
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 424

**Act of Sederunt (Sheriff Court Rules
Amendment) (Miscellaneous) 2015**

Citation, commencement etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Rules Amendment) (Miscellaneous) 2015.

(2) It comes into force on 1st February 2016.

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

Amendment of the Ordinary Cause Rules 1993

2.—(1) The Ordinary Cause Rules 1993⁽¹⁾ are amended in accordance with this paragraph.

(2) For rule 42.2(1) (transfer of proceedings to the Tribunal)⁽²⁾, substitute—

“(1) Where proceedings (or any part of them) relate to an infringement issue, within the meaning of section 16(6) of the Enterprise Act 2002, the sheriff may make an order transferring those proceedings (or that part of them) to the Tribunal—

(a) of the sheriff’s own accord, or

(b) on the motion of a party.

(1A) Where the sheriff orders that such proceedings (or any part of them) are transferred to the Tribunal, the sheriff may make such orders as the sheriff thinks fit to allow the Tribunal to determine the issue.”.

Amendment of the Act of Sederunt (Child Care and Maintenance Rules) 1997

3.—(1) The Act of Sederunt (Child Care and Maintenance Rules) 1997⁽³⁾ is amended in accordance with this paragraph.

(2) In rule 3.1 (interpretation)⁽⁴⁾—

(a) in paragraph (1), after the definition of “2011 Act”, insert—

““CPSA 1995” means the Criminal Procedure (Scotland) Act 1995 and (except where the context otherwise requires) references to terms defined in that Act have the same meaning here as given there;”;

(b) in paragraph (1), in the definition of “relevant person” for subparagraph (bb), substitute—

“(bb) a person deemed a relevant person by virtue of section 81(3), 160(4)(b) or 164(6) of the 2011 Act;”;

(1) The Ordinary Cause Rules 1993 are in Schedule 1 to the Sheriff Courts (Scotland) Act 1907 (c.51). Schedule 1 was substituted by S.I. 1993/1956 and was last amended by S.S.I. 2015/419.

(2) Rule 42.2 was inserted by S.S.I. 2004/350.

(3) S.I. 1997/291, last amended by S.S.I. 2015/419.

(4) Rule 3.1 was last amended by S.S.I. 2013/172.

- (c) in paragraph (3), for “the 1995 Act or the 2011 Act.” substitute “the 1995 Act, the 2011 Act or section 44A of the CPSA 1995.”
- (3) In rule 3.2 (application of rules 3.3 to 3.5A)(5) after paragraph (2), insert—
 “(3) Rules 3.3, 3.3A, 3.5 and 3.5A apply in respect of appeals to the sheriff under section 44A of the CPSA 1995.”
- (4) In rule 3.3A (child to attend hearing)(6) for paragraph (1), substitute—
 “(1) This rule applies where an application is made to the sheriff under—
 (a) the 2011 Act, other than where section 103 or 112 of the 2011 Act applies; or
 (b) section 44A of the CPSA 1995.”
- (5) In rule 3.5 (procedure for obtaining a child’s view)(7) for paragraph (1), substitute—
 “(1) Subject to section 27(3) of the 2011 Act and regulation 11A(5) and (6) of the Secure Accommodation (Scotland) Regulations 2013, the sheriff—
 (a) may order such steps to be taken as he considers appropriate to ascertain the views of that child; and
 (b) shall not come to a decision about a matter relating to a child within the meaning of section 27 of the 2011 Act or in respect of an appeal under section 44A of the CPSA 1995 unless an opportunity has been given for the views of that child to be obtained or heard.”
- (6) In rule 3.13(2) (period of notice)(8) after subparagraph (a), insert—
 “(aa) an appeal under section 44A of the CPSA 1995;”
- (7) After Part VIIIA (applications for review by local authority)(9), insert—

“PART VIIIB

PROCEDURE IN APPEALS TO THE SHERIFF UNDER SECTION 44A OF THE CPSA 1995

Form of appeal

- 3.58C.**—(1) An appeal to the sheriff under section 44A of the CPSA 1995 must be—
 (a) made in Form 64C;
 (b) accompanied by a copy of the decision complained of and any document relevant to it that was taken into account by the local authority when making that decision;
 (c) lodged with the sheriff clerk of the sheriff court district in which the child is habitually resident or, on cause shown, such other court as the sheriff may direct.
- (2) The appeal must be signed by the appellant or the appellant’s representative.

Appointment and intimation of appeal hearing

- 3.58D.**—(1) On the lodging of an appeal, the sheriff clerk must—
 (a) assign a date for the hearing;

(5) Rule 3.2 was last amended by [S.S.I. 2013/172](#).
 (6) Rule 3.3A was substituted by [S.S.I. 2013/172](#).
 (7) Rule 3.5 was last amended by [S.S.I. 2013/172](#).
 (8) Rule 3.13 was last amended by [S.S.I. 2013/172](#).
 (9) Part VIIIA was inserted by [S.S.I. 2013/172](#).

- (b) intimate the date of the hearing to the appellant or the appellant's representative;
 - (c) intimate the date of the hearing, together with a copy of the appeal, to the persons specified in paragraph (2).
- (2) Those persons are—
- (a) the child, unless the child is the appellant;
 - (b) the chief social work officer of the appropriate local authority;
 - (c) any relevant person, other than a relevant person who is the appellant;
 - (d) any other person that the sheriff considers necessary.
- (3) The sheriff clerk must endorse a certificate of execution on the appeal.
- (4) Where an appeal is intimated to a child, that intimation must be in Form 64D.
- (5) The sheriff may dispense with intimation to a child if the sheriff considers it appropriate to do so.

Procedure at hearing of appeal

3.58E.—(1) At any appeal the sheriff may hear evidence where he or she considers it appropriate to do so.

(2) The sheriff must hear the appellant or the appellant's representative and any party to the appeal before examining—

- (a) the chief social work officer;
- (b) the authors or compilers of any reports or statements;
- (c) the Principal Reporter.

(3) Where the nature of the appeal or of any evidence is such that the sheriff is satisfied that it is in the interests of the child not to be present at any stage of the appeal, the sheriff may exclude the child from the hearing during that stage.

(4) Where the sheriff excludes a child, any relevant person or representative of the child will be permitted to remain during the child's absence.

(5) Where the sheriff is satisfied that—

- (a) it is necessary in order to obtain the views of the child in relation to the hearing; or
- (b) the presence of the person or persons in question is causing, or is likely to cause, significant distress to the child,

the sheriff may exclude the persons mentioned in paragraph (6) from the hearing for so long as the sheriff considers it necessary in the interests of the child.

(6) Those persons are—

- (a) a relevant person;
- (b) any representative of a relevant person.

(7) After the exclusion of any person under paragraph (5), the sheriff must—

- (a) explain the substance of what has taken place in that person's absence;
- (b) give that person an opportunity to respond to any evidence given by the child by leading evidence or otherwise.

Adjournment or continuation of appeals

3.58F.—(1) The sheriff may adjourn or continue the hearing of the appeal on the motion of any party or on the sheriff's own motion.

(2) Where the sheriff adjourns or continues a hearing, the sheriff may make any order that is necessary to secure the expeditious determination of the appeal.

Decision of sheriff in appeals

3.58G.—(1) The sheriff must give his or her decision orally, either at the conclusion of the appeal or on such day as the sheriff may appoint.

(2) The sheriff may issue a note of the reasons for his or her decision.

(3) Any note in terms of paragraph (2) must be issued at the time the sheriff’s decision is given or within 7 days after the date of the decision.

(4) The sheriff clerk must immediately send to the persons mentioned in paragraph (5)—

- (a) a copy of the interlocutor containing the sheriff’s decision;
- (b) where a note of reasons has been issued, a copy of that note.

(5) Those persons are—

- (a) the appellant;
- (b) the child, unless the child is the appellant;
- (c) any relevant person, other than a relevant person who is the appellant;
- (d) any other person that the sheriff may direct.

(6) The sheriff clerk must return to the Principal Reporter any documents that the Principal Reporter may have lodged with the sheriff clerk.”.

(8) For rule 3.66 (extent of application of Part XI)(10), substitute—

“Extent of application of this Part

3.66. This Part of Chapter 3 shall apply to proceedings where—

- (a) an application is made to the sheriff under section 93(2)(a), 94(2)(a) or 110 of the 2011 Act;
- (b) an appeal is made to the sheriff under Part 15 of the 2011 Act; or
- (c) an appeal is made under section 44A of the CPSA 1995.”.

(9) The heading of Chapter 3 becomes “Children’s hearings, secure accommodation, etc.: application to the sheriff”(11).

(10) In Schedule 1—

- (a) after Form 64B (Form of application under section 166(2) of the Children’s Hearings (Scotland) Act 2011: Form of warrant to cite)(12), insert Forms 64C and 64D set out in the Schedule to this Act of Sederunt;
- (b) in Form 75 (Form of child witness notice)(13), in paragraph 1 after “[an appeal under Part 15 of the 2011 Act]”, insert “or [an appeal under section 44A of the Criminal Procedure (Scotland) Act 1995]”;
- (c) in Form 76A (Form of vulnerable witness application)(14), in paragraph 1 after “[an appeal under Part 15 of the 2011 Act]”, insert “or [an appeal under section 44A of the Criminal Procedure (Scotland) Act 1995]”;

(10) Rule 3.66 was last amended by [S.S.I. 2013/172](#).

(11) The heading of Chapter 3 was amended by [S.S.I. 2013/172](#).

(12) Form 64B was substituted by [S.S.I. 2013/172](#).

(13) Form 75 was last amended by [S.S.I. 2015/283](#).

(14) Form 76A was last amended by [S.S.I. 2013/172](#).

- (d) in Form 77 (Form of application for review of arrangements for vulnerable witness)(15), in paragraph 1 after “[an appeal under Part 15 of the 2011 Act]”, insert “*or* [an appeal under section 44A of the Criminal Procedure (Scotland) Act 1995]”.

Edinburgh
11th December 2015

CJM SUTHERLAND
Lord Justice Clerk
I.P.D.