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STATUTORY INSTRUMENTS

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**1997 No. 291**

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

CHAPTER 3

CHILDREN (SCOTLAND) ACT 1995

PART II

GENERAL RULES

*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.