

**2004 No. 455**

**SHERIFF COURT**

**Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (Antisocial Behaviour etc. (Scotland) Act 2004) 2004**

*Made* - - - - *21st October 2004*

*Coming into force in accordance with article 1(1)(b) and (2)*

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(a), section 27(5)(e) of the Antisocial Behaviour etc. (Scotland) Act 2004(b), and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the said Act of 1971, do hereby enact and declare:

**Citation and commencement**

**1.**—(1) This Act of Sederunt—

- (a) may be cited as the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (Antisocial Behaviour etc. (Scotland) Act 2004) 2004;
- (b) shall, subject to the provisions of article 1(2), come into force on 28th October 2004; and
- (c) shall be inserted in the Books of Sederunt.

(2) In Part XXVII of Chapter 3 of the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc.) Rules 1999(c) which is inserted by article 2(4)—

- (a) Rule 3.27.18 shall come into force on 31st January 2005;
- (b) Rules 3.27.5 and 3.27.15 to 3.27.17 shall come into force on 4th April 2005; and
- (c) Rules 3.27.12 to 3.27.14 shall come into force on 15th November 2005.

**Amendment, revocation and saving of the Summary Application Rules**

**2.**—(1) In the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999, Chapter 3 (rules on applications under specific statutes) is amended in accordance with the following paragraphs.

(2) Part XXII (Crime and Disorder Act 1998)(d) is hereby revoked.

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(a) 1971 c.58. Section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c.32), section 2(4), the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2001 (asp 4), schedule 5, paragraph 13 and the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43 and was extended by the Child Support Act 1991 (c.48), sections 39(2) and 49.

(b) 2004 asp 8.

(c) S.I. 1999/929. Amended by S.S.I. 2000/148 and 387, 2001/142, 2002/7, 129, 130, 146 and 563, 2003/26, 27, 98, 261, 319, 346 and 556 and 2004/197, 222 and 334.

(d) Part XXII was inserted by S.S.I. 2003/319.

(3) Notwithstanding the revocation of Part XXII by article 2(2), the provisions of Part XXII shall continue in force in relation to applications for an antisocial behaviour order under section 19(3) of the Crime and Disorder Act 1998(a) commenced before the date of that revocation.

(4) After Part XXVI (Protection of Children (Scotland) Act 2003)(b) insert–

## “PART XXVII

### ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) ACT 2004

#### **Interpretation**

**3.27.1.**—(1) In this Part–

“the Act” means the Antisocial Behaviour etc. (Scotland) Act 2004;

“ASBO” means an antisocial behaviour order under section 4(1) of the Act;

“interim ASBO” means an interim ASBO under section 7(2) of the Act;

“parenting order” means a parenting order under section 13 or 102 of the Act; and

“the Principal Reporter” means the Principal Reporter appointed under section 127 of the Local Government etc. (Scotland) Act 1994(c).

(2) Any reference to a section shall, unless the context otherwise requires, be a reference to a section of the Act.

#### **Applications for variation or revocation of ASBOs to be made by minute in the original process**

**3.27.2.**—(1) An application under section 5 (variation and revocation of antisocial behaviour orders) shall be made by minute in the original process of the application for the ASBO in relation to which the variation or revocation is sought.

(2) Where the person subject to the ASBO is a child, a written statement containing the views of the Principal Reporter on the application referred to in rule 3.27.2(1) shall, where practicable, be lodged with that application.

#### **Application for an interim ASBO**

**3.27.3.**—(1) An application for an interim ASBO shall be made by crave in the initial writ in which an ASBO is sought.

(2) An application for an interim ASBO once craved shall be moved by motion to that effect.

(3) The sheriff shall not consider an application for an interim ASBO until after the initial writ has been intimated to the person in respect of whom that application is made and, where that person is a child, a written statement containing the views of the Principal Reporter on that application has been lodged.

#### **Notification of making etc. of ASBOs and interim ASBOs**

**3.27.4.**—(1) Where a person is present in court at the time an ASBO or interim ASBO is made or an ASBO to which that person is subject is varied, service of a copy of the order making the ASBO or interim ASBO or varying the ASBO, as the case may be, shall be made under section 8(5)(a) or (b) and may be effected by the sheriff clerk–

(a) giving such copy to and obtaining a receipt therefor from that person; or

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(a) 1998 c.37

(b) Part XXVI was inserted by S.S.I. 2004/334.

(c) 1994 c.39.

(b) sending such copy to that person by recorded delivery letter or registered post.

(2) Where a person is not present in court at the time an ASBO or interim ASBO is made or an ASBO to which that person is subject is varied, service of a copy of the order making the ASBO or interim ASBO or varying the ASBO, as the case may be, shall be made under section 8(5)(b) and shall be effected by such copy being sent to the person subject to the ASBO or interim ASBO by recorded delivery letter or registered post.

### **Parenting orders**

**3.27.5.**—(1) Where a sheriff is considering making a parenting order under section 13 (sheriff's power to make parenting order), the sheriff shall order the applicant for the ASBO to—

- (a) intimate to any parent in respect of whom the parenting order is being considered—
  - (i) that the court is considering making a parenting order in respect of that parent;
  - (ii) that if that parent wishes to oppose the making of such a parenting order, he or she may attend or be represented at the hearing at which the sheriff considers the making of the parenting order;
  - (iii) the place, date and time of the hearing set out in sub-paragraph (a)(ii) above; and
  - (iv) that if that parent fails to appear and is not represented at the hearing, a parenting order may be made in respect of the parent; and
- (b) serve on any parent in respect of whom the parenting order is being considered a copy of the initial writ in which the ASBO is sought.

(2) Any parent in respect of whom a parenting order under section 13 is being considered may be sisted as a party to the action on their own motion, on the motion of either party or by the sheriff of his own motion.

### **Closure notice**

**3.27.6.**—(1) A closure notice served under section 27 (service etc.) shall be in the form of Form 25 and shall (in addition to the requirements set out in section 27(5))—

- (a) state that it has been authorised by a senior police officer<sup>(a)</sup>;
- (b) specify the date, time and place of the hearing of the application for a closure order under section 28; and
- (c) state that any person living on or having control of, responsibility for or an interest in the premises to which the closure notice relates who wishes to oppose the application should attend or be represented.

(2) Certification of service of a copy of the closure notice to all persons identified in accordance with section 27(2)(b) shall be in the form of Form 26.

### **Application for closure orders**

**3.27.7.** An application to the sheriff for a closure order under section 28 shall be in the form of Form 27.

### **Application for extension of closure orders**

**3.27.8.** An application to the sheriff for an extension of a closure order under section 32 shall be by minute in the form of Form 28 lodged in the original process of the application for the closure order in relation to which the extension is sought and shall be lodged not less than 21 days before the closure order to which it relates is due to expire.

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<sup>(a)</sup> In section 19(1), for authorisations in relation to dispersals a senior police officer must be of or above the rank of superintendent.

### **Application for revocation of closure order**

**3.27.9.** An application to the sheriff for revocation of a closure order under section 33 shall be by minute in the form of Form 29 lodged in the original process of the application for the closure order in relation to which the revocation is sought.

### **Application for access to premises**

**3.27.10.** An application to the sheriff for an order for access to premises under section 34 shall be by minute in the form of Form 30 lodged in the original process of the application for the closure order in relation to which the access order is sought.

### **Applications by summary application**

**3.27.11.** An application under section 35 (Reimbursement of expenditure), 63 (Appeal against graffiti removal notice) or 64 (Appeal against notice under section 61(4)) shall be by summary application.

**3.27.12.** An application under section 71 (Failure to comply with notice: order as to rental income), 74 (Failure to comply with notice: management control order) or 97 (Appeals against notice under section 94) shall be by summary application.

### **Revocation and suspension of order as to rental income**

**3.27.13.** An application under section 73(2) for the revocation or suspension of an order relating to rental income shall be by minute lodged in the original process of the application for the order relating to rental income in relation to which the order for revocation or suspension is sought.

### **Revocation of management control order**

**3.27.14.** An application under section 76(1) for the revocation of a management control order shall be by minute lodged in the original process of the application for the management control order in relation to which the order for revocation is sought.

### **Review of parenting order**

**3.27.15.—(1)** An application under section 105(1) for revocation or variation of a parenting order shall be by minute lodged in the original process of the application for the parenting order in relation to which the order for revocation or variation is sought.

(2) Where the court that made a parenting order makes an order under section 105(5) that court shall within 4 days transmit the original process relating to the parenting order to the court specified in that order.

### **Procedural requirements relating to parenting orders**

**3.27.16.** Where the sheriff is considering making a parenting order, or a revocation or variation of a parenting order, and it is practicable, having regard to the age and maturity of the child to—

- (a) give the child an opportunity to indicate whether the child wishes to express views; and
- (b) if the child so wishes, give the child an opportunity to express those views,

the sheriff shall order intimation in the form of Form 31 to the child in respect of whom the order was or is proposed to be made.

**3.27.17.** Where the sheriff is considering making a parenting order or revoking or varying a parenting order and does not already have sufficient information about the child, the

sheriff shall order intimation in the form of Form 32 to the local authority for the area in which the child resides.

**Enforcement of local authorities' duties under section 71 of the Children (Scotland) Act 1995**

**3.27.18.** An application under section 71A(2) of the Children (Scotland) Act 1995 by the Principal Reporter shall be by summary application to the sheriff principal of the Sheriffdom in which the principal office of the local authority is situated.”.

(5) In Schedule 1 (Forms), after Form 24 insert Forms 25 to 32 as set out in the Schedule to this Act of Sederunt.

*Cullen of Whitekirk*  
Lord President  
I.P.D.

Edinburgh  
21st October 2004

## SCHEDULE

Article 2(5)

Rule 3.27.6(1)

### FORM 25

Antisocial Behaviour etc. (Scotland) Act 2004

Section 27

#### CLOSURE NOTICE

**1.** The service of this closure notice is authorised by a senior police officer under section 26(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 (“the Act”).

**2.** The premises to which this closure notice relates are: *(specify premises)*.

**3.** Access to those premises by any person other than—

- (a) a person who habitually resides in the premises; or
- (b) the owner of the premises,

is prohibited.

**4.** Failure to comply with this notice is an offence which may result in a fine of up to £2,500 or imprisonment for a term of up to 3 months (or both). The penalties may be higher for repeated failure to comply with this (or any other) closure notice.

**5.** An application for the closure of these premises will be made under section 28 of the Act and will be considered at *(insert place including Room No. if appropriate)* on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ am/pm.

**6.** On such an application as set out in paragraph 5 being made, the sheriff may make a closure order under section 29 of the Act in respect of these premises.

**7.** The effect of the Closure Order in respect of these premises would be to close the premises to all persons (other than any person expressly authorised access by the sheriff in terms of section 29(3) of the Act) for such period not exceeding 3 months as is specified in the order. Measures may be taken to ensure that the premises are securely closed against entry by any person.

**8.** If you live on or have control of, responsibility for or an interest in the premises to which this closure notice relates and wish to oppose the application for a closure order, you should attend or be represented at the hearing mentioned in paragraph 5 of this notice.

**9.** If you would like further information or advice about housing or legal matters you can contact—

*(specify at least two persons or organisations (including name and means of contacting) based in the locality of the premises who or which will be able to provide advice about housing and legal matters)*. You also have a legal right to advice from your local authority should you be threatened with possible homelessness.

**CERTIFICATION OF SERVICE**

I (*insert designation, including address and rank, of police officer*) certify that a copy of the closure notice which was authorised by (*insert designation of senior police officer*) on (*insert date on which closure notice was authorised*) in respect of (*insert details of the premises to which closure notice relates*) was served on: (*insert name and address of each person to whom a copy of the notice was given, including date*)

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.....  
.....  
.....  
.....

by (*insert designation, including address and rank, of police officer who served the copy or copies of the closure notice and, if more than one, indicate which police officer served a copy of the notice on which of the persons listed above*).

.....

Signed

(*insert designation, including rank, of police officer*)

Sheriff Court .....

..... 20.....

(Court Ref No.)

**PART A**

APPLICATION FOR CLOSURE ORDER IN RESPECT OF PREMISES AT:

.....  
.....  
..... (“the Premises”)

**PART B**

1. This application is made [by/on behalf of] (*delete as appropriate*) (*insert name and rank of senior police officer*) of (*insert details of police force*).

2. Service of a closure notice on the Premises was authorised by (*insert details of senior police officer*) on the            day of            . A copy of [the authorisation/written confirmation of such authorisation] (*delete as appropriate*) is attached.

3. A copy of the closure notice was, on the            day of            ,–

(a) fixed to:

(*insert details of all locations in, or used as part of, the Premises, to which a copy of the notice was fixed*) .....  
.....  
.....  
.....  
.....; and

(b) given to:

(*insert name and address of each person to whom a copy of the notice was given*) .....  
.....  
.....  
.....  
.....

4. Certification in the prescribed form of service of the closure notice to the persons described at paragraph 3(b) above is attached.





## FORM OF INTERLOCUTOR

Sheriff Court .....

..... 20.....

(Court Ref No.)

The sheriff having heard (*insert details of parties who attended the hearing*) and having considered the application [, being satisfied that the conditions mentioned in section 30(2) of the Antisocial Behaviour etc. (Scotland) Act 2004 are met] (*delete as appropriate*) and having regard to the matters mentioned in section 30(3) of the Antisocial Behaviour etc. (Scotland) Act 2004 (“the Act”),

- \*1. makes an order under section 29(1) of the Act that the premises at (*insert details of premises*) are closed to all persons for a period of (*insert period*).
- \*2. directs intimation of this interlocutor to (*insert details of all known interested persons*) and by posting a copy thereof at prominent places on the premises at (*indicate where copies have been posted*).
- \*3. refuses to make a closure order in respect of the premises at (*insert details of premises*).
- \*4. postpones the determination of the application until (*insert date*) at (*insert time*) within (*insert location*).

\*delete as appropriate

..... Signed

Sheriff

Minute

Application for extension of closure order

Sheriff Court .....

..... 20.....

(Court Ref No.)

**PART A**

PREMISES IN RESPECT OF WHICH CLOSURE ORDER HAS BEEN MADE:

.....  
.....  
..... (“the Premises”)

**PART B**

- 1. This application is made [by/on behalf of] (*delete as appropriate*) (*insert name and rank of senior police officer*) of (*insert details of police force*).
- 2. A copy of the closure order made in respect of the Premises is attached. The closure order has effect until (*enter date*).
- 3. The applicant believes that it is necessary to extend the period for which the closure order has effect for the purpose of preventing relevant harm, on the following grounds: (*specify reasons for extension*).
- 4. (*Insert details of local authority*) has been consulted about the applicant’s intention to make this application.

**PART C**

- 5. The applicant asks the court to–
  - (c) fix a hearing;
  - (d) order the applicant to intimate this application and the date of the hearing to such persons as the sheriff considers appropriate; and
  - (e) extend the closure order in respect of the Premises for a period of [months/days] (*delete as appropriate*) or for such period not exceeding 6 months as the court may consider appropriate.

..... Signed

Senior Police Officer for [Police Force] (Applicant)  
or [X.Y.] Solicitor for Senior Police Officer  
(*add designation and business address*)

## FORM OF INTERLOCUTOR

Sheriff Court ..... 20.....  
(Court Ref No.)

The sheriff having considered this minute orders the applicant to intimate this application and interlocutor to....., assigns..... at ..... within ..... as a hearing and directs any person wishing to oppose the granting of the application to appear or be represented at the hearing to show cause why the application should not be granted.

..... Signed  
Sheriff

## FORM OF INTERLOCUTOR

Sheriff Court ..... 20.....  
(Court Ref No.)

The sheriff having heard (*insert details of parties who attended the hearing*) [and] having considered this minute [and being satisfied that the condition mentioned in section 32(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 is met] (*delete as appropriate*),

- \*1. makes an order extending the closure order made under section 29(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 in respect of the premises at (*insert details of premises*) for a period of (*insert period*).
- \*2. directs intimation of this interlocutor to (*insert details of persons to whom sheriff considers it to be appropriate to intimate*) and by posting a copy thereof at prominent places on the premises at (*indicate where copies have been posted*).
- \*3. refuses to make an order extending the closure order in respect of the premises at (*insert details of premises*).
- \*4. postpones the determination of the application until (*insert date*) at (*insert time*) within (*insert location*).

\*delete as appropriate

..... Signed  
Sheriff

Minute

Application for revocation of closure order

Sheriff Court .....

..... 20.....

(Court Ref No.)

**PART A**

PREMISES IN RESPECT OF WHICH CLOSURE ORDER HAS BEEN MADE:

.....  
.....  
..... (“the Premises”)

The applicant is (*insert name and address of applicant*) who is:

- \*1. a senior police officer of the police force for the area within which the Premises (or part thereof) are situated.
  - \*2. the local authority for the area within which the Premises or part thereof are situated.
  - \*3. a person on whom a copy of the closure notice relating to the Premises in respect of which the closure order has effect was served under section 27(2)(b) or (3) of the Antisocial Behaviour etc. (Scotland) Act 2004.
  - \*4. a person who has an interest in these premises but on whom the closure notice was not served.
- \*delete as appropriate.

**PART B**

- 1. A copy of the closure order made in respect of the Premises is attached.
- 2. The applicant believes that a closure order in respect of the Premises is no longer necessary to prevent the occurrence of relevant harm for the following reasons (*specify grounds for application for revocation*).

**PART C**

- 3. The applicant asks the court to:
  - (a) fix a hearing;
  - (b) order the applicant to intimate this application and the date of the hearing to such persons as the sheriff considers appropriate and, where the applicant is not a senior police officer, to such senior police officer as the sheriff considers appropriate; and

(c) order the revocation of the closure order.

..... Signed  
Applicant (*include full designation*)  
or [X.Y.] Solicitor for Applicant (*include full designation and business address*)

### FORM OF INTERLOCUTOR

Sheriff Court ..... 20.....  
(Court Ref No.)

The sheriff having considered this minute orders the applicant to intimate this application and interlocutor to....., assigns.....at ..... within ..... as a hearing and directs any person wishing to oppose the granting of the application to appear or be represented at the hearing to show cause why the application should not be granted.

..... Signed  
Sheriff

### FORM OF INTERLOCUTOR

Sheriff Court ..... 20.....  
(Court Ref No.)

The sheriff having heard (*insert details of parties who attended the hearing*) [and] having considered this minute [and being satisfied that a closure order is no longer necessary to prevent the occurrence of relevant harm] (*delete as appropriate*),

\*1. makes an order revoking the closure order made under section 29(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 in respect of the premises at *(insert details of the premises)*.

\*2. directs intimation of this interlocutor to *(insert details of persons to whom sheriff considers it to be appropriate to intimate)*.

\*3. refuses to make an order revoking the closure order in respect of the premises at *(insert details of the premises)*.

\*4. postpones the determination of the application until *(insert date)* at *(insert time)* within *(insert location)*.

\*delete as appropriate

..... Signed  
Sheriff

Minute

Application for access to premises in respect of which a closure order is in force

Sheriff Court.....

..... 20.....

(Court Ref No.)

**PART A**

PREMISES IN RESPECT OF WHICH CLOSURE ORDER HAS BEEN MADE:

.....  
.....  
..... (“the Premises”)

PREMISES IN RESPECT OF WHICH APPLICATION FOR ACCESS IS BEING MADE:

.....  
.....  
.....

**PART B**

- 1. A copy of the closure order made in respect of the Premises is attached. The closure order has effect until (*insert date*).
- 2. The applicant (*insert details of applicant*) [owns/occupies] (*delete as appropriate*) the following [part of] (*delete as appropriate*) building or structure in which the Premises are situated and in respect of which the closure order does not have effect.

**PART C**

- 3. The applicant asks the court to:
  - (a) fix a hearing;
  - (b) order the applicant to intimate this application and the date of the hearing to such persons as the sheriff considers appropriate and, where the applicant is not a senior police officer, to such senior police officer as the sheriff considers appropriate; and



(c) make an order allowing access (*detail access provisions requested*).

..... Signed  
Applicant (*include full designation*)  
or [X.Y.] Solicitor for Applicant (*include full designation and business address*)

### FORM OF INTERLOCUTOR

Sheriff Court ..... 20.....  
(Court Ref No.)

The sheriff having considered this minute orders the applicant to intimate this application and interlocutor to....., assigns..... at ..... within ..... as a hearing and directs any person wishing to oppose the granting of the application to appear or be represented at the hearing to show cause why the application should not be granted.

..... Signed  
Sheriff

### FORM OF INTERLOCUTOR

Sheriff Court ..... 20.....  
(Court Ref No.)

The sheriff having heard (*insert details of parties who attended the hearing*) and having considered this minute,

\*1. makes an order an order allowing (*insert name and address*)

.....  
.....  
.....

access to the following part or parts of the premises at *(insert details of premises)* in relation to which a closure order has been made under section 29(1) of the Antisocial Behaviour etc. (Scotland) Act 2004: *(insert details of parts of premises to which access order is to apply)*

.....  
.....  
.....

- \*2. directs intimation of this interlocutor to *(insert details of all known interested persons to whom the sheriff considers it to be appropriate to intimate)*.
- \*3. refuses to make an access order in respect of the premises at *(insert details of premises)*.
- \*4. postpones the determination of the application until *(insert date)* at *(insert time)* within *(insert location)*.

\*delete as appropriate

..... Signed  
Sheriff

Intimation that court may make or revoke or vary a parenting order

Sheriff Court .....

..... 20.....

(Court Ref No.)

**PART A**

**This part must be completed by the applicant’s solicitor in language a child is capable of understanding**

To (1)

The Sheriff (the person who has to decide about the parenting order) has been asked by (2) to decide:-

- (a) (3) and (4);
- (b) (5);
- (c) (6).

If you want to tell the Sheriff what you think about the things (2) has asked the Sheriff to decide about your future you should complete Part B of this form and send it to the Sheriff Clerk at (7) by (8) . An envelope which does not need a postage stamp is enclosed for you to use to return the form.

**IF YOU DO NOT UNDERSTAND THIS FORM OR IF YOU WANT HELP TO COMPLETE IT you may get free help from a SOLICITOR or contact the SCOTTISH CHILD LAW CENTRE ON the FREE ADVICE TELEPHONE LINE ON 0800 317 500.**

If you return the form it will be given to the Sheriff. The Sheriff may wish to speak with you and may ask you to come and see him or her.

NOTES FOR COMPLETION

(1) Insert name and address of child.	(2) Insert description of party making the application to the court.
(3) Insert appropriate wording for parenting order sought.	(4) Insert appropriate wording, if relevant, for Antisocial Behaviour Order.
(5) Insert appropriate wording for contact.	(6) Insert appropriate wording for any other order sought or determinations to be made by sheriff.
(7) Insert address of sheriff clerk.	(8) Insert the date occurring 21 days after the date on which intimation is given.
(9) Insert court reference number.	(10) Insert name and address of parties to the action.

**PART B**

**IF YOU WISH THE SHERIFF TO KNOW YOUR VIEWS ABOUT THE PARENTING ORDER YOU SHOULD COMPLETE THIS PART OF THE FORM**

To the Sheriff Clerk, (7)

Court Ref. No. (9)

(10) .....

**QUESTION (1): DO YOU WISH THE SHERIFF TO KNOW WHAT YOUR VIEWS ARE ABOUT THE PARENTING ORDER?**

(PLEASE TICK BOX)

YES	<input type="checkbox"/>
NO	<input type="checkbox"/>

If you have ticked YES please also answer Question (2) *or* (3)

**QUESTION (2): WOULD YOU LIKE A FRIEND, RELATIVE OR OTHER PERSON TO TELL THE SHERIFF YOUR VIEWS ABOUT THE PARENTING ORDER?**

(PLEASE TICK BOX)

YES	<input type="checkbox"/>
NO	<input type="checkbox"/>

If you have ticked YES please write the name and address of the person you wish to tell the Sheriff your views in Box (A) below. You should also tell that person what your views are about the parenting order.

BOX A:	(NAME).....				
	(ADDRESS) .....				
	.....				
	.....				
	Is this person–	A friend?	<input type="checkbox"/>	A relative?	<input type="checkbox"/>
		A teacher?	<input type="checkbox"/>	Other?	<input type="checkbox"/>

OR

**QUESTION (3): WOULD YOU LIKE TO WRITE TO THE SHERIFF AND TELL HIM WHAT YOUR VIEWS ARE ABOUT THE PARENTING ORDER?**

(PLEASE TICK BOX)

YES	<input type="checkbox"/>
NO	<input type="checkbox"/>

If you decide that you wish to write to the Sheriff you can write what your views are about the parenting order in Box (B) below or on a separate piece of paper. If you decide to write your views on a separate piece of paper you should send it along with this form to the Sheriff Clerk in the envelope provided.

BOX B:	WHAT I HAVE TO SAY ABOUT THE PARENTING ORDER:-

**NAME:** .....

**ADDRESS:** .....

**DATE:** .....

Form of notice to local authority requesting a report in respect of a child

Sheriff Court .....

..... 20.....

(Court Ref No.)

To (*insert name and address*)

**1. YOU ARE GIVEN NOTICE** that in an action in the Sheriff Court at (*insert address*) an application for [the variation/revocation of] (*delete as appropriate*) a parenting order is being considered in respect of a parent of the child (*insert name of child*). A copy of the application is enclosed.

**2.** You are required to submit to the court a report on all the circumstances of the child, including but not limited to:-

- (a) the current or proposed arrangements for the case and upbringing of the child;
- (b) information about the family circumstances of the parent; and
- (c) the likely effect of a parenting order on the family circumstances of the parent and the child.

**3.** This report should be sent to the Sheriff Court at ..... on or before ..... (*insert date*).

Date (*insert date*)

.....

Signed:

Applicant (*include full designation*)

or [X.Y.] Solicitor for Applicant (*include full designation and business address*)

or Sheriff Clerk

## 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 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.









**2004 No. 455**

**SHERIFF COURT**

Act of Sederunt (Summary Applications, Statutory Applications  
and Appeals etc. Rules) Amendment (Antisocial Behaviour etc.  
(Scotland) Act 2004) 2004

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