

SCHEDULE

SHERIFF COURT ADOPTION RULES 2009

CHAPTER 4

PERMANENCE ORDERS

Application for permanence order

31.—(1) An application for a permanence order under section 80 of the 2007 Act is to be made by petition in Form 11.

(2) The following documents must be lodged in process along with a petition under paragraph (1):

- (a) an extract of the entry in the Register of Births relating to the child who is the subject of the application;
- (b) a report by the petitioner in numbered paragraphs, if available, which deals with the following matters:—
 - (i) how the needs of the child came to the notice of the petitioner;
 - (ii) any relevant family circumstances of the child;
 - (iii) a description of the physical and mental health of the child (including any special needs) and his emotional, behavioural and educational development;
 - (iv) an account of the discussion by the petitioner with the parents or guardians of the child and, if appropriate, with the child about their wishes and the alternatives to a permanence order;
 - (v) where appropriate, whether the father of the child has been given notice and provided with the prescribed information under section 105(2) of the 2007 Act;
 - (vi) the knowledge of the petitioner of the position of other relatives or persons likely to be involved;
 - (vii) an account of the search by the petitioner for any parent or guardian who cannot be found;
 - (viii) the arrangements of the petitioner to care for the child after the making of a permanence order (including the arrangements for contact between the child and any other person);
 - (ix) the child's religious persuasion, racial origin and cultural and linguistic background;
 - (x) the likely effect on the child of the making of a permanence order;
 - (xi) whether there is a person who has the right mentioned in section 2(1)(a) of the 1995 Act to have the child living with the person or otherwise to regulate the child's residence and, where there is such a person, evidence that the child's residence with the person is or is likely to be seriously detrimental to the welfare of the child;
 - (xii) whether the child is or has been married or a civil partner;
 - (xiii) in the case of a petition containing a request that the order include provision granting authority for the child to be adopted, the matters mentioned in paragraph (3);
 - (xiv) in the case of a petition in respect of a child who is aged 12 or over, whether the child consents to the making of the order or is incapable of doing so;

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- (xv) whether the child is subject to a supervision requirement under section 70 of the 1995 Act;
 - (xvi) any other information which may be of assistance to the court having regard, in particular, to sections 83 (if appropriate) and 84 of the 2007 Act;
 - (c) any other document founded upon by the petitioner in support of the terms of the petition.
- (3) The matters referred to in paragraph (2)(xiii) are—
- (a) whether the child has been, or is likely to be, placed for adoption;
 - (b) whether each parent or guardian of the child understands what the effect of making an adoption order would be and consents to the making of such an order in relation to the child, or the grounds on which such consent should be dispensed with.
- (4) If the report mentioned in paragraph (2)(b) is unavailable to be lodged with the petition, the sheriff shall pronounce an interlocutor requiring the petitioner to prepare and lodge such a report within 2 weeks of the date of the interlocutor, or within such other period as the sheriff in his discretion may allow.

Appointment of curator *ad litem* and reporting officer

32.—(1) The sheriff must, on the lodging of a petition under rule 31 appoint a curator *ad litem* and reporting officer.

(2) But, subject to paragraph (3) the sheriff is not to appoint a reporting officer where the petition does not request that the order include provision granting authority for the child to be adopted.

(3) Notwithstanding paragraph (2), a reporting officer must be appointed where the child who is the subject of the application is aged 12 or over for the purpose of witnessing that child's consent where that consent is to be executed in Scotland.

(4) The same person may be appointed as curator *ad litem* and reporting officer in the same petition, if the sheriff considers that doing so is appropriate in the circumstances.

(5) The sheriff may appoint a person who is not a member of a panel established under regulations made by virtue of section 101 of the 1995 Act to be curator *ad litem* or a reporting officer.

(6) The sheriff may, on cause shown, appoint a reporting officer prior to the lodging of a petition.

(7) An application for an appointment under paragraph (6) is to be made by letter addressed to the sheriff clerk specifying the reasons for the appointment, and shall not require to be intimated to any other person.

(8) The sheriff clerk must intimate the appointment of a curator *ad litem* and reporting officer under paragraph (1) or (6) to the person or persons appointed.

Intimation of application

33.—(1) On the lodging of a petition under rule 31—

- (a) the sheriff clerk must fix a date for a preliminary hearing not less than 6 and not more than 8 weeks after the date of lodging the petition;
- (b) where the petition does not contain a request that the order include provision granting authority for the child to be adopted, the petitioner must send a copy of the petition along with a notice of intimation in Form 12 to—
 - (i) any person who has parental responsibilities or parental rights in relation to the child;
 - (ii) any person who claims to have an interest;
- (c) where the petition contains such a request—

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- (i) the petitioner must send a copy of the petition along with a notice of intimation in Form 12 to the persons mentioned in paragraph (2); and
 - (ii) the petitioner must send a copy of the petition along with a notice of intimation in Form 13 to the father of the child if he does not have, and never has had, parental responsibilities and parental rights in relation to the child;
 - (d) the sheriff clerk must intimate the date of the preliminary hearing to the curator *ad litem* and to any reporting officer appointed under rule 32;
 - (e) the sheriff may order the petitioner to intimate the application to such other person as he considers appropriate.
- (2) The persons referred to in paragraph (1)(c)(i) are—
- (a) every person who can be found and whose consent to the making of the order is required to be given or dispensed with under the 2007 Act;
 - (b) if no such person can be found, a relative of the child within the meaning of section 119(1) of the 2007 Act unless the address of such a relative is not known to the petitioner and cannot reasonably be ascertained.
- (3) A notice of intimation under paragraph (1)(c)(i) must include the following matters:—
- (a) that an application for a permanence order containing a request that the order include provision granting authority for the child to be adopted has been made;
 - (b) the date on which and place where the preliminary hearing will be held;
 - (c) the fact that the person is entitled to be heard on the application;
 - (d) the fact that, unless the person wishes, or the court requires, the person need not attend the hearing.
- (4) A notice of intimation under paragraph (1)(c)(ii) must include the matters mentioned in paragraphs (3)(a) and (b).
- (5) The sheriff clerk or petitioner on making intimation shall complete a certificate of intimation in Form 14.

Form of response

34. Any person who has received intimation of an application for a permanence order under rule 33 and who intends to oppose that application must lodge a form of response in Form 15 not later than 21 days after the date of intimation of the application.

Preliminary hearing

- 35.—**(1) At the preliminary hearing the sheriff must—
- (a) if no form of response has been lodged under rule 34, dispose of the case or make such other order as he considers appropriate;
 - (b) if a form of response has been lodged—
 - (i) ascertain from the parties the anticipated length of any proof that may be required;
 - (ii) fix a diet of proof not less than 12 and not more than 16 weeks after the date of the preliminary hearing or any continuation thereof unless, on cause shown, a longer period is appropriate;
 - (iii) fix a pre-proof hearing not less than 2 and not more than 6 weeks before the diet of proof; and

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- (iv) order answers and any other documents to be lodged within 21 days of the date of the preliminary hearing or any continuation thereof or such other period as he considers appropriate.
- (2) The sheriff may, on cause shown, of his own motion or on the motion of any party, allow a continuation of the preliminary hearing on one occasion only for a period not exceeding 4 weeks.
- (3) At the preliminary hearing the sheriff may—
 - (a) if he is not satisfied that the facts stated in the petition are supported by the documents lodged with it or by the reports of the curator *ad litem* and reporting officer, order the production of further documents; and
 - (b) make such other order as he considers appropriate for the expeditious progress of the case.
- (4) Any answers lodged under paragraph (1)(b)(iv) shall be in numbered paragraphs corresponding to the numbered paragraphs of the report mentioned in rule 31(2)(b).

Pre-proof hearing

- 36.**—(1) It is the duty of the parties to provide the sheriff with sufficient information to enable him to conduct the hearing as provided for in this rule.
- (2) At the pre-proof hearing the sheriff must ascertain, so far as is reasonably practicable, whether the case is likely to proceed to proof on the date fixed for that purpose and, in particular, the sheriff must consider—
- (a) the state of preparation of the parties;
 - (b) the extent to which the parties have complied with any orders made by the sheriff under rule 35.
- (3) At the pre-proof hearing the sheriff may—
- (a) discharge the proof and fix a new date for such proof;
 - (b) adjourn the pre-proof hearing;
 - (c) order the lodging of joint minutes of agreement, affidavits and expert reports within such period as he considers appropriate; and
 - (d) make such other order as he considers appropriate to secure the expeditious progress of the case.

Proof to be taken continuously

37. A proof is to be taken continuously so far as possible, but the sheriff may adjourn the diet from time to time.

Pronouncement of decision

- 38.**—(1) At the conclusion of the proof the sheriff may—
- (a) pronounce a decision; or
 - (b) reserve judgment.
- (2) If the sheriff pronounces his decision at the end of the proof, he—
- (a) must state briefly the grounds of his decision, including the reasons for his decision on any questions of law or of admissibility of evidence; and
 - (b) may, and if requested to do so by one of the parties must, append to the interlocutor a note setting out those matters and his findings in fact and law.

(3) If the sheriff pronounces his decision after reserving judgment, he must give to the sheriff clerk within 4 weeks of the conclusion of the proof—

- (a) an interlocutor giving effect to his decision and incorporating findings in fact and law; and
- (b) a note setting out the matters mentioned in paragraph (2)(a).

(4) The sheriff clerk must forthwith send copies of the documents mentioned in paragraph (2) or (3) to each of the parties.

(5) The sheriff principal may extend the period mentioned in paragraph (3) for such further period as he considers reasonable.

(6) Where the sheriff reserves judgment—

- (a) the date of the interlocutor of the sheriff shall be the date on which it is received by the sheriff clerk; and
- (b) the sheriff clerk shall enter that date in the interlocutor.

(7) If the question of expenses has been reserved the sheriff must deal with that issue within 21 days of the date of the interlocutor disposing of the merits of the application.

(8) In any case in which a serial number has been assigned in respect of the child's address under rule 43, or where the sheriff so directs, any document issued under this rule shall not disclose the child's address.

Final procedure

39.—(1) Where a permanence order has been granted, the sheriff clerk must—

- (a) after the expiry of 14 days from the date of, or date of confirmation of, the order without an appeal having been taken, issue an extract of the order to the petitioner; and
- (b) where the court has also made an order under section 89(2) (revocation of supervision requirement) of the 2007 Act, intimate the making of that order to the Principal Reporter.

(2) Where the permanence order includes provision granting authority for the child to be adopted the sheriff clerk must, after complying with paragraph (1) seal the process in an envelope marked "Confidential".

(3) The envelope referred to in paragraph (2) must not be unsealed by the sheriff clerk or any other person having control of the records of that or any court, and the process shall not be made accessible to any person for one hundred years after the date of the granting of the order except—

- (a) to the person to whom the permanence order relates once he has attained the age of 16 years;
- (b) to the sheriff clerk, on an application made to him by an adoption agency, with the consent of the person to whom the process relates, for the purpose only of ascertaining the name of the agency, if any, responsible for the placement of that person and informing the applicant of that name;
- (c) to a person, on an application made by him to the sheriff setting forth the reasons for which access to the process is required;
- (d) to a court, public authority or administrative board (whether in the United Kingdom or not) having power to authorise an adoption, on petition by it to the court which granted the original order requesting that information be made available from the process for the purpose of discharging its duties in considering an application for adoption and specifying the precise reasons for which access to the process is required; or
- (e) to a person who is authorised by the Scottish Ministers to obtain information from the process for the purpose of such research as is intended to improve the working of adoption law and practice.

Variation of ancillary provisions in order

40.—(1) An application under section 92(2) (application for variation of ancillary provisions) of the 2007 Act is to be made by minute in Form 16 in the process of the original application.

(2) A minute under paragraph (1) must contain—

- (a) the name and address of the applicant;
- (b) the applicant's relationship to and interest in the child;
- (c) the name and address of the local authority on whose application the permanence order was granted;
- (d) details of the original application;
- (e) details of any other person affected by the order;
- (f) the grounds on which variation is sought;
- (g) details of whether the child is subject to a supervision requirement under section 70 of the 1995 Act;
- (h) details of the order sought by the applicant.

(3) On the lodging of a minute under paragraph (1) the sheriff must order the applicant to intimate the minute to the petitioner in the original application, where it is not the applicant, to any other person affected by the order and to such other persons as the sheriff considers appropriate.

(4) A person to whom intimation is given under paragraph (3) may, within 14 days after the date on which intimation is made, lodge answers to the minute.

(5) The sheriff must, on the lodging of a minute under paragraph (1), appoint a curator *ad litem*.

(6) Where answers have been lodged under paragraph (4) the sheriff must order a hearing to be fixed.

(7) Where no answers have been lodged under paragraph (4) the sheriff may order a hearing to be fixed.

(8) Where the sheriff orders a hearing to be fixed under paragraph (6) or (7) he may also order a pre-proof hearing to be fixed not less than 2 and not more than 6 weeks before the hearing.

(9) Rule 36 is to apply, with any necessary modifications, to any pre-proof hearing fixed under paragraph (8).

(10) The sheriff shall order the applicant to intimate any hearing fixed under paragraph (6), (7) or (8) to the petitioner in the original application, where it is not the applicant, to any other person affected by the order and to such other persons as the sheriff considers appropriate.

(11) A hearing fixed under this rule is to be taken continuously so far as possible but the sheriff may adjourn the diet from time to time.

Amendment of order to grant authority for child to be adopted

41.—(1) An application under section 93(2) (amendment of order to include provision granting authority for child to be adopted) of the 2007 Act is to be made by minute in Form 17 in the process of the original application.

(2) A minute under paragraph (1) must contain—

- (a) the name and address of the applicant;
- (b) details of the original application;
- (c) details of the following matters—
 - (i) whether the child has been, or is likely to be, placed for adoption;

- (ii) whether each parent or guardian of the child understands what the effect of making an adoption order would be and consents to the making of such an order in relation to the child, or the grounds on which such consent should be dispensed with;
 - (iii) the child's religious persuasion, racial origin and cultural and linguistic background;
 - (iv) whether the child is subject to a supervision requirement under section 70 of the 1995 Act;
 - (v) the likely effect on the child of the making of the order.
- (3) On the lodging of a minute under paragraph (1)—
- (a) the sheriff clerk must fix a date for a preliminary hearing not less than 6 and not more than 8 weeks after the date of lodging the application;
 - (b) the applicant must send a copy of the minute along with a notice of intimation in Form 18 to every person who can be found and whose consent to the making of the order is required to be given or dispensed with under the 2007 Act;
 - (c) the applicant must send a copy of the minute along with a notice of intimation in Form 19 to the father of the child if he does not have, and never has had, parental responsibilities in relation to the child;
 - (d) the sheriff may order the applicant to intimate the minute to such other persons as he considers appropriate;
 - (e) the sheriff must appoint a curator *ad litem* and reporting officer and the same person may be appointed as curator *ad litem* and reporting officer if the sheriff considers that doing so is appropriate in the circumstances.
- (4) A notice of intimation under paragraph (3)(b) must state the following matters:—
- (a) that an application has been made;
 - (b) the date on which, and place where, the preliminary hearing will be heard;
 - (c) the fact that the person is entitled to be heard on the application;
 - (d) the fact that, unless the person wishes, or the court requires, the person need not attend the hearing.
- (5) A notice of intimation under paragraph (3)(c) must state the matters mentioned in paragraph (4)(a) and (b).
- (6) The minuter on making intimation shall complete a certificate of intimation in Form 14.
- (7) Rules 34 to 39 are to apply, with any necessary modifications, to an application under this rule as they apply to an application under rule 31.

Revocation

- 42.—(1)** An application under section 98(1) of the 2007 Act for revocation of a permanence order shall—
- (a) be made by minute in Form 20 in the process of the original application; and
 - (b) specify detailed proposals for the future welfare of the child.
- (2) A minute under paragraph (1) must contain—
- (a) the name and address of the applicant;
 - (b) the applicant's relationship to and interest in the child;
 - (c) the name and address of the local authority on whose application the permanence order was granted;
 - (d) details of the original application;

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- (e) details of any other person affected by the order;
 - (f) the grounds on which revocation is sought;
 - (g) details of whether the child is subject to a supervision requirement under section 70 of the 1995 Act;
 - (h) details of the order sought by the applicant.
- (3) On the lodging of a minute under paragraph (1), the sheriff must order the applicant to intimate the minute to the petitioner in the original application, where it is not the applicant, to any other person affected by the order and to such other persons as he considers appropriate.
- (4) Any person to whom intimation has been given under paragraph (3) may, within 14 days after the date on which intimation is made, lodge answers to the minute.
- (5) The sheriff must, on the lodging of a minute under paragraph (1), appoint a curator *ad litem*.
- (6) Where answers have been lodged under paragraph (4), the sheriff—
- (a) must order a hearing to be fixed; and
 - (b) may order the relevant local authority to submit a report to him.
- (7) Where no answers have been lodged under paragraph (4) the sheriff may—
- (a) order the relevant local authority to submit a report to him;
 - (b) order a hearing to be fixed;
 - (c) order both such a report and such a hearing.
- (8) Where the sheriff orders a hearing to be fixed under paragraph (6) or (7) he may also order a pre-proof hearing to be fixed not less than 2 and not more than 6 weeks before the hearing.
- (9) Rule 36 is to apply, with any necessary modifications, to any pre-proof hearing fixed under paragraph (8).
- (10) The sheriff shall order the applicant to intimate any hearing fixed under paragraph (6), (7) or (8) to the petitioner in the original application, where it is not the applicant, to any other person affected by the order and to such other persons as the sheriff considers appropriate.
- (11) A hearing fixed under this rule is to be taken continuously so far as possible but the sheriff may adjourn the diet from time to time.
- (12) An order made in respect of an application under paragraph (1) may specify the person—
- (a) on whom parental responsibilities are imposed in consequence of the making of the order; and
 - (b) to whom parental rights are given in consequence of the making of the order.

Protection of address of child

43.—(1) Where an applicant under this Chapter wishes to prevent the address of the child being disclosed to any person whose consent to the making of an order is required, the applicant may apply to the sheriff clerk for a serial number to be assigned for that purpose.

- (2) On receipt of an application under paragraph (1) the sheriff clerk must—
 - (a) assign a serial number in respect of the child’s address; and
 - (b) enter a note of the number opposite the child’s address in a register of serial numbers.
- (3) The contents of the register of serial numbers and the addresses of the children to whom each number relates shall be treated as confidential by the sheriff clerk and are not to be disclosed to any person other than the sheriff.
- (4) Where a serial number has been assigned under paragraph (2), any form of consent to a permanence order—

- (a) must refer to the child's address by means of the serial number assigned to it; and
- (b) must specify the year in which and the court by which the serial number was assigned.

Duties of reporting officer and curator *ad litem*

44.—(1) The other duties of a reporting officer appointed under this Chapter, other than under rule 32(3), which are prescribed for the purposes of section 108(1)(b) of the 2007 Act are—

- (a) to ascertain the whereabouts of all persons whose consent to the making of an adoption order in respect of the child is required;
- (b) to ascertain whether there is any person other than those mentioned in the petition or minute, as the case may be, upon whom notice of the application should be served;
- (c) in the case of each person whose consent to the making of an adoption order is required or may be dispensed with, to—
 - (i) ascertain whether that person understands what the effect of making an adoption order would be;
 - (ii) ascertain whether alternatives to adoption have been discussed with that person;
 - (iii) confirm that that person understands that he may withdraw his consent at any time before an order is made;
- (d) to confirm that each parent or guardian of the child who can be found is aware that he may apply to the court for—
 - (i) variation of the ancillary provisions in the permanence order under section 92 of the 2007 Act; and
 - (ii) revocation of a permanence order under section 98 of the 2007 Act, and of the appropriate procedure for these applications.
- (e) to report in writing on the matters mentioned in subparagraphs (a) to (d) to the sheriff within 4 weeks from date of interlocutor appointing the reporting officer, or within such other period as the sheriff in his discretion may allow.

(2) References in paragraph (1) to consent are to consent within the meaning of section 83(1)(c), 84(1) or 93(3) of the 2007 Act as the case may be.

(3) A curator *ad litem* appointed under this Chapter must—

- (a) have regard to safeguarding the interests of the child as his paramount duty;
- (b) inquire, so far as he considers necessary into the facts and circumstances stated in the petition or minute, as the case may be, and in any report lodged under rule 31(2)(b);
- (c) where appropriate, establish the child's religious persuasion, racial origin and cultural and linguistic background;
- (d) where appropriate, establish whether the order is likely to safeguard and promote the welfare of the child throughout childhood;
- (e) ascertain whether the child is subject to a supervision requirement under section 70 of the 1995 Act;
- (f) ascertain from the child whether he wishes to express a view and, where the child indicates his wish to express a view, ascertain that view;
- (g) ascertain the likely effect on the child of the making of the order;
- (h) where appropriate, ascertain whether it would be better for the child that the order be made than that it should not be made;

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- (i) where appropriate, ascertain whether it would be better for the child if the court were to grant authority for the child to be adopted than if it were not to grant such authority;
- (j) where appropriate, ascertain whether the child has been, or is likely to be, placed for adoption.

(4) Subject to paragraph (5) the curator *ad litem* must report in writing on the matters mentioned in paragraph (3) to the sheriff within 4 weeks from the date of the interlocutor appointing the curator, or within such other period as the sheriff in his discretion may allow.

(5) Subject to any order made by the sheriff under rule 46(1)(a) the views of the child ascertained in terms of paragraph (3)(f) may, if the curator *ad litem* considers appropriate, be conveyed to the sheriff orally.

Consents

45.—(1) The consent of a parent or guardian required by section 83(1)(c) or 93(3) of the 2007 Act is to be in Form 21.

(2) The consent of the child required under section 84(1) of the 2007 Act is to be in Form 22.

(3) A form of consent mentioned in paragraph (1) or (2) must be witnessed—

- (a) where it is executed in Scotland, by the reporting officer appointed under this Chapter;
- (b) where it is executed outwith Scotland but within the United Kingdom, by a justice of the peace or commissioner for oaths; or
- (c) where it is executed outwith the United Kingdom—
 - (i) if the person who executes the form is serving in Her Majesty’s forces, by an officer holding a commission in any of those forces; or
 - (ii) in any other case, by a British diplomatic or consular official or any person authorised to administer an oath or affirmation under the law of the place where the consent is executed.

Procedure where child wishes to express a view

46.—(1) Where a child has indicated his wish to express his views the sheriff, without prejudice to rule 44(3)(f)—

- (a) may order such procedural steps to be taken as he considers appropriate to ascertain the views of that child; and
- (b) must not make an order under this Chapter unless an opportunity has been given for the views of that child to be obtained or heard.

(2) Where the views of a child, whether obtained under this rule or under rule 44, have been recorded in writing, the sheriff may direct that such a written record is to—

- (a) be sealed in a envelope marked “Views of the child – confidential”;
- (b) be available to a sheriff only;
- (c) not be opened by any person other than a sheriff; and
- (d) not form a borrowable part of the process.

Confidentiality

47.—(1) Unless the sheriff otherwise directs, all documents lodged in process including the reports by the curator *ad litem* and reporting officer shall be available only to the sheriff, the curator *ad litem*, the reporting officer and the parties; and such documents must be treated as confidential by any persons involved in, or a party to, the proceedings and by the sheriff clerk.

- (2) The reporting officer and the curator *ad litem*—
 - (a) must treat all information obtained in the exercise of their duties as confidential; and
 - (b) must 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 46.

Procedure where leave of court required

48.—(1) Where leave of the court is required under section 94(4) or 98(2)(b) of the 2007 Act before an application for variation or revocation of a permanence order may be made, the applicant must lodge along with the minute a written application in the form of a letter addressed to the sheriff clerk stating—

- (a) the grounds on which leave is sought; and
- (b) whether or not the applicant has applied for legal aid.

(2) Where the applicant has applied for legal aid he must also lodge along with the minute written confirmation from the Scottish Legal Aid Board that it has determined, under regulation 7(2)(b) of the Civil Legal Aid (Scotland) Regulations 2002 that notification of the application should be dispensed with or postponed pending the making by the sheriff of an order for intimation under paragraph (4)(b).

(3) Subject to paragraph (4)(b), an application under paragraph (1) shall not be served or intimated to any party.

(4) The sheriff shall consider an application under paragraph (1) without hearing the applicant and may—

- (a) refuse the application and pronounce an interlocutor accordingly; or
- (b) if he is minded to grant the application order the applicant—
 - (i) to intimate the application to such persons as the sheriff considers appropriate; and
 - (ii) to lodge a certificate of intimation in, as near as may be, Form 7.

(5) If any person who receives intimation of an application under paragraph (4)(b) wishes to be heard he shall notify the sheriff clerk in writing within 14 days of receipt of intimation of the application.

(6) On receipt of the notification under paragraph (5) the sheriff clerk shall fix a hearing and intimate the date of the hearing to the parties.

Transfer of process

49.—(1) Where an application under rule 40, 41 or 42 is made in a sheriff court other than the sheriff court in which the process relating to the permanence order is held—

- (a) the minute of application must contain averments as to the sheriff court in which the process relating to the permanence order is held;
- (b) the sheriff clerk with whom the application is lodged must notify the sheriff clerk of the sheriff court in which the process relating to the permanence order is held; and
- (c) the sheriff clerk of the sheriff court in which the process relating to the permanence order is held must, not later than 4 working days after receipt of such notification transfer that process to the sheriff clerk of the sheriff court in which the application is made.

(2) For the purposes of paragraph (1), the sheriff court in which the process relating to the order is held is the sheriff court in which the permanence order was granted or, where the process has been transferred under that paragraph, the last sheriff court to which the process has been transferred.

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(3) A failure of the sheriff clerk to comply with paragraph (1) does not invalidate the application.

Intimation to Principal Reporter

50. Where an application under this Chapter is made in respect of a child whose case has been referred to a children's hearing or who is subject to a supervision requirement under the 1995 Act, the sheriff clerk shall intimate the fact that the application has been made to the Principal Reporter.

Report of children's hearing

51.—(1) On receipt of a report from a children's hearing under section 95(2) of the 2007 Act the sheriff clerk shall—

- (a) lodge the report in the process of the application; and
- (b) send a copy of the report together with a notice in Form 23 to—
 - (i) the parties to the application;
 - (ii) any relevant person in relation to the child within the meaning given by section 93(2) of the 1995 Act; and
 - (iii) such other person as the sheriff considers appropriate.

(2) Any person who receives notice under paragraph (1)(b) and who wishes to oppose the proposals of the children's hearing must lodge a form of response in Form 24 within 7 days of the date notice was given.

(3) Thereafter the sheriff shall consider the report and any form of response lodged under paragraph (2) and decide whether to refer the child's case to the Principal Reporter as mentioned in section 96(3) of the 2007 Act.

(4) Where the sheriff decides to refer the child's case to the Principal Reporter as mentioned in section 96(3) of the 2007 Act, he shall pronounce an order to this effect which shall narrate in terms that he is referring the child's case to the Principal Reporter as mentioned in that provision.

(5) Where the sheriff decides not to refer the child's case to the Principal Reporter, he may nevertheless make such other order he considers appropriate for the expeditious progress of the case.

(6) In order to assist him to decide what to do under paragraph (3), the sheriff may order the holding of a hearing.

(7) If the sheriff so decides, he shall fix a date for the hearing which shall be not more than 7 days after the date of the order.

- (8) The sheriff clerk shall intimate any hearing under paragraph (6) to—
- (a) the parties to the application;
 - (b) any person who lodged a form of response under paragraph (2);
 - (c) any relevant person in relation to the child within the meaning given by section 93(2) of the 1995 Act; and
 - (d) such other person as the sheriff considers appropriate.

(9) The sheriff may allow a continuation of a hearing under paragraph (6) on two occasions only, each for a period not exceeding 14 days.

(10) After the sheriff has made his decision under paragraph (3), the sheriff clerk shall send a notice in Form 25 to the Principal Reporter.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Interim orders

52.—(1) An application for an interim order under section 97 of the 2007 Act is to be made by motion.

(2) Chapter 15 of the Ordinary Cause Rules shall apply, with any necessary modifications, to a motion under this rule as it applies to a motion under the Ordinary Cause Rules.