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SCOTTISH STATUTORY INSTRUMENTS

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**2023 No. 62**

**SHERIFF COURT**

**Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules 1999 Amendment) (Sexual Harm Prevention Orders and Sexual Risk Orders) 2023**

<i>Made</i>	- - - -	<i>1st March 2023</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>2nd March 2023</i>
<i>Coming into force</i>	- -	<i>31st March 2023</i>

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(1), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council with such modifications as it thinks appropriate.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by section 104(1) of the Courts Reform (Scotland) Act 2014(2), sections 12(4), 15(4)(a), 20(8), 21(7)(b), 27(5), 30(7) and 31(7)(b) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016(3) and all other powers enabling it to do so.

**Citation and commencement, etc.**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules 1999 Amendment) (Sexual Harm Prevention Orders and Sexual Risk Orders) 2023.

(2) A certified copy is to be inserted in the Books of Sederunt.

(3) It comes into force on 31st March 2023.

**Amendment of the Summary Application Rules 1999**

2.—(1) The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc.) Rules 1999(4) is amended in accordance with this paragraph.

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(1) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).  
(2) 2014 asp 18.  
(3) 2016 asp 22.  
(4) S.I. 1999/929, last amended by S.S.I. 2022/329.

(2) In Chapter 3 (rules on applications under specific statutes) after Part LIII (Age of Criminal Responsibility (Scotland) Act 2019)(5), insert—

## “PART LIV

### SEXUAL HARM PREVENTION ORDERS AND SEXUAL RISK ORDERS

#### Interpretation

**3.54.1.** In this Part—

“the 2016 Act” means the Abusive Behaviour and Sexual Harm (Scotland) Act 2016(6);

“interim sexual harm prevention order” and “sexual harm prevention order” means an order under section 21 (interim orders) and 12 (making of order against qualifying offender on application to sheriff) of the 2016 Act respectively;

“interim sexual risk order” and “sexual risk order” means an order under section 31 (interim orders) and 27 (making of order) of the 2016 Act respectively.

#### Warrant, Form of Citation and notices

**3.54.2.—**(1) A warrant for citation in an application under this Part is to be in Form 2B (form of warrant of citation under Chapters 3 and 4 of Part 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016).

(2) Citation in respect of a warrant granted under paragraph (1) is to be in Form 3B (form of citation for summary application under Chapters 3 and 4 of Part 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016).

(3) Where a person on whom service has been executed wishes for a hearing to be held, that person is to—

(a) give, within 21 days of the date of service, notice under section 12(4) or 27(5) (making of an order) of the 2016 Act; and

(b) lodge answers at the same time and send a copy of them to the applicant.

(4) Where a person has been served with an application under section 12 of the 2016 Act and disputes under section 15(4)(a) (qualifying offender: conviction etc. outside United Kingdom) of that Act that section 12(2)(b) is satisfied, the person is to serve a notice in accordance with section 15(4)(a) of that Act within 21 days of the date on which they were served with the application under section 12 of that Act.

#### Procedure where no notice under section 12(4) or 27(5) is given

**3.54.3.—**(1) Where no notice of a wish for a hearing under section 12(4) or 27(5) of the 2016 Act has been given to the sheriff within the period of notice contained in the warrant of citation, the applicant may return the application, together with a duly completed execution of service, to the sheriff clerk requesting the sheriff make an order for further procedure under section 12(3)(b)(i) or (ii) or section 27(4)(b)(i) or (ii) (as the case may be) of the 2016 Act.

(2) Where the sheriff gives an opportunity under section 12(3)(b)(ii) or section 27(4)(b)(ii) of the 2016 Act for written representations to be made, the sheriff is to specify the period for lodging the written representations with the court and any party lodging any written representations is at the same time to intimate a copy of them to the other party.

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(5) Part LIII was inserted by [S.S.I. 2021/452](#).

(6) [2016 asp 22](#).

### **Variation, renewal or discharge of sexual harm prevention orders or sexual risk orders**

**3.54.4.**—(1) Subject to paragraph (2), an application under—

- (a) section 20 (variation, renewal and discharge) of the 2016 Act to vary, renew or discharge a sexual harm prevention order; or
- (b) section 30 (variation, renewal and discharge) of the 2016 Act to vary, renew or discharge a sexual risk order,

is to be made by minute in the process relating to that order.

(2) Where an application to vary, renew or discharge a sexual harm prevention order or sexual risk order is made in a sheriff court other than the sheriff court in which the process relating to the order is held—

- (a) the application is to be made by summary application;
- (b) the initial writ containing the application is to contain averments as to the sheriff court in which the process relating to the order is held;
- (c) the sheriff clerk with whom the application is lodged is to notify the sheriff clerk of the sheriff court in which the process relating to the order is held; and
- (d) the sheriff clerk of the sheriff court in which the process relating to the order is held must, not later than 4 days after receipt of such notification, transfer the process relating to the order to the sheriff clerk of the sheriff court in which the application is made.

(3) For the purposes of paragraph (2), the sheriff court in which the process relating to the order is held is the sheriff court in which the order was granted or, where the process has been transferred under that paragraph, the last sheriff court to which the process has been transferred.

(4) Where—

- (a) a minute under paragraph (1) is lodged, the sheriff is to order intimation of the minute;
- (b) a person on whom intimation of a minute under paragraph (1) has been made wishes for a hearing to be held, that person is to—
  - (i) give, within 21 days of the date of intimation of the minute, notice under section 20(8) or section 30(7) of the 2016 Act (as the case may be); and
  - (ii) lodge answers at the same time and send a copy of them to the minuter;
- (c) no notice of a wish for a hearing under section 20(8) or 30(7) of the 2016 Act has been given to the sheriff within the period of notice contained in the warrant of citation, the minuter may return the minute, together with a duly completed certificate of intimation, to the sheriff clerk requesting the sheriff make an order for further procedure under section 20(7)(b)(i) or (ii) or section 30(6)(b)(i) or (ii) (as the case may be) of the 2016 Act.

(5) Where an application referred to in paragraph (2) has been made—

- (a) if a person on whom service has been executed wishes for a hearing to be held, that person is to—
  - (i) give, within 21 days of the date of service, notice under section 20(8) or 30(7) of the 2016 Act (as the case may be); and
  - (ii) lodge answers at the same time and send a copy of them to the applicant;
- (b) if no notice of a wish for a hearing under section 20(8) or 30(7) of the 2016 Act has been given to the sheriff within the period of notice contained in the warrant of citation, the applicant may return the application, together with a duly completed

certificate of intimation, to the sheriff clerk requesting the sheriff make an order for further procedure under section 20(7)(b)(i) or (ii) or section 30(6)(b)(i) or (ii) (as the case may be) of the 2016 Act.

(6) Where paragraph (4)(b) or paragraph (5)(b) applies and the sheriff gives an opportunity to make written representations under section 20(7)(b)(ii) or section 30(6)(b)(ii) of the 2016 Act—

- (a) the sheriff is to specify the period for lodging the written representations with the court; and
- (b) any party lodging written representations is at the same time to intimate a copy of them to any other party.

(7) If the sexual harm prevention order or sexual risk order to which the application to vary, renew or discharge relates is an order made in England or Wales or is a sexual offences prevention order, a foreign travel order or a risk of sexual harm order made in Northern Ireland under the Sexual Offences Act 2003(7)—

- (a) paragraph (4) does not apply and a first application is to be made by initial writ in Form 1 (form of initial writ); and
- (b) where any subsequent application under sub-paragraph (a) is made, that application is to be made by minute in the process.

(8) Where paragraph (7) applies the sheriff clerk is to send a certified copy of the interlocutor varying, renewing or discharging (as the case may be) the order to the court which originally imposed that order.

(9) A failure of the sheriff clerk to comply with paragraph (2) does not invalidate the application.

### **Interim sexual harm prevention orders or interim sexual risk orders**

**3.54.5.**—(1) Subject to paragraph (2), an application for an interim sexual harm prevention order or interim sexual risk order is to be made—

- (a) by crave in the initial writ containing the application for a sexual harm prevention order or sexual risk order, as the case may be (“the main application”); or
- (b) if an application has already been made, by way of motion.

(2) Where an application for an interim sexual harm prevention order or interim sexual risk order is made in a sheriff court other than the sheriff court in which the main application was lodged—

- (a) the application is to be made by summary application;
- (b) the initial writ containing the application is to contain averments as to the sheriff court in which the main application was lodged; and
- (c) the sheriff clerk with whom the application is lodged is to notify the sheriff clerk of the sheriff court in which the main application was lodged.

(3) There is to be produced with a summary application under paragraph (2) copies of the following documents, certified as correct by the applicant’s solicitor or the sheriff clerk—

- (a) the initial writ containing the main application;
- (b) any answers to the main application; and
- (c) any interlocutors pronounced in the main application.

(4) The sheriff clerk is to send a certified copy of any interlocutor disposing of a summary application under paragraph (2) to the sheriff clerk of the sheriff court in which the main application was lodged.

(5) Rule 3.54.4 (variation, renewal or discharge of sexual harm prevention orders or sexual risk orders) applies for the purpose of an application for an order for variation, renewal or discharge of an interim sexual harm prevention order or interim sexual risk order, subject to any necessary modifications.

(6) A failure of the sheriff clerk to comply with paragraph (2)(c) or (4) does not invalidate the main application or the summary application under paragraph (2).

### **Service of orders**

**3.54.6.**—(1) This rule applies to—

- (a) a sexual harm prevention order;
- (b) an interim sexual harm prevention order;
- (c) a sexual risk order;
- (d) an interim sexual risk order;
- (e) an order varying or renewing an order mentioned in sub-paragraphs (a) to (d).

(2) The sheriff clerk must serve a copy of the order on the person against whom it has effect.

(3) For the purposes of paragraph (2), a copy of the order is served—

- (a) where the person against whom the order has effect is present in court when the order is made—
  - (i) by giving it to the person and obtaining a receipt therefor;
  - (ii) by sending it to the person by recorded delivery or registered post; or
  - (iii) by causing it to be served by sheriff officer; or
- (b) where the person against whom the order has effect is not present in court when the order is made—
  - (i) by sending it to the person by recorded delivery or registered post; or
  - (ii) by causing it to be served by sheriff officer.

(4) A failure by the sheriff clerk to comply with this rule does not invalidate the order.”.

(3) In schedule 1 (forms)—

- (a) after Form 2A (form of warrant of application)(**8**), insert Form 2B (form of warrant of citation under Chapters 3 and 4 of Part 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016); and
- (b) after Form 3A (form of citation for summary application)(**9**), insert Form 3B (form of citation for summary application under Chapters 3 and 4 of Part 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016),

as set out in the schedule of this Act of Sederunt.

### **Revocation and saving**

**3.**—(1) Subject to paragraph (2), the following provisions of Chapter 3 of the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc.) Rules 1999 are revoked—

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(8) Form 2A was inserted by [S.S.I. 2002/130](#).

(9) Form 3A was inserted by [S.S.I. 2002/130](#).

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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- (a) Part XXV (Sexual Offences Act 2003)(**10**);
- (b) Part XXIX (risk of sexual harm orders)(**11**).

(2) Notwithstanding the revocation of the provisions mentioned in paragraph (1), they continue to have effect, in relation to those things mentioned in section 40(2)(a) to (c) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016(**12**), until the end of the period of 5 years beginning with the date on which section 40 of that Act comes into force for the purpose of existing orders (within the meaning of section 40(1) of that Act).

Edinburgh  
1st March 2023

CJM SUTHERLAND  
Lord President  
I.P.D.

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(10) Part XXV was inserted by [S.S.I. 2004/222](#) and amended by [S.S.I. 2005/473](#).  
(11) Part XXIX was inserted by [S.S.I. 2005/473](#) and amended by [S.S.I. 2006/410](#).  
(12) [2016 asp 22](#).

SCHEDULE

Paragraph 2(3)

Form 2B

Rule 3.54.2(1)

**Form of warrant of citation under Chapters 3 and 4 of Part 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016**

*(Insert place and date)*. Grants warrant to cite the defender *(insert name and address)* by serving upon them a copy of the writ and warrant on a period of notice of 21 days and ordains them, if they oppose the application and wish a hearing be held—

- (a) to lodge a notice requesting a hearing; and
- (b) to lodge answers with the court and intimate the said answers to the pursuer;  
within the period of notice.

*(Signed)*

Sheriff

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

## Form 3B

Rule 3.54.2(2)

### Form of citation for summary application under Chapters 3 and 4 of Part 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016

CITATION FOR SUMMARY APPLICATION

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

[A.B.], *(insert designation and address)*

Applicant

against

[C.D.], *(insert designation and address)*

Respondent

Court ref. no.

*(Insert place and date)*. You [C.D.] are hereby served with this copy writ and warrant, and are required to answer it.

If you wish to oppose the application, you—

- (a) must lodge a notice requesting a hearing with the sheriff clerk at *(insert place and address of sheriff court)* sheriff court, not later than *(insert date)*; and
- (b) must lodge answers with the sheriff clerk at *(insert place and address of sheriff court)* sheriff court, not later than *(insert date)*, and at the same time, send a copy of the answers to the Applicant.

**IF YOU ARE UNCERTAIN AS TO WHAT ACTION TO TAKE** you should consult a solicitor. You may be eligible for legal aid depending on your income, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens' Advice Bureau, or other advice agency.

**PLEASE NOTE THAT IF YOU DO NOTHING IN ANSWER TO THIS DOCUMENT** the court may grant the application in your absence.

*(Signed)*

[P.Q.], Sheriff Officer, or [X.Y.] *(add designation and business address)*

Solicitor for the Applicant



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## EXPLANATORY NOTE

*(This note is not part of the Act of Sederunt)*

This Act of Sederunt amends the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 (“the Summary Application Rules”) in consequence of the commencement of sections 10 to 40 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 ([asp 22](#)) (“the 2016 Act”).

Paragraph 2(2) inserts a new Part LIV into Chapter 3 of the Summary Application Rules setting out the procedure for the making, variation, renewal or discharge of sexual harm prevention orders and sexual risk orders. Provision is also made in respect of interim sexual harm prevention orders and interim sexual risk orders.

Paragraph 2(3) inserts new Forms 2B (form of warrant of citation under Chapters 3 and 4 of Part 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016) and Form 3B (form of citation for summary application under Chapters 3 and 4 of Part 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016) into the Summary Application Rules.

Paragraph 3 revokes existing Parts XXV and XXIX of Chapter 3 of the Summary Application Rules, while saving those Parts in their application to certain types of existing orders for 5 years after the commencement of section 40 of the 2016 Act.