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| **Act of Sederunt (Child Care and Maintenance Rules) 1997**  **Statutory Instrument 1997 No. 291 (S.19)** | |
| **PART VII PROCEDURE IN APPLICATIONS UNDER SECTION 93(2)(a) OR 94(2)(a) OF THE 2011 ACT**  **Applications lodged on or after 24 June 2013** | |
| **3.44** | [**Interpretation**](#r0344) |
| **3.45** | [**Lodging of application, etc.**](#r0345) |
| **3.46** | [**Withdrawal of application**](#r0346) |
| **3.46A** | [**Expeditious determination of application**](#r0346A) |
| **3.47** | [**Hearing on evidence**](#r0347) |
| **3.48** | [**Amendment of statement**](#r0348) **of grounds** |
| **3.49** | [**Adjournment for inquiry, etc.**](#r0349) |
| **3.50** | [**Power of sheriff in making findings as to offences**](#r0350) |
| **3.51** | [**Decision of sheriff**](#r0351) |
| **3.52** | [**Signature of warrants**](#r0352) |

**Interpretation**

**3.44** In this Part, "application" means an application under section 93(2)(a) or 94(2)(a) of the 2011 Act

**Lodging of application, etc.**

**3.45** (1) Within a period of 7 days beginning with the date on which the Principal Reporter was directed in terms of section 93(2)(a) or 94(2)(a) of the 2011 Act to make an application to the sheriff, the Principal Reporter shall lodge an application in Form 60 with the sheriff clerk of the sheriff court district in which the child is habitually resident.

(1A)  Paragraph (1) is subject to the terms of section 102(2) of the 2011 Act.

(1B)  The sheriff may, on cause shown, remit any application to another sheriff court.

(1C)  Not later than 28 days after the day on which the application is lodged the sheriff clerk shall fix a hearing on evidence as required under section 101(2) of the 2011 Act.

(2) Where a safeguarder has been appointed by the children's hearing, the Principal Reporter shall intimate such appointment to the sheriff clerk and shall lodge along with the application any report made by the safeguarder.

(3)  Paragraphs (4) to (7) apply where an application under paragraph (1) is made by virtue of section 94(2)(a) of the 2011 Act.

(4)  The sheriff may fix a procedural hearing to determine whether or not the section 67 grounds in the statement of grounds are accepted by each relevant person.

(5)  Such procedural hearing must take place before the expiry of the period of 7 days beginning with the day on which the application is lodged.

(6)  The sheriff shall appoint service and intimation of the procedural hearing as the sheriff thinks fit.

(7)  Subject to paragraph (9)(a) and (b), subsequent to the procedural hearing the sheriff may discharge the hearing on evidence and determine the application.

(8)  Where paragraph (7) applies the sheriff shall make such orders for intimation as the sheriff thinks fit.

(9) Where—

(a) a relevant person does not accept the section 67 grounds in the statement of grounds at the procedural hearing;

(b) section 106(2)(a) or (b) of the 2011 Act applies; or

(c) the sheriff has not fixed a procedural hearing;

a hearing on evidence must take place in accordance with rule 3.47.

**Withdrawal of application**

**3.46** (1) At any stage of the proceedings before the application is determined the Principal Reporter may withdraw the application, either in whole or in part, by lodging a minute to that effect or by motion at the hearing.

(2) The Principal Reporter shall intimate such withdrawal to-

(a) the child, except where service on the child has been dispensed with in terms of rule 3.3;

(b) any relevant person whose whereabouts are known to the Principal Reporter; and

(c) any safeguarder and curator *ad litem* .

(3) In the event of withdrawal in whole in terms of paragraph (1), the sheriff shall dismiss the application and discharge the referral.

**Expeditious determination of application**

**3.46A** Prior to or at a hearing on evidence under rule 3.47 (or any adjournment or continuation thereof under rule 3.49), the sheriff may order parties to take such steps as the sheriff deems necessary to secure the expeditious determination of the application, including but not limited to—

(a) instructing a single expert;

(b) using affidavits;

(c) restricting the issues for proof;

(d) restricting witnesses;

(e) applying for evidence to be taken by live link in accordance with rule 3.22

**Hearing on evidence**

**3.47** (A1) If, at a hearing on evidence (or any adjournment or continuation thereof under rule 3.49), the section 67 grounds (or as they may be amended) are no longer in dispute, the sheriff may determine the application without hearing evidence.

(1) In the case of every section 67 ground the sheriff shall, in relation to any ground which is in dispute, hear evidence tendered by or on behalf of the Principal Reporter, including evidence given pursuant to an application granted under rule 3.23.

(2) At the close of the evidence led by the Principal Reporter in a case where it is disputed that the ground set out in section 67(2)(j) of the 2011 Act applies, the sheriff shall consider whether sufficient evidence has been led to establish that ground and shall give all the parties an opportunity to be heard on the question of sufficiency of evidence.

(3) Where the sheriff is not satisfied that sufficient evidence has been led as mentioned in paragraph (2), he shall make a determination to that effect.

(4) Paragraph (4A) applies where—

(a) paragraph (2) applies and the sheriff is satisfied that sufficient evidence has been led;

(b) any other section 67 ground is in dispute.

(4A)  The child, the relevant person and any safeguarder may give evidence and may, with the approval of the sheriff, call witnesses with regard to the ground in question

(5) Where the sheriff excuses the child from attending all or part of the hearing in accordance with section 103(3) of the 2011 Act, the following persons shall be permitted to remain during the absence of the child—

(a) any safeguarder appointed in relation to the child;

(b) any curator *ad litem* appointed in relation to the child;

(c) any relevant person;

(d) the child’s representative.

(6) Subject to paragraph (7), the sheriff may exclude any person, including the relevant person, while any child is giving evidence if the sheriff is satisfied that this is necessary in the interests of the child and that-

(a) he must do so in order to obtain the evidence of the child; or

(b) the presence of the person or persons in question is causing, or is likely to cause, significant distress to the child.

(7) Where the relevant person is not legally represented at the hearing and has been excluded under paragraph (6), the sheriff shall inform that relevant person of the substance of any evidence given by the child and shall give that relevant person an opportunity to respond by leading evidence or otherwise.

(8) Where evidence has been heard in part and a safeguarder thereafter becomes a party to proceedings, the sheriff may order the evidence to be reheard in whole or in part.

**Amendment of the statement of grounds**

**3.48** The sheriff may at any time, on the application of any party or of his own motion, allow amendment of any statement of grounds.

**Adjournment for inquiry, etc.**

**3.49** The sheriff on the motion of any party or on his own motion may continue the hearing fixed under rule 3.45(1C) in order to allow time for further inquiry into any application, in consequence of the amendment of any statement under rule 3.48, or for any other necessary cause, for such reasonable time as he may in the circumstances consider necessary.

**Power of sheriff in making findings as to offences**

**3.50** Where in a statement of grounds it is alleged that an offence has been committed by or against any child, the sheriff may determine that any other offence established by the facts has been committed.

**Decision of sheriff**

**3.51** (1) Subject to rule 3.47(3), the sheriff shall give his decision orally at the conclusion of the hearing.

(2) The sheriff clerk shall forthwith send a copy of the interlocutor containing that decision to-

(a) the child, except where service on the child has been dispensed with in terms of rule 3.3;

(b) any relevant person whose whereabouts are known;

(c) any safeguarder and curator *ad litem*;

(d) the Principal Reporter;

and

(e) such other persons as the sheriff may direct.

(3) The sheriff may, when giving his decision in terms of paragraph (1) or within 7 days thereafter, issue a note of the reasons for his decision and the sheriff clerk shall forthwith send a copy of such a note to the persons referred to in paragraph (2).

**Signature of warrants**

**3.52** (1)  Subject to paragraph (3) a warrant granted under the 2011 Act may be signed by the sheriff or the sheriff clerk.

(2)  A warrant signed by the sheriff clerk shall be treated for all purposes as if it had been signed by the sheriff.

(3)  A warrant to secure attendance must be signed by the sheriff