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STATUTORY INSTRUMENTS

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**1997 No. 291**

**Act of Sederunt (Child Care and Maintenance Rules) 1997**

CHAPTER 3

CHILDREN (SCOTLAND) ACT 1995

PART II

GENERAL RULES

*PROCEDURE IN RESPECT OF CHILDREN*

**Application**

**3.2** Rules 3.3 to 3.5 apply where by virtue of section 16(2) of the Act a child may be given an opportunity to indicate whether he wishes to express his views in relation to an application or proceedings in the circumstances stated in section 16(4)(b) and (c) of the Act.

**Power to dispense with service on child**

**3.3** Where the sheriff is satisfied, taking account of the age and maturity of the child, that it would be inappropriate to order service on the child, he may dispense with—

- (a) service on the child; and
- (b) the attendance of the child at the hearing of the application.

**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 set aside 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;
- (e) Form 30 in respect of an application for a warrant to keep a child in a place of safety under Part VI of this Chapter; and
- (f) Form 31 in respect of an application under section 65(7) or (9) of the Act made under Part VII of this Chapter.

(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 where child wishes to express a view**

**3.5.—**(1) Where a child has indicated his wish to express his views, 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 make any order or disposal mentioned in paragraph (b) or (c) of section 16(4) of the Act 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 or curator *ad litem* appointed by the court; or
- (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.

*SAFEGUARDERS*

**Application**

**3.6** Rules 3.7 to 3.10 apply, as regards a safeguarder, to all applications and proceedings to which this Chapter applies except for proceedings under section 57 of the Act for a child protection order.

**Appointment of safeguarder**

**3.7.—**(1) 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 safeguarder has been appointed in proceedings before the children’s hearing or the sheriff in respect of related proceedings, the appointee shall, unless the sheriff on his own motion or on cause shown by a party directs otherwise, be the same person appointed as safeguarder by the children’s hearing or the sheriff.

### **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.

### **Provision where safeguarder intimates his intention to become a party to the proceedings**

**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.

### **Provision where safeguarder intimates his intention not to become a party to the proceedings**

**3.10.**—(1) Where a safeguarder intimates that he does not intend to become a party to the proceedings, he shall at the same time report in writing to the sheriff on the extent of his enquiries and his conclusion as to the interests of the child in the proceedings.

(2) The sheriff clerk shall intimate to a safeguarder who has not become a party to the proceedings all interlocutors subsequent to his appointment.

(3) A safeguarder who has intimated his intention not to become a party to the proceedings may subsequently seek leave so to become.

## *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 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 set aside 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;
- (e) Form 38 in respect of an application for a warrant to keep a child in a place of safety under Part VI of this Chapter; and
- (f) Form 39 in respect of an application under section 65(7) or (9) of the Act made under Part VII of this Chapter.

(2) Notice of the application shall be given in the case of a safeguarder 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 against a decision to issue a warrant for the detention of a child;
- (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 set aside a child protection order or any direction given with the order; or
- (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 first diet 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) or (f), 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) The sheriff clerk shall cite the Principal Reporter and the authors or compilers of any reports or statements whom the sheriff may wish to examine under section 51(3) of the Act (appeal against decision of children’s hearing or sheriff).

### **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, the post office 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 of children by television link**

**3.22.**—(1) This rule and rule 3.23 shall apply to any proceedings in the sheriff court under Part II of the Act.

(2) An application to the court for the giving of evidence by a child by means of a live television link shall be made in Form 44.

(3) An application referred to in paragraph (2) shall be lodged with the sheriff clerk not later than 14 days before the hearing at which the child is to give evidence (except on special cause shown).

(4) The sheriff shall—

(a) order intimation of the application to be made to the other party or parties to the proceedings; and

(b) hear the application on the earliest practicable date.

## **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.