

SCHEDULE

Paragraph 2

SHERIFF COURT ADOPTION RULES 2009

CHAPTER 1

GENERAL

Citation and interpretation

1.—(1) These Rules may be cited as the Sheriff Court Adoption Rules 2009.

(2) In these Rules—

“the 1995 Act” means the Children (Scotland) Act 1995(1);

“the 2002 Act” means the Adoption and Children Act 2002(2);

“the 2007 Act” means the Adoption and Children (Scotland) Act 2007;

“the 2009 Regulations” means the Adoptions with a Foreign Element (Scotland) Regulations 2009(3);

“adoption agency” means—

(a) a local authority;

(b) a registered adoption service within the meaning of section 2(3) of the 2007 Act;

(c) an adoption agency within the meaning of section 2(1) of the 2002 Act (adoption agencies in England and Wales); or

(d) an adoption agency within the meaning of article 3 of the Adoption (Northern Ireland) Order 1987(4);

“Her Majesty’s Forces” means the regular forces as defined in section 374 of the Armed Forces Act 2006(5);

“Ordinary Cause Rules” means the first Schedule to the Sheriff Courts (Scotland) Act 1907;

“Principal Reporter” has the same meaning as in section 93(1) of the 1995 Act;

“Registrar General” means the Registrar General of Births, Deaths and Marriages for Scotland.

(3) Any reference to a specified Chapter or rule shall be construed as a reference to the Chapter or rule bearing that number in these Rules, and a reference to a specified paragraph or subparagraph shall be construed as a reference to the paragraph or subparagraph so numbered or lettered in the provision in which that reference occurs.

(4) A form referred to by number means the form so numbered in the Appendix to these Rules or a form substantially to the same effect with such variation as circumstances may require.

Expenses

2. The sheriff may—

(1) 1995 c.36.
(2) 2002 c.38.
(3) S.S.I. 2009/182.
(4) S.I. 1987/203.
(5) 2006 c.52.

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- (a) make such order as he thinks fit with regard to the expenses of an application under these Rules, including the expenses of a reporting officer and a curator *ad litem* or any other person who attended a hearing; and
- (b) modify such expenses or direct them to be taxed on such scale as he may determine.

Intimation to Principal Reporter

3. Where in any proceedings referred to in section 54(2)(c) or (ca) of the 1995 Act a matter is referred by the sheriff to the Principal Reporter under that section—

- (a) the interlocutor making the reference must specify which of the conditions in paragraph (2) (a) to (h), (j), (k), (l) or (m) of section 52 of the 1995 Act it appears to the sheriff has been satisfied; and
- (b) the sheriff clerk must intimate that interlocutor forthwith to the Principal Reporter.

Power of sheriff to make orders etc.

4.—(1) The sheriff may make such order as he thinks fit for the expeditious progress of an application under the 2007 Act, including an application for a Convention adoption order, in so far as it is not inconsistent with the provisions of these Rules.

(2) The sheriff may relieve a party from the consequences of failure to comply with a provision in these Rules which is shown to be due to mistake, oversight or other excusable cause, on such conditions as he thinks fit.

(3) Where the sheriff relieves a party from the consequences of a failure to comply with a provision in these Rules under paragraph (2), he may make such order as he thinks fit to enable the cause to proceed as if the failure to comply with the provision had not occurred.

Vulnerable witnesses

5.—(1) At any hearing on an application under these Rules, the sheriff shall ascertain whether there is likely to be a vulnerable witness who is to give evidence at or for the purposes of any proof or hearing, consider any child witness notice or vulnerable witness application that has been lodged where no order has been made under section 12(1) or (6) of the Vulnerable Witnesses (Scotland) Act 2004⁽⁶⁾ and consider whether any order under section 12(1) of that Act requires to be made.

(2) Except where the sheriff otherwise directs, where a vulnerable witness is to give evidence at or for the purposes of any proof or hearing in an application under these Rules, any application in relation to the vulnerable witness or special measure that may be ordered shall be dealt with in accordance with the rules within Chapter 45 of the Ordinary Cause Rules.

(3) In this rule “vulnerable witness” means a witness within the meaning of section 11(1) of the Vulnerable Witnesses (Scotland) Act 2004.

Service of documents

6. Rules 5.2(4) to (6), 5.3 to 5.6 and 5.10 of the Ordinary Cause Rules are to apply, with any necessary modifications, to the service or intimation of any document under these Rules as they apply to the service or intimation of any document under the Ordinary Cause Rules.

(6) 2004 asp 3.

Appeals

7. Chapter 31 of the Ordinary Cause Rules is to apply, with any necessary modifications, to an appeal against an order of the sheriff under these Rules as it applies to an appeal against an order of the sheriff under the Ordinary Cause Rules.

CHAPTER 2 ADOPTION ORDERS

Application for adoption order

8.—(1) An application for an adoption order under section 29 (adoption by certain couples) or 30 (adoption by one person) of the 2007 Act is to be made by petition in Form 1.

(2) An application for an order vesting parental responsibilities and parental rights relating to a child under section 59(1) of the 2007 Act (preliminary order where child to be adopted abroad) is to be made by petition in Form 2.

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

- (a) an extract of the entry in the Register of Births relating to the child who is the subject of the application;
- (b) in the case of an application under section 29 of the 2007 Act by a relevant couple who are married to each other, an extract or a certified copy of the entry in the Register of Marriages relating to their marriage;
- (c) in the case of an application under section 29 of the 2007 Act by a relevant couple who are civil partners of each other, an extract or a certified copy of the entry in the Register of Civil Partnerships relating to their civil partnership;
- (d) any report by the local authority required by section 19(2) (investigation by local authority on receipt of notice of intention to apply for adoption order) of the 2007 Act, if available;
- (e) any report by an adoption agency required by section 17 (report on the suitability of the applicants and other matters) of the 2007 Act, if available;
- (f) where appropriate, an extract of the order freeing the child for adoption;
- (g) where appropriate, an extract of the permanence order made in respect of the child under section 80 of the 2007 Act;
- (h) where appropriate, the consent under section 19(1) (placing children with parental consent: England and Wales) of the 2002 Act of each parent or guardian to the child being placed for adoption, in the form prescribed under section 52(7) of that Act, if available;
- (i) where appropriate, the consent under section 20(1) (advance consent to adoption: England and Wales) of the 2002 Act of each parent or guardian to the making of a future adoption order, in the form prescribed under section 52(7) of that Act, if available;
- (j) any notice given under section 20(4) (notice that information about application for adoption order not required: England and Wales) of the 2002 Act by a parent or guardian of the child to an adoption agency, if available;
- (k) a certified copy of any placement order made under section 21(1) (placement orders: England and Wales) of the 2002 Act, if available; and
- (l) any other document founded upon by the petitioner in support of the terms of the petition.

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(4) A report by a local authority under section 19(2) or an adoption agency under section 17 of the 2007 Act must be in numbered paragraphs and include the following matters:—

- (a) information about how the needs of the child came to the notice of the authority or agency;
- (b) the family circumstances of the child;
- (c) where the child was placed for adoption by an adoption agency, a description of the physical and mental health of the child (including any special needs) and his emotional, behavioural and educational development;
- (d) an account of the discussion with the parents or guardians of the child and, if appropriate, with the child about their wishes and the alternatives to adoption;
- (e) the position of other relatives or persons likely to be involved;
- (f) an account of any search for a parent or guardian who cannot be found;
- (g) information about the mutual suitability of the petitioner and the child for the relationship created by adoption and the ability of the petitioner to bring up the child including an assessment of the personality of the petitioner and, where appropriate, that of the child;
- (h) particulars of all members of the household of the petitioner and their relationship to the petitioner;
- (i) a description of the accommodation in the home of the petitioner;
- (j) in a petition by only one member of a relevant couple within the meaning of section 29(3) of the 2007 Act, why the other member of that couple has not joined in the application;
- (k) whether the petitioner understands the nature and effect of an adoption order and in particular that the order, if made, will make the petitioner responsible for the maintenance and upbringing of the child;
- (l) whether the means and standing of the petitioner are such as to enable him to maintain and bring up the child suitably;
- (m) whether the child has any right or interest in property and, if so, what right or interest;
- (n) whether any payment or other reward in consideration of the adoption, other than an approved adoption allowance, has been received or agreed upon;
- (o) what insurance has been offered on the life of the child;
- (p) the religious persuasion, racial origin and cultural and linguistic background of the child and of the petitioner;
- (q) consideration arising from the difference in age between the petitioner and the child if this is more or less than the normal difference in age between parents and children;
- (r) whether adoption is likely to safeguard and promote the welfare of the child throughout his life;
- (s) whether the child is subject to a supervision requirement and, if so, what steps have been taken to comply with section 73(4)(c), (5) and (13) (duration and review of supervision requirement) of the 1995 Act;
- (t) where paragraph (5) applies, the information mentioned in paragraph (6);
- (u) whether there has been a contravention of section 75 of the 2007 Act in relation to the child;
- (v) whether there has been a failure to comply with section 76(2) of the 2007 Act in relation to the child;
- (w) any other matters relevant to the operation of section 14 of the 2007 Act in relation to the application;
- (x) where appropriate, information about whether—

- (i) in an application under section 29(1) of the 2007 Act, the petitioners are a relevant couple within the meaning of section 29(3)(c) or (d) of the 2007 Act; or
 - (ii) in an application under section 30(1) of the 2007 Act, the petitioner is a member of a relevant couple within the meaning of section 29(3)(c) or (d) of the 2007 Act;
 - (y) in the case of a petition under paragraph (2) to which regulation 50 of the 2009 Regulations applies, the details referred to in paragraph (7);
 - (z) any other information which may be of assistance to the court.
- (5) This paragraph applies where—
- (a) the child was placed for adoption under section 19(1) (placement with parental consent: England and Wales) of the 2002 Act;
 - (b) the child was placed for adoption under a placement order made under section 21(1) (placement orders: England and Wales) of the 2002 Act; or
 - (c) each parent or guardian has consented under section 20(1) (advance consent to adoption: England and Wales) of the 2002 Act to the making of a future adoption order.
- (6) The information referred to in paragraph (4)(t) is any available information about whether—
- (a) any placement order has been revoked;
 - (b) any of the consents referred to in section 31(8) or (9) of the 2007 Act have at any time been withdrawn;
 - (c) a parent or guardian of the child wishes to seek leave to oppose the petition; and
 - (d) there has been any change of circumstances since the consent of the parent or guardian was given or, as the case may be, the order under section 21(1) (placement orders: England and Wales) of the 2002 Act was made.
- (7) The details mentioned in paragraph (4)(y) are—
- (a) details of any reviews carried out under regulation 10 of the Adoption Agencies (Scotland) Regulations 2009(7); and
 - (b) details of any visits carried out under regulation 25(1)(a) of those Regulations.
- (8) If a report mentioned in paragraph (3)(d) or (e) is unavailable to be lodged along with the petition, the sheriff shall pronounce an interlocutor requiring the adoption agency or local authority concerned to prepare and lodge such a report within 2 weeks from the date of the interlocutor, or within such other period as the sheriff in his discretion may allow.
- (9) If any of the documents required to be lodged in process under paragraph (3)(f), (g), (h), (i), (j) or (k) is unavailable to be lodged by reason of its being in the possession of an adoption agency, the sheriff shall pronounce an interlocutor requiring the agency to lodge the document within 4 weeks from the date of the interlocutor, or within such other period as the sheriff in his discretion may allow.
- (10) A petition under this rule must include a crave for warrant for intimation to the persons mentioned in rule 14(1)(b) to (d) as appropriate.

Additional requirements where child to be adopted abroad

9.—(1) The additional requirements in this Rule apply to a petitioner in an application for an order under section 59 of the 2007 Act.

(2) In the case of an application to which regulation 7 of the 2009 Regulations applies, the petitioner must lodge in process along with the petition—

- (a) the confirmation required under regulation 7(3)(a)(i) of the 2009 Regulations;

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- (b) the documents mentioned in regulation 8 of the 2009 Regulations;
- (c) copies of the confirmations to the adoption agency referred to in regulation 7(3)(b)(i), (iii) and (iv) of the 2009 Regulations;
- (d) a copy of the report mentioned in regulation 7(3)(b)(ii) of the 2009 Regulations;
- (e) a copy of the confirmation to the adoption agency referred to in regulation 7(3)(c) or (d), as the case may be, of the 2009 Regulations.

(3) In the case of an application to which regulation 50 of the 2009 Regulations applies, the petitioner must lodge along with the petition the reports, confirmations and other documents referred to in regulation 50(3)(a) to (d), (f) and (g) of those Regulations or, where appropriate, copies thereof.

(4) Where appropriate, the petitioner must also lodge in process a translation into English of any document referred to in paragraph (2) or (3) together with the certificate referred to in paragraph (5).

(5) The certificate mentioned in paragraph (4) is a certificate by the translator—

- (a) certifying that the translation is in conformity with the original document; and
- (b) giving the full name, address and qualifications of the translator.

(6) The petitioner must adduce evidence of the law of adoption in the country or territory in which it is intended to adopt to the child.

(7) The evidence of the law of adoption required under paragraph (6) may be in the form of an affidavit by a person who is conversant with that law and who—

- (a) practises or has practised law in that country or territory; or
- (b) is a duly accredited representative of the government of that country or territory in the United Kingdom.

Protection of identity of petitioner

10.—(1) When any person who proposes to apply under rule 8 wishes to prevent his identity being disclosed to any person whose consent to the order is required, he may before presenting the petition apply by letter to the sheriff clerk for a serial number to be assigned to him for all purposes connected with the petition.

(2) On receipt of an application under paragraph (1), the sheriff clerk must—

- (a) assign a serial number to the applicant; and
- (b) enter a note of the number opposite the name of the applicant in a register of serial numbers.

(3) The contents of the register of serial numbers and the names of the persons to whom each number relates shall be treated as confidential by the sheriff clerk and are to not be disclosed to any person other than the sheriff.

(4) Where a serial number has been assigned to an applicant under paragraph (2) any form of consent to an adoption order or order under section 59 of the 2007 Act—

- (a) must refer to the applicant by means of the serial number assigned to him;
- (b) must not contain the name and designation of the applicant; and
- (c) must specify the year in which and the court by which the serial number was assigned.

Appointment of a curator *ad litem* and reporting officer

11.—(1) The sheriff must on the lodging of a petition under rule 8 appoint a curator *ad litem* and reporting officer.

(2) But, subject to paragraph (3), the sheriff must not appoint a reporting officer where one or more of the following applies—

- (a) an order freeing the child for adoption has been made;
 - (b) a permanence order with provision granting authority for the child to be adopted has been granted under section 80 of the 2007 Act;
 - (c) the petition is founded on one or other or both of section 31(8) (advance consent to adopt) or (9) (placement of child: England and Wales) of the 2007 Act.
- (3) Notwithstanding paragraph (2), a reporting officer must be appointed—
- (a) in any case in which the petition is founded on the condition in section 31(2) of the 2007 Act, whether or not it is also founded on section 31(8) or (9) of that Act; or
 - (b) where the child who is the subject of the application is aged 12 or over, for the purpose of witnessing that child's consent, if it 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 such 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 petitioner and to the person or persons appointed.

Duties of reporting officer and curator *ad litem*

- 12.**—(1) The other duties of a reporting officer appointed under rule 11, other than under rule 11(3)(b), 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 or order under section 59 of the 2007 Act in respect of the child is required;
 - (b) to ascertain whether there is any person other than those mentioned in the petition upon whom notice of the petition should be served;
 - (c) in the case of each person who is not a petitioner and whose consent to the making of an adoption order or order under section 59 of the 2007 Act is required or may be dispensed with—
 - (i) to ascertain whether that person understands the effect of the adoption order or order under section 59 of the 2007 Act;
 - (ii) to ascertain whether alternatives to adoption have been discussed with that person;
 - (iii) to confirm that that person understands that he may withdraw his consent at any time before an order is made;
 - (iv) to ascertain whether that person suffers or appears to suffer from a mental disorder within the meaning of section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003⁽⁸⁾;
 - (d) to report in writing on the matters mentioned in subparagraphs (a) to (c) to the sheriff within 4 weeks from the date of the interlocutor appointing the reporting officer, or within such other period as the sheriff in his discretion may allow.

⁽⁸⁾ 2003 asp 13.

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- (2) References in paragraph (1) to “consent” are to consent within the meaning of section 31(2)(a) or 32(1) of the 2007 Act, as the case may be.
- (3) A curator *ad litem* appointed under rule 11 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 and in the report mentioned in rule 8(4);
 - (c) obtain particulars of accommodation in the home of the petitioner and the condition of the home;
 - (d) obtain particulars of all members of the household of the petitioner and their relationship to the petitioner;
 - (e) in the case of a petition by only one member of a relevant couple within the meaning of section 29(3) of the 2007 Act, ascertain the reason of the other member of the couple for not joining in the application;
 - (f) ascertain whether the means and status of the petitioner are sufficient to enable him to maintain and bring up the child suitably;
 - (g) ascertain what rights or interest in property the child has;
 - (h) establish that the petitioner understands the nature and effect of an adoption order and in particular that the making of the order will render him responsible for the maintenance and upbringing of the child;
 - (i) where appropriate, ascertain when the mother of the child ceased to have the care and possession of the child and to whom care and possession was then transferred;
 - (j) ascertain whether any payment or other reward in consideration of the adoption has been given or agreed upon;
 - (k) ascertain whether the child is subject to a supervision requirement under section 70 of the 1995 Act;
 - (l) ascertain whether the life of the child has been insured and if so for what sum;
 - (m) ascertain whether it may be in the interests of the welfare of the child that the sheriff should make the adoption order or order under section 59 of the 2007 Act subject to particular terms and conditions or require the petitioner to make special provision for the child and, if so, what provision;
 - (n) where the petitioner is not ordinarily resident in the United Kingdom, establish whether a report has been obtained on the home and living conditions of the petitioner from a suitable agency in the country in which he is ordinarily resident;
 - (o) establish the reasons of the petitioner for wishing to adopt the child;
 - (p) establish the religious persuasion, racial origin and cultural and linguistic background of the child and of the petitioner;
 - (q) assess the considerations which might arise where the difference in ages as between the petitioner and the child is greater or less than the normal difference in age between parents and their children;
 - (r) consider such other matters, including the personality of the petitioner and, where appropriate, that of the child, which might affect the suitability of the petitioner and the child for the relationship created by adoption and affect the ability of the petitioner to bring up the child;
 - (s) ascertain whether it would be better for the child that the court should make the order than it should not make the order;

- (t) establish whether the adoption is likely to safeguard and promote the welfare of the child throughout his life;
- (u) ascertain from the child whether he wishes to express a view and, where a child indicates his wish to express a view, ascertain that view.

(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 17(1)(a), the views of the child ascertained in terms of paragraph (3)(u) may, if the curator *ad litem* considers appropriate, be conveyed to the sheriff orally.

Consents

13.—(1) The consent of a parent or guardian required by section 31(2)(a) of the 2007 Act is to be in Form 3.

(2) The consent of a child required by section 32(1) of the 2007 Act is to be in Form 4.

(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 rule 11;
- (b) where it is executed outwith Scotland but within the United Kingdom, by a justice of the peace or commissioner for oaths;
- (c) where it is executed outwith the United Kingdom—
 - (i) if the person who executes the consent 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.

Intimation of application

14.—(1) On the lodging of a petition under rule 8—

- (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) in the case of a petition under rule 8(1), the petitioner or, where a serial number has been assigned under rule 10, the sheriff clerk, must send a copy of the petition along with a notice of intimation in Form 5 to—
 - (i) 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;
 - (ii) 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;
 - (iii) every person who has consented to the making of the order under section 20 of the 2002 Act (and has not withdrawn the consent) unless the person has given a notice under subsection (4)(a) of that section which has effect; and
 - (iv) every person who, if leave were given under section 31(12) of the 2007 Act, would be entitled to oppose the making of the order;
- (c) in the case of a petition under rule 8(2) the petitioner or, where a serial number has been assigned under rule 10, the sheriff clerk must send a copy of the petition along with a

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notice of intimation in Form 5 to every person who can be found and whose consent to the making of the order would be required if the application were for an adoption order (other than a Convention adoption order);

- (d) in the case of a petition under rule 8(1) the petitioner or, where a serial number has been assigned under rule 10, the sheriff clerk must send a copy of the petition along with a notice of intimation in Form 6 to the father of the child if he does not have, and has never had, parental responsibilities or parental rights in relation to the child and if he can be found;
- (e) the sheriff clerk must intimate the date of the preliminary hearing to the curator *ad litem* and to any reporting officer appointed by the sheriff under rule 11;
- (f) the sheriff may order the petitioner or, where a serial number has been assigned under rule 10, the sheriff clerk to intimate the application to such other person and in such terms as he considers appropriate.

(2) A notice of intimation under paragraph (1)(b) or (c) must state—

- (a) that an application for adoption 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.

(3) A notice of intimation under paragraph (1)(d) must state the matters mentioned in paragraph (2)(a) and (b).

(4) The sheriff clerk or petitioner on making intimation shall complete a certificate of intimation in Form 7.

Orders for intimation

15. In any application for an adoption order or for an order under section 59 of the 2007 Act, the sheriff may at any time order intimation to be made in such terms as he considers appropriate on any person who in his opinion ought to be given notice of the application.

Form of response

16.—(1) Any person who has received intimation of an application by virtue of rule 14 or 15 and who intends to oppose that application shall lodge a form of response in Form 8 not later than 21 days after the date of intimation of the application or such other period as the sheriff may direct.

(2) A form of response under paragraph (1) must contain a brief statement of the respondent's reasons for opposing the application but shall be without prejudice to any answers lodged under rule 18(1)(b)(iv).

Procedure where child wishes to express a view

17.—(1) Where a child has indicated his wish to express his views the sheriff, without prejudice to rule 12(3)(u)—

- (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 12(3)(u) 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.

Preliminary hearing

18.—(1) At the preliminary hearing the sheriff must—

- (a) if no form of response has been lodged under rule 16, 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
 - (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) The answers lodged under paragraph (1)(b)(iv) must be in numbered paragraphs corresponding to the numbered paragraphs of the report mentioned in rule 8(4).

Pre-proof hearing

19.—(1) The parties must 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 18.

(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, expert reports and any other documents within such period as he considers appropriate;
- (d) make such other order as he thinks fit to secure the expeditious progress of the case.

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Proof to be taken continuously

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

Confidentiality

21.—(1) Unless the sheriff otherwise directs, all documents lodged in process including the reports by the curator *ad litem* and reporting officer are to 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 17.

Pronouncement of decision

22.—(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 fact or 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 his decision—

- (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 to the petitioner under rule 10 or where the sheriff so directs, any document issued under this rule shall not disclose the identity of the petitioner.

Communication to the Registrar General

23. The communication to the Registrar General of an adoption order required to be made by the sheriff clerk under paragraph 4(1) of Schedule 1 to the 2007 Act is to be made by sending a certified copy of the order to the Registrar General either by recorded delivery post in an envelope marked “Confidential”, or by personal delivery by the sheriff clerk in a sealed envelope marked “Confidential”.

Adoption orders

24.—(1) An adoption order granted by the sheriff must specify the name and address of the adoption agency, if any, which has taken part in the arrangements for placing the child in the care of the petitioner.

(2) No extract of an adoption order is to be issued except with the authority of the sheriff who made the order or, in that sheriff’s absence, the sheriff principal.

(3) The authority required by paragraph (2) is to be obtained by lodging a petition setting forth the reasons for which the extract is required.

Final procedure

25.—(1) After the granting of an adoption order or order under section 59 of the 2007 Act, the court process must, immediately upon the communication under rule 23 being made or, in the event of an extract of the order being issued under rule 24, immediately upon such issue, be sealed by the sheriff clerk in an envelope marked “Confidential”.

(2) The envelope referred to in paragraph (1) is not to be unsealed by the sheriff clerk or by any other person having control of the records of that or any court, and the process is not to be made accessible to any person for one hundred years after the date of the granting of the order except—

- (a) to an adopted child who has attained the age of 16 and to whose adoption the process refers;
- (b) to the sheriff clerk, on an application being made to him by an adoption agency, and with the consent of the adopted person 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 the granting of an application made by him to the sheriff setting forth the reason 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 reason for which access to the process is required;
- (e) to a person who is authorised by the Scottish Ministers to obtain information for the purposes of such research as is intended to improve the working of adoption law and practice.

(3) The sheriff clerk must—

- (a) where the court also makes an order under section 36(2) (revocation of supervision requirement) of the 2007 Act, intimate that order to the Principal Reporter; and
- (b) where appropriate, intimate the making of an adoption order or order under section 59 of the 2007 Act to the court by which—
 - (i) an order freeing the child for adoption was made; or

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- (ii) a permanence order with provision granting authority for the child to be adopted was made.

Amendment of an adoption order

26.—(1) An application under paragraph 7 of Schedule 1 to the 2007 Act (amendment of orders and rectification of registers) is to be made by petition to the court which made the adoption order.

(2) The sheriff may order the petitioner to intimate the petition to such persons as the sheriff considers appropriate.

Applications under sections 20 to 24

27.—(1) An application under section 20(2) (restrictions on removal: child placed for adoption with consent), section 21(3) (restrictions on removal: notice of intention to adopt given), 22(3) (restrictions on removal: application for adoption order pending), 23(3) (restrictions on removal of child looked after by local authority), 24(1) (return of child removed in breach of certain provisions) or 24(2) (order directing person not to remove child) of the 2007 Act shall be made—

- (a) if there is pending in respect of the child an application for an adoption order, by minute in the process of that application; or
- (b) in any other case, by petition.

(2) A minute or petition under paragraph (1) shall set out the relevant facts and the crave which the minuter or petitioner, as the case may be, wishes to make.

(3) On receipt of a minute under paragraph (1)(a) the sheriff shall—

- (a) order a diet of hearing to be fixed; and
- (b) ordain the minuter to send a notice of such hearing in Form 9 together with a copy of the minute, by recorded delivery letter to the petitioner in the original petition, to the curator *ad litem* in the original petition, to any person who may have care and possession of the child and to such other persons as the sheriff considers appropriate.

(4) On receipt of a petition under paragraph (1)(b) the sheriff shall—

- (a) order a diet of hearing to be fixed; and
- (b) ordain the petitioner to send a notice of such hearing in Form 9 together with a copy of the petition, by recorded delivery letter to any person who may have care and possession of the child and to such other persons as the sheriff considers appropriate.

(5) The sheriff may, on the motion of a party and on cause shown, remit any petition lodged under paragraph (1)(b) to another sheriff court.

(6) On the making of an order under paragraph (5) the sheriff—

- (a) must state his reasons for doing so in the interlocutor;
- (b) may make such other order as he thinks fit.

(7) The court to which a petition is transferred under paragraph (5) shall accept the petition.

(8) A petition transferred under paragraph (5) shall proceed in all respects as if it had been brought in the court to which it is transferred.

CHAPTER 3

CONVENTION ADOPTION ORDERS

Interpretation

28. In this Chapter, unless the context otherwise requires—

“the Convention” means the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at The Hague on 29th May 1993;

“Convention adoption order” means an adoption which, by virtue of regulation 53(2) of the 2009 Regulations, is made as a Convention adoption order;

“Convention country” means any country or territory in which the Convention is in force; and

“Central Authority” means the Scottish Executive.

Process and form of application

29.—(1) An application for a Convention adoption order is to be made by petition in Form 10.

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

- (a) a certificate, register extract, or other proof of date of birth relating to the child who is the subject of the application, issued or authenticated by the applicable Convention country authority;
- (b) in the case of a joint petition by a married couple, a certificate, register extract or other proof of their marriage, issued or authenticated by the applicable Convention country authority;
- (c) in the case of a joint petition by a couple who are civil partners of each other, a certificate, register extract or other proof of their civil partnership, issued or authenticated by the applicable Convention country authority;
- (d) any report by the local authority required by section 19(2) (investigation by local authority on receipt of notice of intention to apply for adoption order) of the 2007 Act, if available;
- (e) any report by an adoption agency required by section 17 (report on the suitability of the applicants and other matters) of the 2007 Act, if available;
- (f) where appropriate, an extract of the order freeing the child for adoption;
- (g) where appropriate, an extract of the permanence order made in respect of the child under section 80 of the 2007 Act;
- (h) in the case of a petition to which the provisions of Chapter 1 of Part 3 of the 2009 Regulations apply—
 - (i) copies of the Article 16 Information and the Agreement under Article 17(c) of the Convention referred to in regulation 34(c) of those Regulations; and
 - (ii) the confirmation referred to in regulation 34(d) of those Regulations;
- (i) in the case of a petition to which the provisions of Chapter 2 of Part 3 of the 2009 Regulations apply—
 - (i) copies of the Article 16 Report and the Agreement under Article 17(c) of the Convention referred to in regulation 51(c) of those Regulations; and
 - (ii) the confirmation referred to in regulation 51(d) of those Regulations;
- (j) any other document founded on by the petitioner in support of the petition;

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- (k) where appropriate, a translation into English of any document referred to in subparagraphs (a) to (j), together with the certificate referred to in paragraph (3).
- (3) The certificate mentioned in paragraph (2)(k) is a certificate by the translator—
 - (a) certifying that the translation is in conformity with the original document; and
 - (b) giving the full name, address and qualifications of the translator.
- (4) A report by a local authority under section 19(2), or an adoption agency under section 17 of the 2007 Act must be in numbered paragraphs and include the following matters:—
 - (a) a description of the petitioner’s background, including his family history, medical history, his social environment, his reasons for wishing to adopt, his eligibility and suitability to adopt, and in particular his suitability for a Convention adoption order;
 - (b) a description of the child’s background, including his family history, his medical history and that of his family, his social environment, his physical and mental health (including any special needs), and his emotional, behavioural and educational development;
 - (c) information about the mutual suitability of the petitioner and the child for the relationship created by adoption, and the ability of the petitioner to bring up the child, including an assessment of the personalities of the petitioner and of the child;
 - (d) particulars of all the members of the household of the petitioner, and their relationship to the petitioner;
 - (e) a description of the accommodation in the home of the petitioner;
 - (f) in a petition by only one member of a relevant couple within the meaning of section 29(3) of the 2007 Act, why the other member of that couple has not joined in the application;
 - (g) whether the petitioner understands the nature and effect of an adoption order and in particular that the order, if made, will make the petitioner responsible for the maintenance and upbringing of the child;
 - (h) whether the means and standing of the petitioner are such as to enable him to maintain and bring up the child suitably;
 - (i) whether the child has any right or interest in property and, if so, what right or interest;
 - (j) whether any payment or other reward in consideration of the proposed adoption, other than an approved adoption allowance has been received or agreed;
 - (k) what insurance has been offered on the life of the child;
 - (l) the religious persuasion, racial origin, and cultural and linguistic background of the child and of the petitioner;
 - (m) considerations arising from the difference in age between the petitioner and the child if this is more or less than the normal difference between parents and children;
 - (n) whether adoption is likely to safeguard and promote the welfare of the child throughout his life;
 - (o) whether the child is subject to a supervision requirement under section 70 of the 1995 Act and, if so, what steps have been taken to comply with section 73(4)(c), (5) and (13) of the 1995 Act;
 - (p) whether there has been a contravention of section 75 of the 2007 Act in relation to the child;
 - (q) whether there has been a failure to comply with section 76(2) of the 2007 Act in relation to the child;
 - (r) any other matters relevant to the operation of section 14 of the 2007 Act in relation to the application;
 - (s) where appropriate, information about whether—

- (i) in an application under section 29(1) of the 2007 Act, the petitioners are a relevant couple within the meaning of section 29(3)(c) or (d) of the 2007 Act;
- (ii) in an application under section 30(1) of the 2007 Act, the petitioner is a member of a relevant couple within the meaning of section 29(3)(c) or (d) of the 2007 Act;
- (t) in the case of a petition to which the provisions of Chapter 1 of Part 3 of the 2009 Regulations apply, the confirmation, the date and the details referred to respectively in regulation 33(a), (b) and (c) of those Regulations;
- (u) any other information which may be of assistance to the court.

(5) If no report mentioned in paragraph (2)(d) or (e) is available to be lodged with the petition, the sheriff shall pronounce an interlocutor requiring the local authority or adoption agency to prepare and lodge such a report in court within 2 weeks from the date of the interlocutor, or within such other period as the sheriff in his discretion may allow.

Application of Chapter 2 to Convention adoption orders

30. Rules 11 to 27 (other than paragraphs (1), (2) and (3)(n) of rule 12) of Chapter 2 are to apply to an application under this Chapter, so far as they are not inconsistent with this Chapter, except that—

- (a) rule 11 (appointment of curator *ad litem* and reporting officer) is to be read as if—
 - (i) in paragraph (1), for “rule 8” there were substituted “rule 29”;
 - (ii) in paragraph (1) the words “and reporting officer” were omitted; and
 - (iii) for paragraphs (2) and (3) there were substituted—
 - “(2) Subject to paragraph (3), the sheriff must not appoint a reporting officer;
 - (3) But 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.”;
- (b) rule 14 (intimation of application) is to be read as if—
 - (i) in paragraph (1), for “rule 8” there were substituted “rule 29”;
 - (ii) for paragraph (1)(b) there were substituted—
 - “(b) the petitioner must send a copy of the petition along with a notice of intimation in Form 5 to—
 - (i) the curator *ad litem* and the reporting officer;
 - (ii) any person or body who has care or possession of the child; and
 - (iii) any local authority or adoption agency that has prepared a report under section 17 or 19(2) of the 2007 Act.”; and
 - (iii) paragraph (1)(c) and (d) were omitted; and
- (c) rule 23 (communication to the Registrar General) is to be read as if for it there were substituted—

“Communications to the Registrar General and the Central Authority

23.—(1) The making of a Convention adoption order is to be intimated in accordance with this rule to the Registrar General and the Central Authority by the sheriff clerk.

(2) A certified copy of the order making a Convention adoption order must be sent to the Registrar General and the Central Authority either by recorded delivery post in an envelope marked “Confidential”, or by personal delivery by the sheriff clerk in a sealed envelope marked “Confidential”.

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;
 - (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—
 - (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;

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- (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
 - (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.

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(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;

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- (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;
 - (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.

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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;
- (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

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- (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.

- (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.

Interim orders

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

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(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.