
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 335

SHERIFF COURT

Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (Adult Support and Protection (Scotland) Act 2007) (No.2) 2008

Made - - - - *3rd October 2008*
Coming into force - - *29th October 2008*

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(1), sections 21(3), 25(2)(a), 26(2) and 27(1) and (2)(2) of the Adult Support and Protection (Scotland) Act 2007(3), 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 may be cited as the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (Adult Support and Protection (Scotland) Act 2007) (No. 2) 2008 and shall come into force on 29th October 2008.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

Amendment of the Summary Application Rules

2.—(1) The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(4) is amended in accordance with subparagraphs (2) and (3).

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- (1) 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 2000 (asp 4), schedule 5, paragraph 13, the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43 and the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2) and was extended by the Child Support Act 1991 (c. 48), sections 39(2) and 49 and by section 33 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 33.
- (2) Certain information may be prescribed under sections 21(3), 25(2)(a), 26(2) and 27(1) and (2). By virtue of section 53 “prescribed” means prescribed by rules of court.
- (3) 2007 asp 10.
- (4) S.I.1999/929, amended by S.S.I. 2000/18 and 387, 2001/142, 2002/7, 129, 130, 146 and 563, 2003/26, 27, 98, 261, 319, 346 and 556, 2004/197, 222, 334 and 455, 2005/61, 473, 504 and 648, 2006/198, 410, 437 and 509, 2007/6, 233, 339, 440 and 463 and 2008/9, 41, 111 and 223.

(2) After Part XXXIV(5) insert—

“PART XXXV

ADULT SUPPORT AND PROTECTION (SCOTLAND) ACT 2007

Interpretation

3.35.1. In this Part—

“the Act” means the Adult Support and Protection (Scotland) Act 2007;

“the adult at risk” has the same meaning as in section 3 of the Act.

Variation or recall of removal order

3.35.2.—(1) An application under section 17 of the Act (variation or recall of removal order) for variation or recall of a removal order shall be made by minute in the process relating to the removal order.

(2) A minute under paragraph (1) shall be made in accordance with and regulated by Chapter 14 of the Ordinary Cause Rules.

Applications – banning orders and temporary banning orders

3.35.3.—(1) Where in an application under subsection (1) of section 19 of the Act (banning orders) an order is sought under subsection (2)(a) or (b) of that section there shall, where appropriate and unless the sheriff otherwise directs, be lodged a plan which clearly identifies the area specified in the application.

(2) An application under section 21 of the Act (temporary banning orders) shall—

(a) be made by crave in the application for the banning order concerned; and

(b) once craved, be moved by motion to that effect.

(3) Where a temporary banning order is granted, the related application for a banning order shall be determined within 6 months of the date of the lodging of that application.

(4) An application under section 24(1)(a) of the Act (variation or recall of banning order) shall be made by minute in the process relating to the banning order.

(5) An application under section 24(1)(b) of the Act (variation or recall of temporary banning order) shall be moved by motion to that effect in the process relating to the application for the banning order concerned.

(6) A minute under paragraph (4) shall be made in accordance with and regulated by Chapter 14 of the Ordinary Cause Rules.

Attachment of power of arrest

3.35.4.—(1) The following documents shall be served under section 25(2) of the Act (powers of arrest) along with a power of arrest:—

(a) a copy of the application for the order;

(b) a copy of the interlocutor granting the order and the power of arrest; and

(c) where the application to attach the power of arrest was made after the order was granted, a copy of the certificate of service of the order.

(2) The following documents shall be delivered to the chief constable in accordance with section 27(1) of the Act (notification to police):—

- (a) a copy of the application for the order;
- (b) a copy of the interlocutor granting the order;
- (c) a copy of the certificate of service of the order; and
- (d) where the application to attach the power of arrest was made after the order was granted—
 - (i) where applicable, a copy of the application for the power of arrest;
 - (ii) a copy of the interlocutor granting it; and
 - (iii) a copy of the certificate of service of the power of arrest and the documents that required to be served along with it in accordance with section 25(2).

(3) Delivery under section 27(1) and (2) of the Act may be carried out by the applicant's solicitor, a sheriff officer or such other person as may be authorised by the sheriff.

Notification to adult at risk

3.35.5. Where section 26 of the Act (notification to adult at risk etc.) applies, the document referred to in subsection (3) of that section shall be delivered to the adult at risk by the applicant's solicitor, a sheriff officer or such other person as may be authorised by the sheriff.

Certificate of delivery of documents

3.35.6. Where a person is in any circumstances required to comply with section 25(2) or 26(2) of the Act he shall, after such compliance, lodge in process a certificate of delivery in Form 34.

Warrants for entry

3.35.7.—(1) An application for a warrant for entry under section 38(2) of the Act (criteria for granting warrants of entry under section 7) shall be in Form 35.

(2) The application may be granted without a hearing.

Form of appeal to the sheriff principal

3.35.8.—(1) An appeal under section 51(2) of the Act (appeals) against an interlocutor of the sheriff granting, or refusing to grant, a banning order shall be lodged within 14 days after the date of the interlocutor concerned.

(2) An application for leave to appeal against an interlocutor of the sheriff granting, or refusing to grant, a temporary banning order under section 51(2) of the Act shall be made within 7 days after the date of the interlocutor concerned.

(3) An appeal against an interlocutor referred to in paragraph (2) shall be lodged within 7 days after the date of the interlocutor granting leave to appeal.

Privacy of any hearing

3.35.9. The sheriff may, where he considers it appropriate in all the circumstances, appoint that the hearing of an application or other proceedings under this Part shall take place in private.”

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

(3) After Form 33 in Schedule 1, insert Forms 34 and 35 set out in the Schedule to this Act of Sederunt.

Edinburgh
3rd October 2008

A. C. Hamilton
Lord President I.P.D.

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

SCHEDULE

Paragraph 2(3)

FORM 34

Form of certificate of delivery of documents to chief constable

(Insert place and date) I, *(insert name and designation)*, hereby certify that upon the day of *(date)* I duly delivered to *(insert name and address)*, Chief Constable of *(insert name of constabulary)*, *(insert details of the document(s) delivered)*. This I did by *(state method of delivery)*.

Signed

(add designation and business address)

FORM 35

FORM OF APPLICATION FOR WARRANT FOR ENTRY UNDER SECTION 38(2) OF THE ADULT SUPPORT AND PROTECTION (SCOTLAND) ACT 2007

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

[A.B.] *(design and state capacity in which the application is made)*, Applicant

The applicant craves the court to grant a warrant for entry in terms of sections 37 and 38(2) of the Adult Support and Protection (Scotland) Act 2007 to *(state address of specified place to which entry is sought)*.

STATEMENTS OF FACT

(State in numbered paragraphs the facts on which the application is made, with reference to the criteria in section 38(2) of the 2007 Act, and include:

1. The designation of the adult at risk concerned.
2. The adult's place of habitual residence.
3. The address to which entry is sought.

(insert time and place)

(signed)

[A.B.] Applicant *or* [B.C.]
Solicitor for applicant]

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EXPLANATORY NOTE

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

This Act of Sederunt amends the Summary Application Rules (“the Rules”) in consequence of the [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#).

Paragraph 2(2) inserts a new Part XXXV into Chapter 3 of the Rules.

Part XXXV sets out rules providing for forms of application for a warrant for entry and for an order for variation or recall of a removal order. It also makes rules relating to banning orders and temporary banning orders, including notification to the adult, the service of an attached power of arrest on the subject of the order and its delivery to the chief constable, along with certain prescribed documents. This Part also makes provision for time limits for an appeal to the sheriff principal and for any hearing to take place in private where the sheriff considers it appropriate.