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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 I

INTERPRETATION

**Interpretation**

**3.1.**—(1) In this Chapter, unless the context otherwise requires—

“the Act” means the Children (Scotland) Act 1995<sup>(1)</sup> and expressions used in this Chapter which are also used in that Act shall have the meaning assigned to them for the purposes of Part II of the Act;

“service” includes citation, intimation or the giving of notice as required in terms of this Chapter.

(2) In this Chapter any reference, however expressed, to disputed grounds of referral shall be construed as a reference to grounds of referral which form the subject of an application under section 65(7) or (9) of the Act (application to sheriff).

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.

## **PART III**

### **CHILD ASSESSMENT ORDERS**

#### **Interpretation**

**3.25** In this Part, “application” means an application for a child assessment order in terms of section 55 of the Act.

#### **Form of application**

**3.26** An application shall be made in Form 45.

#### **Orders**

**3.27.**—(1) After hearing parties and allowing such further procedure as he thinks fit, the sheriff shall make an order granting or refusing the application.

(2) Where an order is made granting the application, that order shall be made in Form 46 and shall contain the information specified therein.

(3) Where the sheriff, in terms of section 55(2) of the Act, has decided to make a child protection order pursuant to an application, rules 3.31 to 3.33 shall apply.

#### **Intimation**

**3.28** The local authority shall intimate the grant or refusal of an application to such persons, if any, as the sheriff directs.

## **PART IV**

### **CHILD PROTECTION ORDERS**

#### **Interpretation**

**3.29** In this Part, “application” means, except in rule 3.33, an application for a child protection order in terms of section 57 of the Act.

### **Form of application**

**3.30** An application made by a local authority shall be in Form 47 and an application made by any other person shall be in Form 48.

### **Determination of application**

**3.31.**—(1) On receipt of an application, the sheriff, having considered the grounds of the application and the supporting evidence, shall forthwith grant or refuse it.

(2) Where an order is granted, it shall be in Form 49 and it shall contain any directions made under section 58 of the Act.

### **Intimation of making of order**

**3.32** Where an order is granted, the applicant shall forthwith serve a copy of the order on—

- (a) the child, along with a notice in Form 50;
- (b) any other person named in the application, along with a notice in Form 51.

### **Application to vary or set aside a child protection order**

**3.33.**—(1) An application under section 60(7) of the Act for the variation or setting aside of a child protection order or a direction given under section 58 of the Act or such an order or direction continued (whether with or without variation) under section 59(4) of the Act shall be made in Form 52.

(2) A person applying under section 60(7) of the Act for the variation or setting aside of a child protection order shall require to lodge with his application a copy of that order.

(3) Without prejudice to rule 3.5, any person on whom service is made may appear or be represented at the hearing of the application.

(4) Subject to section 60(11) of the Act, the sheriff, after hearing parties and allowing such further procedure as he thinks fit, shall grant or refuse the application.

(5) Where an order is made granting the application for variation, that order shall be in Form 53.

(6) Where the sheriff so directs, intimation of the granting or refusing of an application shall be given by the applicant to such person as the sheriff shall direct.

## **PART V**

### **EXCLUSION ORDERS**

#### **Interpretation**

**3.34** In this Part, “application” means, except in rule 3.40, an application by a local authority for an exclusion order in terms of sections 76 to 80 of the Act; and “ancillary order” and “interim order” shall be construed accordingly.

#### **Form of application**

**3.35** An application shall be made in Form 54.

#### **Hearing following interim order**

**3.36** Where an interim order is granted under subsection (4) of section 76 of the Act, the hearing under subsection (5) of that section shall take place not later than 3 working days after the granting of the interim order.

### **Orders**

**3.37.**—(1) After hearing parties and allowing such further procedure as he thinks fit, the sheriff shall make an order granting or refusing the application.

(2) Where the sheriff grants an order in terms of paragraph (1), it shall be in Form 55 and shall be served forthwith by the local authority on—

- (a) the named person;
- (b) the appropriate person;
- (c) the relevant child; and
- (d) the Principal Reporter.

### **Certificates of delivery of documents to chief constable**

**3.38.**—(1) After the local authority have complied with section 78(4) of the Act, they shall forthwith lodge in process a certificate of delivery in Form 56.

(2) After a person has complied with section 78(5) of the Act, he shall lodge in process a certificate of delivery in Form 56.

### **Power to make child protection order in an application for an exclusion order**

**3.39** Where the sheriff, in terms of 76(8) of the Act, has decided to make a child protection order pursuant to an application, rules 3.31 to 3.33 shall apply.

### **Variation or recall of an exclusion order**

**3.40.**—(1) Any application for the variation or recall of an exclusion order and any warrant, interdict, order or direction granted or made under section 77 of the Act shall be in Form 57.

(2) After hearing parties and allowing such further procedure as he thinks fit, the sheriff shall make an order granting or refusing the application.

(3) Where an order is made granting the application for variation, that order shall be in Form 58.

(4) Intimation of the granting or refusing of an application shall be given by the applicant to such persons as the sheriff shall direct.

## **PART VI**

### **WARRANT FOR FURTHER DETENTION OF A CHILD**

#### **Interpretation**

**3.41** In this Part, “application” means an application for a warrant to keep a child in a place of safety in terms of section 67 of the Act.

#### **Form of application**

**3.42** An application shall be made in Form 59.

#### **Orders**

**3.43** After hearing parties and allowing such further procedure as he thinks fit, the sheriff shall make an order granting or refusing the application.

## PART VII

### PROCEDURE IN APPLICATIONS UNDER SECTION 65(7) OR (9) OF THE ACT

#### **Interpretation**

**3.44** In this Part, “application” means an application under section 65(7) or (9) of the Act (establishment of grounds for referral).

#### **Lodging of application, etc.**

**3.45.**—(1) Within a period of seven days beginning with the date on which the Principal Reporter was directed in terms of section 65 of the Act to make application to the sheriff, he shall lodge with the sheriff clerk an application in Form 60.

(2) Where a safeguarder has been appointed by the chairman at 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.

#### **Abandonment of application**

**3.46.**—(1) At any stage of the proceedings before the application is determined the Principal Reporter may abandon 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 abandonment 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 appointed by the sheriff.

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

#### **Hearing of evidence**

**3.47.**—(1) In the case of any condition mentioned in section 52(2) of the Act (conditions relative to compulsory measures of supervision), the sheriff shall, in relation to any ground of referral 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 condition mentioned in paragraph (i) of section 52(2) of the Act is satisfied, the sheriff shall consider whether sufficient evidence has been led to establish that condition is satisfied 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 finding to that effect.

(4) Where the sheriff is satisfied that sufficient evidence has been led as mentioned in paragraph (2), the child, the relevant person and any safeguarder appointed may give evidence and call witnesses with regard to the condition in question.

(5) Where the nature of the case or of any evidence to be given is such that the sheriff is satisfied that it is in the interests of the child that he should not be present at any stage of the proceedings, the sheriff may exclude the child from the hearing during that stage and in that event any safeguarder appointed and the relevant person or representative of the child shall be permitted to remain during the absence of the child.

(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 in a referral 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 grounds for referral**

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

### **Adjournment for inquiry, etc.**

**3.49** Subject to the provisions of section 68(2) of the Act (applications to be heard within twenty-eight days of lodging), the sheriff on the motion of any party or on his own motion may continue the hearing 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 ground of referral it is alleged that an offence has been committed by or against any child, the sheriff may find 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 appointed by the sheriff; and
  - (d) the Principal Reporter.

(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** Warrants, other than warrants granted by the sheriff under section 68(6) of the Act where the child has failed to attend a children’s hearing, may be signed by the sheriff clerk but any warrant may, and a warrant under the said section 68(6) shall, be signed by the sheriff.

## PART VIII

### PROCEDURE IN APPEALS UNDER SECTION 51(1) OF THE ACT

#### Form of appeal

**3.53.**—(1) An appeal to the sheriff under section 51(1) of the Act (appeal against decision of children’s hearing) shall be in Form 61, 62 or 63 whichever is appropriate and shall be lodged with the sheriff clerk.

(2) Subject to paragraph (3), the appeal shall be signed by the appellant or his representative.

(3) An appeal by a child may be signed on his behalf by any safeguarder appointed by the children’s hearing.

#### Appointment and intimation of first diet

**3.54.**—(1) On the lodging of the appeal, the sheriff clerk shall forthwith assign a date for the hearing and shall at the same time intimate to the appellant or his representative and, together with a copy of the appeal, to—

- (a) the Principal Reporter;
- (b) subject to the provisions of paragraph (4), the child (if not the appellant);
- (c) the relevant person (if not the appellant);
- (d) any safeguarder appointed for the purposes of the appeal by the sheriff or appointed by the chairman of the children’s hearing; and
- (e) any other person the sheriff thinks necessary.

(2) The sheriff clerk shall endorse on the appeal a certificate of execution of intimation under paragraph (1).

(3) Intimation to a child in terms of paragraph (1)(b) shall be in Form 64.

(4) The sheriff may dispense with intimation to a child in terms of paragraph (1)(b) where he considers that such dispensation is appropriate.

(5) The date assigned for the hearing under paragraph (1) shall be no later than 28 days after the lodging of the appeal.

#### Answers

**3.55.**—(1) Except in an appeal under section 51(8) of the Act (appeal against warrant by children’s hearing), if any person on whom service of the appeal has been made wishes to lodge answers to the appeal he shall do so not later than 7 days before the diet fixed for the hearing of the appeal.

(2) Any person who has lodged answers shall forthwith intimate a copy thereof to any other person on whom service has been made under rule 3.54(1).

#### Procedure at hearing of appeal

**3.56.**—(1) Before proceeding in accordance with section 51(3) of the Act to examine the Principal Reporter and the authors or compilers of any reports or statements, the sheriff shall hear the appellant or his representative and any party to the appeal.

(2) On receipt of a further report called for under section 51(3)(c) of the Act, the sheriff shall direct the Principal Reporter to send a copy of the report to every party to the appeal.

(3) At any appeal the sheriff may hear evidence—

(a) where a ground of the appeal is an alleged irregularity in the conduct of a hearing, as to that irregularity;

(b) in any other circumstances where he considers it appropriate to do so.

(4) Where the nature of the appeal or of any evidence is such that the sheriff is satisfied that it is in the interests of the child that he should not be present at any stage of the appeal, the sheriff may exclude the child from the hearing during that stage and, in that event, any safeguarder appointed and the relevant person or representative of the child shall be permitted to remain during the absence of the child.

(5) Subject to paragraph (6), the sheriff may exclude the relevant person, or that person and any representative of his, or any such representative from any part or parts of the hearing for so long as he considers it is necessary in the interests of any child, where he is satisfied that—

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

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

(6) Where the relevant person has been excluded under paragraph (5) the sheriff shall, after that exclusion has ended, explain to him the substance of what has taken place in his absence and shall give him an opportunity to respond to any evidence given by the child by leading evidence or otherwise.

(7) Where an appeal has been heard in part and a safeguarder thereafter becomes a party to the appeal, the sheriff may order the hearing of the appeal to commence of new.

### **Adjournment of appeals**

**3.57** The sheriff may, on the motion of any party or on his own motion, adjourn the hearing of the appeal for such reasonable time and for such purpose as may in the circumstances be appropriate.

### **Decision of sheriff in appeals**

**3.58.**—(1) The sheriff shall give his decision orally either at the conclusion of the appeal or on such day as he shall appoint.

(2) The sheriff may issue a note of the reasons for his decision, and shall require to do so where he decides to follow the course of action provided for in sub-paragraph (i) or (iii) of section 51(5) (c) of the Act.

(3) Any note in terms of paragraph (2) shall be issued at the time the sheriff gives his decision or within 7 days thereafter.

(4) The sheriff clerk shall forthwith send a copy of the interlocutor containing the decision of the sheriff, and where appropriate of the note referred to in paragraph (2), to the Principal Reporter, to the appellant (and to the child or the relevant person, if not the appellant) and to any safeguarder appointed by the sheriff, and shall also return to the Principal Reporter any documents lodged by virtue of section 51(2) or (3) of the Act.

## **PART IX**

### **PROCEDURE IN APPEALS UNDER SECTION 51(11) OF THE ACT**

#### **Appeals**

**3.59.**—(1) An appeal to the sheriff principal under section 51(11) of the Act shall be by note of appeal—

(a) requesting a stated case;

- (b) specifying the point of law upon which the appeal is to proceed or the irregularity in the conduct of the case concerned, as the case may be; and
  - (c) lodged with the sheriff clerk within a period of 14 days beginning with the date of the decision appealed against.
- (2) The appellant shall, at the same time as lodging a note of appeal, intimate the lodging of an appeal from the decision of the sheriff—
- (a) in the case of an appeal under section 51(1) of the Act, to the parties referred to in rule 3.58(4);
  - (b) in the case of an application made under section 65(7) or (9) of the Act, to the parties referred to in rule 3.51(2); and
  - (c) in the case of an application made under section 85(1) of the Act (review of establishment of grounds of referral), to the parties referred to in rule 3.62.
- (3) The sheriff shall, within 14 days of the lodging of a note of appeal, issue a draft stated case—
- (a) containing findings in fact and law or, where appropriate, a narrative of the proceedings before him;
  - (b) containing appropriate questions of law or setting out the irregularity concerned; and
  - (c) containing a note stating the reasons for his decisions in law,
- and the sheriff clerk shall send a copy of the draft stated case to the appellant and to parties referred to in paragraph (2).
- (4) Within 7 days of the issue of the draft stated case—
- (a) the appellant or a party referred to in paragraph (2) may lodge with the sheriff clerk a note of any adjustments which he seeks to make;
  - (b) the appellant or such a party may state any point of law which he wishes to raise in the appeal; and
  - (c) the note of adjustment and, where appropriate, point of law shall be intimated to the appellant and the other such parties.
- (5) The sheriff may, on the motion of the appellant or a party referred to in paragraph (2) or of his own accord, and shall where he proposes to reject any proposed adjustment, allow a hearing on adjustments and may provide for such further procedure under this rule prior to the hearing of the appeal as he thinks fit.
- (6) The sheriff shall, within 14 days after—
- (a) the latest date on which a note of adjustments has been or may be lodged; or
  - (b) where there has been a hearing on adjustments, that hearing,
- and after considering such note and any representations made to him at the hearing, state and sign the case.
- (7) The stated case signed by the sheriff shall include—
- (a) questions of law, framed by him, arising from the points of law stated by the parties and such other questions of law as he may consider appropriate;
  - (b) any adjustments, proposed under paragraph (4), which are rejected by him;
  - (c) a note of the irregularity in the conduct of the case averred by the parties and any questions of law or other issue which he considers arise therefrom,
- as the case may be.
- (8) After the sheriff has signed the stated case, the sheriff clerk shall—

- (a) place before the sheriff principal all documents and productions in the appeal together with the stated case; and
- (b) send to the appellant and the parties referred to in paragraph (2) a copy of the stated case together with a written note of the date, time and place of the hearing of the appeal.

(9) In the hearing of an appeal, a party referred to in paragraph (2) shall not be allowed to raise questions of law or irregularities in the conduct of the case of which notice has not been given except on cause shown and subject to such conditions as the sheriff principal may consider appropriate.

(10) The sheriff may, on an application by any party or of his own motion, reduce any of the periods mentioned in paragraph (3), (4) or (6) to such period or periods as he considers reasonable.

(11) Where the sheriff is temporarily absent from duty for any reason, the sheriff principal may extend any period specified in paragraph (3) or (6) for such period or periods as he considers reasonable.

### **Lodging of reports and statements with sheriff**

**3.60.** Where, in an appeal—

- (a) it appears to the sheriff that any report or statement lodged under section 51(2) or (3) of the Act is relevant to any issue which is likely to arise in the stated case; and
- (b) the report or statement has been returned to the Principal Reporter,

the sheriff may require the Principal Reporter to lodge the report or statement with the sheriff clerk.

### **Hearing**

**3.61.**—(1) The sheriff principal, on hearing the appeal, may either pronounce his decision or reserve judgement.

(2) Where judgement is so reserved, the sheriff principal shall within 28 days give his decision in writing which shall be intimated by the sheriff clerk to the parties.

## **PART X**

### **APPLICATION FOR REVIEW OF ESTABLISHMENT OF GROUNDS OF REFERRAL—NEW EVIDENCE**

### **Application**

**3.62** An application under section 85 of the Act for a review of a finding made in terms of section 68(10) of the Act (finding that grounds for referral established) shall contain—

- (a) the name and address of the applicant and his representative (if any);
- (b) the name and address of the Principal Reporter;
- (c) the name and address of the safeguarder (if any);
- (d) the name and address of any other party to the application;
- (e) the date and finding made and the name of the sheriff who made the finding;
- (f) the grounds for the making of the application;
- (g) specification of the nature of evidence in terms of section 85(3) of the Act not considered by the sheriff who made the finding;
- (h) the explanation for the failure to lead such evidence on the original application; and
- (i) any reports, affidavits and productions upon which the applicant intends to rely.

### **Hearing on application**

**3.63.**—(1) After the lodging of the application in terms of rule 3.62, the sheriff clerk shall assign a diet for a hearing of the application and shall issue a warrant to cite in Form 65 which shall require the Principal Reporter to lodge answers if so advised within such time as the sheriff shall appoint.

(2) Subject to the provisions of rule 3.4 (service on child), after the issue of the warrant to cite, the applicant shall forthwith give notice of the application by serving a copy and the warrant on the persons named in rule 3.62.

(3) After hearing parties and allowing such further procedure as he thinks fits, the sheriff shall, if satisfied in terms of section 85(6) of the Act, consider the evidence and may fix a further hearing for that purpose.

### **Hearing to consider the evidence**

**3.64.**—(1) After hearing parties on the evidence and allowing such further procedure as the sheriff thinks fit, he shall make an order as appropriate in terms of section 85(6) and (7) of the Act.

(2) The provisions of rule 3.51 shall apply to any order made under paragraph (1).