SHERIFFDOM OF NORTH STRATHCLYDE

PRACTICE NOTE NO 1, 2006

ADOPTION OF CHILDREN, ETC: GUIDANCE FOR SHERIFFS AND PRACTITIONERS

A. PRELIMINARY

1. Introduction

Purpose

1.1 The purpose of this Practice Note is to secure the efficient management of contested proceedings in applications for orders declaring children free for adoption, applications for the revocation of such orders, applications for adoption orders**,** applications for parental responsibilities orders and applications for the variation and discharge of such orders. It is intended to provide sheriffs and practitioners with practical guidance about the operation of the Adoption (Scotland) Act 1978 ('the 1978 Act'), the Children (Scotland) Act 1995 ('the 1995 Act') and the Act of Sederunt (Child Care and Maintenance Rules) 1997 ('the Rules') relative to such proceedings. It will be revised in the light of experience and any new primary or secondary legislation.

Commencement

1.2 This Practice Note applies to all applications lodged on or after 31st January 2006.

Minimum of delay

1.3 It is the duty of the court to secure that applications for freeing orders are dealt with 'as expeditiously as possible with the minimum of delay' (*Lothian Regional Council v A* 1992 SLT 858 at 861). Such applications require the co-operation of all concerned

and firm case management by the sheriff (*Strathclyde Regional Council v MF* 1997 SCLR 142 at 143, *Dundee City Council v M* 2004 SLT 640 and *Petitions of Aberdeenshire Council to declare A, B and C free for adoption,* Court of Session, 22nd June 2004). The same considerations apply to the other applications dealt with in this Practice Note. This Practice Note indicates how sheriffs and practitioners may best fulfil those responsibilities.

Identity of sheriff

1.4 Unless the sheriff principal otherwise agrees, the sheriff presiding at any stage in the proceedings must be a sheriff of this sheriffdom. In the interests of continuity and consistency in management, every stage of each case must, whenever possible, call before the same sheriff on dates and at times assigned by him or her. If a diet of proof has to be fixed, it will normally be assigned to the sheriff who has conducted the previous hearings unless, exceptionally, an early diet can be made available at which another sheriff is free to preside.

Representatives

1.5 At every calling of each case any representative of any party must be familiar with the case and must have sufficient authority to deal with any issues that are likely to arise. Procedural hearings in the case should be attended by the principal agent acting for each party unless the sheriff otherwise directs.

Record of discussion to be kept

1.6 At every hearing prior to any proof it is the responsibility of the sheriff not only to pronounce an interlocutor regulating further procedure but also to prepare and keep with the process a brief written record of the main points of the discussion at that hearing.

B. APPLICATION FOR AN ORDER DECLARING A CHILD FREE FOR ADOPTION

2. Timetable

2.1 Section 25A of the 1978 Act provides that in proceedings in which the question arises as to whether the court is satisfied that the agreement of a parent or guardian should be dispensed with, the court must do the following 'with a view to determining the question without delay'. First, it must draw up a timetable specifying periods within which certain steps must be taken. Secondly, it must give such directions as it considers appropriate for the purpose of ensuring, so far as reasonably practicable, that the timetable is adhered to.

2.2 This Practice Note emphasises the duty of the sheriff to draw up timetables and the importance of adherence to these timetables. However, the programming of all classes of business in the courts remains exclusively the responsibility of the sheriff principal. In this respect he generally acts through the sheriff clerk. It is therefore essential that the drawing up of timetables and the assigning of diets by the sheriff should be undertaken only after consultation with, and with the agreement of, the sheriff clerk. Any timetable that is drawn up must be adhered to, unless in exceptional circumstances.

2.3 Rule 2.4 of the Rules requires the court to draw up the timetable 'forthwith' in three situations: (1) where the petition craves the agreement of a parent or guardian to be dispensed with; or (2) where it appears from a report by an adoption agency, local authority or reporting officer that a question as to dispensing with such agreement arises; or (3) such agreement previously given is withdrawn. Where the parent or guardian agrees to the making of an adoption order in terms of section 18(1)(a) of the 1978 Act, no timetable is necessary. A timetable is necessary, however, where the agreement of the

parent or guardian has not been secured, even if he or she takes no part in the proceedings (as in *T, Petitioner* 1997 SLT 724).

2.4 In many freeing cases situation (1) will apply. In such a case, in order to comply with rule 2.4 the timetable should be drawn up at the same time as the interlocutor appointing the curator *ad litem* and the reporting officer in terms of rule 2.7(1) which must be pronounced as soon as practicable after the petition is lodged. It will usually be too early, however, to draw up a detailed timetable at this stage because the areas of dispute, the availability of legal aid, documents and witnesses, and other matters with a bearing on the progress of the case will not yet be known. The timetable at this stage should therefore only specify the date by which the reports of the curator *ad litem* and the reporting officer should be lodged. The curator *ad litem* and the reporting officer must generally report within four weeks of the date of the interlocutor appointing them (rule 2.8(1), (2)). The paragraphs of their respective reports should be individually numbered.

2.5 The sheriff may select a period other than four weeks since he or she has a discretion to select a period other than four weeks for the lodging of the reports. Before selecting any other period the sheriff may wish to consult the curator *ad litem* and the reporting officer. If selecting any other period it is necessary to keep in view the court's duty to determine 'without delay' the question whether consent should be dispensed with. Whatever period is selected, the sheriff or sheriff clerk on his behalf should be vigilant to see that the reports are submitted timeously.

2.6 When the reports of the curator *ad litem* and the reporting officer have been received, the sheriff must order a diet of hearing to be fixed (rule 2.11(1)). This is the hearing referred to below (see paragraph 3.1) as 'the first hearing'. It should be fixed after consultation with, and with the agreement of, the sheriff clerk (see paragraph 2.2), for a date some two weeks ahead and should be of sufficient duration to allow for a proper consideration of the issues likely to be canvassed at it. The sheriff should consider the advisability of ordering intimation by sheriff officer in order to avoid any possible delay due to ineffective postal service.

2.7 The sheriff clerk should advise the petitioners' solicitors forthwith of the terms of the interlocutor appointing the date of the first hearing in order that they may intimate it as soon as possible.

3. First hearing

3.1 The first hearing provides the first opportunity for all interested parties to be present or represented and for the court to fix a further timetable. The drawing up of a further firm and realistic timetable or timetables and the need for adherence to them will be of central importance to the efficient management of the later stages of the case, as will appear from later paragraphs.

3.1.1 The object of the first hearing is to enable the sheriff to make preliminary enquiries with a view to ascertaining the likely scope of the dispute, encouraging early preparation for the proof and drawing up a timetable and giving such directions as he or she considers appropriate for the purpose of ensuring, so far as reasonably practicable, that the timetable is adhered to (see paragraphs 2.1 and 2.2 above).

Before the first hearing

3.2 Before the first hearing, and throughout the proceedings, the sheriff should be prepared to engage in active management of the case. He or she should maintain control over the proceedings while exercising flexibility in doing so.

3.2.1 He or she should have read the report lodged by the local authority which accompanies the petition (and the paragraphs of which should be individually numbered), and checked that it contains the information required by rule 2.5(2)(b).

3.2.2 The sheriff should also have read the reports of the curator *ad litem* and the reporting officer and checked that they similarly comply with rule 2.8(1) and (2).

3.2.3 The sheriff should also have read any other documents lodged by the petitioners in terms of rule 2.5(2)(c). These may include a report by a children's hearing received in terms of section 73(14) of the 1995 Act.

3.2.4 The sheriff should have checked that intimation of the hearing has been made as required by rule 2.11(2).

3.2.5 Where the child has indicated a wish to express a view, the sheriff should consider ordering appropriate procedural steps in terms of rule 2.9(1)(a). Such steps may include interviewing the child.

3.2.6 The solicitor for a party who has received intimation of the first hearing may apply to the court for access before the first hearing to any document which has been lodged. (See also paragraph 3.3.4 below.)

At the first hearing

3.3 At the first hearing the attention of the sheriff and all parties should be devoted to securing that the issues at the proof will be as sharply focussed as possible. The parties should therefore have considered in general terms how they intend to prove their respective cases.

3.3.1 The sheriff should ask the respondent or his or her solicitor to indicate in general terms the grounds of his or her opposition to the petition, without prejudice to the right of the respondent to state further or different grounds later.

3.3.2 The sheriff should ask the respondent or his or her solicitor whether the respondent has applied, or proposes to apply, for legal aid. If so, the respondent should be able to give the sheriff at least as much information about the grounds of opposition as has been or will be given to the Scottish Legal Aid Board.

3.3.3 The sheriff should ask the respondent or his or her solicitor whether it is intended to instruct counsel or any expert witness and, if so, whether legal aid for that purpose has been or is to be applied for.

3.3.4 The sheriff should ensure that the parties have sufficient access to all the documents lodged in process (see also paragraph 3.2.6 above). A party's solicitor is entitled to copies of such documents so long as he or she complies with rule 2.12 by treating the documents and any copies as confidential.

3.3.5 The sheriff should ask the respondent or his or her solicitor whether they will be seeking to recover other documents and, if so, which documents. The sheriff should ask the petitioners' solicitor if the petitioners will make these available to the respondent informally without the need for a commission and diligence, and if so, should fix a date by which those documents should be lodged with the court.

3.3.6 It is now for the sheriff to draw up the timetable and determine further procedure after consultation with, and with the agreement of, the sheriff clerk (see paragraph 2.2 above). Consideration should be given at this stage to where the proof will take place (which, subject to section 57 of the 1978 Act, may be elsewhere than at the courthouse) and whether the evidence at the proof should be recorded. In many cases it will be advantageous to appoint a second hearing and thereafter a pre-proof hearing, as recommended in the following paragraphs. In other cases, however, the sheriff may in the exercise of his or her discretion dispense with either or both of those hearings. For example, in a very simple case the sheriff may instead continue the first hearing for a short period in order that any outstanding matters may be addressed and then, if satisfied that the issues in dispute have been clearly identified and the preparations for proof will be simple and straightforward, obtain the parties' estimates of the duration of the proof and assign a diet of proof (as in paragraphs 4.3.4 to 4.3.6 below).

3.3.7 If the sheriff decides that a second hearing is appropriate, he or she should advise the parties that he or she is now going to fix a second hearing; and that before the second

hearing they must have lodged the statement of disputed issues and joint minute referred to in paragraphs 4.2.1 and 4.2.2, and must be prepared to give the sheriff the information referred to below.

3.3.8 The date fixed for the second hearing should normally be no more than six weeks after the date of the first hearing and again should be of sufficient duration – see paragraph 2.6 above. If it has not been possible for the sheriff to identify with the sheriff clerk, before the first hearing, a suitable date and time for the second hearing, the sheriff should now adjourn briefly for that purpose (see paragraphs 2.2 and 3.3.6 above).

4. Second hearing

4.1 The object of the second hearing is to make further preparations for the proof, to identify clearly the issues in dispute and to avoid having a lengthy and poorly focussed proof. 'The principal duty of representatives in adoption proceedings is to identify the issues in dispute, and to lead evidence in relation to those issues.' (Macphail, *Sheriff Court Practice* (2nd edn), vol 1, page 931, paragraph 28.111). The following guidance assists the parties' representatives to carry out that duty.

Before the second hearing

THE STATEMENT OF DISPUTED ISSUES

4.2.1 Before the hearing the respondent's solicitor should have prepared a statement of disputed issues. It should be signed and lodged at least seven working days before the hearing. It should specify the matters in the local authority's report which the respondent disputes, and should refer to the numbered paragraphs of the report in which these matters are stated. It should also specify any other issues which are not mentioned in the report but which the respondent intends to raise at the proof.

THE JOINT MINUTE

4.2.2 Before the hearing the parties should have entered into a joint minute. It is the responsibility of the petitioners' solicitor to draft the joint minute and send it to the respondent's solicitor for revisal. The petitioners' solicitor may use as a basis of the joint minute the material facts in the local authority's report which are considered not to be controversial. The parties' solicitors are expected to co-operate in the framing of the joint minute. It should be signed and lodged at least two working days before the hearing.

CONSIDERATION OF LEGAL ISSUES, EVIDENCE AND PROOF DATES

4.2.3 Before the hearing the parties' solicitors should consider the matters mentioned in paragraphs 4.3.1 to 4.3.5 below in order that they may provide the sheriff with sufficient information to enable him or her to conduct the second hearing as provided for in these paragraphs. A solicitor who intends to raise a legal issue at the second hearing should intimate it to the other parties' solicitors beforehand.

At the second hearing

CONSIDERATION OF JOINT MINUTE AND STATEMENT

4.3.1 At the hearing the sheriff should consider with the parties the contents of the joint minute and the statement of disputed issues. If necessary, the sheriff will ask whether further facts can be agreed by joint minute. He or she may also seek clarification of any matter in the statement of disputed issues. If it appears to the sheriff that a matter identified in the statement is not a relevant issue, although it is disputed, he or she may indicate that evidence on that matter will not be admitted at the proof.

LEGAL ISSUES

4.3.2 The sheriff should ask the parties if there are any questions of admissibility of evidence or any other legal issues, including any questions under the European

Convention on Human Rights, that are likely to arise at the proof. If so, the sheriff should consider whether they could with advantage be determined at this hearing rather than at the proof. Alternatively, the sheriff may continue the second hearing to another date in order to enable any such issue to be argued and determined. If a legal issue is not raised at the second hearing, the sheriff may refuse to allow it to be raised at the proof except on cause shown.

EVIDENCE

4.3.3 It should be noted that evidence may be presented in the form of affidavits or other written documents (Civil Evidence (Scotland) Act 1988, section 2; *McVinnie v McVinnie* 1995 SLT (Sh Ct) 81; *Glaser v Glaser* 1997 SLT 456). The sheriff is bound to consider reports placed before him or her even if the authors are not called to speak to them, and the strict rules of evidence do not apply (*T, Petitioner* 1997 SLT 724 at 730L). Such considerations may render the attendance of certain witnesses unnecessary, although for other reasons it may be preferable to call the author of a document. The parties should therefore apply their minds to the question whether any evidence might be appropriately presented in the form of an affidavit or other document and the sheriff should encourage them to decide that question at this hearing. The sheriff should also encourage the use of affidavits to cover contentious issues where that would save the time of witnesses and the court. Notwithstanding that an affidavit has been lodged, its author may be called to give evidence at the proof (see paragraph 3 of the judgement of Lady Smith in *Petitions of Aberdeenshire Council to declare A, B and C free for adoption*, Court of Session, 22nd June 2004).

4.3.3.1 Where the author of a report or the maker of a statement which has been or is to be lodged is to be called as a witness, the sheriff should order that the report is to be held to be equivalent to the witness's examination-in-chief, unless for special reasons he or she otherwise directs.

4.3.3.2 The sheriff should discourage the unnecessary use of expert witnesses. If expert evidence is essential, the sheriff should encourage the joint instruction of a single expert

by all parties. If one party instructs an expert report, it should be disclosed to the other parties with a view to the agreement of as much of its contents as possible.

4.3.3.3 The sheriff should ask the parties what further productions, if any, they intend to lodge. Any difficulties over the obtaining or lodging of documents should be raised and if possible resolved.

ESTIMATE OF DURATION OF PROOF

4.3.4 'It is essential . . . that the sheriff should be given at the outset a carefully considered forecast of the time which the proof is expected to take.' (*Lothian Regional Council v A* at 861L.) It is therefore very important that the parties should pay close attention to this matter. The sheriff should ask each party to specify in detail how long he expects to take in the presentation of his own evidence and in the cross-examination of the other side's witnesses. On the basis of that information the sheriff will assess how many days should be set aside for the proof (including closing submissions). At the proof, parties may expect to be held to the estimates given at this hearing, unless in exceptional circumstances

ASSIGNING THE DIET OF PROOF

4.3.5 Having assessed how many days are needed for the proof, the sheriff will assign the diet. He or she should do so at the hearing after consultation with, and with the agreement of, the sheriff clerk (see paragraph 2.2 above). The sheriff may adjourn briefly for that purpose. The dates assigned should be consecutive working days, and to allow for this consideration should be given to the possibility of holding the proof elsewhere than at the courthouse – see paragraph 3.3.6 above. The sheriff should consider too whether he or she is likely to require any writing days in order to produce the judgment. If so, the dates assigned should include writing time. The reason for such arrangements is that the sheriff should 'be released from other duties so that he can give priority to the case without interruption and until it has been completed by the issuing of his interlocutor. Special arrangements of that kind are clearly necessary if the sheriff is to maintain the

continuity of thought throughout the proceedings which is so necessary to a proper disposal of the case.' (*Lothian Regional Council v A* at 862A-B).

4.3.6 The parties should have come to the hearing with a list of dates when their witnesses, including any expert witnesses, and counsel, if any, will be available. It is not generally a valid ground for postponing a proof that a party wishes to instruct particular counsel. The sheriff should not, unless in highly exceptional circumstances, pronounce an interlocutor allowing a proof on dates to be afterwards fixed. If the dates cannot be fixed at the hearing, it will usually be preferable to continue the hearing for a few days and fix the dates at the continued hearing.

ASSIGNING THE PRE-PROOF HEARING

4.3.7 The sheriff should also assign a pre-proof hearing on a date some two weeks before the proof. The date and time of the hearing (which should be of sufficient duration – see paragraph 2.6 above) should be selected after consultation with, and with the agreement of, the sheriff clerk (see paragraph 2.2 above).

4.3.8 In addition to assigning the pre-proof hearing the sheriff should assign a date two weeks prior to the pre-proof hearing by which the parties must have lodged their productions and exchanged list of the witnesses who are to give oral evidence.

5. Pre-proof hearing

5.1 The purpose of the pre-proof hearing is to ascertain whether the parties are still in dispute and, if so, whether they are fully prepared for proof. The timetable must, however, be respected and a proof will be discharged only in highly exceptional circumstances.

6. The proof

6.1 If the guidance above is followed, the proof should not be unduly long. In any event, 'there is a heavy responsibility on the parties' representatives to exercise all reasonable economy and restraint in their presentation of the evidence and in their submissions to the court.' (*Lothian Regional Council v A* at 862B).

6.2 Parties may expect to be held to their estimates of time taken for examination and cross-examination which they gave at the second hearing.

6.3 The sheriff may exercise his or her existing common law power to intervene to discourage prolixity, repetition, the leading of evidence of unnecessary witnesses and the leading of evidence on matters which are unlikely to assist the court to reach a decision.

6.4 If the proof is not completed on the last day assigned, it is very desirable that it should continue on the following day or days.

6.5 At the conclusion of the evidence parties must be heard orally thereon by the sheriff. In anticipation of this the sheriff may require the parties to submit, in electronic form or otherwise, draft findings in fact, or skeleton arguments, or both.

7. The judgment

7.1 The judgment should be issued within four weeks of the date of the making of avizandum. See paragraph 4.3.5 above.

C. REVOCATION OF FREEING ORDERS

8.1 Part A of this Practice Note applies to contested applications for the revocation of freeing orders.

8.2 Paragraphs 2.2, 2.6, 2.7 and 3.1 to 7.1 of this Practice Note, with the exception of paragraphs 3.2.1, 3.3.1 and 4.2.1, apply to contested applications for the revocation of freeing orders *mutatis mutandis*, subject to paragraphs 8.3 to 8.11.

8.3 In terms of rule 2.16(1) the sheriff may appoint a curator *ad litem* who must generally report in writing to the sheriff within four weeks. The sheriff may select a period other than four weeks since he or she has a discretion in the matter. Before selecting any other period the sheriff may wish to consult the curator *ad litem* and should keep in view the importance of disposing of the application for revocation as

expeditiously as possible. Whatever period is selected, the sheriff or sheriff clerk on his behalf should be vigilant to see that the report is delivered timeously.

8.4 In paragraph 2.6 the first sentence shall be deleted and there shall be substituted therefor:

> 'Rule 2.18(1) requires the sheriff to order a diet of hearing to be fixed when answers have been lodged under rule 2.15(3).

8.5 In paragraph 3.1.1 the reference to paragraph 2.1 shall be deleted.

8.6 For paragraph 3.2.2 there shall be substituted: 'The sheriff should have read the report by any curator *ad litem* appointed in terms of rule 2.16(1) and checked that it complies with that rule. The paragraphs of any such report must be individually numbered.'

8.7 In paragraph 3.2.3 the words "by the petitioners in terms of rule 2.5(2)(c)" shall be deleted, as shall the whole of the second sentence.

8.8 In paragraph 3.2.4, for the reference to rule 2.11(2) there shall be substituted a reference to rule 2.15(2) and in paragraph 3.2.5 for the reference to rule 2.9(1)(a) there shall be substituted a reference to rule 2.17(1)(a).

8.9 In paragraph 3.3.7 the references to the statement of disputed issues and paragraph 4.2.1 shall be deleted and there shall be added at the end:

> ' The sheriff should also fix a date at least seven days before the second hearing by which any permitted adjustment of the minute and answers should be completed'.

8.10 In paragraph 4.2.2 for the words 'in the local authority's report' in the second sentence there shall be substituted the words 'in the minute and answers'.

8.11 In paragraph 4.3.1 for the references to 'the statement of disputed issues' and 'the statement' there shall be substituted a reference to 'the parties' pleadings'.

D. ADOPTION ORDERS

9.1 Part A of this Practice Note applies to contested applications for adoption orders.

9.2 Part B of this Practice Note applies, with the exception of paragraph 3.2.3, to contested applications for adoption orders, *mutatis mutandis*, subject to paragraphs 9.3 to 9.11.

9.3 In paragraph 2.2 there shall be added at the end:

> 'If no report by an adoption agency or local authority has been lodged with the petition, the sheriff must pronounce an interlocutor requiring such a report to be lodged within four weeks or such other period as the sheriff may allow: rule 2.21(5).'

9.4 In paragraph 2.3 for the reference to section 18(1)(a) there shall be substituted a reference to section 16(1)(b)(i), and there shall be inserted at the beginning of the last sentence the words 'Subject to the remaining provisions of section 16 of the 1978 Act'.

9.5 In paragraph 2.4 the words 'applications for adoptions' shall be substituted for the words 'freeing cases', and for the reference to rule 2.7(1) there shall be substituted a reference to rule 2.25(1) and for the reference to rule 2.8(1),(2) a reference to rule 2.26(1),(2). A reporting officer need not be appointed where an order has been made freeing the child for adoption – see rule 2.25(2) as amended.

9.6 In paragraph 2.6 the first two sentences shall be deleted and there shall be substituted therefor:

> 'Rule 2.28(1) requires the sheriff to fix a diet of hearing on receipt of the reports of the reporting officer and curator *ad litem* in respect of a child who is not free for adoption. Rule 2.28(2) provides that the sheriff may fix a diet of hearing on receipt of the report of the curator *ad litem* in respect of a child who is free for

adoption. Any such diet of hearing is the hearing referred to below (see paragraph 3.1) as "the first hearing".'

9.7 For paragraph 3.2.1 there shall be substituted:

'3.2.1 He or she should have read all the reports and other papers lodged with the petition and will have checked that a report by the local authority or adoption agency (the paragraphs of which must be individually numbered) contains the information required by rule 2.21(3). The other papers may include a report by a children's hearing received in terms of section 73(14) of the 1995 Act and, where the child has not been placed for adoption with the applicant by an adoption agency, a medical report (rule 2.21(2)(c)).'

9.8 In paragraph 3.2.2 for the reference to rule 2.8(1) and (2) there shall be substituted a reference to rule 2.26(1) and (2).

9.9 In paragraph 3.2.4 for the reference to rule 2.11(2) there shall be substituted a reference to rule 2.28(3), and in paragraph 3.2.5 for the reference to rule 2.9(1)(a) there shall be substituted a reference to rule 2.27(1)(a).

9.10 In paragraph 3.3.4, for the reference to rule 2.12 there shall be substituted a reference to rule 2.30.

9.11 In paragraphs 4.2.1 and 4.2.2 the words 'in the local authority's report' shall be deleted and there shall be substituted the words 'in the report of the local authority or adoption agency as the case may be'.

E. CONVENTION ADOPTION ORDERS

10.1 Subject always to the provisions of Part IVA of the Rules, Part D of this Practice Note applies to contested applications for Convention adoption orders *mutatis mutandis* as it does to contested applications for adoption orders.

F. PARENTAL RESPONSIBILITIES ORDERS

11.1 Part A of this Practice Note applies to contested applications for parental responsibilities orders.

11.2 Paragraphs 2.2, 2.6, 2.7 and 3.1 to 7.1 of this Practice Note, with the exception of paragraph 3.2.3, apply to contested applications for parental responsibilities orders, *mutatis mutandis*, subject to paragraphs 11.3 to 11.11.

11.3 In terms of rule 2.39(1) the sheriff must appoint a curator *ad litem* and reporting officer who must generally report to the sheriff within four weeks from the date of the interlocutor appointing them – see rule 2.40(1) and (2). The paragraphs of their respective reports should be individually numbered. The sheriff should make these appointments as soon as practicable and may select a period other than four weeks since he has a discretion in the matter. Before selecting any other period the sheriff may wish to consult the curator *ad litem* and reporting officer and should keep in view the importance of disposing of the application for a parental responsibilities order as expeditiously as possible. The sheriff or sheriff clerk on his behalf should be vigilant to see that the reports are delivered timeously.

11.4 In paragraph 2.6 for the reference to rule 2.11(1) there shall be substituted a reference to rule 2.42(1).

11.5 In paragraph 3.1.1 the reference to paragraph 2.1 shall be deleted.

11.6 For paragraph 3.2.1 there shall be substituted:

> '3.2.1 He or she should have read any report by a children's hearing received in terms of section 73(14) of the 1995 Act and any reports (the paragraphs of which must be individually numbered) and other papers lodged by the local authority with the application.'

11.7 In paragraph 3.2.2, for the reference to rule 2.8(1),(2) there shall be substituted a reference to rule 2.40(1),(2).

11.8 In paragraph 3.2.4, for the reference to rule 2.11(2) there shall be substituted a reference to rule 2.42(2) and in paragraph 3.2.5 for the reference to rule 2.9(1)(a) there shall be substituted a reference to rule 2.41(1)(a).

11.9 In paragraph 3.3.6 the reference to section 57 of the 1978 Act shall be deleted.

11.10 In paragraph 4.2.1 the third sentence shall be deleted and there shall be substituted therefor:

> 'It should specify the matters which the respondent disputes in the application and in the reports which have been produced, and should refer to the numbered sections or paragraphs of the application and reports in which these matters are stated';

and in the final sentence the word 'reports' shall be substituted for 'report'.

11.11 In paragraph 4.2.2 for the reference to 'the local authority's report' there shall be substituted a reference to 'the application and the reports which have been produced'.

G. VARIATION AND DISCHARGE OF PARENTAL RESPONSIBILITIES ORDERS

12.1 Part A of this Practice Note applies to contested applications for the variation and discharge of parental responsibilities orders.

12.2 Paragraphs 2.2, 2.6, 2.7 and 3.1 to 7.1 of this Practice Note, with the exception of paragraph 3.2.1, apply to contested applications for the variation and discharge of parental responsibilities orders *mutatis mutandis,* subject to paragraphs 12.3 to 12.12.

12.3 In terms of rule 2.44(3) the sheriff may appoint a curator *ad litem* who must generally report in writing to the sheriff within four weeks. The paragraphs of any such report must be individually numbered. The sheriff may select a period other than four weeks since he or she has a discretion in the matter. Before selecting any other period the sheriff may wish to consult the curator *ad litem* and should keep in view the importance of disposing of the application for variation or discharge as expeditiously as possible. The sheriff or sheriff clerk on his behalf should be vigilant to see that the report is delivered timeously.

12.4 In paragraph 2.6 the first sentence shall be deleted and there shall be substituted:

> 'Rule 2.42(1), as applied by rule 2.44(5), requires the sheriff to order a diet of hearing to be fixed when the report of any curator *ad litem* appointed under rule 2.44(3) has been received.'

12.5 In paragraph 3.1.1 the reference to paragraph 2.1 shall be deleted.

12.6 For paragraph 3.2.2 there shall be substituted:

> 'The sheriff should have read the report of any curator *ad litem* appointed in terms of rule 2.44(3) and checked that it complies with that rule.'

12.7 In paragraph 3.2.3 the words 'in terms of rule 2.5(2)(c)' shall be deleted, as shall the whole of the second sentence.

12.8 In paragraph 3.2.4, for the reference to rule 2.11(2) there shall be substituted a reference to rule 2.44(6).

12.9 In paragraph 3.2.5 for the reference to rule 2.9(1)(a) there shall be substituted a reference to rule 2.41(1)(a) as applied by rule 2.44(4).

12.10 In paragraph 3.3.6 the reference to section 57 of the 1978 Act shall be deleted.

12.11 In paragraph 4.2.1 the third sentence shall be deleted and there shall be substituted therefor:

> ‘It should specify the matters which the respondent disputes in the application for variation or discharge and in any reports which have been produced, and should refer to the numbered sections or paragraphs of the application and reports in which these matters are stated’;

and in the final sentence the word ‘reports’ should be substituted for ‘report’.

12.12 In paragraph 4.2.2 for the reference to ‘the local authority’s report’ there shall be substituted a reference to ‘the application and any reports which have been produced’.

(Sgd) BA Kerr

Sheriff Principal of North Strathclyde

January 2006