
EXPLANATORY NOTE

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

This Act of Sederunt further amends the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 (“the 1999 Rules”) to make provision for miscellaneous procedure under the Antisocial Behaviour etc. (Scotland) Act 2004 (“the Act”).

Article 1 provides that this Act of Sederunt comes into force on 28th October 2004, except for certain rules in the new Part of the 1999 Rules inserted by this Act of Sederunt which are brought into force at subsequent dates. These dates are set at the commencement dates of sections of the Act to which the individual rules relate. The commencement provisions of the Act are contained in [S.S.I. 2004/420 \(C. 31\)](#).

Article 2 inserts a new Part XXVII into Chapter 3 of the 1999 Rules. The new Part provides rules for miscellaneous procedures under the Antisocial Behaviour etc. (Scotland) Act 2004.

Rule 3.27.2 provides that an application for the variation or revocation of an antisocial behaviour order (“ASBO”) is to be made by minute in the original process of the application for the ASBO. Where the person subject to the ASBO which it is sought to vary or revoke is a child, the application must be accompanied by a written statement of the Principal Reporter’s views on the application.

Rule 3.27.3 provides that an application for an interim ASBO is to be made by crave in the initial writ in which the ASBO is sought. Once an application for an interim ASBO has been craved, it must be moved by motion to that effect. The sheriff may not consider an application for the interim ASBO until the initial writ has been intimated to the person in respect of whom that application has been made and, where that person is a child, a written statement of the Principal Reporter’s views on the application has been lodged.

Rule 3.27.4 relates to the notification of the making or variation of an ASBO or the making of an interim ASBO to the person to whom it relates. Where that person is in court at the time that the ASBO is made or varied or the interim ASBO is made, the sheriff clerk may serve a copy of the relevant order by giving the copy to that person and obtaining a receipt or by sending a copy of the order to the person by delivery letter or registered post. Where that person is not present in court at that time, service of the copy of the relevant order is effected by sending a copy of that order to the person by recorded delivery letter or by registered post.

Section 13 of the Act allows a sheriff who makes an ASBO in respect of a child to make a parenting order in respect of a parent of that child. Rule 3.27.5 provides that where a sheriff is considering making such a parenting order, the applicant for the ASBO must intimate to any parent of the child in respect of whom the parenting order is being considered—

- (a) the fact that the court is considering making such a parenting order;
- (b) that if the parent wishes to proceed with the making of the parenting order he or she may attend or be represented at the hearing in which the sheriff considers the making of the order;
- (c) the details of the place, date and time of the hearing; and
- (d) a statement that if that parent fails to appear and is not represented at the hearing, then a parenting order may be made in his or her absence.

The applicant must further serve on any parent in respect of whom the parenting order is being considered a copy of the initial writ in which the ASBO relating to the child is sought. Any parent in

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respect of whom a parenting order is being considered may be sisted as a party to the action either on the motion of either party or of the sheriff's own motion.

Rule 3.27.6 provides that a closure notice served under section 27 of the Act is to be in the prescribed form and must state that it has been authorised by a senior police officer, specify the date, time and place of the hearing of the application for closure order and state that any relevant person who wishes to oppose the application should attend or be represented.

Rule 3.27.7 prescribes the form to be used for an application to the sheriff for a closure order under section 28 of the Act.

Rule 3.27.8 prescribes the form to be used for an application to the sheriff for an extension of a closure order under section 32 of the Act, and further provides that such an application is to be by minute in the original process and must be lodged not less than 21 days before the closure order is due to expire.

Rule 3.27.9 prescribes the form to be used for an application to the sheriff for revocation of the closure order under section 33 of the Act and further provides that such an application is to be by minute lodged in the original process.

Rule 3.27.10 prescribes the form to be used for an application to the sheriff for an order for access to the premises under section 34 of the Act and further provides that such an application is to be by minute lodged in the original process.

Rule 3.27.11 clarifies that applications under section 35, 63 or 64 of the Act are to be made by way of summary application; rule 3.27.12 clarifies that applications made under section 71, 74 or 97 of the Act are to be made by way of summary application. The distinction has been made to enable rules 3.27.11 and 3.27.12 to be commenced on separate dates in accordance with article 1(2).

Rule 3.27.13 clarifies that an application made under section 73(2) of the Act for the revocation or suspension of an order relating to rental income is to be made by minute lodged in the original process of the application for the order relating to rental income.

Rule 3.27.14 clarifies that an application made under section 76(1) of the Act for the revocation of a management control order is to be made by minute lodged in the original process of the application for the management control order.

Rule 3.27.15 clarifies that an application under section 105(1) of the Act for the revocation or variation of a parenting order is to be made by minute lodged in the original process of the application for a parenting order. Section 105(5) of the Act allows a sheriff to make an order specifying the sheriff of another sheriffdom as the court which may entertain applications for the review of the parenting order. Paragraph 2 of Rule 3.27.14 provides that where the sheriff makes an order under section 105(5) of the Act, the transmitting sheriff court shall transmit the original process relating to the parenting order to the receiving court within 4 days.

Rule 3.27.16 provides that where a sheriff is considering making a parenting order or a revocation or variation thereof, the child should be given an opportunity to express his or her views. This will include a parenting order made by the sheriff under section 13 of the Act (in relation to which no application for a parenting order will have been made) and a parenting order made, varied or revoked pursuant to an application made under section 102 or 105 of the Act.

Rule 3.27.17 provides that where a sheriff is considering making a parenting order or a revocation or variation thereof, and does not already have sufficient information about the child, the sheriff must intimate in the prescribed form to the local authority for the area in which the child resides the fact that a parenting order is being considered.

Rule 3.27.18 confirms that an application which is made under section 71A(2) of the Children (Scotland) Act 1995 by the Principal Reporter must be by summary application to the sheriff principal of the sheriffdom in which the principal office of the local authority is located.