
STATUTORY INSTRUMENTS

1997 No. 291

Act of Sederunt (Child Care and Maintenance Rules) 1997

CHAPTER 2

ADOPTION OF CHILDREN

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).