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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 172**

**Act of Sederunt (Children's Hearings (Scotland)  
Act 2011) (Miscellaneous Amendments) 2013**

**Amendment of Chapter 3 of the 1997 Act of Sederunt**

**3.—**(1) Chapter 3 of the 1997 Act of Sederunt is amended in accordance with the following subparagraphs.

(2) The title of Chapter 3 becomes “Children’s Hearings: Applications to the sheriff”.

(3) In rule 3.1 (interpretation)—

(a) in paragraph (1)—

(i) the following definitions are inserted in the appropriate sequential order—

““1995 Act” means the Children (Scotland) Act 1995 and (except where the context otherwise requires) references to terms defined in that Act have the same meaning here as given there;

“2011 Act” means the Children’s Hearings (Scotland) Act 2011 and (except where the context otherwise requires) references to terms defined in that Act have the same meaning here as given there;

“relevant person” means—

(aa) a person referred to in section 200(1) of the 2011 Act or

(bb) a person deemed a relevant person by virtue of section 81(3) or 160(4)(b) of the 2011 Act;”;

(ii) omit the defined term “the Act” and its related definition;

(b) for paragraph (2) substitute—

“(2) In this Chapter any reference, however expressed, to disputed grounds shall be construed as a reference to a statement of grounds which forms the subject of an application under section 93(2)(a) or 94(2)(a) of the 2011 Act.

(3) Except as otherwise provided, this Chapter applies to applications to the sheriff (including reviews and appeals) under the 1995 Act or the 2011 Act.

(4) All hearings in respect of applications to the sheriff must be held in private.”.

(4) For rule 3.2 (application) substitute—

**“Application of rules 3.3 to 3.5A**

**3.2.—**(1) Rules 3.3 to 3.5 apply where a sheriff is coming to a decision about a matter relating to a child within the meaning of section 27 of the 2011 Act.

(2) Rule 3.5A applies in the circumstances referred to in paragraph (1) and in respect of applications under Part V of this Chapter.”.

(5) For rule 3.3 (power to dispense with service on child) substitute—

### **“Power to dispense with service on child**

**3.3.** Where the sheriff is satisfied, so far as practicable and taking account of the age and maturity of the child, that it would be inappropriate to order service on the child, the sheriff may dispense with service on the child.

### **Child to attend hearing**

**3.3A.—**(1) This rule applies where an application is made to the sheriff under the 2011 Act, other than where section 103 or 112 of the 2011 Act applies.

(2) A child must attend all hearings, unless the sheriff otherwise directs.

(3) A child may attend a hearing even if the child is excused from doing so.

(4) If the child is not excused from attending the hearing but does not attend the sheriff may grant a warrant to secure attendance in relation to the child.

(5) Paragraph (6) applies if—

(a) the hearing of the application is to be continued to another day; and

(b) the sheriff is satisfied that there is reason to believe that the child will not attend on that day.

(6) The sheriff may grant a warrant to secure attendance in relation to the child.”.

(6) In rule 3.4 (service on child)—

(a) in paragraph (1)(b) for “set aside” substitute “terminate”;

(b) omit paragraph (1)(e);

(c) for paragraph (1)(f) substitute—

“(f) subject to subparagraph (g), in Form 31 in respect of an application under section 93(2)(a) or 94(2)(a) of the 2011 Act;

(g) Form 31A in respect of an application under section 94(2)(a) of the 2011 Act where a procedural hearing has been fixed; and

(h) Form 31B in respect of an application under section 110(2) of the 2011 Act.”.

(7) In rule 3.5 (procedure where child wishes to express a view)—

(a) in paragraph (1)—

(i) for the first line of paragraph (1) substitute “Subject to section 27(3) of the 2011 Act, the sheriff—”;

(ii) for subparagraph (b) substitute—

“(b) shall not come to a decision about a matter relating to a child within the meaning of section 27 of the 2011 Act unless an opportunity has been given for the views of that child to be obtained or heard.”;

(b) in paragraph (2)(c) omit—

(i) “or curator *ad litem* appointed by the court”;

(ii) omit “or” at the end of the paragraph;

(c) after paragraph (2)(c) insert—

“(ca) by any curator *ad litem*.”;

(d) the heading becomes “Procedure for obtaining a child’s view”.

(8) After rule 3.5 insert—

### “Confidentiality

- 3.5A.**—(1) Unless the sheriff otherwise directs, all documents lodged in process are to be available only to the sheriff, the reporter, the safeguarder, the curator *ad litem* and the parties; and such documents must be treated as confidential by all persons involved in, or party to, the proceedings and by the sheriff clerk.
- (2) The safeguarder and the curator *ad litem* must—
- (a) treat all information obtained in the exercise of their duties as confidential; and
  - (b) 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 3.5.”.
- (9) In rule 3.6 (application of rules for safeguarders)—
- (a) for “to 3.10” substitute “to 3.9”;
  - (b) for “proceedings under section 57 of the Act” substitute “an application under section 37 of the 2011 Act”.
- (10) In rule 3.7 (appointment of safeguarder)—
- (a) in paragraph (1) for “The sheriff” substitute “Where a safeguarder has not been appointed for the child, the sheriff”;
  - (b) for paragraph (2) substitute—  
“(2) Where a sheriff appoints a safeguarder, the appointment and the reasons for it must be recorded in an interlocutor.”.
- (11) In rule 3.8 (rights, powers and duties of safeguarder etc.) after paragraph (e) insert—  
“(f) whether or not a party, be entitled to receive from the sheriff clerk all interlocutors subsequent to his or her appointment.”.
- (12) The heading of rule 3.9 becomes “Representation of safeguarder”.
- (13) Rule 3.10 (provision where safeguarder intimates his decision not to become a party to the proceedings) is omitted.
- (14) In rule 3.11 (assigning of diet for hearing) after “Form 32” insert “, Form 32A”.
- (15) In rule 3.12 (service and notice to persons named in application)—
- (a) in paragraph (1)—
    - (i) in subparagraph (b) for “set aside” substitute “terminate”;
    - (ii) omit subparagraph (e);
    - (iii) in subparagraph (f) substitute—
      - “(f) subject to subparagraph (g), in Form 39 in respect of an application under section 93(2)(a) or 94(2)(a) of the 2011 Act made under Part VII of this Chapter; or
      - (g) in Form 39A where a procedural hearing has been fixed in respect of an application under section 94(2)(a) of the 2011 Act made under Part VII of this Chapter.”;
  - (b) in paragraph (2) after “safeguarder” insert “or curator *ad litem*”.
- (16) In rule 3.13 (period of notice) in paragraph (2)—
- (a) for subparagraph (a) substitute—  
“(a) an appeal referred to in section 157(1), 160(1), 161(1) or 162(3) of the 2011 Act;”;

- (b) for subparagraph (c) substitute—
  - “(c) a hearing on an application to vary or terminate a child protection order;”.
- (17) In rule 3.14 (citation of witnesses etc.) in paragraph (1)(a) for “first diet” substitute “hearing on evidence”.
- (18) In rule 3.16 (persons who may effect service)—
  - (a) in paragraph (1)(b) for “or (f)” substitute “to (g)”;
  - (b) for paragraph (3) substitute—
    - “(3) Where required by the sheriff, the sheriff clerk shall cite the Principal Reporter, the authors or compilers of any reports or statements and any other person whom the sheriff may wish to examine under section 155(5) of the 2011 Act (procedure in appeal to sheriff against decision of children’s hearing).”.
- (19) In rule 3.17 (production of certificates of execution of service) in paragraph (1)(b) for “the post office” substitute “a”.
- (20) For rule 3.22 (applications for evidence of children by television link) substitute—

**“Applications for evidence by live link**

**3.22.—**(1) On cause shown, a party may apply in the form prescribed in paragraph (3) for authority for the whole or part of—

- (a) the evidence of a witness or party; or
- (b) a submission,

to be made through a live link.

(2) In paragraph (1)—

“witness” means a person who has been or may be cited to appear before the sheriff as a witness (including a witness who is outwith Scotland), except in circumstances where such witness is a vulnerable witness within the meaning of section 11(1) of the Vulnerable Witnesses (Scotland) Act 2004;

“submission” means any oral submission which would otherwise be made to the court by the party or such party’s representative in person including an oral submission in support of an application;

“live link” means a live television link or such other arrangement as may be specified in the application by which the witness, party or representative, as the case may be, is able to be seen and heard in the proceedings or heard in the proceedings and is able to see and hear or hear the proceedings while at a place which is outside the courtroom.

(3) An application under paragraph (1) shall be made—

- (a) in Form 44A in the case of a witness or party;
- (b) in Form 44B in the case of a submission.

(4) The application shall be lodged with the sheriff clerk prior to the hearing at which the witness is to give evidence or the submission is to be made (except on special cause shown).

(5) The sheriff shall—

- (a) order intimation of the application to be made to the other party or parties to the proceedings in such form as he or she prescribes; and
- (b) hear the application as soon as reasonably practicable.”.

(21) In rule 3.25 (child assessment orders: interpretation) for “section 55 of the Act” substitute “section 35(1) of the 2011 Act”.

(22) In rule 3.27 (orders) in paragraph (3) for “section 55(2) of the Act” substitute “section 36(3) of the 2011 Act”.

(23) In rule 3.29 (child protection orders: interpretation) for “section 57 of the Act” substitute “section 37 of the 2011 Act”.

(24) In rule 3.31 (determination of application) in paragraph (2) for “section 58 of the Act” substitute “section 40, 41 or 42 of the 2011 Act”.

(25) In rule 3.32 (intimation of making of order) for subparagraph (b) substitute—

“(b) the persons referred to in section 43(1)(a), (c), (d) and (e) of the 2011 Act, along with a notice in Form 51; and

(c) such other persons as the sheriff may direct and in such manner as he or she may direct.”.

(26) In rule 3.33 (application to vary or set aside a child protection order)—

(a) in paragraph (1)—

(i) for “section 60(7) of the Act” substitute “section 48 of the 2011 Act”;

(ii) for “setting aside” substitute “termination”;

(iii) omit from “or a direction” to “section 59(4) of the Act”;

(b) in paragraph (2)—

(i) for “section 60(7) of the Act” substitute “section 48 of the 2011 Act”;

(ii) for “setting aside” substitute “termination”;

(c) in paragraph (3) after “is made” insert “under section 49 of the 2011 Act”;

(d) in paragraph (4) omit “Subject to section 60(11) of the Act”;

(e) the heading becomes “Application to vary or terminate a child protection order”.

(27) In each of the following rules, wherever reference is made to “the Act” substitute “the 1995 Act”—

(a) rule 3.34 (exclusion orders: interpretation);

(b) rule 3.36 (hearing following interim order);

(c) rule 3.38 (certificates of delivery of documents to chief constable);

(d) rule 3.40 (variation or recall of an exclusion order).

(28) For rule 3.39 (power to make child protection order in an application for an exclusion order) substitute—

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

**3.39.** Where the sheriff, in terms of section 76(8) of the 1995 Act, has decided to make a child protection order under Part 5 of the 2011 Act pursuant to an application, rules 3.31 to 3.33 shall apply.”.

(29) Part VI (Warrant for further detention of a child) is omitted.

(30) The heading of Part VII becomes “PROCEDURE IN APPLICATIONS UNDER SECTION 93(2)(a) OR 94(2)(a) OF THE 2011 ACT”.

(31) In rule 3.44 (interpretation) for “section 65(7) or (9) of the Act (establishment of grounds for referral)” substitute “section 93(2)(a) or 94(2)(a) of the 2011 Act”.

(32) In rule 3.45 (lodging of application, etc.)—

(a) for paragraph (1) substitute—

“(1) Within a period of 7 days beginning with the date on which the Principal Reporter was directed in terms of section 93(2)(a) or 94(2)(a) of the 2011 Act to make an application

to the sheriff, the Principal Reporter shall lodge an application in Form 60 with the sheriff clerk of the sheriff court district in which the child is habitually resident.

(1A) Paragraph (1) is subject to the terms of section 102(2) of the 2011 Act.

(1B) The sheriff may, on cause shown, remit any application to another sheriff court.

(1C) Not later than 28 days after the day on which the application is lodged the sheriff clerk shall fix a hearing on evidence as required under section 101(2) of the 2011 Act.”.

(b) in paragraph (2) omit “the chairman at”;

(c) after paragraph (2) insert—

“(3) Paragraphs (4) to (7) apply where an application under paragraph (1) is made by virtue of section 94(2)(a) of the 2011 Act.

(4) The sheriff may fix a procedural hearing to determine whether or not the section 67 grounds in the statement of grounds are accepted by each relevant person.

(5) Such procedural hearing must take place before the expiry of the period of 7 days beginning with the day on which the application is lodged.

(6) The sheriff shall appoint service and intimation of the procedural hearing as the sheriff thinks fit.

(7) Subject to paragraph (9)(a) and (b), subsequent to the procedural hearing the sheriff may discharge the hearing on evidence and determine the application.

(8) Where paragraph (7) applies the sheriff shall make such orders for intimation as the sheriff thinks fit.

(9) Where—

(a) a relevant person does not accept the section 67 grounds in the statement of grounds at the procedural hearing;

(b) section 106(2)(a) or (b) of the 2011 Act applies; or

(c) the sheriff has not fixed a procedural hearing;

a hearing on evidence must take place in accordance with rule 3.47.”.

(33) In rule 3.46 (abandonment of application)—

(a) in paragraph (1) for “abandon” substitute “withdraw”;

(b) in paragraph (2) and (3) for “abandonment” substitute “withdrawal”;

(c) in paragraph (2)(c) for “appointed by the sheriff” substitute “and curator *ad litem*”;

(d) the heading of that rule becomes “Withdrawal of application”.

(34) After rule 3.46 insert—

**“Expeditious determination of application**

**3.46A.** Prior to or at a hearing on evidence under rule 3.47 (or any adjournment or continuation thereof under rule 3.49), the sheriff may order parties to take such steps as the sheriff deems necessary to secure the expeditious determination of the application, including but not limited to—

(a) instructing a single expert;

(b) using affidavits;

(c) restricting the issues for proof;

(d) restricting witnesses;

(e) applying for evidence to be taken by live link in accordance with rule 3.22.”.

- (35) In rule 3.47 (Hearing of evidence)—
- (a) before paragraph (1) insert—

“(A1) If, at a hearing on evidence (or any adjournment or continuation thereof under rule 3.49), the section 67 grounds (or as they may be amended) are no longer in dispute, the sheriff may determine the application without hearing evidence.”;
  - (b) in paragraph (1)—
    - (i) for “any condition mentioned in section 52(2) of the Act (conditions relative to compulsory measures of supervision)” substitute “every section 67 ground”;
    - (ii) omit “of referral”;
  - (c) in paragraph (2)—
    - (i) for “condition mentioned in paragraph (i) of section 52(2) of the Act is satisfied” substitute “ground set out in section 67(2)(j) of the 2011 Act applies”;
    - (ii) for “condition is satisfied” substitute “ground”;
  - (d) in paragraph (3) for “finding” substitute “determination”;
  - (e) for paragraph (4) substitute—

“(4) Paragraph (4A) applies where—

    - (a) paragraph (2) applies and the sheriff is satisfied that sufficient evidence has been led;
    - (b) any other section 67 ground is in dispute.

(4A) The child, the relevant person and any safeguarder may give evidence and may, with the approval of the sheriff, call witnesses with regard to the ground in question.”.
  - (f) For paragraph (5) substitute—

“(5) Where the sheriff excuses the child from attending all or part of the hearing in accordance with section 103(3) of the 2011 Act, the following persons shall be permitted to remain during the absence of the child—

    - (a) any safeguarder appointed in relation to the child;
    - (b) any curator *ad litem* appointed in relation to the child;
    - (c) any relevant person;
    - (d) the child’s representative.”;
    - (g) in paragraph (8) omit “in a referral”;
    - (h) the heading of that rule becomes “Hearing on evidence”.
- (36) In rule 3.48 (amendment of grounds for referral)—
- (a) for “statement supporting the conditions of the grounds for referral” substitute “statement of grounds”;
  - (b) the heading of that rule becomes “Amendment of the statement of grounds”.
- (37) In rule 3.49 (adjournment for inquiry, etc.)
- (a) omit “Subject to the provisions of section 68(2) of the Act (applications to be heard within twenty-eight days of lodging)”;
  - (b) after “hearing” insert “fixed under rule 3.45(1B)”.
- (38) In rule 3.50 (power of sheriff in making findings as to offences)—
- (a) for “ground of referral” substitute “statement of grounds”;
  - (b) for “find” substitute “determine”.

- (39) In rule 3.51 (decision of sheriff)—
- (a) in paragraph (2)(c) for “appointed by the sheriff; and” substitute “and curator *ad litem*.”;
  - (b) after paragraph (2)(d) insert—
    - “and
    - (e) such other persons as the sheriff may direct.”.
- (40) For rule 3.52 (signature of warrants) substitute—
- “**3.52.**—(1) Subject to paragraph (3) a warrant granted under the 2011 Act may be signed by the sheriff or the sheriff clerk.
- (2) A warrant signed by the sheriff clerk shall be treated for all purposes as if it had been signed by the sheriff.
- (3) A warrant to secure attendance must be signed by the sheriff.”.
- (41) The heading of Part VIII becomes “PROCEDURE IN APPEALS TO THE SHERIFF AGAINST DECISIONS OF CHILDREN’S HEARINGS”.
- (42) In rule 3.53 (form of appeal)—
- (a) for paragraph (1) substitute—
    - “(1) This Part applies to appeals to the sheriff under sections 154(1), 160(1), 161(1) and 162(3) of the 2011 Act.
    - (1A) An appeal to the sheriff under the sections of the 2011 Act prescribed in paragraph (1B) must be—
      - (a) made in the form prescribed in paragraph (1B);
      - (b) accompanied by a copy of the decision complained of and any document relevant to it that was before the children’s hearing; and
      - (c) lodged with the sheriff clerk of the sheriff court district in which the child is habitually resident or, on cause shown, such other court as the sheriff may direct.
    - (1B) The prescribed sections and form of appeal are—
      - (a) in the case of an appeal under section 154(1) (appeal to sheriff against decision of children’s hearing), in Form 61;
      - (b) in the case of an appeal under section 160(1) (appeal to sheriff against relevant person determination), in Form 62;
      - (c) in the case of an appeal under section 161(1) (appeal to sheriff against decision affecting contact or permanence order), in Form 63;
      - (d) in the case of an appeal under section 162(3) (appeal to sheriff against decision to implement secure accommodation authorisation), in Form 63A.”;
  - (b) in paragraph (3) omit “appointed by the children’s hearing”;
  - (c) after paragraph (3) insert—
    - “(4) Where leave to appeal is required by virtue of section 159(2) of the 2011 Act, such application for leave shall be—
      - (a) made by letter addressed to the sheriff clerk setting out the grounds on which the application is made;
      - (b) accompanied by a copy of the decision referred to in section 159(2) of the 2011 Act;
      - (c) lodged with the sheriff clerk with the relevant form of appeal.



(5) On receipt of such application the sheriff clerk shall forthwith fix a hearing and intimate the application and the date of the hearing to the other parties to the proceedings.

(6) Where leave to appeal is granted, the appeal will proceed in accordance with rule 3.54.”.

(43) In rule 3.54 (appointment and intimation of first diet)—

(a) in paragraph (1)—

(i) in subparagraph (c) for “the relevant person” substitute “any relevant person”;

(ii) in subparagraph (d) omit “appointed for the purposes of the appeal by the sheriff or appointed by the chairman of the children’s hearing; and”;

(iii) in subparagraph (e) for “thinks necessary” substitute “considers necessary, including those referred to in section 155(5)(c) and (e) of the 2011 Act”;

(iv) after subparagraph (e) insert—

“(f) in the case of appeals under section 162(3), the chief social work officer of the relevant local authority for the child.”;

(b) in paragraph (5) after “shall be” insert “within the time limits prescribed in, or by virtue of, the 2011 Act and in any event,”.

(44) In rule 3.55 (answers) for paragraph (1) substitute—

“(1) Subject to paragraph (1A), if any person on whom service of the appeal has been made wishes to lodge answers to the appeal, he or she must do so not later than 7 days before the diet fixed for the hearing of the appeal.

(1A) Paragraph (1) does not apply to those appeals referred to in section 157(1), 160(1), 161(1) or 162(3) of the 2011 Act.”.

(45) In rule 3.56 (procedure at hearing of appeal)—

(a) in paragraph (1) omit “in accordance with section 51(3) of the Act”;

(b) in paragraph (2) for “a further report called for under section 51(3)(c) of the Act” substitute “any further report required by the sheriff under or by virtue of the 2011 Act”;

(c) in paragraph (4), (5) and (6) for “the relevant person” substitute “any relevant person”;

(46) In rule 3.57 (adjournment of appeals)—

(a) after “adjourn” insert “or continue”;

(b) the existing rule becomes paragraph (1);

(c) after paragraph (1) insert—

“(2) In the event of such adjournment or continuation the sheriff may make such order as the sheriff deems necessary to secure the expeditious determination of the appeal.”;

(d) the heading of the rule becomes “Adjournment or continuation of appeals”.

(47) In rule 3.58 (decision of sheriff in appeals)—

(a) at the end of paragraph (1) insert “, subject to the provisions of, or by virtue of, the 2011 Act”;

(b) in paragraph (2) for “decides to follow the course of action provided for in subparagraph (i) or (iii) of section 51(5)(c) of the Act” substitute “takes any of the steps referred to in section 156(2) or (3) of the 2011 Act”;

(c) in paragraph (4)—

(i) for “the relevant person” substitute “any relevant person”;

- (ii) for “and to any safeguarder appointed by the sheriff” substitute “, any safeguarder and such other persons as the sheriff may direct”;
- (iii) for “by virtue of section 51(2) or (3) of the Act” substitute “with the sheriff clerk”;
- (d) after paragraph (4) insert—
  - “(5) Where section 159 of the 2011 Act applies the sheriff clerk shall send a copy of the interlocutor containing the decision of the sheriff to the Scottish Legal Aid Board”.
- (48) After rule 3.58 insert—

## “PART VIII A

### APPLICATIONS FOR REVIEW BY LOCAL AUTHORITY

#### **Review applications by local authority**

**3.58A.**—(1) This Part of Chapter 3 applies to applications to the sheriff for a review under section 166(2) of the 2011 Act.

- (2) An application shall be made in Form 64A and must contain—
  - (a) the name and address of the local authority;
  - (b) the name of the child in respect of whom the duty was imposed and the child’s representative (if any);
  - (c) the name and address of any relevant person in relation to the child and such person’s representative (if any);
  - (d) the name and address of any safeguarder;
  - (e) the name and address of any curator *ad litem*;
  - (f) the name and address of any other party to the application;
  - (g) the name and address of any other local authority with an interest;
  - (h) the date and determination made and the place of the sheriff court which made the determination, or alternatively the date and decision made by the children’s hearing;
  - (i) the grounds for the making of the application;
  - (j) any reports, affidavits and productions upon which the applicant intends to rely.

#### **Hearing on application**

**3.58B.**—(1) After lodging the application in terms of rule 3.58A, the sheriff clerk shall assign a date for hearing the application and shall issue a warrant to cite in Form 64B, which shall require any party to lodge answers if so advised within such time as the sheriff shall appoint.

(2) Subject to the provisions of rule 3.3 (power to dispense with service on child), after the issue of the warrant to cite, the applicant shall forthwith give notice of the application by serving a copy and the warrant on the persons referred to in rule 3.58A.

(3) At the hearing the sheriff may determine the application or allow such further procedure as the sheriff thinks fit.

(4) The provisions of rule 3.51 shall apply to any order made under this Part.”.

(49) The heading of Part IX becomes “PROCEDURE IN APPEALS BY STATED CASE UNDER PART 15 OF THE 2011 ACT”.

- (50) In rule 3.59 (appeals)(1)—
- (a) before paragraph (1) insert—
    - “(A1) This Part applies to appeals by stated case under section 163(1), 164(1), 165(1) and 167(1) of the 2011 Act.”;
  - (b) in paragraph (1)—
    - (i) for “under section 51(11)(a) of the Act” substitute “to the sheriff principal to which this Part applies”;
    - (ii) for “irregularity in the conduct of the case concerned” substitute “procedural irregularity”;
  - (c) in paragraph (2)—
    - (i) after “sheriff” insert “to”;
    - (ii) for subparagraphs (a) to (c) substitute—
      - “(a) the Principal Reporter;
      - (b) the child (if not the appellant), except where service on the child has been dispensed with in terms of rule 3.3;
      - (c) any relevant person (if not the appellant);
      - (d) any safeguarder;
      - (e) any other party to proceedings.”;
  - (d) in paragraph (3)—
    - (i) for “14” substitute “21”;
    - (ii) in subparagraph (b) before “irregularity” insert “procedural”;
  - (e) in paragraph (4) in subparagraph (b) and (c) after “point of law” insert “or procedural irregularity”;
  - (f) in paragraph (7)(c) for “irregularity in the conduct of the case” substitute “procedural irregularity”;
  - (g) in paragraph (9) for “irregularities in the conduct of the case” substitute “procedural irregularities”.
- (51) In rule 3.60 (lodging of reports and statements with sheriff)—
- (a) in each place where it occurs, for “statement” substitute “information”;
  - (b) in subparagraph (a), for “section 51(2) or (3) of the Act” substitute “section 155(2) of the 2011 Act”;
  - (c) the heading of that rule becomes “Lodging reports and information in appeals”.
- (52) After rule 3.61 (hearing) insert—

**“Leave of the sheriff principal to appeal to the Court of Session**

**3.61A.**—(1) This rule applies to applications for leave to appeal under section 163(2), 164(2) or 165(2) of the 2011 Act.

- (2) An application shall be made by letter addressed to the sheriff clerk, which must—
- (a) state the point of law or procedural irregularity upon which the appeal is to proceed;
  - (b) be lodged with the sheriff clerk before the expiry of the period of 7 days beginning with the day on which the determination or decision appealed against was made.

- (3) On receipt of such application the sheriff clerk shall—
- (a) forthwith fix a hearing which should take place no later than 14 days from the date of receipt of the application;
  - (b) intimate the application and the date of the hearing to the other parties to the proceedings.

(4) Where leave to appeal is granted, the appeal shall be lodged in accordance with the timescales prescribed in the relevant section of the 2011 Act.”.

(53) The heading of Part X becomes “APPLICATIONS FOR REVIEW OF GROUNDS DETERMINATION”.

(54) For rule 3.62 (application) substitute—

**“Application**

**3.62.**—(1) An application under section 110 of the 2011 Act for a review of a grounds determination made in terms of section 108 of the 2011 Act (determination that grounds for referral established) shall contain—

- (a) the name and address of the applicant and his or her representative (if any);
- (b) the name and address (if known) of the person who is the subject of the grounds determination (even if that person is no longer a child), if not the applicant;
- (c) the name and address of the safeguarder (if any);
- (d) the name and address of the curator *ad litem* (if any);
- (e) the name and address of any person who is, or was at the time the grounds determination was made, a relevant person in relation to the child, if not the applicant;
- (f) the date and grounds determination made and the place of the sheriff court which made the grounds determination;
- (g) the grounds for the making of the application;
- (h) specification of the nature of evidence in terms of section 111(3) of the 2011 Act not considered by the sheriff who made the grounds determination;
- (i) the explanation for the failure to lead such evidence on the original application; and
- (j) any reports, affidavits and productions upon which the applicant intends to rely.

(2) Where the applicant does not wish to disclose the address or whereabouts of the child or any other person to persons receiving notice of the application, the applicant shall set out his or her reasons for this.”.

(55) In rule 3.63 (hearing on application)—

- (a) for paragraph (1) substitute—
  - “(1) Where an application has been lodged in terms of rule 3.62, the sheriff clerk shall—
  - (a) assign a diet for hearing the application;
  - (b) issue a warrant to cite in Form 65 requiring the Principal Reporter to lodge answers if so advised within such time as the sheriff shall appoint.”.
- (b) in paragraph (2) after “rule 3.62” insert “and such other persons as the sheriff directs”;
- (c) for paragraph (3) substitute—

“(3) After hearing parties and having considered the terms of section 111(3) of the 2011 Act and allowing such further procedure as the sheriff thinks fit to secure the expeditious determination of the application, the sheriff shall make an order as appropriate.

- (4) The provisions of rule 3.51 shall apply to any order made under paragraph (3).”.
- (56) Rule 3.64 (hearing to consider the evidence) is omitted.
- (57) Before Part XI (Vulnerable Witnesses (Scotland) Act 2004) insert—

## “PART XA

### ORDERS UNDER THE CHILDREN’S HEARINGS (SCOTLAND) ACT 2011

#### **Interim compulsory supervision order**

**3.64A.**—(1) Where a sheriff makes an interim compulsory supervision order under section 100, 109 or 156(3)(d) of the 2011 Act, such order shall be in Form 65A and, subject to rule 3.3, shall be intimated forthwith to the child by the Principal Reporter in Form 65B.

(2) An application for the extension or extension and variation of an interim compulsory supervision order shall be made to the sheriff in Form 65C.

(3) An application for the further extension or further extension and variation of an interim compulsory supervision order shall be made to the sheriff in Form 65D.

(4) Subject to rule 3.3, an application under paragraph (2) or (3) must be intimated forthwith by the applicant to the child and each relevant person and such other persons as the sheriff determines and in such manner as the sheriff determines.

(5) Where the sheriff grants an application under paragraph (2) or (3), the interlocutor shall state the terms of such extension or extension and variation and subject to rule 3.3, shall be intimated forthwith to the child by the Principal Reporter in Form 65B.

(6) Subject to paragraphs (1) and (5), where the sheriff—

- (a) makes an interim compulsory supervision order under paragraph (1); or
- (b) grants an application under paragraph (2) or (3),

the Principal Reporter shall intimate the order forthwith to the implementation authority and to such other persons as the sheriff determines in Form 65E.

#### **Compulsory supervision order**

**3.64B.** Where a sheriff varies or continues a compulsory supervision order, the interlocutor shall state the terms of such variation or continuation and shall be intimated forthwith by the sheriff clerk to the parties and the relevant implementation authority.

#### **Medical examination order**

**3.64C.** Where a sheriff varies or continues a medical examination order, the interlocutor shall state the terms of such variation or continuation and shall be intimated forthwith by the sheriff clerk to the parties and the relevant local authority or establishment.”.

(58) In rule 3.65 (vulnerable witnesses: interpretation) omit the defined term “admission application” and its related definition.

(59) In rule 3.66 (extent of application of this Part)(2) for “in an appeal under section 51(1) or applications under section 65(7) or (9) or 85(1) of the Act” substitute “where an application is made to the sheriff under section 93(2)(a), 94(2)(a) or 110 of the 2011 Act or an appeal is made under Part 15 of the 2011 Act”.

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(2) Rule 3.66 was inserted by [S.S.I. 2005/190](#).

- (60) In rule 3.75 (lodging of video record and documents)(3)—
- (a) in paragraph (1) for “the video record” substitute “any audio or audio-visual recording”;
  - (b) in paragraph (2) for “the video record” substitute “any audio or audio-visual recording”;
  - (c) the heading of that rule becomes “Lodging audio and audio-visual recordings and documents”.
- (61) In rule 3.76 (custody of video record and documents)(4)—
- (a) in paragraph (1) for “The video record” substitute “The audio or audio-visual recording”;
  - (b) in paragraph (2) for “the video record” substitute “the audio or audio-visual recording”;
  - (c) the heading of that rule becomes “Custody of audio or audio-visual recordings and documents”.
- (62) After rule 3.76 insert—

## “PART XIA CASES INVOLVING SEXUAL BEHAVIOUR

### **Interpretation and application of this Part**

**3.76A.**—(1) This Part of Chapter 3 applies to proceedings where—

- (a) an application is made to the sheriff under section 93(2)(a), 94(2)(a) or 110 of the 2011 Act or an appeal is made under Part 15 of the 2011 Act; and
- (b) the section 67 ground involves sexual behaviour engaged in by any person.

(2) In the case of relevant appeals the provisions of sections 173 to 175 of the 2011 Act shall be deemed to apply as they apply to applications.

(3) The evidence referred to in section 173(2) of the 2011 Act may be in writing or take the form of an audio or audio-visual recording.

(4) In this Part an “admission application” means an application to the sheriff for an order as to evidence pursuant to section 175(1) of the 2011 Act.”.

(63) In each of the following rules omit “who has been appointed by the court”—

- (a) rule 3.68(1)(5);
- (b) rule 3.69B(1)(6);
- (c) rule 3.71(1)(7);
- (d) rule 3.78(1)(8).

(64) In rule 3.78(1) for “is in Form 79” substitute “is made under rule 3.77”.

(65) In rule 3.79(9) for paragraph (1)(a) substitute—

- “(a) grant the admission application in whole or in part;”.

(66) After rule 3.81 insert—

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- (3) Rule 3.75 was inserted by [S.S.I. 2005/190](#) and amended by [S.S.I. 2006/75](#).
  - (4) Rule 3.76 was inserted by [S.S.I. 2005/190](#).
  - (5) Rule 3.68 was inserted by [S.S.I. 2005/190](#).
  - (6) Rule 3.69B was inserted by [S.S.I. 2006/75](#).
  - (7) Rule 3.71 was inserted by [S.S.I. 2005/190](#).
  - (8) Rule 3.78 was inserted by [S.S.I. 2005/190](#).
  - (9) Rule 3.79 was inserted by [S.S.I. 2005/190](#).

**“Lodging restricted evidence**

**3.81A.**—(1) Where the sheriff makes an order under section 175(1)(or (c) of the 2011 Act, the applicant shall lodge any relevant recording and documents with the sheriff clerk.

(2) On the recording and documents being lodged the sheriff clerk shall—

(a) note—

(i) the evidence lodged;

(ii) by whom they were lodged;

(iii) the date on which they were lodged; and

(b) intimate what he or she has noted to all parties concerned.

(3) The recording and documents referred to in paragraph (1) shall, subject to paragraph (4), be kept in the custody of the sheriff clerk.

(4) Where the recording of the evidence of a witness is in the custody of the sheriff clerk under this rule and where intimation has been given to that effect under paragraph (2), the name and address of that witness and the record of his or her evidence shall be treated as being in the knowledge of the parties; and no party shall be required, notwithstanding any enactment to the contrary—

(a) to include the name of that witness in any list of witnesses; or

(b) to include the record of his or her evidence in any list of productions.”.

(67) The Index to the Arrangement of Rules is amended accordingly.