



## SHERIFFDOM OF SOUTH STRATHCLYDE DUMFRIES AND GALLOWAY

### PRACTICE NOTE NO. 15 of 2020

#### ORDERS IN TERMS OF SECTION 11 OF THE CHILDREN (SCOTLAND) ACT 1995

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 all family actions (as defined in terms of Chapter 33 of the Rules) and all civil partnership actions (as defined in terms of Chapter 33A of the Rules) in which orders in terms of section 11 of the Children (Scotland) Act 1995 ("the 1995 Act") are sought.
- 1.2 The purpose of this Practice Note is to ensure the efficient and expeditious disposal of such proceedings 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 such proceedings will require active case management by the judiciary and meaningful dialogue between the parties.

- 1.4 All references in this Practice Note to sheriff include summary sheriff. All references to Rules are to the Act of Sederunt (Sheriff Court Ordinary Cause Rules) 1993.
- 1.5 This Practice Note has immediate effect.

## **Part 2 - General Provisions**

- 2.1 Practitioners and parties should be aware of the terms of (a) the Guidance for Practitioners and Litigants Covid-19: Electronic Submission of Documents dated 10 June 2020 and (b) the Guidance for Practitioners and Litigants Covid-19: Management of Civil Business dated 10 June 2020.
- 2.2 Part 1 of Schedule 4 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 Each party seeking an order in terms of section 11 of the 1995 Act must provide the court with a note of (i) his or her telephone number; (ii) his or her email address; and (iii) the means available to him or her to take part in the proceedings remotely. This information must be provided, in relation to new applications, upon the lodging of the application and in relation to existing applications, upon request by the court.
- 2.4 Each party opposing an application for an order in terms of section 11 of the 1995 Act must provide the court with a note of (i) his or her telephone number; (ii) his or her email address; and (iii) the means available to him or her to take part in the proceedings remotely. This information must be provided, in relation to new applications, upon the lodging of a notice of intention to defend and in relation to existing applications upon request by the court.

## **Part 3 – Procedural Hearing**

- 3.1 Where the sheriff considers it necessary in order to secure the efficient and expeditious disposal of an action in which an order in terms of section 11 of the 1995

Act is sought, the sheriff may *ex proprio motu* assign a Procedural Hearing to be conducted by remote means. The purpose of such a Procedural Hearing is to allow the sheriff (i) to order a Child Welfare Report or a report from a local authority where that is considered necessary and to discuss with parties the matters to be addressed in any such report; (ii) to discuss the means by which any Child Welfare Hearing will take place; (iii) to identify those who will be attending any Child Welfare Hearing; and (iv) to make any other orders or interim orders as the sheriff thinks fit.

- 3.2 Where a part has instructed a solicitor, that party is not required to attend any Procedural Hearing.

#### **Part 4 – Child Welfare Hearings**

4.1 Where the sheriff has determined that parties require to attend a Child Welfare Hearing personally in a court building, the interlocutor assigning the Child Welfare Hearing will set out the date and time of the hearing. Each Child Welfare Hearing will be allocated a specific time to regulate the number of individuals within a court building.

4.2 Parties should not enter the court building more than ten minutes before the Child Welfare Hearing is due to take place. Parties must consult with their solicitors prior to attending the Child Welfare Hearing. Negotiations or discussions between parties must be conducted either outside the court building or prior to attending the Child Welfare Hearing.

4.3 Only parties and their solicitors will be permitted within the court building. Parties must not be accompanied by others, including family or friends.

4.4 Parties and their solicitors must observe the requirements of social distancing and follow the instructions provided to them by court staff.

#### **Part 5 – Case Management Hearings**

5.1 The pursuer must lodge a Joint Minute of a Pre-hearing Conference at least two working days in advance of a Case Management Hearing. The Joint Minute must

address each of the matters set out in OCR 33AA.4(1). Failure to comply with the requirements of Chapter 33AA of the Rules may result in the action being dismissed, or an award of expenses being made against the party responsible for the failure.

- 5.2 Case Management Hearings will take place by telephone conference. Those attending Case Management Hearings must be in a position to provide the sheriff with sufficient information to enable him to ascertain the matters specified in OCR 33AA.4(1).
- 5.3 Parties are expected to assist the court in achieving the fair and expeditious determination of the proceedings 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 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. The use of affidavits in lieu of evidence in chief, in whole or in part, is encouraged.

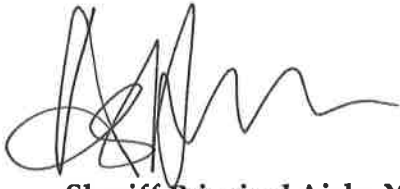
#### **Part 6 – Pre-Proof Hearings**

- 6.1 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.
- 6.2 Where the evidence of any witness is to be led remotely, or a party is to participate in the proceedings remotely, parties will cooperate with the court to ensure the integrity of the proceedings and will ensure 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.

**Part 7 – Proofs**

- 7.1 The initial default position to conducting proofs is by electronic means.
- 7.2 In the event that the sheriff directs that the proof will be conducted in a court room, the sheriff will direct which persons shall be present in the court room.
- 7.3 Evidence will be recorded electronically.
- 7.4 Unless otherwise directed, each witness shall arrive at court no earlier than 10 minutes before the time scheduled for the commencement of his/her evidence.
- 7.5 Parties, their solicitors and witnesses must observe the requirements of social distancing and follow the instructions provided to them by court staff.



**Sheriff Principal Aisha Yaqoob Anwar**

**Sheriffdom of South Strathclyde, Dumfries and Galloway**

**19 June 2020**