
STATUTORY INSTRUMENTS

1997 No. 291

Act of Sederunt (Child Care and Maintenance Rules) 1997

CHAPTER 1

PRELIMINARY

Citation and commencement

1.1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Child Care and Maintenance Rules) 1997 and shall come into force on 1st April 1997.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

Interpretation

1.2.—(1) In this Act of Sederunt, unless the context otherwise requires—

“Ordinary Cause Rules” means the First Schedule to the Sheriff Courts (Scotland) Act 1907⁽¹⁾;

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

“sheriff clerk” includes sheriff clerk depute.

(2) Unless the context otherwise requires, any reference in this Act of Sederunt to a specified Chapter, Part or rule shall be construed as a reference to the Chapter, Part or rule bearing that number in this Act of Sederunt, and a reference to a specified paragraph, sub-paragraph or head shall be construed as a reference to the paragraph, sub-paragraph or head so numbered or lettered in the provision in which that reference occurs.

(3) Any reference in this Act of Sederunt to a numbered Form shall be construed as a reference to the Form so numbered in Schedule 1 to this Act of Sederunt and includes a form substantially to the same effect with such variation as circumstances may require.

Affidavits

1.3. An affidavit required in terms of any provision of this Act of Sederunt may be emitted—

(a) in the United Kingdom, before a notary public or any other competent authority;

(b) outwith the United Kingdom, before a British diplomatic or consular officer, or any person authorised to administer an oath or affirmation under the law of the place where the oath or affirmation is made.

Revocations and transitional provisions

1.4.—(1) Subject to paragraphs (2) and (3), the Acts of Sederunt mentioned in column (1) of Schedule 2 to this Act of Sederunt are revoked to the extent specified in column (3) of that Schedule.

(1) 1907 c. 51, the First Schedule was substituted by S.I.1993/1956.

(2) Nothing in paragraph (1) or in Chapter 2 shall affect any cause which has been commenced before 1st April 1997 and to which that Chapter would otherwise apply, and such a cause shall proceed according to the law and practice in force immediately before that date.

(3) Nothing in paragraph (1) shall affect any cause to which paragraph 8(1) of Schedule 3 to the Children (Scotland) Act 1995 applies, and such a cause shall proceed according to the law and practice in force immediately before 1st April 1997.

CHAPTER 2

ADOPTION OF CHILDREN

PART I

GENERAL

Interpretation

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

“the Act” means the Adoption (Scotland) Act 1978(2);

“the 1995 Act” means the Children (Scotland) Act 1995(3);

“adoption agency” means a local authority or an approved adoption society;

“Her Majesty’s Forces” means the Royal Navy, the regular forces as defined by section 225 of the Army Act 1955(4), the regular air force as defined by section 223 of the Air Force Act 1955(5), the Queen Alexandra’s Royal Naval Nursing Service and the Woman’s Royal Naval Service; and

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

Expenses

2.2. The sheriff may make such an order with regard to the expenses, including the expenses of a reporting officer and a curator *ad litem* or any other person who attended a hearing, of an application under this Chapter as he thinks fit and may modify such expenses or direct them to be taxed on such scale as he may determine.

Intimation to Principal Reporter

2.3. Where in such proceedings as are referred to in subsection (2)(c) of section 54 of the 1995 Act (reference to the Principal Reporter by court) a matter is referred by the sheriff to the Principal Reporter under that section, the interlocutor making the reference shall be intimated by the sheriff clerk forthwith to the Principal Reporter; and that intimation shall specify which of the conditions in paragraph (2)(a) to (h), (j), (k) or (l) of section 52 of the 1995 Act it appears to the sheriff has been satisfied.

(2) 1978 c. 28.

(3) 1995 c. 36.

(4) 1955 c. 18.

(5) 1955 c. 19.

Timetables under section 25A of the Act

2.4. In proceedings in which such a timetable as is referred to in section 25A(a) of the Act (timetable for resolving question)(6) is required, the court shall draw up the timetable forthwith where—

- (a) there is presented a petition with a crave for the agreement of a parent or guardian to be dispensed with;
- (b) it appears to the court from a report by an adoption agency, local authority or reporting officer that a question as to dispensing with such agreement arises; or
- (c) such agreement previously given is withdrawn.

PART II

APPLICATION FOR AN ORDER DECLARING A CHILD FREE FOR ADOPTION

Petition

2.5.—(1) An application under section 18(1) of the Act (freeing child for adoption)(7) for an order declaring a child free for adoption shall be made by petition in Form 1.

(2) There shall be lodged in process at the same time as the lodging of 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 of the adoption agency 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 adoption;
 - (v) the knowledge of the petitioner of the position of other relatives or persons likely to be involved;
 - (vi) an account of the search by the petitioner for any parent or guardian who cannot be found;
 - (vii) the likelihood of placement of the child for adoption and whether a petition for an adoption order is likely in the near future;
 - (viii) the arrangements of the petitioner to care for the child after the granting of the prayer of the petition for an order freeing the child for adoption;
 - (ix) whether the petitioner has given each parent or guardian who can be found an opportunity to make a declaration under section 18(6) of the Act(8) that he prefers not to be involved in future questions concerning the adoption of the child;
 - (x) an account of the enquiries by the petitioner into the circumstances of any reputed father;

(6) Section 25A was inserted by the Children (Scotland) Act 1995, Schedule 2, paragraph 18.

(7) Section 18(1) was amended by the Children (Scotland) Act 1995, Schedule 2, paragraph 11(a).

(8) Section 18(6) was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 2, paragraph 40.

- (xi) the intentions of the petitioner about giving notice to a former parent or guardian under section 19(2) and (3) of the Act (progress reports to former parent)⁽⁹⁾; and
- (xii) any other information which may be of assistance to the Court; and

(c) any other document founded upon by the petitioner in support of the terms of the petition.

(3) Where an adoption agency which proposes to apply under paragraph (1) wishes to prevent the address of the child being disclosed to any person whose agreement or consent is required by section 18(1)(a) or (2) of the Act respectively, the agency may apply to the sheriff clerk for a serial number to be assigned for that purpose.

Agreement and consents to order freeing child for adoption

2.6.—(1) An agreement required by section 18(1)(a), or a consent required by section 18(2) or 18(8) of the Act⁽¹⁰⁾, if given in writing shall be in Form 2, 3 or 4 as appropriate and such form, duly executed, shall be sufficient evidence of such agreement or consent.

(2) A form of agreement or of consent executed outwith the United Kingdom shall be sufficient evidence of such agreement or consent if it is witnessed—

- (a) where 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
- (b) in any other case, by a British consular official, or by any person for the time being authorised by the law of the country in which the form is executed to administer an oath for any judicial or legal purpose.

Appointment of curator *ad litem* and reporting officer

2.7.—(1) The sheriff shall, after the lodging of a petition under rule 2.5(1), appoint a curator *ad litem* and reporting officer and 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.

(2) 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 a curator *ad litem* or a reporting officer.

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

(4) An application for an appointment under paragraph (3) shall 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.

Duties of reporting officer and curator *ad litem*

2.8.—(1) A reporting officer appointed under this Part shall—

- (a) witness any consent to the making of an application for an order freeing a child for adoption executed within the United Kingdom by a parent or guardian of the child and shall lodge the consent in process;
- (b) witness any agreement executed within the United Kingdom by a parent or guardian of a child to the making of an adoption order in respect of the child and lodge the agreement in process;
- (c) ascertain that each parent or guardian who can be found understands that the effect of an adoption order would be to extinguish his parental responsibilities and rights;

⁽⁹⁾ Subsections (2) and (3) of section 19 were amended by the Children (Scotland) Act 1995, Schedule 2, paragraph 12(b) and (c).
⁽¹⁰⁾ Section 18(8) was substituted by the Age of Legal Capacity (Scotland) Act 1991 (c. 50), section 2(3)(b).

- (d) ascertain from any parent or guardian who can be found, whether alternatives to adoption have been discussed with him;
 - (e) ascertain whether there is any person other than those mentioned in the petition upon whom notice of the petition should be served;
 - (f) ascertain whether the child is subject to a supervision requirement;
 - (g) confirm that each parent or guardian who can be found understands the implications of an order freeing the child for adoption;
 - (h) confirm that each parent or guardian who has given his agreement and can be found understands that he may withdraw his agreement at any time before an order under section 18(1) of the Act is made;
 - (i) confirm that each parent or guardian who can be found is aware that he may in the circumstances set forth in section 20 of the Act (revocation of section 18 order) apply to the court for revocation of any order under section 18(1) of the Act and of the appropriate procedure for such an application;
 - (j) confirm that each parent or guardian who can be found has been given an opportunity to make a declaration in terms of section 18(6) of the Act and, where the parent or guardian elects to make such declaration, shall comply with rule 2.10; and
 - (k) in the case of a child whose father is not married to the mother, consider the likelihood of any person claiming to be the father of the child—
 - (i) applying for or being refused an order under section 11 of the 1995 Act (court orders relating to parental responsibilities); or
 - (ii) entering into an agreement in terms of section 4(1) of that Act (agreement as to parental responsibilities and rights),and shall report in writing thereon 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.
- (2) A curator *ad litem* appointed under this Part shall have regard to the welfare of the child as his paramount duty and shall further—
- (a) generally safeguard the interests of the child who is the subject of the petition and ensure that consideration has been given to the interests of the child for the purposes of section 6 of the Act (duty to promote welfare of child)(**11**);
 - (b) ascertain whether the facts stated in the petition are correct except where investigation of such facts falls within the duties of the reporting officer;
 - (c) where the child who is sought to be freed for adoption is over the age of 12 years, witness any consent to the order executed by him in the United Kingdom and lodge the consent in process;
 - (d) 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;
 - (e) ascertain whether an order freeing the child for adoption would safeguard and throughout his life promote the welfare of the child;
 - (f) ascertain whether it would be better for the child that the court should make the order than it should not make such order; and
 - (g) report on the current circumstances and care of the child,

(11) Section 6 was substituted by the Children (Scotland) Act 1995, section 95.

and, subject to paragraph (3), shall report in writing thereon 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.

(3) Subject to any order made by the sheriff under rule 2.9(1)(a), the views of the child ascertained in terms of paragraph (2)(d) may, if the curator *ad litem* considers appropriate, be conveyed to the sheriff orally.

Procedure where child wishes to express a view

2.9.—(1) Where a child had indicated his wish to express his views the sheriff, without prejudice to rule 2.8(2)(d)—

- (a) may order such procedural steps to be taken as he considers appropriate to ascertain the views of that child; and
- (b) shall not make an order under this Part 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 2.8(2)(d), have been recorded in writing, the sheriff may direct that such a written record shall—

- (a) be sealed in an 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.

Declaration made under section 18(6) of the Act

2.10.—(1) A declaration made under section 18(6) of the Act (declaration of preference not to be involved in future questions concerning the adoption of the child) shall be in Form 5, be signed by each parent or guardian of the child and shall, subject to paragraph (3), be witnessed by the reporting officer.

(2) The reporting officer shall provide a copy of the form of declaration to each parent or guardian of the child for signature and shall explain to him the consequences of signing the declaration and of the terms of section 19 of the Act (progress reports to former parents).

(3) A declaration executed outwith the United Kingdom shall be witnessed in the manner prescribed by rule 2.6(2)(a) or (b).

(4) The reporting officer shall submit the executed declaration to the sheriff clerk who shall thereafter record the declaration in the manner prescribed in rule 2.13.

(5) A withdrawal of a declaration made under section 18(6) of the Act may be made at any time and shall be made by notice in writing in Form 6 to the sheriff clerk who shall forthwith record the withdrawal in the manner prescribed in rule 2.13 and intimate the withdrawal to the adoption agency.

Hearing

2.11.—(1) When the reports of the reporting officer and the curator *ad litem* have been received by the court, the sheriff shall order a diet of hearing to be fixed.

(2) The petitioner shall intimate the diet of hearing in accordance with Form 7—

- (a) to every person, whose whereabouts are known to him and whose agreement or consent in terms of section 18 of the Act is required or must be dispensed with; and
- (b) in the case of a child whose father is not married to the mother, to any person whose whereabouts are known to him and who claims to be the father of the child but who is

not his guardian and in respect of whom no order relating to parental responsibilities has been made.

(3) Subject to paragraph (5), if no person entitled to appear appears and wishes to be heard, the sheriff may make an order freeing the child for adoption on the motion of the petitioner.

(4) Subject to paragraph (5), if a person entitled to appear appears and wishes to be heard, the sheriff may hear him or may order a further diet to be fixed at which he may be heard and evidence given at any such diet shall be given in the presence of the petitioner or his solicitor.

(5) Before making an order, the sheriff shall consider any report received by him in terms of section 73(14) of the 1995 Act (report by children's hearing).

Confidentiality

2.12.—(1) Unless the sheriff otherwise directs, all documents lodged in process including the reports by the curator *ad litem* and the reporting officer shall be available only to the sheriff, the curator *ad litem*, the reporting officer and the parties; and such documents shall 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 curator *ad litem* shall treat all information obtained in the exercise of their duties as confidential and shall not disclose any such information to any person unless disclosure of such information is necessary for the proper discharge of their duties.

(3) This rule is subject to rule 2.9(2).

Adoption Register

2.13.—(1) The sheriff clerk shall maintain a register known as “the Adoption Register”.

(2) The sheriff clerk shall enter in the Adoption Register any declaration made under section 18(6) of the Act submitted to him by the reporting officer and any withdrawal made in terms of rule 2.10(5).

(3) A declaration under section 19(4) of the Act (declaration by former parent not to be involved in future questions concerning the adoption)(**12**) shall be made in Form 5 and the adoption agency shall submit the declaration to the sheriff clerk who shall enter it in the Adoption Register.

Final procedure

2.14.—(1) Where an order under this Part has been granted the sheriff clerk shall—

(a) after the expiry of 14 days from the date of, or date of confirmation of, the order without appeal having been taken, issue an extract of the order to the petitioner and thereafter seal the process in an envelope marked “Confidential”; and

(b) where that order includes a determination under section 18(9) of the Act (cancellation of supervision requirement)(**13**), intimate the making of that determination to the Principal Reporter.

(2) The envelope referred to in paragraph (1)(a) shall 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 freed for adoption by the order once he has attained the age of sixteen 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;

(12) Section 19(4) was amended by the Children (Scotland) Act 1995, Schedule 2, paragraph 12(d).

(13) Section 18(9) was added by the Children (Scotland) Act 1995, Schedule 2, paragraph 11(d).

- (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 Secretary of State to obtain information from the process for the purposes of such research as is intended to improve the working of adoption law and practice.

PART III

REVOCATION ORDERS, ETC.

Application for revocation

2.15.—(1) An application under section 20(1) of the Act(14) for revocation of an order freeing a child for adoption shall be made by minute in Form 8 in the process of the original application and shall specify detailed proposals for the future well-being of the child.

(2) On the lodging of a minute under paragraph (1), the sheriff shall order the applicant to intimate the minute to the petitioner in the original application and to such other person as shall to the sheriff seem appropriate.

(3) Any person to whom intimation has been made under paragraph (2) may, within 14 days after the date on which intimation is made, lodge answers to the minute.

Appointment of curator *ad litem*

2.16.—(1) On the lodging of a minute under rule 2.15(1), the sheriff may appoint a curator *ad litem* who shall have regard to the welfare of the child as his paramount duty and shall further—

- (a) investigate the facts contained in the minute;
- (b) investigate the circumstances and care of the child with regard to the promotion of his welfare throughout his life; and
- (c) 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,

and, subject to paragraph (2), shall report in writing thereon 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.

(2) Subject to any order made by the sheriff under rule 2.17(1)(a), the views of the child ascertained in terms of paragraph (1)(c) may, if the curator *ad litem* considers appropriate, be conveyed to the sheriff orally.

Procedure where child wishes to express a view

2.17.—(1) Where a child has indicated his wish to express his views the sheriff, without prejudice to rule 2.16(1)(c)—

- (a) may order such procedural steps to be taken as he considers appropriate to ascertain the views of that child; and

(14) Section 20 was amended by the Children (Scotland) Act 1995, Schedule 2, paragraph 13.

- (b) shall not make an order under this Part 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 2.16(1)(c), have been recorded in writing, the sheriff may direct that such a written record shall—
 - (a) be sealed in an 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.

Hearing

- 2.18.**—(1) Where answers have been lodged under rule 2.15(3), the sheriff shall order a diet of hearing to be fixed.
- (2) Where no answers to the minute under rule 2.15(1) have been lodged the sheriff may—
 - (a) order the relevant adoption agency to submit a report to him;
 - (b) order a diet of hearing to be fixed; or
 - (c) order both such a report and such a diet of hearing.
 - (3) An order made under this Part shall specify the person—
 - (a) to whom parental rights are given in consequence of the making of the order; and
 - (b) on whom parental responsibilities are imposed in consequence of the making of the order,and intimation shall be given to such a person on the making of such an order.

Application to place a child

- 2.19.**—(1) An application by an adoption agency under section 20(2) of the Act (leave of court to place a child) shall be made by minute in Form 9 in the original process.
- (2) A minute under paragraph (1) shall be intimated by the applicant to such persons as shall to the sheriff seem appropriate.

Further application with leave of the court

- 2.20.** A further application made with leave of the sheriff in terms of section 20(5) of the Act (further application by former parent with leave of the court) shall be made by minute in Form 10 in the original process and the provisions of rules 2.15(2) and (3), 2.16 and 2.17 shall apply to such a further application.

PART IV ADOPTION ORDERS

Application for adoption order

- 2.21.**—(1) An application for an adoption order, or for an order vesting parental responsibilities and rights relating to a child under section 49(1) of the Act (adoption of children abroad)(15), shall be made by petition in Form 11 or 12 as appropriate.
- (2) There shall be lodged in process along with the petition—

(15) Section 49 was amended by the Children Act 1989 (c. 41), Schedule 10, paragraph 42(a).

- (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 a joint petition by a married couple, an extract of the entry in the Register of Marriages relating to their marriage;
 - (c) where the child was not placed for adoption with the applicant by an adoption agency, three copies of a medical report showing the physical and mental health of the child (including any special needs) and his emotional, behavioural and educational development;
 - (d) any report by the local authority required by section 22(2) of the Act (investigation by local authority on receipt of notice of intention to apply for adoption order);
 - (e) any report by an adoption agency required by section 23 of the Act (report on the suitability of the applicants);
 - (f) where appropriate, an extract of the order freeing the child for adoption; and
 - (g) any other document founded upon by the petitioner in support of the terms of his petition.
- (3) A report by a local authority under section 22(2), or an adoption agency under section 23, of the Act shall include the following matters:–
- (a) information about how the needs of the child came to the notice of the 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 the 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 one of two spouses, why the other spouse has not joined in the petition;
 - (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, and what right or interest in property the child has;
 - (m) whether any payment or other reward in consideration of the adoption, other than an approved adoption allowance, has been received or agreed upon;
 - (n) what insurance has been offered on the life of the child;
 - (o) the religious persuasion, if any, of the petitioner and the religious persuasion, if any, racial origin and cultural and linguistic background of the child;
 - (p) considerations 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;
 - (q) whether adoption is likely to safeguard and promote the welfare of the child throughout its life; and

(r) any other information which may be of assistance to the court.

(4) A report by a local authority under section 22(2) of the Act shall also specify whether the child was placed with the applicant in contravention of section 11 of the Act (restriction on arranging adoptions).

(5) If no report by an adoption agency or local authority under paragraph (2)(d) or (e) is available 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 in court within 4 weeks from the date of the interlocutor, or within such other period as the sheriff in his discretion may allow.

Additional requirements where child to be adopted abroad

2.22.—(1) In a petition for an order under section 49(1) of the Act, the petitioner shall, in addition to complying with rule 2.21, adduce evidence of the law of adoption in the country in which he is domiciled.

(2) The evidence of the law of adoption required under paragraph (1) may be in the form of an affidavit by a person who is conversant with the law of adoption of that country and who practises or has practised law in that country or is a duly accredited representative of the government of that country in the United Kingdom.

Consents and agreements to adoption orders

2.23.—(1) A consent to an order required by section 12(8) of the Act (need for child's consent)(**16**), or an agreement required by section 16(1) of the Act (parental agreement)(**17**), or such an agreement where the application is made by a person to whom section 15(1)(aa) of the Act (adoption by one person)(**18**) applies, if given in writing shall be in Form 4, 13 or 14 as appropriate and such form duly executed shall be sufficient evidence of such consent or agreement.

(2) A form of consent or agreement executed outwith the United Kingdom shall be sufficient evidence of such consent or agreement if it is witnessed—

- (a) where 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
- (b) in any other case, by a British diplomatic or consular officer, or any person authorised to administer an oath or affirmation under the law of the place where the consent or agreement is executed.

Protection of identity of petitioner

2.24.—(1) When any person who proposes to apply under rule 2.21 wishes to prevent his identity being disclosed to any person whose agreement to the order is required, he may, before presenting the petition, apply 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 for a serial number, the sheriff clerk shall assign such a number to the applicant and shall enter a note of it opposite the name of the applicant in a register of such 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 shall not be disclosed to any person other than the sheriff.

(16) Section 12(8) was substituted by the Age of Legal Capacity (Scotland) Act 1991 (c. 50), section 2(3)(a).

(17) Section 16(1) was amended by the Children Act 1989 (c. 41), Schedule 10, paragraph 34.

(18) Section 15(1)(aa) was inserted by the Children (Scotland) Act 1995, section 97(2)(a).

(4) Where a serial number has been assigned to an applicant in terms of paragraph (2), any form of agreement to an adoption order which is required shall not contain the name or designation of the petitioner but shall refer to him by means of the serial number assigned to him and shall specify the year in which, and by which court, the serial number has been assigned.

Appointment of curator *ad litem* and reporting officer

2.25.—(1) Subject to paragraph (2) the sheriff shall, after the lodging of a petition under rule 2.21, appoint a curator *ad litem* and reporting officer and 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.

(2) Where an order freeing the child for adoption has been made, the sheriff shall not appoint a reporting officer save for the purpose specified in rule 2.26(1)(a).

(3) 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.

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

(5) An application for an appointment under paragraph (4) shall 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.

Duties of reporting office and curator *ad litem*

2.26.—(1) Subject to rule 2.25(2), a reporting officer appointed under this Part shall—

- (a) witness any agreement executed within the United Kingdom by a parent or guardian of a child to the making of an adoption order in respect of the child and lodge the agreement in process;
- (b) ascertain that each parent or guardian who is not a petitioner and whose agreement is required or may be dispensed with understands the effect of the adoption order;
- (c) where a parent or guardian whose agreement is required or may be dispensed with can be found, ascertain whether alternatives to adoption have been discussed with him;
- (d) ascertain whether there is any person other than those mentioned in the petition upon whom notice of the petition should be served;
- (e) ascertain whether the child is subject to a supervision requirement; and
- (f) confirm that each parent or guardian whose agreement is required understands that he may withdraw his agreement at any time before an order is made,

and shall report in writing thereon 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.

(2) A curator *ad litem* appointed under this Part shall have regard to the welfare of the child as his paramount duty and shall further—

- (a) generally safeguard the interests of the child whose adoption is the subject of the petition;
- (b) where the child in respect of whom an adoption order is sought is over the age of 12 years, witness any consent to the order executed by him in the United Kingdom and lodge the consent in process;
- (c) ascertain whether the facts stated in the petition are correct and if they are not establish the true facts;
- (d) obtain particulars of accommodation in the home of the petitioner and the condition of the home;

- (e) obtain particulars of all members of the household of the petitioner and their relationship to the petitioner;
- (f) in the case of a petition by only one of two spouses, ascertain the reason of the other spouse for not joining in the application;
- (g) ascertain whether the means and status of the petitioner are sufficient to enable him to maintain and bring up the child suitably;
- (h) ascertain what rights or interests in property the child has;
- (i) 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;
- (j) 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;
- (k) ascertain whether any payment or other reward in consideration of the adoption has been given or agreed upon;
- (l) establish whether the adoption is likely to safeguard and promote the welfare of the child throughout his life;
- (m) ascertain whether the life of the child has been insured and if so for what sum;
- (n) ascertain whether it may be in the interests of the welfare of the child that the sheriff should make any interim order or make the adoption order subject to particular terms and conditions or require the petitioner to make special provision for the child and if so what provision;
- (o) 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;
- (p) establish the reasons of the petitioner for wishing to adopt the child;
- (q) establish to which religion, if any, the petitioner subscribes and the religious persuasion, if any, racial origin and cultural and linguistic background of the child;
- (r) 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 as between parents and their children;
- (s) 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;
- (t) ascertain whether it would be better for the child that the court should make the order than it should not make the order; and
- (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,

and, subject to paragraph (3), shall report in writing thereon 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.

(3) Subject to any order made by the sheriff under rule 2.27(1)(a), the views of the child ascertained in terms of paragraph (2)(u) may, if the curator *ad litem* considers appropriate, be conveyed to the sheriff orally.

Procedure where child wishes to express a view

2.27.—(1) Where a child has indicated his wish to express his views the sheriff, without prejudice to rule 2.26(2)(u)—

- (a) may order such procedural steps to be taken as he considers appropriate to ascertain the views of that child; and
- (b) shall not make an order under this Part 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 2.26(2)(u), have been recorded in writing, the sheriff may direct that such a written record shall—

- (a) be sealed in an 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.

Hearing

2.28.—(1) On receipt of the reports of the reporting officer and the curator *ad litem* in respect of a child who is not free for adoption, the sheriff shall fix a diet of hearing.

(2) On receipt of the report of the curator *ad litem* in respect of a child who is free for adoption, the sheriff may fix a diet of hearing.

(3) The petitioner shall intimate in Form 7 the diet of hearing referred to in paragraphs (1) and (2) to—

- (a) in a petition for an adoption order, every person who can be found and whose agreement or consent to the making of such an order is required to be given or dispensed with; or
- (b) in a petition for an order under section 49(1) of the Act, every person who can be found and whose agreement to the making of such an order would be required if the application were for an adoption order.

(4) The sheriff may, if he considers it appropriate, ordain the petitioner to serve notice of the date of the hearing in Form 7 on—

- (a) any person or body having the rights and powers of a parent of the child or having the custody or care of the child or a local authority having the child committed to its care by virtue of sections 11, 54 or 86 of the 1995 Act or sections 5, 8 or 31 of the Children Act 1989⁽¹⁹⁾;
- (b) any person liable by virtue of any order or agreement to contribute to the maintenance of the child;
- (c) the local authority to whom the petitioner has given notice of his intention to apply for an adoption order;
- (d) any other person or body who in the opinion of the sheriff ought to be served with notice of the hearing.

(5) Subject to paragraph (7), if no person entitled to appear at such a hearing appears to be heard, the sheriff may grant an adoption order on the motion of the petitioner.

(6) Subject to paragraph (7), if a person entitled to appear appears and wishes to be heard, the sheriff may hear him or may order a further diet to be fixed at which he may be heard and evidence given at such a diet shall be given in the presence of the petitioner or his solicitor.

⁽¹⁹⁾ 1989 c. 41; section 31 was amended by the Children (Scotland) Act 1995, Schedule 4, paragraph 48(2).

(7) Before making an order, the sheriff shall consider any report received by him in terms of section 73(14) of the 1995 Act.

Insufficient evidence

2.29. If the sheriff 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, or if for any other reason he considers it appropriate, he may order the production of further documents or that oral evidence be led.

Confidentiality

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

(2) The reporting officer and the curator *ad litem* shall treat all information obtained in the exercise of their duties as confidential and shall not disclose any such information to any person unless disclosure of such information is necessary for the proper discharge of their duties.

(3) This rule is subject to rule 2.27(2).

Communications to the Registrar General

2.31. The communication to the Registrar General of an adoption order or order for the revocation of an adoption order required to be made by the sheriff clerk shall 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

2.32.—(1) An adoption order granted by the sheriff shall 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 shall be issued except with the authority of the sheriff who made the order or, in that sheriff’s absence, of the sheriff principal.

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

Final procedure

2.33.—(1) After the granting of an order under this Part the court process shall, immediately upon the communication under rule 2.31 being made or, in the event of an extract of the order being issued under rule 2.32, immediately upon the issue of such extract, be sealed by the sheriff clerk in an envelope marked “Confidential”.

(2) The envelope referred to in paragraph (1) shall 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 adoption order except—

(a) to an adopted child who has attained the age of sixteen years and to whose adoption the process refers;

- (b) to the sheriff clerk, on an application 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 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 Secretary of State to obtain information from the process for the purposes of such research as is intended to improve the working of adoption law and practice.
- (3) The sheriff clerk shall—
- (a) where an adoption order includes a determination under section 12(9) of the Act, intimate the making of that determination to the Principal Reporter; and
 - (b) where appropriate, intimate the making of an adoption order to the court by which an order freeing the child for adoption was made.

Amendment of adoption order

2.34.—(1) An application under paragraph 4(1) of Schedule 1 to the Act (amendment of orders and rectification of registers) shall be by petition to the court which pronounced the adoption order.

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

Revocation of adoption order

2.35.—(1) An application under section 46(1) of the Act (revocation of adoption order where adoptive parent marries other parent)(**20**) shall be by petition to the court which pronounced the adoption order.

(2) On lodging of a petition under this rule, the sheriff shall order such service as he considers appropriate.

Application for removal of child pending adoption

2.36.—(1) An application under section 27(1) (restrictions on removal where adoption agreed or application made under section 18(1)), section 28 (restrictions on removal where applicant has provided home for five years), section 29 (return of child taken away in breach of section 27 or 28) or section 30(2) (return of children placed for adoption) of the Act(**21**) shall be made by minute lodged in the process of the original adoption petition.

(2) A minute under paragraph (1) shall set forth the relevant facts and the crave which the minuter wishes to make.

(3) On receipt of the minute the sheriff shall order a diet of hearing to be fixed and shall ordain the minuter to send a notice of such hearing in Form 15 together with a copy of the minute by registered post or by recorded delivery letter to the petitioner in the original petition, to the curator *ad litem* in

(**20**) Section 46(1) was amended by the Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9), Schedule 1, paragraph 18(3).

(**21**) Sections 27(1), 28 and 29 were amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 2, paragraphs 42 to 44 ; section 29 was also amended by the Children Act 1989, Schedule 10, paragraph 39.

the original petition, to any person who may have care and possession of the child and to such other persons as the sheriff may deem appropriate.

PART V

PARENTAL RESPONSIBILITIES ORDERS

Interpretation

2.37. In this Part—

“application” means, except in rule 2.44, an application for a parental responsibilities order in terms of section 86 of the 1995 Act; and

“relevant person” has the same meaning as in section 86 of the 1995 Act.

Form of application and agreement

2.38.—(1) An application shall be made in Form 16.

(2) An agreement entered into by a relevant person in terms of section 86(2)(a) of the 1995 Act shall be in writing and shall be in Form 17.

Appointment of curator *ad litem* and reporting officer

2.39.—(1) The sheriff shall, after the making of an application, appoint a curator *ad litem* and reporting officer and the same person may be appointed as curator *ad litem* and reporting officer in the same application, if the sheriff considers that doing so is appropriate in the circumstances.

(2) 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 a curator *ad litem* or a reporting officer.

(3) The sheriff may, on cause shown, appoint a reporting officer prior to the lodging of an application.

(4) A request for an appointment under paragraph (3) shall 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.

Duties of reporting officer and curator *ad litem*

2.40.—(1) A reporting officer appointed under this Part shall—

- (a) witness any agreement executed within the United Kingdom by a relevant person to the making of a parental responsibilities order in respect of the child and shall lodge the agreement in process;
- (b) ascertain that each relevant person who can be found understands that the effect of a parental responsibilities order would be to transfer his parental responsibilities and rights;
- (c) ascertain whether there is any person other than those mentioned in the application upon whom notice of the application should be served;
- (d) confirm that each relevant person who can be found understands the implications of a parental responsibilities order; and
- (e) confirm that each relevant person who can be found understands that he may apply to the sheriff for the variation or discharge of a parental responsibilities order in terms of rule 2.44 and understands the appropriate procedure for so applying,

and shall report in writing thereon 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.

(2) A curator *ad litem* appointed under this Part shall have regard to the welfare of the child as his paramount duty and shall further—

- (a) generally safeguard the interests of the child who is the subject of the application and ensure that consideration has been given to the interests of the child for the purposes of section 6 of the Act (duty to promote welfare of child);
- (b) ascertain whether the facts stated in the application are correct, except where investigation of such facts falls within the duties of the reporting officer;
- (c) 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;
- (d) ascertain whether a parental responsibilities order would safeguard and promote the welfare of the child; and
- (e) report on the current circumstances and care of the child,

and, subject to paragraph (3), shall report in writing thereon 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.

(3) Subject to any order made by the sheriff under rule 2.41(1)(a), the views of the child ascertained in terms of paragraph (2)(c) may, if the curator *ad litem* considers appropriate, be conveyed to the sheriff orally.

Procedure where child wishes to express a view

2.41.—(1) Where a child has indicated his wish to express his views the sheriff, without prejudice to rule 2.40(2)(c)—

- (a) may order such procedural steps to be taken as he considers appropriate to ascertain the views of that child; and
- (b) shall not make a parental responsibilities order 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 2.40(2)(c), have been recorded in writing, the sheriff may direct that such a written record shall—

- (a) be sealed in an 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.

Hearing

2.42.—(1) When the reports of the reporting officer and the curator *ad litem* have been received by the court, the sheriff shall order a diet of hearing to be fixed.

(2) The applicant shall intimate the diet of hearing in accordance with Form 18—

- (a) to any relevant person whose whereabouts are known to him and whose agreement in terms of section 86(2) of the 1995 Act is required or must be dispensed with; and
- (b) in the case of a child whose father is not married to the mother, to any person whose whereabouts are known to him and who claims to be the father of the child but who is not his guardian and in respect of whom no order relating to parental rights has been made.

(3) Subject to paragraph (5), if no person entitled to appear appears and wishes to be heard, the sheriff may make the parental responsibilities order.

(4) Subject to paragraph (5), if a person entitled to appear appears and wishes to be heard, the sheriff may hear him or may order a further diet to be fixed at which he may be heard and evidence given at any such diet shall be given in the presence of the applicant or his solicitor.

(5) Before making an order, the sheriff shall consider any report received by him in terms of section 73(14) of the 1995 Act.

Orders

2.43.—(1) After hearing evidence in terms of rule 2.42(4) and allowing such further procedure as he thinks appropriate, the sheriff shall make an order granting or refusing the application and any order granting the application may contain such conditions as he thinks appropriate.

(2) Where an order is made granting the application, that order shall be in Form 19.

Variation and discharge of order

2.44.—(1) In any proceedings in which a parental responsibilities order is granted under section 86 of the 1995 Act, any of the persons referred to in subsection (5) of that section may by minute make application for the variation or discharge of that order (in this rule referred to as an “application”).

(2) An application shall contain—

- (a) the name and address of the applicant and his relationship to and interest in the child;
- (b) the name and address of the local authority which made the application for the parental responsibilities order (“the original application”), the child, the curator *ad litem* appointed in terms of rule 2.39, any relevant person and any other person who was a party to the original application;
- (c) details of the original application;
- (d) the grounds on which variation or discharge is sought; and
- (e) details of the order sought by the applicant.

(3) The sheriff may, on the lodging of a minute under paragraph (1), appoint a curator *ad litem* who shall have regard to the welfare of the child as his paramount duty and shall further—

- (a) investigate the facts, as contained in the application;
- (b) investigate the care of the child with regard to the promotion of his welfare throughout his life;
- (c) 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,

and, subject to paragraph (4), shall report in writing thereon 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.

(4) Rule 2.41 shall apply to an application and, subject to any order thereunder, the views of the child ascertained in terms of paragraph (3)(c) may, if the curator *ad litem* considers appropriate, be conveyed to the sheriff orally.

(5) Subject to paragraphs (6) and (7), rules 2.42 and 2.43 shall apply to an application as they apply to an application for a parental responsibilities order.

(6) Intimation of the diet of hearing of an application shall be in Form 20 and shall be given, in addition to the persons referred to in rule 2.42(2), to the persons referred to in paragraph (2)(b).

(7) Where an order is made granting the application, that order shall be in Form 21 and the making of such an order shall be intimated to the persons referred to in paragraph (2)(b).

PART VI

HUMAN FERTILISATION AND EMBRYOLOGY

Interpretation

2.45. In this Part—

“1990 Act” means the Human Fertilisation and Embryology Act 1990⁽²²⁾;

“application” means an application for a parental order under section 30 of the 1990 Act;

“the Regulations” means the Parental Orders (Human Fertilisation and Embryology) (Scotland) Regulations 1994⁽²³⁾.

Form of application and productions

2.46.—(1) An application shall be made by petition in Form 22.

(2) On presentation of the petition, there shall be lodged in process as productions—

- (a) an extract of any entry in the register of births relating to the birth of the child;
- (b) extracts of any entries in the register of births relating to the birth of each of the petitioners;
- (c) an extract of any entry in the register of marriages relating to the marriage of the petitioners; and
- (d) any other document founded on by the petitioners in support of the terms of the petition.

Confidentiality

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

(2) The reporting officer and the curator *ad litem* shall treat all information obtained in the exercise of their duties as confidential and shall not disclose any such information to any person unless disclosure of such information is necessary for the proper discharge of their duties.

Agreements to parental order

2.48.—(1) An agreement for the purposes of section 30(5) of the 1990 Act (agreement to parental order by a father who is not the husband of the female petitioner or by the woman who carried the child) shall, if given in writing, be in Form 23.

(2) An agreement referred to in this rule which is executed furth of Scotland shall be witnessed—

- (a) where it is executed in England, Wales or Northern Ireland, by a justice of the peace or commissioner for oaths; or
- (b) where it is executed furth of the United Kingdom—
 - (i) the case of a person who is serving in Her Majesty’s Forces, by an officer holding a commission in those forces; or
 - (ii) by a British consular official or any person authorised, by the law of the country where the agreement is executed, to administer an oath for any legal purpose.

⁽²²⁾ 1990 c. 37.

⁽²³⁾ S.I. 1994/2804.

Orders for evidence

2.49.—(1) The sheriff may, before determining the cause, order—

- (a) production of further documents (including affidavits); or
- (b) parole evidence.

(2) A party may apply by motion for the evidence of a person to be received in evidence by affidavit; and the sheriff may make such order as he thinks fit.

Protection of identity of petitioners

2.50.—(1) Where a married couple, who seek to apply for a parental order, wish to prevent their identity being disclosed to any person whose agreement is required under section 30(5) of the 1990 Act, they may, before presenting a petition, apply to the sheriff clerk for a serial number to be assigned to them.

(2) On receipt of an application for a serial number, the sheriff clerk shall assign a serial number to the applicants and shall enter a note of it opposite the names of the applicants in a register of serial numbers.

(3) Where a serial number has been assigned under paragraph (2)—

- (a) the record of the serial number and the persons to whom it applies shall be treated as confidential and disclosed only to the sheriff;
- (b) any agreement under section 30(5) of the 1990 Act shall not name or design the petitioners but shall refer to them by means of the serial number; and
- (c) it shall be used to name or design the petitioners for all purposes connected with the petition.

Appointment of reporting officer and curator *ad litem*

2.51.—(1) On the presentation of the petition, the sheriff shall appoint a reporting officer and a curator *ad litem* and the same person may be appointed as reporting officer and curator *ad litem* in the same petition, if the sheriff considers that doing so is appropriate in the circumstances.

(2) Where the curator *ad litem* is not also the reporting officer, the sheriff may order the reporting officer to make available to the curator *ad litem* any report or information in relation to the child.

(3) A married couple may, before presenting the petition, apply to the sheriff for the appointment of a reporting officer.

(4) An application under paragraph (3) shall—

- (a) be made by letter setting out the reasons for which the appointment is sought; and
- (b) not require to be intimated to any person.

Selection of reporting officer and curator *ad litem*

2.52. The reporting officer and curator *ad litem* appointed by the sheriff shall be selected from a panel established under regulations made by virtue of section 101 of the 1995 Act unless the sheriff considers that it would be appropriate to appoint a person who is not on the panel.

Duties of reporting officer and curator *ad litem*

2.53.—(1) A reporting officer appointed under rule 2.51(1) shall, where appropriate—

- (a) enquire into the facts and circumstances averred in the petition;

- (b) ascertain whether the conditions in subsections (2) to (7) of section 30 of the 1990 Act have been satisfied;
- (c) witness any execution in Scotland of any agreement under section 30(5) of the 1990 Act, and investigate whether the agreement is given freely, unconditionally and with full understanding of what is involved;
- (d) where a person whose agreement is required is furth of Scotland, confirm his views in writing, ensure that any agreement under said section 30(5) is witnessed in accordance with rule 2.48(2) and investigate whether the agreement is given freely, unconditionally and with full understanding of what is involved;
- (e) ensure that each person whose agreement is required understands that in agreeing to the parental order he is giving up all future claims to the child and that all parental rights and responsibilities will vest in the petitioners;
- (f) investigate whether there are any other persons with a relevant interest and whether they should be informed of the petition;
- (g) ascertain from any person whose agreement is required and who can be found whether alternatives to a parental order have been discussed with him;
- (h) ensure that any person whose agreement is required is aware of the date (if known) of the hearing to determine the application if he wishes to appear, and confirm that any such person understands that he may withdraw his agreement at any time before a parental order is made; and
- (i) draw to the attention of the court any matter which may be of assistance;

and shall report in writing thereon 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.

(2) A curator *ad litem* appointed under rule 2.51(1) shall—

- (a) safeguard generally the interests of the child;
- (b) enquire, so far as he considers necessary, into the facts and circumstances averred in the petition;
- (c) ascertain whether any money or other benefit which is prohibited by section 30(7) of the 1990 Act (prohibition on gift or receipt of money or other benefit) has been received or agreed upon;
- (d) establish that the petitioners understand that the nature and effect of a parental order is to transfer the parental rights and responsibilities in relation to the child to the petitioners and make them responsible for the maintenance and upbringing of the child;
- (e) ascertain whether the proposed parental order is likely to safeguard and promote the welfare of the child throughout his life;
- (f) ascertain whether it may be in the interests of the child that the court should make a parental order subject to particular conditions, including the making of special provision for the child; and
- (g) perform such other duties as appear to him to be necessary or as the court may require;

and shall report in writing thereon 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.

(3) The reporting officer shall, on completion of his report in terms of paragraph (1), in addition send to the sheriff clerk—

- (a) a copy of his report for each party; and
- (b) any agreement for the purposes of section 30(5) of the 1990 Act.

(4) The curator *ad litem* shall, on completion of his report in terms of paragraph (2), in addition send a copy for each party to the sheriff clerk.

Hearing

2.54.—(1) On receipt of the reports referred to in rule 2.53, the sheriff shall fix a hearing.

(2) The sheriff may—

- (a) order any person whose agreement is required to be given to attend the hearing;
- (b) order intimation of the date of the hearing to any person not mentioned in paragraph (3) (a), (b) or (c); and
- (c) order the reporting officer or curator *ad litem* to perform additional duties to assist him in determining the petition.

(3) The petitioners shall intimate the date of the hearing in Form 24 by registered post or recorded delivery letter to—

- (a) every person whose whereabouts are known to them and whose agreement is required to be given;
- (b) the reporting officer appointed under rule 2.51(1);
- (c) the curator *ad litem* appointed under rule 2.51(1); and
- (d) any person on whom intimation has been ordered under paragraph (2)(b).

(4) At the hearing—

- (a) the petitioners, the reporting officer and the curator *ad litem* shall, if required by the sheriff, appear and may be represented;
- (b) any other person required by the sheriff to attend the hearing shall appear and may be represented;
- (c) any other person to whom intimation was made under paragraph (3)(a) or (d) may appear or be represented.

Applications for return, removal or prohibition of removal of child

2.55.—(1) An application under section 29 of the Act, as modified and applied in relation to applications for parental orders by Schedule 1 to the Regulations (order to return a child to, or not to remove a child from, the care of the applicants), in relation to a breach of section 27(1) of the Act as so modified and applied (restriction on removal of child where application for parental order pending), or under section 27(1) of the Act as so modified and applied for leave to remove a child, shall be made by minute in the process of the petition for a parental order to which it relates.

(2) A minute under paragraph (1) shall include an appropriate crave and statement of facts.

(3) On receipt of the minute, the sheriff shall order a hearing to be fixed and ordain the minuter to send a notice of such hearing in Form 25 and a copy of the minute by registered post or recorded delivery letter to the reporting officer and the curator *ad litem* and to such other persons as the sheriff thinks fit.

Applications to amend, or revoke a direction in, a parental order

2.56.—(1) An application under paragraph 3(1) of Schedule 1 to the Act, as modified and applied in relation to parental orders by Schedule 1 to the Regulations (amendment, or revocation of a direction in, a parental order), shall be made by petition to the court which pronounced the order.

(2) The sheriff may order the petitioners to intimate the petition to such persons as he thinks fit.

Registration of certified copy interlocutor

2.57. On the sheriff pronouncing an interlocutor making—

- (a) a parental order;
- (b) an amendment to, or revocation of a direction in, a parental order; or
- (c) a revocation of a parental order,

the sheriff clerk shall send a certified copy of that interlocutor to the Registrar General in a sealed envelope marked “confidential”.

Extract of order

2.58. An extract of a parental order shall not be issued except by order of the court on an application to it—

- (a) where there is a petition for the parental order depending before the court, by motion in that process; or
- (b) where there is no such petition depending before the court, by petition.

Final procedure

2.59.—(1) After a certified copy of an interlocutor mentioned in rule 2.57 has been sent to the Registrar General, the sheriff clerk shall forthwith—

- (a) place the whole process in an envelope bearing only—
 - (i) the name of the petitioners;
 - (ii) the full name of the child to whom the process relates; and
 - (iii) the date of the order; and
- (b) seal the envelope and mark it “confidential”.

(2) No person shall open a process referred to in paragraph (1) or inspect its contents within 100 years after the date of the parental order, except—

- (a) the person in respect of whom the parental order was made after he has reached the age of 16 years;
- (b) any other person or body entitled under subsection (5) of section 45 of the Act, as modified and applied in relation to parental orders and applications for such orders by Schedule 1 to the Regulations, to access to the registers and books kept under subsection (4) of that section, as so modified and applied, with the written authority of the person in respect of whom the parental order was made;
- (c) by order of the court on an application made by petition presented by another court or authority (whether within the United Kingdom or not) having the power to make a parental order for the purpose of obtaining information in connection with an application to it for such an order;
- (d) by order of the court on an application made by petition presented by any person; and
- (e) a person who is authorised in writing by the Secretary of State to obtain information from the process for the purpose of research designed to improve the working of human fertilisation and embryology law and practice.

CHAPTER 3
CHILDREN (SCOTLAND) ACT 1995
PART I
INTERPRETATION

Interpretation

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

“the Act” means the Children (Scotland) Act 1995(24) and expressions used in this Chapter which are also used in that Act shall have the meaning assigned to them for the purposes of Part II of the Act;

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

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

PART II
GENERAL RULES

PROCEDURE IN RESPECT OF CHILDREN

Application

3.2. Rules 3.3 to 3.5 apply where by virtue of section 16(2) of the Act a child may be given an opportunity to indicate whether he wishes to express his views in relation to an application or proceedings in the circumstances stated in section 16(4)(b) and (c) of the Act.

Power to dispense with service on child

3.3. Where the sheriff is satisfied, taking account of the age and maturity of the child, that it would be inappropriate to order service on the child, he may dispense with—

- (a) service on the child; and
- (b) the attendance of the child at the hearing of the application.

Service on child

3.4.—(1) Subject to rule 3.3 and to paragraph (2), after the issue of the first order or warrant to cite, as the case may be, the applicant shall forthwith serve a copy of the application and first order or warrant to cite on the child, together with a notice or citation in—

- (a) Form 26 in respect of an application for a child assessment order under Part III of this Chapter;
- (b) Form 27 in respect of an application to vary or set aside a child protection order in terms of rule 3.33;
- (c) Form 28 in respect of an application for an exclusion order in terms of rules 3.34 to 3.39;

- (d) Form 29 in respect of an application to vary or recall an exclusion order in terms of rule 3.40;
- (e) Form 30 in respect of an application for a warrant to keep a child in a place of safety under Part VI of this Chapter; and
- (f) Form 31 in respect of an application under section 65(7) or (9) of the Act made under Part VII of this Chapter.

(2) The sheriff may, on application by the applicant or of his own motion, order that a specified part of the application is not served on the child.

Procedure where child wishes to express a view

3.5.—(1) Where a child has indicated his wish to express his views, the sheriff—

- (a) may order such steps to be taken as he considers appropriate to ascertain the views of that child; and
- (b) shall not make any order or disposal mentioned in paragraph (b) or (c) of section 16(4) of the Act unless an opportunity has been given for the views of that child to be obtained or heard.

(2) Subject to any order made by the sheriff under paragraph (1)(a) and to any other method as the sheriff in his discretion may permit, the views of the child may be conveyed—

- (a) by the child orally or in writing;
- (b) by an advocate or solicitor acting on behalf of the child;
- (c) by any safeguarder or curator *ad litem* appointed by the court; or
- (d) by any other person (either orally or in writing), provided that the sheriff is satisfied that that person is a suitable representative and is duly authorised to represent the child.

(3) Where the views of the child are conveyed orally to the sheriff, the sheriff shall record those views in writing.

(4) The sheriff may direct that any written views given by a child, or any written record of those views, shall—

- (a) be sealed in an envelope marked “Views of the child – confidential”;
- (b) be kept in the court process without being recorded in the inventory of process;
- (c) be available to a sheriff only;
- (d) not be opened by any person other than a sheriff, and
- (e) not form a borrowable part of the process.

SAFEGUARDERS

Application

3.6. Rules 3.7 to 3.10 apply, as regards a safeguarder, to all applications and proceedings to which this Chapter applies except for proceedings under section 57 of the Act for a child protection order.

Appointment of safeguarder

3.7.—(1) The sheriff—

- (a) shall, as soon as reasonably practicable after the lodging of an application or the commencing of any proceedings, consider whether it is necessary to appoint a safeguarder in the application or proceedings; and

(b) may at that stage, or at any later stage of the application or proceedings, appoint a safeguarder.

(2) Where a safeguarder has been appointed in proceedings before the children's hearing or the sheriff in respect of related proceedings, the appointee shall, unless the sheriff on his own motion or on cause shown by a party directs otherwise, be the same person appointed as safeguarder by the children's hearing or the sheriff.

Rights, powers and duties of safeguarder on appointment

3.8. A safeguarder appointed in an application shall—

- (a) have the powers and duties at common law of a curator *ad litem* in respect of the child;
- (b) be entitled to receive from the Principal Reporter copies of the application, all of the productions in the proceedings and any papers which were before the children's hearing;
- (c) subject to rule 3.5(1)(a), determine whether the child wishes to express his views in relation to the application and, if so, where the child so wishes transmit his views to the sheriff;
- (d) make such enquiries so far as relevant to the application as he considers appropriate; and
- (e) without delay, and in any event before the hearing on the application, intimate in writing to the sheriff clerk whether or not he intends to become a party to the proceedings.

Provision where safeguarder intimates his intention to become a party to the proceedings

3.9.—(1) A safeguarder may appear personally in the proceedings or instruct an advocate or solicitor to appear on his behalf.

(2) Where an advocate or a solicitor is appointed to act as a safeguarder, he shall not act also as advocate or solicitor for the child in the proceedings.

Provision where safeguarder intimates his intention not to become a party to the proceedings

3.10.—(1) Where a safeguarder intimates that he does not intend to become a party to the proceedings, he shall at the same time report in writing to the sheriff on the extent of his enquiries and his conclusion as to the interests of the child in the proceedings.

(2) The sheriff clerk shall intimate to a safeguarder who has not become a party to the proceedings all interlocutors subsequent to his appointment.

(3) A safeguarder who has intimated his intention not to become a party to the proceedings may subsequently seek leave so to become.

FIXING OF FIRST HEARING

Assigning of diet for hearing

3.11. Except where otherwise provided in these Rules, after the lodging of any application the sheriff clerk shall forthwith assign a diet for the hearing of the application and shall issue a first order or a warrant to cite in Form 32 or Form 33, as the case may be.

SERVICE, CITATION AND NOTICE

Service and notice to persons named in application

3.12.—(1) Subject to the provisions of rule 3.4 (service on child), after the issue of the first order or warrant to cite, as the case may be, the applicant shall forthwith give notice of the application

by serving a copy of the application and the first order or warrant to cite together with a notice or citation, as the case may be, on the persons named in the application or, as the case may be, a person who should receive notice of the application (subject to paragraph (2)) in—

- (a) Form 34 in respect of an application for a child assessment order under Part III of this Chapter;
- (b) Form 35 in respect of an application to vary or set aside a child protection order in terms of rule 3.33;
- (c) Form 36 in respect of an application for an exclusion order in terms of rules 3.34 to 3.39;
- (d) Form 37 in respect of an application to vary or recall an exclusion order in terms of rule 3.40;
- (e) Form 38 in respect of an application for a warrant to keep a child in a place of safety under Part VI of this Chapter; and
- (f) Form 39 in respect of an application under section 65(7) or (9) of the Act made under Part VII of this Chapter.

(2) Notice of the application shall be given in the case of a safeguarder by serving a copy of the application and the first order or warrant to cite together with notice in Form 40.

Period of notice

3.13.—(1) Subject to paragraph (2), citation or notice authorised or required by this Chapter shall be made not later than forty-eight hours, or in the case of postal citation seventy-two hours, before the date of the diet to which the citation or notice relates.

(2) Paragraph (1) shall not apply in relation to citation or notice of the following applications or proceedings—

- (a) an appeal against a decision to issue a warrant for the detention of a child;
- (b) a hearing in respect of an exclusion order where an interim order has been granted in terms of rule 3.36;
- (c) a hearing on an application to vary or set aside a child protection order or any direction given with the order; or
- (d) an application for a child assessment order,

in which cases the period of notice and the method of giving notice shall be as directed by the sheriff.

Citation of witnesses, parties and persons having an interest

3.14.—(1) The following shall be warrants for citation of witnesses, parties and havers:—

- (a) the warrant for the first diet in an application;
- (b) an interlocutor fixing a diet for the continued hearing of an application; and
- (c) an interlocutor assigning a diet for a hearing of an appeal or application.

(2) In an application or an appeal, witnesses or havers may be cited in Form 41.

(3) The certificate of execution of citation of witnesses and havers shall be in Form 42.

Modes of service

3.15.—(1) Service authorised or required by this Chapter shall be made by any mode specified in paragraphs (2) and (3).

(2) It shall be deemed legal service to or on any person if such service is—

- (a) delivered to him personally;

- (b) left for him at his dwelling-house or place of business with some person resident or employed therein;
- (c) where it cannot be delivered to him personally and he has no known dwelling-house or place of business, left for him at any other place at which he may at the time be resident;
- (d) where he is the master of, or a seaman or other person employed in, a vessel, left with a person on board or connected with the vessel;
- (e) sent by first class recorded delivery post, or the nearest equivalent which the available postal service permits, to his dwelling-house or place of business, or if he has no known dwelling-house or place of business to any other place in which he may at the time be resident;
- (f) where the person has the facility to receive facsimile or other electronic transmission, by such facsimile or other electronic transmission; or
- (g) where the person has a numbered box at a document exchange, given by leaving at the document exchange.

(3) Where service requires to be made and there is not sufficient time to employ any of the methods specified in paragraph (2), service shall be effected orally or in such other manner as the sheriff directs.

Persons who may effect service

3.16.—(1) Subject to paragraphs (2) and (3), service shall be effected—

- (a) in the case of any of the modes specified in rule 3.15(2), by a sheriff officer;
- (b) in the case of any of the modes specified in rule 3.15(2)(e) or (f), by a solicitor, the sheriff clerk, the Principal Reporter or an officer of the local authority; or
- (c) in the case of any mode specified by the sheriff in terms of rule 3.15(3), by such person as the sheriff directs.

(2) In relation to the citation of witnesses, parties and havens in terms of rule 3.14 or service of any application, “officer of the local authority” in paragraph (1)(b) includes any officer of a local authority authorised to conduct proceedings under these Rules in terms of rule 3.21 (representation).

(3) The sheriff clerk shall cite the Principal Reporter and the authors or compilers of any reports or statements whom the sheriff may wish to examine under section 51(3) of the Act (appeal against decision of children’s hearing or sheriff).

Production of certificates of execution of service

3.17.—(1) The production before the sheriff of—

- (a) a certificate of execution of service in Form 43; and
- (b) additionally in the case of postal service, the post office receipt of the registered or recorded delivery letter,

shall be sufficient evidence that service was duly made.

(2) It shall be sufficient to lodge the execution of service at the hearing, unless the sheriff otherwise directs or on cause shown.

Power to dispense with service

3.18. Subject to rule 3.3, the sheriff may, on cause shown, dispense with service on any person named.

MISCELLANEOUS

Expenses

3.19. No expenses shall be awarded in any proceedings to which this Chapter applies.

Record of proceedings

3.20. Proceedings under this Chapter shall be conducted summarily.

Representation

3.21.—(1) In any proceedings any party may be represented by an advocate or a solicitor or, subject to paragraphs (2) and (3), other representative authorised by the party.

(2) Such other representative must throughout the proceedings satisfy the sheriff that he is a suitable person to represent the party and that he is authorised to do so.

(3) Such other representative may in representing a party do all such things for the preparation and conduct of the proceedings as may be done by an individual on his own behalf.

Applications for evidence of children by television link

3.22.—(1) This rule and rule 3.23 shall apply to any proceedings in the sheriff court under Part II of the Act.

(2) An application to the court for the giving of evidence by a child by means of a live television link shall be made in Form 44.

(3) An application referred to in paragraph (2) shall be lodged with the sheriff clerk not later than 14 days before the hearing at which the child is to give evidence (except on special cause shown).

(4) The sheriff shall—

- (a) order intimation of the application to be made to the other party or parties to the proceedings; and
- (b) hear the application on the earliest practicable date.

Orders and transfer of cases

3.23.—(1) The sheriff who hears an application under rule 3.22 shall, after hearing the parties and allowing such further procedure as the sheriff thinks fit, make an order granting or refusing the application.

(2) Where the sheriff grants the application, he may—

- (a) transfer the case to be heard in whole; or
- (b) hear the case himself or such part of it as he shall determine,

in another sheriff court in the same sheriffdom.

Exclusion of certain enactments

3.24. The enactments specified in column (1) of Schedule 3 to this Act of Sederunt (being enactments relating to matters with respect to which this Chapter is made) shall not, to the extent specified in column (3) of that Schedule, apply to an application or appeal.

PART III CHILD ASSESSMENT ORDERS

Interpretation

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

Form of application

3.26. An application shall be made in Form 45.

Orders

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

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

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

Intimation

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

PART IV CHILD PROTECTION ORDERS

Interpretation

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

Form of application

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

Determination of application

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

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

Intimation of making of order

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

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

Application to vary or set aside a child protection order

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

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

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

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

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

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

PART V

EXCLUSION ORDERS

Interpretation

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

Form of application

3.35. An application shall be made in Form 54.

Hearing following interim order

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

Orders

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

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

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

Certificates of delivery of documents to chief constable

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

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

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

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

Variation or recall of an exclusion order

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

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

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

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

PART VI

WARRANT FOR FURTHER DETENTION OF A CHILD

Interpretation

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

Form of application

3.42. An application shall be made in Form 59.

Orders

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

PART VII

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

Interpretation

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

Lodging of application, etc.

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

(2) Where a safeguarder has been appointed by the chairman at the children’s hearing, the Principal Reporter shall intimate such appointment to the sheriff clerk and shall lodge along with the application any report made by the safeguarder.

Abandonment of application

3.46.—(1) At any stage of the proceedings before the application is determined the Principal Reporter may abandon the application, either in whole or in part, by lodging a minute to that effect or by motion at the hearing.

(2) The Principal Reporter shall intimate such abandonment to—

- (a) the child, except where service on the child has been dispensed with in terms of rule 3.3;
- (b) any relevant person whose whereabouts are known to the Principal Reporter; and
- (c) any safeguarder appointed by the sheriff.

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

Hearing of evidence

3.47.—(1) In the case of any condition mentioned in section 52(2) of the Act (conditions relative to compulsory measures of supervision), the sheriff shall, in relation to any ground of referral which is in dispute, hear evidence tendered by or on behalf of the Principal Reporter, including evidence given pursuant to an application granted under rule 3.23.

(2) At the close of the evidence led by the Principal Reporter in a case where it is disputed that the condition mentioned in paragraph (i) of section 52(2) of the Act is satisfied, the sheriff shall consider whether sufficient evidence has been led to establish that condition is satisfied and shall give all the parties an opportunity to be heard on the question of sufficiency of evidence.

(3) Where the sheriff is not satisfied that sufficient evidence has been led as mentioned in paragraph (2), he shall make a finding to that effect.

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

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

(6) Subject to paragraph (7), the sheriff may exclude any person, including the relevant person, while any child is giving evidence if the sheriff is satisfied that this is necessary in the interests of the child and that—

- (a) he must do so in order to obtain the evidence of the child; or
- (b) the presence of the person or persons in question is causing, or is likely to cause, significant distress to the child.

(7) Where the relevant person is not legally represented at the hearing and has been excluded under paragraph (6), the sheriff shall inform that relevant person of the substance of any evidence given by the child and shall give that relevant person an opportunity to respond by leading evidence or otherwise.

(8) Where evidence in a referral has been heard in part and a safeguarder thereafter becomes a party to proceedings, the sheriff may order the evidence to be reheard in whole or in part.

Amendment of grounds for referral

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

Adjournment for inquiry, etc.

3.49. Subject to the provisions of section 68(2) of the Act (applications to be heard within twenty-eight days of lodging), the sheriff on the motion of any party or on his own motion may continue the hearing in order to allow time for further inquiry into any application, in consequence of the amendment of any statement under rule 3.48, or for any other necessary cause, for such reasonable time as he may in the circumstances consider necessary.

Power of sheriff in making findings as to offences

3.50. Where in a ground of referral it is alleged that an offence has been committed by or against any child, the sheriff may find that any other offence established by the facts has been committed.

Decision of sheriff

3.51.—(1) Subject to rule 3.47(3), the sheriff shall give his decision orally at the conclusion of the hearing.

(2) The sheriff clerk shall forthwith send a copy of the interlocutor containing that decision to—

- (a) the child, except where service on the child has been dispensed with in terms of rule 3.3;
- (b) any relevant person whose whereabouts are known;
- (c) any safeguarder appointed by the sheriff; and
- (d) the Principal Reporter.

(3) The sheriff may, when giving his decision in terms of paragraph (1) or within 7 days thereafter, issue a note of the reasons for his decision and the sheriff clerk shall forthwith send a copy of such a note to the persons referred to in paragraph (2).

Signature of warrants

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

PART VIII

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

Form of appeal

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

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

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

Appointment and intimation of first diet

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

- (a) the Principal Reporter;
- (b) subject to the provisions of paragraph (4), the child (if not the appellant);

- (c) the relevant person (if not the appellant);
 - (d) any safeguarder appointed for the purposes of the appeal by the sheriff or appointed by the chairman of the children's hearing; and
 - (e) any other person the sheriff thinks necessary.
- (2) The sheriff clerk shall endorse on the appeal a certificate of execution of intimation under paragraph (1).
- (3) Intimation to a child in terms of paragraph (1)(b) shall be in Form 64.
- (4) The sheriff may dispense with intimation to a child in terms of paragraph (1)(b) where he considers that such dispensation is appropriate.
- (5) The date assigned for the hearing under paragraph (1) shall be no later than 28 days after the lodging of the appeal.

Answers

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

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

Procedure at hearing of appeal

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

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

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

- (a) where a ground of the appeal is an alleged irregularity in the conduct of a hearing, as to that irregularity;
- (b) in any other circumstances where he considers it appropriate to do so.

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

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

- (a) he must do so in order to obtain the views of the child in relation to the hearing; or
- (b) the presence of the person or persons in question is causing, or is likely to cause, significant distress to the child.

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

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

Adjournment of appeals

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

Decision of sheriff in appeals

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

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

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

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

PART IX

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

Appeals

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

- (a) requesting a stated case;
- (b) specifying the point of law upon which the appeal is to proceed or the irregularity in the conduct of the case concerned, as the case may be; and
- (c) lodged with the sheriff clerk within a period of 14 days beginning with the date of the decision appealed against.

(2) The appellant shall, at the same time as lodging a note of appeal, intimate the lodging of an appeal from the decision of the sheriff—

- (a) in the case of an appeal under section 51(1) of the Act, to the parties referred to in rule 3.58(4);
- (b) in the case of an application made under section 65(7) or (9) of the Act, to the parties referred to in rule 3.51(2); and
- (c) in the case of an application made under section 85(1) of the Act (review of establishment of grounds of referral), to the parties referred to in rule 3.62.

(3) The sheriff shall, within 14 days of the lodging of a note of appeal, issue a draft stated case—

- (a) containing findings in fact and law or, where appropriate, a narrative of the proceedings before him;
- (b) containing appropriate questions of law or setting out the irregularity concerned; and
- (c) containing a note stating the reasons for his decisions in law,

and the sheriff clerk shall send a copy of the draft stated case to the appellant and to parties referred to in paragraph (2).

(4) Within 7 days of the issue of the draft stated case—

- (a) the appellant or a party referred to in paragraph (2) may lodge with the sheriff clerk a note of any adjustments which he seeks to make;
- (b) the appellant or such a party may state any point of law which he wishes to raise in the appeal; and
- (c) the note of adjustment and, where appropriate, point of law shall be intimated to the appellant and the other such parties.

(5) The sheriff may, on the motion of the appellant or a party referred to in paragraph (2) or of his own accord, and shall where he proposes to reject any proposed adjustment, allow a hearing on adjustments and may provide for such further procedure under this rule prior to the hearing of the appeal as he thinks fit.

(6) The sheriff shall, within 14 days after—

- (a) the latest date on which a note of adjustments has been or may be lodged; or
- (b) where there has been a hearing on adjustments, that hearing,

and after considering such note and any representations made to him at the hearing, state and sign the case.

(7) The stated case signed by the sheriff shall include—

- (a) questions of law, framed by him, arising from the points of law stated by the parties and such other questions of law as he may consider appropriate;
- (b) any adjustments, proposed under paragraph (4), which are rejected by him;
- (c) a note of the irregularity in the conduct of the case averred by the parties and any questions of law or other issue which he considers arise therefrom,

as the case may be.

(8) After the sheriff has signed the stated case, the sheriff clerk shall—

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

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

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

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

Lodging of reports and statements with sheriff

3.60. Where, in an appeal—

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

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

Hearing

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

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

PART X

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

Application

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

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

Hearing on application

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

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

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

Hearing to consider the evidence

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

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

CHAPTER 4

REGISTRATION OF CHILD CUSTODY ORDERS

Interpretation

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

“the Act” means the Family Law Act 1986⁽²⁵⁾;

“appropriate court” means the High Court in England and Wales or the High Court in Northern Ireland or, in relation to a specified dependant territory, the corresponding court of that territory, as the case may be;

“appropriate register” means the sheriff court book in which there is registered the action in which the Part I order was made;

“corresponding court”, in relation to a specified dependent territory, means the corresponding court specified in relation to that territory in Schedule 3 to the Family Law Act 1986 (Dependent Territories) Order 1991⁽²⁶⁾;

“Part I order” has the meaning assigned to it by sections 1, 32, 42(5) and 42(6) of the Act⁽²⁷⁾;

“proper officer” means the Secretary of the Principal Registry of the Family Division of the High Court in England and Wales or the Master (Care and Protection) of the High Court in Northern Ireland or, in relation to a specified dependent territory, the corresponding officer of the appropriate court in that territory, as the case may be; and

“specified dependent territory” means a territory specified in column 1 of Schedule 1 to the Family Law Act 1986 (Dependent Territories) Order 1991.

Applications for registration of Part I order in another court

4.2.—(1) An application under section 27 of the Act (registration) to register a Part I order made by a sheriff court in an appropriate court shall be made by letter to the sheriff clerk of the court in which the order was made.

(2) An application under paragraph (1) of this rule shall be accompanied by—

- (a) a copy of the letter of application;
- (b) an affidavit by the applicant;
- (c) a copy of that affidavit;
- (d) a certified copy of the interlocutor making the Part I order and any variation thereto which is still in force; and
- (e) any other document relevant to the application together with a copy of it.

(3) The affidavit required under this rule shall set out—

- (a) the name and address of the applicant and his right under the Part I order;
- (b) the name and date of birth of the child in respect of whom the Part I order was made, the present whereabouts or suspected whereabouts of the child and the name of any person with whom he is alleged to be;
- (c) the name and address of any other person who has an interest in the Part I order;

⁽²⁵⁾ 1986 c. 55.

⁽²⁶⁾ S.I. 1991/1723.

⁽²⁷⁾ Section 1 was amended by the Children Act 1989 (c. 41), Schedule 13, paragraph 63 and Schedule 15, the Age of Legal Capacity (Scotland) Act 1991 (c. 50) Schedule 1, paragraph 44, and the Children (Scotland) Act 1995, Schedule 4, paragraph 41(2); section 42(6) was amended by the Children Act 1989, Schedule 13, paragraph 71(2) and Schedule 15.

- (d) the appropriate court in which it is sought to register the Part I order;
- (e) whether the Part I order is in force;
- (f) whether the Part I order is already registered and, if so, where it is registered; and
- (g) details of any order known to the applicant which affects the child and is in force in the jurisdiction in which the Part I order is to be registered.

Transmission of application for registration

4.3.—(1) Unless it appears to the court that the Part I order is no longer in force, the sheriff clerk shall send the documents mentioned in section 27(3) of the Act to the proper officer of the court in which the Part I order is to be registered.

(2) For the purposes of section 27(3) of the Act the prescribed particulars of any variation of a Part I order which is in force shall be a certified copy of the interlocutor making any such variation.

(3) On sending an application under paragraph (1) of this rule, the sheriff clerk shall record the date and particulars of the application and the Part I order in the appropriate register.

(4) On receiving notification from the appropriate court that the Part I order has been registered in that court under section 27(4) of the Act, the sheriff clerk shall record the date of registration in the appropriate register.

Notification of refusal of application

4.4. Where the court refuses to send an application under rule 4.2 to the appropriate court on the ground that the Part I order is no longer in force, the sheriff clerk shall notify the applicant in writing of the court's decision.

Retention of application and related documents

4.5. The sheriff clerk shall retain the letter of application under rule 4.2 together with any documents which accompanied it and which are not transmitted to the appropriate court under section 27(3) of the Act.

Cancellation or variation of registered Part I order

4.6.—(1) Where the court revokes, recalls or varies a Part I order which it has made and which has been registered under section 27(4) of the Act, the sheriff clerk shall—

- (a) send a certified copy of the appropriate interlocutor to the proper officer of the court in which the Part I order is registered;
- (b) record the transmission of the certified copy in the appropriate register; and
- (c) record the revocation, recall or variation in the appropriate register.

(2) On receiving notification from the court in which the Part I order is registered that the revocation, recall or variation has been recorded, the sheriff clerk shall record that fact in the appropriate register.

CHAPTER 5
MAINTENANCE ORDERS
PART I
GENERAL

Interpretation

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

“the 1950 Act” means the Maintenance Orders Act 1950**(28)**;

“the 1958 Act” means the Maintenance Orders Act 1958**(29)**;

“the 1972 Act” means the Maintenance Orders (Reciprocal Enforcement) Act 1972**(30)**;

“the 1982 Act” means the Civil Jurisdiction and Judgments Act 1982**(31)**;

“clerk of court” means the clerk to the magistrates' court in England or Northern Ireland and, in relation to a county court in England or Northern Ireland, means the registrar of that court;

“clerk of the magistrates' court” means the clerk to the magistrates' court in England or Northern Ireland as the case may be;

“Court in a Hague Convention Country” includes any judicial or administrative authority in a Hague Convention Country;

“Hague Convention” means the convention on the Recognition and Enforcement of Decisions relating to maintenance obligations concluded at the Hague on 2nd October 1973;

“Hague Convention Country” means a country or territory specified in Schedule 1 to the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1993**(32)**, being a country or territory (other than the United Kingdom) in which the Hague Convention is in force;

“order” includes decree;

“reciprocating country” has the meaning assigned to it by section 1 of the 1972 Act; and

“the Registrar”, in relation to the High Court in England, means the Senior Registrar of the principal Registry of the Family Division of the High Court in England.

Application

5.2.—(1) Part II of this Chapter shall have effect in relation to the registration in other parts of the United Kingdom of orders granted by the sheriff to which the 1950 and 1958 Acts apply and such orders are referred to in this Chapter as “outgoing orders under the 1950 Act”.

(2) Part III of this Chapter shall have effect in relation to the registration outwith the United Kingdom of orders to which the 1972 Act, or the 1972 Act as amended by any order in Council made under Part III of the 1972 Act, applies and such orders are referred to as “outgoing orders under the 1972 Act”.

(3) Part IV of this Chapter shall have effect in relation to the registration in the sheriff court of orders made by courts in other parts of the United Kingdom to which the 1950 Act applies and such orders are referred to in this Chapter as “incoming orders under the 1950 Act”.

(28) 1950 c. 37.

(29) 1958 c. 39.

(30) 1972 c. 18.

(31) 1982 c. 27.

(32) S.I. 1993/593; Schedule 1 was substituted by S.I. 1994/1902.

(4) Part V of this Chapter shall have effect in relation to the registration in the sheriff court of orders made by courts outwith the United Kingdom to which the 1972 Act, or the 1972 Act as amended by any Order in Council made under Part III of the 1972 Act, applies and such orders are referred to in this Chapter as “incoming orders under the 1972 Act”.

(5) Part VI of this Chapter shall have effect in relation to the registration in the sheriff court of orders made by courts outwith the United Kingdom to which the 1982 Act applies and such orders are referred to in this Chapter as “incoming orders under the 1982 Act”.

Prescribed officer

5.3.—(1) The sheriff clerk shall be—

- (a) the prescribed officer for the purposes of the 1950, 1958 and 1972 Acts, the 1972 Act as amended by any Order in Council, and the 1982 Act; and
- (b) the proper officer for the purposes of Schedules 6 and 7 to the 1982 Act (enforcement of U.K. judgments).

(2) Unless otherwise provided, all communications which the prescribed officer is required to send to—

- (a) an addressee in the United Kingdom shall be sent by first class recorded delivery post; and
- (b) an addressee outwith the United Kingdom shall be sent registered letter or the nearest equivalent which the available postal service permits.

Maintenance Orders Register

5.4.—(1) The sheriff clerk shall maintain a Register called “the Maintenance Orders Register” for the purpose of the 1950, 1958 and 1972 Acts, the 1972 Act as amended by any Order in Council, and the 1982 Act, Part I of which shall relate to outgoing orders and Part II to incoming orders.

(2) The sheriff clerk shall make appropriate entries in the Maintenance Orders Register in respect of any action taken by him or notified to him in accordance with the provisions of those Acts, and shall keep in such manner as he considers appropriate any documents sent to him in connection with any such action.

(3) Every entry registering a maintenance order shall specify the section of the Act and where appropriate any Order in Council under which the maintenance order in question is registered.

(4) When a registered maintenance order is varied, revoked or cancelled, the sheriff clerk shall make an appropriate entry against the entry for the original order.

Inspection

5.5.—(1) The sheriff clerk shall, on an application by—

- (a) any person entitled to, or liable to make, payments under an order in respect of which any entry has been made in the Maintenance Orders Register; or
- (b) a solicitor acting on behalf of any such person,

permit that person or his solicitor, as the case may be, to inspect any such entry and any document in his possession relating to that entry and to take copies of any such entry or document.

(2) On an application by or on behalf of any other person, the sheriff clerk may, on being satisfied of that person’s interest, grant that person or his solicitor permission to inspect or take copies of any such entry or document.

PART II

OUTGOING ORDERS UNDER THE 1950 ACT

Commencement of proceedings

5.6.—(1) Every writ by which proceedings are begun in a sheriff court having jurisdiction under or by virtue of Part I of the 1950 Act against a person residing in another part of the United Kingdom, and all parts of process (other than productions) lodged in any proceedings taken in a sheriff court under or by virtue of the 1950 Act or the 1958 Act, shall be headed “Maintenance Orders Act 1950” or as the case may be “Maintenance Orders Act 1958”.

(2) The warrant of citation granted upon any writ which by virtue of those Acts is to be served upon a person residing in another part of the United Kingdom shall proceed upon a period of notice of 21 days, and such warrant of citation may be signed by the sheriff clerk.

(3) In connection with the service under section 15 of the 1950 Act (service of process) of a writ from a sheriff court the expressions “initial writ”, “writ” and “summons” in the said section and in the forms contained in the Second Schedule to that Act shall include the warrant of citation relative thereto.

Application for registration

5.7.—(1) An application for registration in a magistrates' court in England or Northern Ireland of an order granted by a sheriff court to which the 1950 Act applies shall be made by lodging with the sheriff clerk—

- (a) a letter of application;
- (b) an affidavit by the applicant;
- (c) a copy of that affidavit; and
- (d) a certified copy of the order.

(2) An affidavit under this rule shall include—

- (a) the name and address of the person liable to make payments under the order;
- (b) details of any arrears due under the order and the date to which they are calculated;
- (c) the reason for the application; and
- (d) a statement that the order is not already registered under the 1950 Act.

Transmission

5.8. On the grant of an application under rule 5.7, the sheriff clerk shall send to the clerk of the magistrates' court—

- (a) the affidavit of the applicant;
- (b) the certified copy of the order; and
- (c) a letter requesting registration of the order.

Application to adduce evidence

5.9.—(1) An application to a sheriff court under section 22(5) of the 1950 Act to adduce evidence in connection with an order granted by that court and registered in a court in England or Northern Ireland shall be made by initial writ.

(2) Any evidence adduced in pursuance of such an application shall be recorded in such manner as the sheriff shall direct and the record of evidence certified by the sheriff shall be the transcript

or summary of the evidence adduced, and shall be signed by the deponent, together with any documentary productions referred to therein.

(3) Where the sheriff clerk of a court in which an order was granted receives a transcript or summary of evidence connected with that order adduced, under section 22(5) of the 1950 Act, in the court where the order was registered, he shall lodge such transcript or summary in the process containing that order.

Re-registration in the High Court

5.10.—(1) When an order has been registered in the magistrates' court, an application to the sheriff court for the re-registration of that order in the High Court in England under the 1958 Act shall be made by lodging with the sheriff clerk—

- (a) a letter of application;
- (b) an affidavit by the applicant;
- (c) a certified copy of that affidavit; and
- (d) a certified copy of the order.

(2) An affidavit under this rule shall include—

- (a) the name and address of the person liable to make payments under the order;
- (b) details of any arrears due under the order and the date to which they are calculated;
- (c) the reason for the application;
- (d) the date and place of the original registration;
- (e) where the order has been re-registered, the date and place of the last re-registration and whether or not that has been cancelled, or where any of these facts is not known a statement to that effect; and
- (f) a declaration that no process remains in force for the enforcement of the registered order.

Transmission for re-registration

5.11. If an application under rule 5.10 is granted, the sheriff clerk shall send to the Registrar—

- (a) the affidavit of the applicant; and
- (b) a letter stating that the application has been granted and requesting him to take steps to have the order registered in the High Court.

Discharge and variation

5.12. Where an interlocutor is pronounced in the sheriff court varying or discharging an order registered under the 1950 Act or the 1958 Act, the sheriff clerk shall send to the clerk of the magistrates' court and, as the case may be, to the Registrar—

- (a) a certified copy of the interlocutor; and
- (b) a letter requesting the clerk of the magistrates' court and, as the case may be, the Registrar to take the appropriate action under those Acts, in accordance with the interlocutor, and to notify him of the result.

Cancellation of registration

5.13.—(1) An application under section 24(2) of the 1950 Act (cancellation of registration)(**33**) in connection with an order granted by a sheriff court and registered in a court in England or Northern Ireland shall be made by lodging with the sheriff clerk an affidavit by the person liable to make payments under the order stating the facts on which the application is founded.

(2) Where it appears to the sheriff clerk that the applicant has ceased to reside in England or Northern Ireland, as the case may be, the sheriff clerk shall send notice to that effect to the clerk of the magistrates' court and the Registrar, as the case may be, of any court in which the order is registered.

PART III

OUTGOING ORDERS UNDER THE 1972 ACT

Application for transmission of order for enforcement in a reciprocating country

5.14.—(1) An application for the transmission of a maintenance order for enforcement in a reciprocating country shall be made by letter addressed to the sheriff clerk.

(2) There shall be lodged with any such application—

- (a) a certified copy of the relevant order;
- (b) a statement signed by the applicant or his solicitor of any arrears outstanding in respect of the order;
- (c) a statement signed by the applicant or his solicitor giving such information as to the whereabouts of the payer as he possesses;
- (d) a statement signed by the applicant or his solicitor giving such information as the applicant possesses for facilitating the identification of the payer;
- (e) where available, a photograph of the payer.

Application for transmission of order for enforcement in the Republic of Ireland

5.15.—(1) An application for the transmission of a maintenance order for enforcement in the Republic of Ireland(**34**) shall be made by letter addressed to the sheriff clerk.

(2) There shall be lodged with any such application—

- (a) a certified copy of the relevant order;
- (b) a statement signed by the applicant or his solicitor of any arrears outstanding in respect of the order;
- (c) a statement signed by the applicant or his solicitor giving such information as to the whereabouts of the payer as he possesses;
- (d) a statement signed by the applicant or his solicitor giving such information as the applicant possesses for facilitating the identification of the payer;
- (e) where available, a photograph of the payer;
- (f) a statement signed by the applicant or his solicitor which establishes that notice of the order was sent to the payer;
- (g) if the payee received legal aid in the proceedings, a statement to that effect; and

(33) Section 24(2) was amended by the Administration of Justice Act 1977 (c. 38), Schedule 3, paragraph 9.

(34) The 1972 Act is applied to the Republic of Ireland by S.I. 1993/594.

- (h) if the payer did not appear in the proceedings in which the maintenance order was made, the original or a certified true copy of a document which establishes that notice of the institution of the proceedings was served on the payer.

(3) On receipt of such an application and documents, the sheriff clerk shall send to the Secretary of State the documents specified in section 2(4) of the 1972 Act as applied to the Republic of Ireland.

Application for transmission of order to Hague Convention Country

5.16.—(1) An application for the transmission of a maintenance order to a Court in a Hague Convention Country for registration and enforcement shall be made by letter addressed to the sheriff clerk.

- (2) There shall be lodged with any such application—
 - (a) a certified copy of the relevant order;
 - (b) a statement signed by the applicant or his solicitor of any arrears outstanding in respect of that order;
 - (c) a statement signed by the applicant or his solicitor giving such information as to the whereabouts of the payer as he possesses;
 - (d) a statement signed by the applicant or his solicitor giving such information as the applicant possesses for facilitating the identification of the payer;
 - (e) where available, a photograph of the payer;
 - (f) a statement signed by the applicant or his solicitor which establishes that notice of the order was sent to the payer;
 - (g) if the payee received legal aid in the proceedings, a statement to that effect; and
 - (h) if the payer did not appear in the proceedings in which the maintenance order was made, the original or a certified true copy of a document which establishes that notice of the institution of the proceedings was served on the payer.

Service on defender in Hague Convention Country

5.17. For the purposes of section 4(4) of the 1972 Act as applied in respect of a defender in a Hague Convention Country⁽³⁵⁾, service on such a defender shall be effected in accordance with the Ordinary Cause Rules.

Provisional order made with a view to transmission to a reciprocating country

5.18. A certificate signed by the sheriff clerk in terms of section 3(5)(c) of the 1972 Act (certificate of grounds), as read with section 4(6) thereof, shall also be signed by the sheriff.

Evidence adduced prior to confirmation of provisional order

5.19.—(1) Where under section 5(9) of the 1972 Act it appears to the sheriff that a provisional order ought not to have been made, the sheriff clerk shall send by first class recorded delivery a notice on Form 66 to the person on whose application the order was made.

(2) Where such a person wishes to make representations, he shall lodge with the sheriff clerk within 21 days of the date of posting of the notice a minute narrating the representations and the further evidence which he intends to adduce.

(3) On the expiry of the period of 21 days, the cause shall be enrolled before the sheriff who shall appoint a diet for the hearing of further evidence or make such other order as may be appropriate.

(35) See S.I. 1993/593.

Provisions in relation to intimation and entering appearance

5.20.—(1) Where the 1972 Act provides that on intimation to a payee of the receipt by the Court of a provisional order the payee is to enter appearance within a prescribed period, intimation shall be given in Form 67 and the period shall be—

- (a) 21 days from the date of posting where the payee is resident in Europe; and
- (b) 42 days from the date of posting where the payee is resident outside Europe.

(2) To enter appearance in terms of section 5(6) of the 1972 Act, the payee shall lodge an application—

- (a) stating that he opposes confirmation of the order; and
- (b) setting forth averments in answer to the case upon which the provisional order was made, supported by the appropriate pleas-in-law.

(3) Where the payee enters appearance in terms of section 5(6) of the 1972 Act, the sheriff shall appoint a diet for the hearing of evidence or make such other order as may be appropriate to enable the court to proceed in accordance with the procedure and practice in ordinary civil proceedings in the sheriff court as if the application for the variation or revocation of the maintenance order had been made to it.

Authentication of documents

5.21. Where the 1972 Act provides that a document is to be authenticated in a prescribed manner, it shall be authenticated by a certificate signed by the sheriff clerk declaring that the document is authentic.

Application under section 4 or 5 of the 1972 Act

5.22. An application for a provisional order under section 4 of the 1972 Act⁽³⁶⁾ or an application under section 5 of that Act for variation or revocation of a maintenance order shall be brought as an ordinary cause.

Evidence

5.23.—(1) Where any request to take evidence is made by or on behalf of a court in terms of section 14 of the 1972 Act, or the Act as amended by any Order in Council made under Part III of that Act, or by the Secretary of State in terms of section 38 thereof, such evidence shall be taken before a sheriff of the sheriffdom in which the witness resides and shall be taken down by a shorthand writer, or where the sheriff so directs, by the sheriff, and the extended notes of evidence certified by the sheriff shall be the notes of the evidence taken.

(2) Where a provisional order is made under section 4 or 5 of the 1972 Act and evidence has been taken by a shorthand writer, the applicant or his solicitor shall provide the sheriff clerk with a copy of the extended notes of evidence.

PART IV

INCOMING ORDERS UNDER THE 1950 ACT

Registration

5.24.—(1) On receiving a certified copy of a maintenance order made by a court in England or Northern Ireland, the sheriff clerk shall—

⁽³⁶⁾ Section 4 was amended by the Civil Jurisdiction and Judgments Act 1982 (c. 27), Schedule 12, Part II, paragraph 3 and the Children (Scotland) Act 1995, Schedule 5.

- (a) retain any certificate or affidavit sent with the certified copy of the order as to the amount of any arrears due under the order;
- (b) endorse on the certified copy order a declaration in Form 68 and retain such certified copy order and declaration; and
- (c) notify the clerk of the court which made the order that it has been registered.

(2) The sheriff clerk may issue an extract of the order with the declaration thereon, and such extract shall have the same force and effect as, and may be enforced in all respects as if it was, an extract decree of the sheriff court in which the certified copy is registered.

Variation of rate of payment

5.25. An application to a sheriff court under section 22(1) of the 1950 Act⁽³⁷⁾ for variation of the rate of payment under a maintenance order made by a court in England or Northern Ireland and registered in that sheriff court shall be made by initial writ.

Application to adduce evidence

5.26.—(1) An application to a sheriff court under section 22(5) of the 1950 Act to adduce evidence in connection with a maintenance order made by a court in England or Northern Ireland and registered in that sheriff court shall be made by initial writ.

(2) Any evidence adduced in pursuance of such an application shall be recorded in such manner as the sheriff shall direct and the record of evidence certified by the sheriff shall be the transcript or summary of the evidence adduced.

(3) Where the sheriff clerk of a court in which an order is registered receives a transcript or summary of evidence connected with that order adduced under section 22(5) of the 1950 Act in the court where that order was made, he shall lodge such transcript or summary in the process of any proceedings for variation of the order before the sheriff court.

Discharge and variation

5.27.—(1) Where a maintenance order made by a court in England or Northern Ireland and registered under the 1950 Act in a sheriff court is varied by that sheriff court, the sheriff clerk shall give notice of the variation to the clerk of the court by which the order was made by sending him a certified copy of the interlocutor varying the order.

(2) Where a maintenance order made by a court in England or Northern Ireland and registered in a sheriff court is discharged or varied by any court other than that sheriff court, the sheriff clerk shall on receipt of a certified copy of the order discharging or varying the registered order notify the clerk of the appropriate court that the discharge or variation has been entered in the Maintenance Orders Register.

(3) Paragraphs (1)(a) and (b) and (2) of rule 5.24 shall apply to an order varying a registered order as they apply to the registered order.

Cancellation of registration

5.28.—(1) An application under section 24(1) of the 1950 Act for the cancellation of the registration of a maintenance order made by a court in England or Northern Ireland and registered in a sheriff court shall be made by lodging with the sheriff clerk—

- (a) an application for that purpose which shall state the date of the registration of the order; and
- (b) a copy of the order the registration of which is sought to be cancelled.

(37) Section 22(1) was amended by the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), Schedule 2, paragraph 14.

(2) Where under section 24(1) or (2) of the 1950 Act the sheriff clerk cancels the registration of a maintenance order, he shall—

- (a) notify the clerk of the court by which the order was made; and
- (b) notify the person liable to make payments under the order.

PART V

INCOMING ORDERS UNDER THE 1972 ACT

Provisions in relation to intimation and entering appearance

5.29.—(1) Where the 1972 Act provides that on intimation to a payer of the receipt by the court of a provisional order the payer is to enter appearance within a prescribed period, intimation shall be given in Form 67 and the period shall be—

- (a) 21 days from the date of posting where the payer is resident in Europe; and
- (b) 42 days from the date of posting where the payer is resident outside Europe.

(2) To enter appearance in terms of section 7(4) or 9(7) of the 1972 Act, the payer shall lodge an application—

- (a) stating that he opposes confirmation of the order; and
- (b) setting forth averments in answer to the case upon which the provisional order was made, supported by appropriate pleas-in-law.

(3) Where the payer enters appearance in terms of section 7(4) of the 1972 Act, the sheriff shall appoint a diet for the hearing of evidence or make such other order as may be appropriate to enable the court to proceed in accordance with the procedure and practice in ordinary civil proceedings in the sheriff court as if an application for a maintenance order against the payer had been made to it.

(4) Where the payer enters appearance in terms of section 9(7) of the 1972 Act, the sheriff shall appoint a diet for the hearing of evidence or make such other order as may be appropriate to enable the court to proceed in accordance with the procedure and practice in ordinary civil proceedings in the sheriff court as if an application for the variation of the maintenance order had been made to it.

Authentication of documents

5.30. Where the 1972 Act provides that a document is to be authenticated in a prescribed manner, it shall be authenticated by a certificate signed by the sheriff clerk declaring that the document is authentic.

Application under sections 9 and 20 of the 1972 Act

5.31.—(1) An application under section 9 of the 1972 Act (variation and revocation of maintenance orders)(38) for variation or revocation of a maintenance order shall be brought as an ordinary cause.

(2) An application under section 20 of the 1972 Act (restriction on enforcement of arrears) for leave to enforce the payment of any arrears due under a maintenance order registered in Scotland shall be made by lodging a minute in the process.

Information to be provided where payer has ceased to reside in Scotland

5.32.—(1) Where the registration of an order is cancelled in the circumstances set out in section 10(2) of the 1972 Act, the payee or his solicitor shall provide the sheriff clerk so far as is

(38) Section 9 was amended by the Civil Jurisdiction and Judgments Act 1982, Schedule 11, paragraphs 4 and 12.

possible with information to enable the sheriff clerk to prepare the certificate and statement referred to in section 10(7) of the 1972 Act⁽³⁹⁾.

(2) Where the sheriff clerk is required in terms of section 32(1) of the 1972 Act (transfer of orders) to send to the Secretary of State the related documents specified in section 32(8) of that Act, the payee or his solicitor shall provide the sheriff clerk so far as possible with information to enable the sheriff clerk to prepare the certificate and statement to be included among those documents.

Evidence

5.33. Where a provisional order is made under section 9 of the 1972 Act and evidence has been taken by a shorthand writer, the applicant or his solicitor shall provide the sheriff clerk with a copy of the extended notes of evidence.

Intimation of registration of, or of decision not to register, an order made in the Republic of Ireland

5.34.—(1) Intimation of the registration of an order in terms of section 6 of the 1972 Act as applied to an order made in the Republic of Ireland shall be given by the sheriff clerk –

- (a) to the payer, by sending an intimation in Form 69; and
- (b) to the payee, by sending a notice in Form 70.

(2) Notice of a decision not to register an order on any of the grounds set out in section 6(5) of the 1972 Act as applied to an order made in the Republic of Ireland shall be given by the sheriff clerk to the payee, by sending a notice in Form 71.

Application to set aside registration of, or to set aside decision not to register, an order made in the Republic of Ireland

5.35.—(1) Application to the court under section 6(7) or (11) of the 1972 Act as applied to an order made in the Republic of Ireland⁽⁴⁰⁾ shall be made by summary application setting out the grounds of the application.

(2) An application under section 6(11) of the 1972 Act as applied to an order made in the Republic of Ireland shall be made within one month from the date of service of the notice in terms of rule 5.34(2).

Intimation of registration of, or refusal to register, an order made in a Hague Convention Country

5.36.—(1) Intimation of the registration of a maintenance order in terms of section 6 of the 1972 Act as applied to an order made in a Hague Convention Country shall be given by the sheriff clerk–

- (a) to the payer, by sending an intimation in Form 72; and
- (b) to the payee, by sending a notice in Form 70.

(2) Notice of a refusal to register a maintenance order on any of the grounds set out in section 6(5), (6) or (7) of the 1972 Act as applied to an order made in a Hague Convention Country shall be given by the sheriff clerk to the payee, by sending a notice in Form 71.

⁽³⁹⁾ Section 10(7) was amended by the Civil Jurisdiction and Judgments Act 1982, Schedule 11, paragraph 13.

⁽⁴⁰⁾ Section 6(7) provides a time limit of one month from the date of service of notice of registration.

Application to set aside registration of, or to set aside decision not to register, an order made in a Hague Convention Country

5.37. Application to the court under section 6(9) or (12) of the 1972 Act as applied to an order made in a Hague Convention Country⁽⁴¹⁾ shall be made by summary application setting out the grounds of the application.

PART VI

INCOMING ORDERS UNDER THE 1982 ACT

Applications under section 5 of the 1982 Act

5.38.—(1) An application under section 5 of the 1982 Act shall be in writing addressed to the Secretary of State, signed by the applicant, or a solicitor or professional person qualified to act in such matters in the Contracting State of origin on his behalf, and shall specify—

- (a) an address within Scotland for service on the applicant;
- (b) the usual and last known address of the person against whom judgement was granted;
- (c) the place where the applicant seeks to enforce the judgement;
- (d) whether at the date of the application the judgement has been satisfied in whole or in part;
- (e) whether interest is recoverable under the judgement in accordance with the law of the country in which it was granted and, if so, the rate of interest and the date from which interest became due; and
- (f) whether the time for bringing an appeal against the judgement has expired without an appeal having been brought or whether an appeal has been brought against the judgement and is pending or has been finally disposed of.

(2) An application under paragraph (1) shall be accompanied by—

- (a) a copy of the judgement authenticated by the court which made the order;
- (b) documents which establish that, according to the law of the country in which the judgement has been given, the judgement is enforceable and has been served;
- (c) in the case of a judgement given in default, documents which establish that the party in default was served with the documents instituting the proceedings;
- (d) where appropriate, a document showing that the applicant is in receipt of legal aid in the country in which the judgement was given; and
- (e) where the judgement or any of the documents specified in sub-paragraphs (b) to (d) are in a language other than English, a translation into English certified by a person qualified to do so in one of the Contracting States.

(3) Where the applicant does not produce a document required under paragraph (2)(c) or (d), the sheriff clerk may—

- (a) fix a time within which the document is to be produced;
- (b) accept an equivalent document; or
- (c) dispense with production of the document.

(41) Sections 6(9) and 6(12) provide a time limit of one month from service of notice of registration or decision not to register.

Address of applicant's solicitor for service

5.39. Where the sheriff clerk is informed by a solicitor practising in Scotland that he is acting on behalf of the applicant, the business address of the solicitor shall thereafter be treated as the address for service on the applicant.

Notice of determination of application

5.40. Immediately after determination of an application for the recognition or enforcement of an order, the sheriff clerk shall serve, in accordance with the Ordinary Cause Rules so far as not inconsistent with the terms of this Chapter, a notice in Form 73 on the applicant and on the person against whom enforcement is sought.

Appeal by party against whom enforcement is authorised

5.41.—(1) Where enforcement of a maintenance order is authorised to any extent, the party against whom enforcement is authorised may appeal by way of summary application to the sheriff against the decision of the sheriff clerk—

- (a) within one month from the date of service of the notice under rule 5.40; or
- (b) if the person against whom enforcement is sought is domiciled in a Contracting State other than the United Kingdom, within two months from the date of service of such notice.

(2) The determination of the sheriff of such a summary application shall be subject to a final appeal on a point of law to the Inner House of the Court of Session in accordance with the Ordinary Cause Rules.

Appeal by applicant

5.42.—(1) Where the application for enforcement of a maintenance order is refused, the applicant may appeal by way of summary application to the sheriff within one month from the date of service of the notice under rule 5.40.

(2) The determination of the sheriff of such a summary application shall be subject to a final appeal on a point of law to the Inner House of the Court of Session in accordance with the Ordinary Cause Rules.

Enforcement of registered order

5.43. The applicant may obtain an extract of a registered order and proceed to arrest in execution, to intimate the order (for the purposes of section 54(1) of the Debtors (Scotland) Act 1987(42)), to inhibit and to charge and poind thereon, but may not proceed to an action of furthcoming in respect of an arrestment, serve a current maintenance arrestment schedule, make application for a conjoined arrestment order, proceed to adjudication in respect of inhibition or sale in respect of a poinding until the time for appeal against the determination of the sheriff under rules 5.41 or 5.42 has elapsed and any appeal has been disposed of.

CHAPTER 6

APPLICATIONS UNDER THE SOCIAL SECURITY ADMINISTRATION ACT 1992

Interpretation

6.1. In this Chapter “the Act” means the Social Security Administration Act 1992⁽⁴³⁾ and, unless the context otherwise requires, expressions used in this Chapter which are also used in that Act shall have the meaning assigned to them by the Act.

Applications under section 106 of the Act

6.2.—(1) An application to the sheriff under section 106(1) of the Act (recovery of expenditure on benefit from person liable for maintenance) shall be by summary application.

(2) Where, in such an application, a sum is craved which represents or includes a personal allowance element, that element shall be identified in the application.

Transfer of rights under section 107 of the Act

6.3.—(1) The sheriff clerk, on receiving notice from the Secretary of State of a transfer of rights to an order by virtue of section 107(3) or (8) of the Act, shall endorse on the interlocutor sheet a certificate in Form 74.

(2) Where, following a transfer by virtue of section 107(3) or (8) of the Act, the dependent parent or the Secretary of State requests an extract of the order originally granted, the sheriff clerk shall issue an extract with a certified copy of the latest certificate referred to in paragraph (1) endorsed on it.

Notice to Secretary of State under section 108(5) of the Act

6.4. The notice required to be given to the Secretary of State by the sheriff clerk under section 108(5) of the Act (notice of application to vary etc. a maintenance order), as read with regulation 3 of the Income Support (Liable Relatives) Regulations 1990⁽⁴⁴⁾, shall—

- (a) be in writing;
- (b) specify any date assigned for the hearing of the application;
- (c) be accompanied by a copy of the application; and
- (d) be sent by recorded delivery post.

Notice to Secretary of State of making of maintenance order

6.5. Where an order granted by the sheriff in favour of the Secretary of State under section 106(2) of the Act has been transferred to the dependent parent in accordance with section 107(3) of that Act and a maintenance order is subsequently granted by the sheriff in favour of the dependent relative, the sheriff clerk shall forthwith notify the Secretary of State in writing and by recorded delivery post of the granting of the maintenance order.

⁽⁴³⁾ 1992 c. 5.

⁽⁴⁴⁾ S.I. 1990/1777.

Edinburgh
6th February 1997

Rodger of Earlsferry
Lord President, IPD