



SHERIFFDOM OF SOUTH STRATHCLYDE DUMFRIES AND GALLOWAY

PRACTICE NOTE NO. 14 of 2020

**CHILDREN'S REFERRALS AND RELATED APPLICATIONS UNDER THE CHILDREN'S
HEARINGS (SCOTLAND) ACT 2011**

I, AISHA YAQOOB ANWAR, Sheriff Principal of South Strathclyde, Dumfries and Galloway, for the purpose of regulating practice in the Sheriffdom in pursuance of the powers conferred by section 27(2) and (4) of the Courts Reform (Scotland) Act 2014 and all common law powers enabling me on that behalf, Order and Direct as follows:-

Part 1 - Introduction

1.1 This practice note applies to the following types of procedure under the Children's Hearings (Scotland) Act 2011 ("the 2011 Act"), collectively referred to as "proceedings under the 2011 Act":

- applications for establishment of the grounds of referral under sections 93(2)(a) and 94(2)(a) of the 2011 Act;

- applications for interim compulsory supervision orders (“ICSOs”) under sections 98 to 100 of the 2011 Act;
- appeals against decisions of the children’s hearing under sections 154, 160 and 162 of the 2011 Act;
- applications for child assessment orders under sections 35 and 36 of the 2011 Act;
- applications for child protection orders (“CPOs”) under sections 37 to 42 of the 2011 Act;
- applications for CPO reviews under sections 48-51 of the 2011 Act;
- applications for review by a local authority (for determination that it is not the relevant authority) under section 166 of the 2011 Act;
- applications for a review of a grounds’ determination under sections 110 to 117 of the 2011 Act.

It also applies to applications for exclusion orders under section 76 of the Children (Scotland) Act 1995 (“the 1995 Act”).

- 1.2 The purpose of this Practice Note is to ensure the efficient and expeditious disposal of applications and appeals under the 2011 Act (together referred to as “proceedings under the 2011 Act”) while adhering to the social distancing requirements caused by the Coronavirus pandemic and complying with the terms of the Coronavirus (Scotland) Act 2020. The efficient disposal of proceedings under the 2011 Act will require active case management by the judiciary and meaningful dialogue between the parties.
- 1.3 Subject to section 26 of the 2011 Act, the Court must regard the need to safeguard and promote the welfare of the child throughout the child’s childhood as the paramount consideration.
- 1.4 All references in this Practice Note to sheriff include summary sheriff. All references to Rules are to the Act of Sederunt (Child Care and Maintenance) Rules 1997 as amended.
- 1.5 This Practice Note has immediate effect.

Part 2 - General provisions applicable to all applications

- 2.1 Practitioners and parties should be aware of the terms of (a) the Guidance for Practitioners and Litigants Covid 19 : Management of Civil Business dated 10 June 2020 and (b) the Guidance for Practitioners and Litigants Covid 19 : Electronic Submission of Documents dated 10 June 2020 issued by the Sheriff Principal.
- 2.2 Part 1 of Schedule to the Coronavirus (Scotland) Act 2020 suspends the requirement for physical attendance at court unless the court otherwise directs in circumstances where that would (i) result in prejudice to the fairness of the proceedings or (ii) it would otherwise be contrary to the interests of justice. A person excused from a requirement to attend at court must instead appear before the court by electronic means in accordance with a direction issued by the court.
- 2.3 All parties to proceedings under the 2011 Act must provide the sheriff with sufficient information in relation to the application or appeal and what is known about the position of any other party to the proceedings to enable the sheriff to properly case manage the application and the procedure to be followed.
- 2.4 Without prejudice to paragraph 2.2 above, all applications made by a statutory authority should be accompanied by a note setting out the knowledge of the authority in relation to the following matters: (i) whether and to what extent the relevant parties are aware of the application and its terms; (ii) whether a relevant person(s) wishes to take part in the proceedings; and (iii) by what means a relevant person(s) can take part in proceedings remotely and if no such means are known to be available, what steps can be taken by the authority to make such means available.
- 2.5 Applications and appeals should also identify any safeguarder or curator *ad litem* currently or recently appointed and his/her contact details including email address.
- 2.6 Any applications or appeals by a relevant person should state the means, if any, by which that person can take part in hearings remotely and provide an email address for the relevant person, where available.

- 2.7 Where an evidential hearing requires to be fixed, such a hearing will, where the sheriff considers it practicable, be held remotely in whole or in part. All parties to the proceedings will be expected to provide the sheriff with sufficient information to enable the sheriff to determine the form of the evidential hearing and the manner in which any evidence may be lead. The sheriff may fix one or more procedural or pre-proof hearings to allow the arrangements for any evidential hearing to be determined.
- 2.8 The use of affidavits in lieu of oral evidence, in whole or part, is strongly encouraged.

Part 3 - Applications under sections 93(2)(a) and 94(2)(a) of the 2011 Act for establishment of the grounds of referral.

- 3.1 The Reporter shall lodge a provisional list of witnesses containing a summary of the matters to which the witnesses are expected to speak when lodging the application.
- 3.2 The Reporter should set out in a covering letter accompanying the application any factors which indicate that the application may be complex. An application shall be treated as complex if (i) it is likely to require the use of expert witnesses or (ii) it is likely to require a hearing of more than 3 days.
- 3.3 Where the relevant person(s)/child are represented, the attendance of the relevant person(s) and the child will not be required at a procedural hearing. If such attendance is required at any hearing which does not involve the leading of evidence, the court will expect the Reporter and the statutory authorities to provide as much assistance as is reasonably possible to enable electronic attendance by those parties. The child and any relevant person nonetheless have the right to attend all hearings in the application and should they wish to do so, arrangements will be made.
- 3.4 Parties are expected to assist the court in achieving the fair and expeditious determination of the application with minimum delay in particular: (i) the parties shall cooperate in exchanging and agreeing evidence; (ii) make full and frank disclosure of

their position; (iii) provide such information on the progress of the application as is required by the sheriff; (iv) provide the sheriff with information as to the availability of witnesses and their ability to give evidence by remote means; and (v) lead only relevant evidence in an efficient manner.

3.5 At the first procedural hearing, the sheriff will seek to progress the application as expeditiously as possible. To enable him to do so, by no later than 12 noon two working days prior to the first procedural hearing, each party should lodge electronically a note setting out the following:

- Confirmation that the parties have discussed the application and have sought to identify the issues in dispute and those which are capable of agreement;
- The name, email and telephone number of the person who will be conducting the hearing for that party (and the other parties if known);
- whether a safeguarder should be appointed (if not already determined);
- whether disclosure of further information is required by any party;
- whether the attendance of the child at that or any subsequent hearing should be dispensed with in terms of section 103(3);
- whether any relevant person(s) wishes to or is required to attend at that or any subsequent hearing (which does not involve the leading of evidence) and if so, the means by which such attendance could be achieved remotely;
- whether the sheriff may be able to dispense with the hearing of evidence and find the grounds for referral (or agreed amended grounds of referral) established;
- where an evidential hearing is likely to be required (i) the need for any special measures for any witness; (ii) the availability of witnesses; (iii) the extent to which evidence may be led remotely; (iv) the means by which evidence may be led remotely; (v) the extent to which affidavit evidence may be used to provide the evidence of witnesses in whole or part; and (vi) whether any party proposes to rely on a hearsay statement without it being spoken to and any consequences that may flow from that;

- any other steps that may be necessary to secure the expeditious determination of the application including but not limited to those listed in Rule 3.46A; and
- if a further procedural hearing is sought, the reasons why that is considered necessary.

3.6 At this, or any further procedural hearing, the sheriff will consider the matters set out in paragraph 3.5 above insofar as they have not already have been considered. The sheriff will consider whether a proof is required, and if so, the parties' state of preparation for proof.

3.7 Where the sheriff determines that a proof is necessary and that the parties are or will be ready to proceed to proof, the court will fix a pre-proof hearing. In doing so, the sheriff will make directions for the manner in which the evidence is to be led. Consistent with the need to ensure that proceedings are conducted fairly, expeditiously and efficiently, the sheriff may order that at least two working days in advance of the pre-proof hearing (i) parties' lodge a joint minute of agreement agreeing *inter alia* the terms of any evidence in documentary form to the fullest extent possible and incorporating an agreed chronology of events and (ii) parties lodge and exchange affidavits for any witnesses (to the extent that they may not have done so already) to be used in lieu of evidence in chief.

3.8 Where the evidence of any witness is to be led remotely, or the child or relevant person(s) is to participate remotely, parties will cooperate with the court to ensure that the proof is heard in private, that matters arising in the hearing remain confidential to the parties and that witnesses have access to any productions to which they are expected to testify. The sheriff may make whatever orders and directions the sheriff sees fit to ensure the effective conduct of any proof requiring evidence to be led remotely or requiring the remote participation of relevant person(s) or the child.

3.9 Where an ICSO is in place, parties are expected to take all reasonable steps to assist the court in securing the earliest possible determination of the application.

- 3.10 Where the sheriff concludes that the application is complex (as defined in paragraph 3.2 above) the court will fix one or more case management hearings to clarify the scope and duration of evidence required, the logistical and procedural matters likely to affect the progress of the case and to regulate the use of expert witnesses with the aim of achieving the most expeditious, efficient and fair disposal of the application. The sheriff may make whatever orders and directions are appropriate to the circumstances to achieve that aim.

Part 4 - Applications for ICSOs under sections 98 to 100 of the 2011 Act.

- 4.1 An application for an ICSO should be accompanied by a written statement setting out in concise terms the procedural history of the case, and the basis upon which the Reporter considers it is necessary for the protection, guidance, treatment or control of the child that the current ICSO be extended or extended and varied.
- 4.2 There is no requirement for any party other than the Reporter to attend in person, or to be represented at a hearing assigned to consider an application under paragraph 4.1, unless that party opposes the extension of the order in the terms sought by the Reporter, or wishes to seek any variation of its proposed terms. The sheriff will assume that a party who does not attend in person and is not represented at the hearing of the application does not oppose the extension of the order in the terms sought by the Reporter.

Part 5 - Appeals against decisions of the children hearing under sections 154, 160 and 162 of the 2011 Act

- 5.1 Part 2 above applies to appeals against the decisions of children's hearings.
- 5.2 All appeals must be lodged electronically and must be accompanied by a pdf copy of: (i) the relevant decision appealed against; (ii) any documentation produced before the children's hearing relevant to the appeal; and (iii) where evidence is sought to be led, an

explanation as to why that is considered necessary. On receipt of the appeal the sheriff clerk will pass the appeal documentation to the sheriff who will make an order for intimation and service on the other parties to the appeal and an order for answers.

- 5.3 The sheriff shall also fix a hearing specifying (i) the means by which that hearing is to take place; (ii) whether the attendance of the parties or any other person(s) (including any safeguarder previously appointed) will be required; and (iii) and where evidence is considered necessary, how that evidence may be led. The sheriff shall make any ancillary orders as the sheriff may consider necessary for the expeditious and fair disposal of the appeal.

Part 6 - Applications for child assessment orders under sections 35 and 36 of the 2011 Act

- 6.2 Part 2 above applies to applications under sections 35 and 36 of the 2011 Act.
- 6.3 On receipt of the application, the sheriff shall fix a hearing and may make any further orders as the sheriff sees fit including: (i) the means by which that hearing is to take place; (ii) the means by which the parties, including relevant person(s), may take part; and (iii) the requirement for any assistance by the statutory authorities to enable such participation (in private) by any relevant person(s).

Part 7 - Applications for CPOs under sections 37 to 42 of the 2011 Act

- 7.1 Part 2 above applies to applications for CPOs.
- 7.2 The application should be lodged in electronic form with all supporting material in pdf format. Upon receipt of the application, the sheriff will fix a hearing to take place urgently in such manner as the sheriff shall direct to consider the application and supporting evidence. Such hearings will normally be by remote means.

- 7.3 The sheriff may permit any relevant person(s) to take part in that hearing and where that is so ordered, the applicant shall offer whatever assistance is practicable to enable such participation by remote means.

Part 8 - Applications for child protection order review under sections 48-51 of the 2011 Act

- 8.1 Part 2 above applies to applications for a review of a CPO.
- 8.2 Many such applications are made by relevant person(s) who may not be represented. While all such applications should be made in electronic form, applications in paper form will be accepted when lodged by unrepresented parties. The applicant should indicate in the application what facilities the applicant has to enable participation in a remote hearing.
- 8.3 On receipt of such an application, the sheriff shall fix an urgent hearing and order intimation and service to all entitled to take part in terms of section 49 of the 2011 Act. The sheriff shall determine the form of hearing and future procedure and decide whether that hearing can take place remotely. If it cannot take place remotely, the sheriff shall make such orders as are appropriate in all the circumstances.

Part 9 - Applications for review by a local authority (for determination that it is not the relevant authority) under section 166 of the 2011 Act

- 9.1 Part 2 above applies to all applications for review by a local authority in terms of section 166 of the 2011 Act.
- 9.2 Such applications should be lodged electronically with supporting documentation in pdf form. On receipt of the application the sheriff shall issue a warrant to cite the parties and make an order requiring answers to be lodged in electronic form within such time as the sheriff shall appoint. The sheriff shall fix a hearing to take place remotely to consider the application or to determine further procedure.

- 9.3 Following the hearing referred to in paragraph 9.2 above, the sheriff shall determine the application or make such order for further procedure as the sheriff sees fit.

Part 10 - Applications for a review of a grounds determination under sections 110 to 117 of the 2011 Act

- 10.1 Part 2 above applies to applications under sections 110 to 117 of the 2011 Act.
- 10.2 Most such applications are to be made by an unrepresented relevant person or the child. While all such applications should be made in electronic form, applications in paper form will be accepted when lodged by unrepresented parties. The applicant should indicate in the application what facilities the applicant has to enable participation in a remote hearing.
- 10.3 On receipt of the application, the sheriff will determine (on the papers without a hearing) whether the threshold review conditions in section 111(3) are met. If section 111(3) does not apply, the sheriff will dismiss the application.
- 10.4 If the sheriff determines that section 111(3) does apply, the sheriff will fix a review hearing and order intimation and service to all those entitled to take part. The sheriff shall determine the form of hearing and future procedure taking account of the provisions of Part 2 of this Practice Note.

Part 11 - Applications for exclusion orders under section 76 of the 1995 Act

- 11.1 Part 2 above applies to applications under sections 76 of the 1995 Act.
- 11.2 Applications for such orders should be lodged electronically together with supporting material in pdf form. Such applications must also indicate whether an interim order under section 76(4) of the 1995 Act is required. If so, the sheriff shall hear the applicant remotely on the application for an interim order and if granted fix an urgent hearing in

terms of section 76(5) of the 1995 Act at which all parties are entitled to be heard. That hearing, where possible will be heard remotely.

11.3 The applicant shall provide all reasonable assistance to enable the other parties to participate in any remote hearing. If a remote hearing is impracticable, the sheriff shall make such orders as are necessary in the circumstances to enable the hearing to take place.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above the typed name.

Sheriff Principal Aisha Yaqoob Anwar
Sheriffdom of South Strathclyde, Dumfries and Galloway
19 June 2020