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| **Act of Sederunt (Child Care and Maintenance Rules) 1997**  **Statutory Instrument 1997 No. 291 (S.19)** | |
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**PROCEDURE IN RESPECT OF CHILDREN**

**Application of rules 3.3 to 3.5A**

**3.2** (1)  Rules 3.3 to 3.5 apply where a sheriff is coming to a decision about a matter relating to a child within the meaning of section 27 of the 2011 Act.

(2)  Rule 3.5A applies in the circumstances referred to in paragraph (1) and in respect of applications under Part V of this Chapter.

(3) Rules 3.3, 3.3A, 3.5 and 3.5A apply in respect of appeals to the sheriff under section 44A of the CPSA 1995.

**Power to dispense with service on child**

**3.3** Where the sheriff is satisfied, so far as practicable and taking account of the age and maturity of the child, that it would be inappropriate to order service on the child, the sheriff may dispense with service on the child.

**Child to attend hearing**

**3.3A** (1)  This rule applies where an application is made to the sheriff under—

(a) the 2011 Act, other than where section 103 or 112 of the 2011 Act applies; or

(b) section 44A of the CPSA 1995.

(2)  A child must attend all hearings, unless the sheriff otherwise directs.

(3)  A child may attend a hearing even if the child is excused from doing so.

(4)  If the child is not excused from attending the hearing but does not attend the sheriff may grant a warrant to secure attendance in relation to the child.

(5)  Paragraph (6) applies if—

(a) the hearing of the application is to be continued to another day; and

(b) the sheriff is satisfied that there is reason to believe that the child will not attend on that day.

(6)  The sheriff may grant a warrant to secure attendance in relation to the child.

**Service on child**

**3.4** (1) Subject to rule 3.3 and to paragraph (2), after the issue of the first order or warrant to cite, as the case may be, the applicant shall forthwith serve a copy of the application and first order or warrant to cite on the child, together with a notice or citation in-

(a) Form 26 in respect of an application for a child assessment order under Part III of this Chapter;

(b) Form 27 in respect of an application to vary or terminate a child protection order in terms of rule 3.33;

(c) Form 28 in respect of an application for an exclusion order in terms of rules 3.34 to 3.39;

(d) Form 29 in respect of an application to vary or recall an exclusion order in terms of rule 3.40;

(f) subject to subparagraph (g), in Form 31 in respect of an application under section 93(2)(a) or 94(2)(a) of the 2011 Act;

(g) Form 31A in respect of an application under section 94(2)(a) of the 2011 Act where a procedural hearing has been fixed; and

(h) Form 31B in respect of an application under section 110(2) of the 2011 Act.

(2) The sheriff may, on application by the applicant or of his own motion, order that a specified part of the application is not served on the child.

**Procedure for obtaining a child’s view**

**3.5** (1) Subject to section 27(3) of the 2011 Act and regulation 11A(5) and (6) of the Secure Accommodation (Scotland) Regulations 2013, the sheriff—

(a) may order such steps to be taken as he considers appropriate to ascertain the views of that child; and

(b) shall not come to a decision about a matter relating to a child within the meaning of section 27 of the 2011 Act or in respect of an appeal under section 44A of the CPSA 1995 unless an opportunity has been given for the views of that child to be obtained or heard.

(2) Subject to any order made by the sheriff under paragraph (1)(a) and to any other method as the sheriff in his discretion may permit, the views of the child may be conveyed-

(a) by the child orally or in writing;

(b) by an advocate or solicitor acting on behalf of the child;

(c) by any safeguarder;

(ca) by any curator *ad litem*;

(d) by any other person (either orally or in writing), provided that the sheriff is satisfied that that person is a suitable representative and is duly authorised to represent the child.

(3) Where the views of the child are conveyed orally to the sheriff, the sheriff shall record those views in writing.

(4) The sheriff may direct that any written views given by a child, or any written record of those views, shall-

(a) be sealed in an envelope marked "Views of the child - confidential";

(b) be kept in the court process without being recorded in the inventory of process;

(c) be available to a sheriff only;

(d) not be opened by any person other than a sheriff, and

(e) not form a borrowable part of the process.

**Confidentiality**

**3.5A** (1)  Unless the sheriff otherwise directs, all documents lodged in process are to be available only to the sheriff, the reporter, the safeguarder, the curator *ad litem* and the parties; and such documents must be treated as confidential by all persons involved in, or party to, the proceedings and by the sheriff clerk.

(2)  The safeguarder and the curator *ad litem* must—

(a) treat all information obtained in the exercise of their duties as confidential; and

(b) not disclose any such information to any person unless disclosure of such information is necessary for the purpose of their duties.

(3)  This rule is subject to rule 3.5

**SAFEGUARDERS**

**Application**

**3.6** Rules 3.7 to 3.9 apply, as regards a safeguarder, to all applications and proceedings to which this Chapter applies except for an application under section 37 of the 2011 Act for a child protection order.

**Appointment of safeguarder**

**3.7** (1) Where a safeguarder has not been appointed for the child, the sheriff -

(a) shall, as soon as reasonably practicable after the lodging of an application or the commencing of any proceedings, consider whether it is necessary to appoint a safeguarder in the application or proceedings; and

(b) may at that stage, or at any later stage of the application or proceedings, appoint a safeguarder.

(2) Where a sheriff appoints a safeguarder, the appointment and the reasons for it must be recorded in an interlocutor.

**Rights, powers and duties of safeguarder on appointment**

**3.8** A safeguarder appointed in an application shall-

(a) have the powers and duties at common law of a curator *ad litem* in respect of the child;

(b) be entitled to receive from the Principal Reporter copies of the application, all of the productions in the proceedings and any papers which were before the children's hearing;

(c) subject to rule 3.5(1)(a), determine whether the child wishes to express his views in relation to the application and, if so, where the child so wishes transmit his views to the sheriff;

(d) make such enquiries so far as relevant to the application as he considers appropriate; and

(e) without delay, and in any event before the hearing on the application, intimate in writing to the sheriff clerk whether or not he intends to become a party to the proceedings.

(f) whether or not a party, be entitled to receive from the sheriff clerk all interlocutors subsequent to his or her appointment.

**Representation of safeguarder**

**3.9** (1) A safeguarder may appear personally in the proceedings or instruct an advocate or solicitor to appear on his behalf.

(2) Where an advocate or a solicitor is appointed to act as a safeguarder, he shall not act also as advocate or solicitor for the child in the proceedings.

**FIXING OF FIRST HEARING**

**Assigning of diet for hearing**

**3.11** Except where otherwise provided in these Rules, after the lodging of any application the sheriff clerk shall forthwith assign a diet for the hearing of the application and shall issue a first order or a warrant to cite in Form 32, Form 32A or Form 33, as the case may be.

**SERVICE, CITATION AND NOTICE**

**Service and notice to persons named in application**

**3.12** (1) Subject to the provisions of rule 3.4 (service on child), after the issue of the first order or warrant to cite, as the case may be, the applicant shall forthwith give notice of the application by serving a copy of the application and the first order or warrant to cite together with a notice or citation, as the case may be, on the persons named in the application or, as the case may be, a person who should receive notice of the application (subject to paragraph (2)) in-

(a) Form 34 in respect of an application for a child assessment order under Part III of this Chapter;

(b) Form 35 in respect of an application to vary or terminate a child protection order in terms of rule 3.33;

(c) Form 36 in respect of an application for an exclusion order in terms of rules 3.34 to 3.39;

(d) Form 37 in respect of an application to vary or recall an exclusion order in terms of rule 3.40;

(f) subject to subparagraph (g), in Form 39 in respect of an application under section 93(2)(a) or 94(2)(a) of the 2011 Act made under Part VII of this Chapter; or

(g) in Form 39A where a procedural hearing has been fixed in respect of an application under section 94(2)(a) of the 2011 Act made under Part VII of this Chapter.

(2) Notice of the application shall be given in the case of a safeguarder or curator *ad litem* by serving a copy of the application and the first order or warrant to cite together with notice in Form 40.

**Period of notice**

**3.13** (1) Subject to paragraph (2), citation or notice authorised or required by this Chapter shall be made not later than forty-eight hours, or in the case of postal citation seventy-two hours, before the date of the diet to which the citation or notice relates.

(2) Paragraph (1) shall not apply in relation to citation or notice of the following applications or proceedings-

(a) an appeal referred to in section 157(1), 160(1), 161(1) or 162(3) of the 2011 Act;

(aa) an appeal under section 44A of the CPSA 1995;

(b) a hearing in respect of an exclusion order where an interim order has been granted in terms of rule 3.36;

(c) a hearing on an application to vary or terminate a child protection order;

(d) an application for a child assessment order,

in which cases the period of notice and the method of giving notice shall be as directed by the sheriff.

**Citation of witnesses, parties and persons having an interest**

**3.14** (1) The following shall be warrants for citation of witnesses, parties and havers:-

(a) the warrant for the hearing on evidence in an application;

(b) an interlocutor fixing a diet for the continued hearing of an application; and

(c) an interlocutor assigning a diet for a hearing of an appeal or application.

(2) In an application or an appeal, witnesses or havers may be cited in Form 41.

(3) The certificate of execution of citation of witnesses and havers shall be in Form 42.

**Modes of service**

**3.15** (1) Service authorised or required by this Chapter shall be made by any mode specified in paragraphs (2) and (3).

(2) It shall be deemed legal service to or on any person if such service is-

(a) delivered to him personally;

(b) left for him at his dwelling-house or place of business with some person resident or employed therein;

(c) where it cannot be delivered to him personally and he has no known dwelling-house or place of business, left for him at any other place at which he may at the time be resident;

(d) where he is the master of, or a seaman or other person employed in, a vessel, left with a person on board or connected with the vessel;

(e) sent by first class recorded delivery post, or the nearest equivalent which the available postal service permits, to his dwelling-house or place of business, or if he has no known dwelling-house or place of business to any other place in which he may at the time be resident;

(f) where the person has the facility to receive facsimile or other electronic transmission, by such facsimile or other electronic transmission; or

(g) where the person has a numbered box at a document exchange, given by leaving at the document exchange.

(3) Where service requires to be made and there is not sufficient time to employ any of the methods specified in paragraph (2), service shall be effected orally or in such other manner as the sheriff directs.

**Persons who may effect service**

**3.16** (1) Subject to paragraphs (2) and (3), service shall be effected-

(a) in the case of any of the modes specified in rule 3.15(2), by a sheriff officer;

(b) in the case of any of the modes specified in rule 3.15(2)(e) to (g), by a solicitor, the sheriff clerk, the Principal Reporter or an officer of the local authority; or

(c) in the case of any mode specified by the sheriff in terms of rule 3.15(3), by such person as the sheriff directs.

(2) In relation to the citation of witnesses, parties and havers in terms of rule 3.14 or service of any application, "officer of the local authority" in paragraph (1)(b) includes any officer of a local authority authorised to conduct proceedings under these Rules in terms of rule 3.21 (representation).

(3) Where required by the sheriff, the sheriff clerk shall cite the Principal Reporter, the authors or compilers of any reports or statements and any other person whom the sheriff may wish to examine under section 155(5) of the 2011 Act (procedure in appeal to sheriff against decision of children’s hearing).

**Production of certificates of execution of service**

**3.17** (1) The production before the sheriff of-

(a) a certificate of execution of service in Form 43; and

(b) additionally in the case of postal service, a receipt of the registered or recorded delivery letter,

shall be sufficient evidence that service was duly made.

(2) It shall be sufficient to lodge the execution of service at the hearing, unless the sheriff otherwise directs or on cause shown.

**Power to dispense with service**

**3.18** Subject to rule 3.3, the sheriff may, on cause shown, dispense with service on any person named.

**MISCELLANEOUS**

**Expenses**

**3.19** No expenses shall be awarded in any proceedings to which this Chapter applies.

**Record of proceedings**

**3.20** Proceedings under this Chapter shall be conducted summarily.

**Representation**

**3.21** (1) In any proceedings any party may be represented by an advocate or a solicitor or, subject to paragraphs (2) and (3), other representative authorised by the party.

(2) Such other representative must throughout the proceedings satisfy the sheriff that he is a suitable person to represent the party and that he is authorised to do so.

(3) Such other representative may in representing a party do all such things for the preparation and conduct of the proceedings as may be done by an individual on his own behalf.

**Applications for evidence by live link**

**3.22** (1)  On cause shown, a party may apply in the form prescribed in paragraph (3) for authority for the whole or part of—

(a) the evidence of a witness or party; or

(b) a submission,

to be made through a live link.

(2)  In paragraph (1)—

“witness” means a person who has been or may be cited to appear before the sheriff as a witness (including a witness who is outwith Scotland), except in circumstances where such witness is a vulnerable witness within the meaning of section 11(1) of the Vulnerable Witnesses (Scotland) Act 2004;

“submission” means any oral submission which would otherwise be made to the court by the party or such party’s representative in person including an oral submission in support of an application;

“live link” means a live television link or such other arrangement as may be specified in the application by which the witness, party or representative, as the case may be, is able to be seen and heard in the proceedings or heard in the proceedings and is able to see and hear or hear the proceedings while at a place which is outside the courtroom.

(3)  An application under paragraph (1) shall be made—

(a) in Form 44A in the case of a witness or party;

(b) in Form 44B in the case of a submission.

(4)  The application shall be lodged with the sheriff clerk prior to the hearing at which the witness is to give evidence or the submission is to be made (except on special cause shown).

(5)  The sheriff shall—

(a) order intimation of the application to be made to the other party or parties to the proceedings in such form as he or she prescribes; and

(b) hear the application as soon as reasonably practicable

**Orders and transfer of cases**

**3.23** (1) The sheriff who hears an application under rule 3.22 shall, after hearing the parties and allowing such further procedure as the sheriff thinks fit, make an order granting or refusing the application.

(2) Where the sheriff grants the application, he may-

(a) transfer the case to be heard in whole; or

(b) hear the case himself or such part of it as he shall determine,

in another sheriff court in the same sheriffdom.

**Exclusion of certain enactments**

**3.24** The enactments specified in column (1) of Schedule 3 to this Act of Sederunt (being enactments relating to matters with respect to which this Chapter is made) shall not, to the extent specified in column (3) of that Schedule, apply to an application or appeal.