comes to light after the appeal period, the child or relevant persons may wish to make an application to the court for an interim order (see section 8 below).

8. Interaction between Permanence/Adoption Orders and CSO/Hearing

- 8.1 Where an application is made for a permanence order, or variation of such an order, the court may make such interim order as it thinks fit, section 97(1) and (2). The court can make an interim order on its own motion, having heard from all interested parties, or on the motion of any party with an interest in the proceedings. Rule 52, 67.44.
- 8.2 If an interim order under section 97 is made in relation to a child subject to a CSO and the provisions of the order conflict or are otherwise inconsistent with the CSO, the provisions of the interim order take precedence, section 97(5) ¹⁸.
- 8.3 The court must terminate the CSO if it (1) makes an interim order¹⁹ in permanence order proceedings, or a permanence order²⁰ or adoption order²¹ and (2) is satisfied that compulsory measures of supervision are no longer necessary.
- 8.4 If a permanence order or adoption order is granted, and the CSO terminated, the rules of court require the clerk to intimate termination of the CSO to the reporter²². Although the court may also terminate a CSO when making an interim order²³ there is no duty on the clerk to intimate termination of a CSO on the making of an interim order. SCRA staff are to record a CSO as terminated only after the court clerk provides written notice or exceptionally after an interlocutor is received through another route. Appendix 1 and CSAS Guidance provide more detail on the process to be followed when a court terminates a CSO.

¹⁸ If a subsequent hearing wants to change the terms of the CSO to be consistent with the interim order, or to remove any measure that is inconsistent, a section 95 report will be necessary.

¹⁹ Section 97(3) and (4)

²⁰ Section 89

²¹ Section 36

²² For permanence orders AS 39(1)(b), RCS 67.33(1)(b), and for adoption orders AS 25(3)(a), RCS 67.21(3)(a)

²³ Section 97(3) and (4)

- 8.5 An adoption order has the effect of removing relevant person status from parents. A permanence order may have that effect depending on the terms of the order but generally does not unless all parental rights and responsibilities are removed. An adoption order may affect who is, in law, a sibling of the child. See Appendix 1 for details about the impact of different orders on parental rights and responsibilities, relevant person status and sibling status. See also PD 3 Relevant Persons, section 2.
- 8.6 If an appeal is marked against an adoption order, permanence order, or interim permanence order this suspends the effect of such orders, including the impact on relevant person status and termination of the CSO (if applicable)²⁴.
- 8.7 If a CSO is due to lapse during either (1) the period after an appeal has been marked but not determined or (2) the period when an appeal may be marked against an adoption order or permanence order, then it will be necessary to hold a review hearing in order to prevent the CSO lapsing. If a hearing is held during the appeal period, or following an appeal being marked, the persons who, prior to the granting of the adoption or permanence order, were relevant persons would continue to be treated as relevant persons for this hearing. Unless the CSO is about to lapse, reporters should avoid scheduling a review hearing during the appeal period.
- 8.8 The time limits for appealing against an adoption or permanence order is 28 days. If a reporter is aware of a decision in relation to an adoption or permanence order, and may require to arrange a hearing within 28 days of the court's decision, the reporter is to (1) check with the clerk of court as to the exact date on which the appeal period will expire if not already clear and (2) ask the clerk to notify the reporter verbally if an appeal is lodged.
- 8.9 Where the local authority has by virtue of a permanence order parental responsibilities or rights in relation to a child, it must not act in any way which would be incompatible with the CSO, section 90(1) and (2)(b).

²⁴ In the 3rd edition of their book "Adoption in Scotland", McNeill P and Jack M, the authors submitted that, contrary to the usual rule, the marking of an appeal against an adoption order did not suspend the order appealed against. This was the view reflected in previous responses to case practice enquiries. The authors in their 4th edition, published in 2010, think that the better view is that the normal rule, that the effect of marking of the appeal is to suspend the operation of the order appealed against, should apply. See McNeill and Jack, para 13-04 and Macphail's Sheriff Court Practice, 3rd edn, para 29-136.

Appendix 1

- **Termination of CSO in Adoption or Permanence Order Proceedings**
- **Effect of Court Orders on Parental Rights and Responsibilities etc.**

Introduction

A court may terminate a CSO when making an Adoption Order, Permanence Order or interim order in permanence order proceedings. An Adoption Order or Permanence Order will impact on who has parental rights and responsibilities in relation to the child, and therefore who is a relevant person in relation to the child²⁵. An Adoption Order may impact on who, in law, is a sibling of the child.

It is essential that any information recorded by SCRA is up-to-date and accurate. If SCRA records contain inaccurate information about a child there is an increased risk of a data breach in relation to that child. Where a CSO is terminated by a court there is particular risk if the child is ever re-referred and any Connection on CSAS that became inaccurate as a result of the court order was not deleted at the time. Where a court has made a decision about permanence for a child there is often increased risk of harm and distress from a data breach. Further, where a non-disclosure provision applied before a CSO was terminated by a court, the non-disclosure warning banner will no longer display on the child's contact record in CSAS. (The court order may include non-disclosure provisions and these will require to be appropriately recorded in a Non Disclosure Note.²⁶)

There is therefore a need for a robust and consistent approach to managing information on CSAS after a CSO is terminated by a court ²⁷. This appendix sets out the principles and outline approach to be taken.

Full details of the relevant CSAS processes are available.

Principles and Outline Approach

1. The information recorded by SCRA must be accurate and up-to-date. Therefore, when a compulsory supervision order is terminated the child's record in CSAS must be updated to remove information that has become inaccurate following the CSO being terminated.
2. A CSO is to be recorded by SCRA staff as terminated by a court only after the court provides written notice, or exceptionally after an interlocutor is received through another route.
3. However, during the 28 day period for appeal against an adoption order or permanence order, and throughout any appeal proceedings, the order does not

²⁵ Other orders may also have an impact, in particular orders under section 11 of the Children (Scotland) Act 1995 and interim orders in permanence order proceedings.

²⁶ See Practice Direction 4 Appendix 2.

²⁷ Information must also be kept up to date if any court order affects who has parental rights and responsibilities during the currency of a CSO.

change relevant person status or the existence of the CSO. Therefore the reporter is to create a reminder to terminate the child's order once the appeal period has passed. The relevant CSAS process must be followed.

4. Information must be updated as follows, applying the relevant CSAS processes:

- Record the existence of the court order (and any non-disclosure provision made by the court).
- Update the child's name if required in terms of the court order.
- Remove any pre-existing non-disclosure provision.
- Delete any Connection that is no longer accurate as a result of the court order. The tables below set out the effect of various court orders on parental rights and responsibilities, relevant person status and sibling status.
- Do not add any new Connection. (These will be added if the child is ever re-referred, and will reflect the child's situation at the point of re-referral.)
- For non-disclosure cases add ND note stating what non-disclosure provision has been removed (or made). Refer to PD4 Appendix 2.

5. The reporter must always be clear about who has any parental right and/or responsibility in relation to the child.

Effect of Court Orders on Parental Rights and Responsibilities, Relevant Person Status and Siblings

Adoption Orders, Permanence Orders, interim orders in permanence order proceedings, and orders under section 11 of the Children (Scotland) Act 1995 can all remove or grant parental rights and responsibilities.

A court can terminate a CSO when making an Adoption Order, a Permanence Order or an interim order during permanence order proceedings. A court cannot terminate a CSO as part of section 11 proceedings.

The following tables set out the effect of various court orders on (1) parental rights and responsibilities and the consequent effect on relevant person status, and (2) sibling 'status' and participation rights.

Order	Effect on PRR	Effect on RP Status (new RP arises only if the case remains ongoing or there is a subsequent referral ²⁸)
Adoption Order	Child is treated as the child of the adopter(s). All other existing PRRs are extinguished ²⁹ .	Any previous s.200 RP is no longer a s.200 RP ³⁰ . Adopter(s) become s.200 RP.
Permanence Order (with or without	Local authority will have some PRRs. Other persons, including parents, may also have some	Depends on the terms of the court order. If a parent retains any PRR they remain a s200 RP. A person with

²⁸ As specified above, if a court terminates a CSO, connections that are no longer accurate are to be deleted on CSAS but new ones are not to be created

²⁹ Unless the adopter is a member of a relevant couple in which case the existing PRRs of the other member of the couple are unaffected).

³⁰ Subject to the 'relevant couple' exception above.

authority to adopt)	PRRs. Any existing section 11 Order is revoked.	PRR under a section 11 Order loses that basis for being a RP. Anyone who obtains PRR becomes a section 200 RP.
Interim Order in Permanence Order proceedings	Depends on the terms of the Interim Order. Might not affect PRRs. Situation may change on final determination of the proceedings.	Depends on the terms of the Interim Order ³¹ .
Section 11 Order (Note: cannot terminate CSO)	Can remove or give PRRs to any person.	Depends on the terms of the court order. If a person has all PRRs removed they are no longer a section 200 RP. If a person is given any PRR they become a s.200 RP. A residence order always confers a PRR.

Effect of Court Orders on Siblings and Participation Individual Status

Order	Effect on Siblings	Effect on Status as a Participation Individual³²
Adoption Order	The birth sibling cannot be treated in law as a sibling of the adopted child. The adopted child is treated in law as if born as the child of the adopter(s) and as not being the child born to any other person (with exception of certain 'relevant couple' adoptions) - section 40 of the Adoption and Children (Scotland) Act 2007.	The criteria for participation rights specify an ongoing sibling-type relationship, not an in law sibling relationship. A birth sibling may therefore meet the criteria, depending on the particular circumstances. The fact of the birth relationship may be relevant in determining whether there is an ongoing sibling-type relationship. ³³
Permanence Order (with or without authority to adopt)	Does <u>not</u> affect the legal status of a birth sibling as a sibling.	The criteria for participation rights specify an ongoing sibling-type relationship, not an in law sibling relationship. The sibling may meet the criteria depending on the particular circumstances.

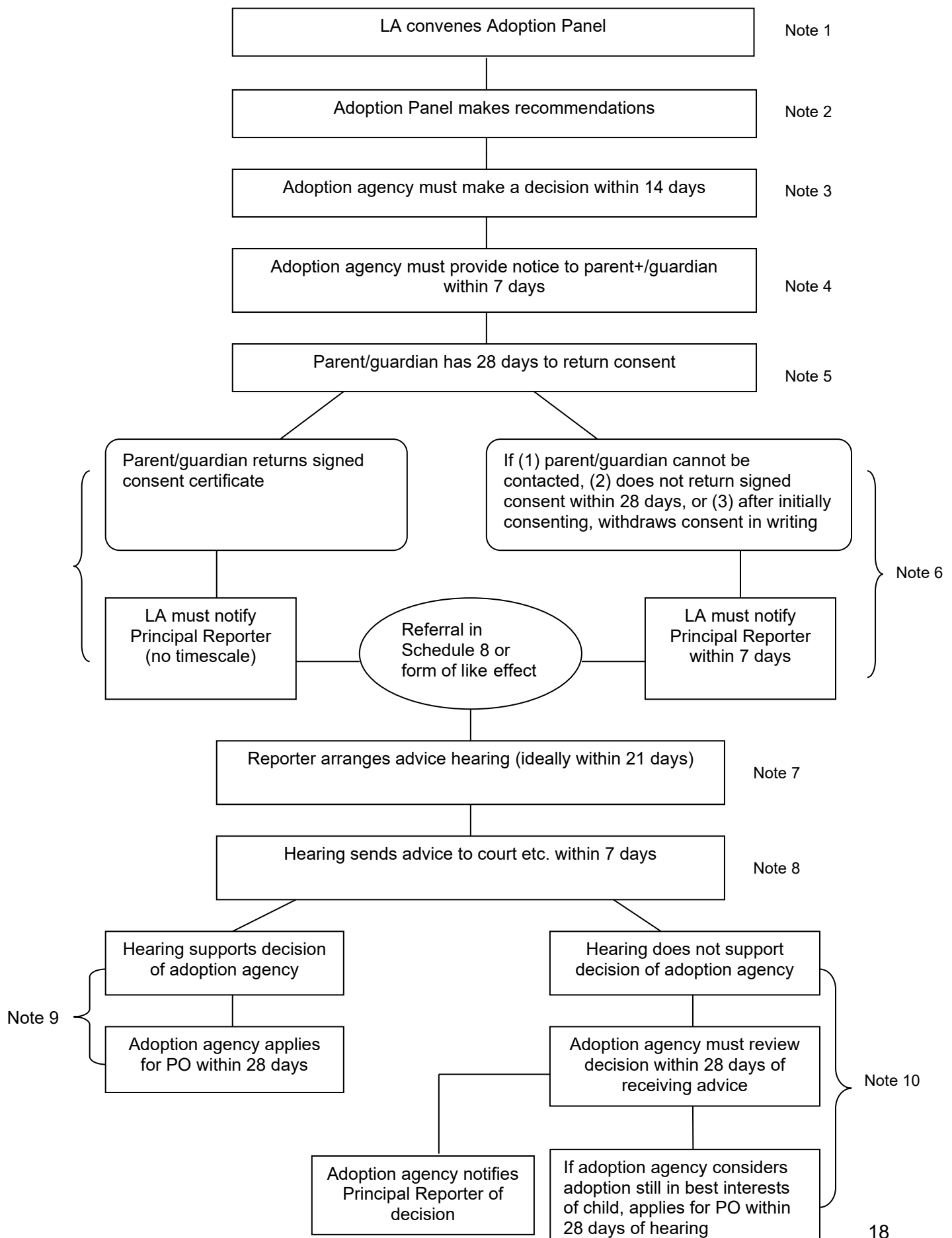
³¹ If a parent retains any PRR they remain a s.200 RP. Anyone who obtains PRR becomes a s.200 RP. The final order granted may be different to the interim order.

³² Participation rights are always retained during ongoing children's hearing proceedings, and where the individual subsequently requests a review hearing. See PD 33 paragraph 17.

³³ The hearing's duty under section 29A to consider whether to make a contact direction may apply, as it applies not just to all siblings but also to those with an ongoing sibling-type relationship who have lived with the child.

Flow Chart 1

Adoption agency and reporter obligations – Where decision to place a child for adoption/make an application for permanence order with authority to adopt Children subject to compulsory supervision order



Explanatory notes for Flow Chart 1

References to regulations are to the Adoption Agencies (Scotland) Regulations 2009, unless otherwise specified.

Note 1

If adoption agency considers adoption may be in the child's best interests it must refer the case to the adoption panel (Reg 12(3))

Note 2

Adoption panel makes and sends to adoption agency recommendations on:-

- (a) whether adoption is in the best interests of the child; and
- (b) whether an application for a permanence order granting authority for the child to be adopted should be made under section 80
Reg 6(2)

Note 3

Within 14 days of receipt of recommendation, adoption agency must make a decision as to whether:-

- (1) adoption is in the best interests of the child; and
- (2) whether an application for a permanence order granting authority for the child to be adopted should be made under section 80
Reg 13(1)

Note 4

Where an adoption agency decides that adoption is in the best interests of the child, and either:-

- proposes to make arrangements for the adoption of the child (place child for adoption), or
- decides that an application for a permanence order with authority for the child to be adopted should be made under section 80,

the adoption agency must within 7 days of that decision provide each parent with a memorandum (explaining about adoption orders or permanence orders with authority to adopt as the case may be) and certain certificates (acknowledging receipt of the information memorandum, and providing a form of consent to placement of child for adoption, or consent to the application for a permanence order with authority to adopt). Reg 16(1) and (2) and Schedules 2-4 (placing for adoption), Reg 17 (1) and (2) and Schedules 5-7 (application for permanence order with authority to adopt)

Note 5

The parent or guardian has 28 days from receipt within which to consent to the placement for adoption by returning a signed consent certificate. Reg 19

Note 6

If child is subject to a compulsory supervision order, the adoption agency must refer to the reporter if they intend to apply for a permanence order or if they intend to place the child for adoption (section 131 and Reg 22(1)). The referral to the reporter may be made in the form set out in Schedule 8 or in a form to like effect. Reg 22(3)

This referral shall not be made unless a signed consent certificate has been received or the following applies (Reg 22(2)):-

1. the adoption agency has not received the signed certificate within 28 days or
 2. the adoption agency has not been able to notify a parent/guardian because they cannot be contacted from reasonable efforts being made to make contact or
 3. a parent or guardian has signed and returned the certificate but then subsequently withdraws that consent in writing, in which case the adoption agency must decide to proceed as though parental agreement is not forthcoming. Reg 20(1) and (3).
- Therefore, unless 2 or 3 applies, the local authority should only make the referral to the Reporter at the end of the 28 day period referred to above.

If 1, 2 or 3 apply the adoption agency must notify the reporter within 7 days of making its determination to proceed as though parental consent is not forthcoming, Reg 23 (2). If a signed certificate has been received there is no statutory timescale in which the referral to the reporter must be made.

Note 7

The reporter arranges a hearing under section 137 of the Children's Hearings (Scotland) Act 2011. There is no statutory timescale for this. In light of the benefits of progressing permanence cases without delay, reporters are to arrange an advice hearing within 21 days of receiving the referral, unless exceptional circumstances prevent it.

Note 8

Within 5 days of the hearing, the reporter must give a copy of the report of advice to the court, the implementation authority the child, any relevant person, any safeguarder, and the person or couple making the adoption application (if applicable).

Note 9

Once the adoption agency has received a report of advice from a hearing, supporting the application for a permanence order, it must within 28 days of receipt of that make the application. Reg 23(3).

Note 10

If the hearing does not support the application, the adoption agency must review its decision within 28 days from receiving the advice (Reg 23(4)) and notify the reporter of its decision (Reg 23(5)). If it still considers that it is correct to do so, it must make the application for the order within 28 days of the children's hearing. Reg 23(6).

These timescales under note 9 and 10 do not apply if an application for an adoption order has been made. Reg 23(8).

Flow Chart 2

Duty of Children's Hearing to Prepare a Report for Court S95 2007 Act,
Act of Sederunt (Sheriff Court Rules Amendment) (Adoption and Children (Scotland) Act 2007)

