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STATUTORY INSTRUMENTS

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**1997 No. 291**

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

**CHAPTER 3**

**CHILDREN (SCOTLAND) ACT 1995**

**PART 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.