

July 2022

Management Circular No 93

To Heads of all Establishments

Sheriff Court Family Actions

1 Introduction

Children (Scotland) Act 1995

Family actions can be raised by private individuals under Section 11 of the Children (Scotland) Act 1995 and relate to parental rights (Section 2) and, parental responsibilities (Section 1). They are mainly raised when:

- a. a person with parental rights and responsibilities (PRRs) wants to vary or formalise the contact or residence that they have with their child or raise a specific issue in relation to that child eg consent for a holiday or a decision on which school their child should attend
 - b. a person is seeking the vesting of, or removal of, PRRs.
2. Although the Local Authority cannot raise proceedings it can be named as a defender, especially when the child is a looked after child (LAC) or if Social Work Services are involved. At times, the Sheriff will order Social Work Services to prepare a Section 11 report which will be lodged in court and served on the parties to the action (pursuers and defenders). That report will usually include a recommendation.
 3. The person raising the court action is called the pursuer. They will send the papers to court and would normally appoint a solicitor to do this on their behalf. The Sheriff will then decide who is to receive a copy of the papers eg the carer, if the child does not live with the pursuer or, the local authority if the child is looked after or if involved with Social Work Services. Unless there is a good reason not to, the court will order that the papers are also issued to the child.
 4. The court papers are usually sent to the child via the school or to their home address. Issuing the papers via the school is becoming the more popular option. This avoids undue influence by the parent/carer in what can be very acrimonious court proceedings and a neutral space where the child can express their views. School staff should be aware that:
 - a. if the papers are sent to the school, the child should be informed at the earliest opportunity. The Form F9 gives the child an opportunity to provide their views. The deadline to have this completed and returned is usually 14 days;
 - b. the child may ask for support to understand what they are expected to do in terms of the Form F9. The form explains that they can talk to someone they trust. This may be a member of the school staff. Any support provided should not influence the child's response. They may need support to understand what is being asked of them;
 - c. if the child does not want support, they should still be offered a quiet space and some time to complete the form, but they do not need to accept this assistance;

- d. **there is no requirement for the child to complete this form. It is their choice. They may decide to answer some questions or draw pictures instead of writing words. They may decide to say nothing. Any views provided must be those of the child and not the views of school staff, parents or carers;**
 - e. if the child does provide information, it is important to note that the form must be returned to the Sheriff Court. **It must never be returned to a solicitor acting for any one of the parties.** The Sheriff will read the child's response and decide how much information to share with the parties;
 - f. it is not the responsibility of school staff to tell a parent about the court papers. The solicitor who sends them to the school should tell the other party to the court action that that this is what they are doing. You can ask that solicitor for confirmation that they have, in fact, done this.
5. For further advice please contact Louise McHugh, Yvonne Jackson or Sarah Davidson in Legal Services. Contact details are:

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Yvonne.jackson@glasgow.gov.uk

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All information in this management circular has been provided by Legal Services and Glasgow Sheriff Court.