

2015 No. 85

COURT OF SESSION

SHERIFF COURT

**Act of Sederunt (Rules of the Court of Session and Sheriff Court
Rules Amendment No. 3) (Reporting Restrictions) 2015**

Made - - - - - *26th February 2015*

Laid before the Scottish Parliament *2nd March 2015*

Coming into force - - - *1st April 2015*

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 5 of the Court of Session Act 1988(b) and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Scottish Civil Justice Council in accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(c), do hereby enact and declare:

Citation, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session and Sheriff Court Rules Amendment No. 3) (Reporting Restrictions) 2015.

(2) It comes into force on 1st April 2015.

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

(4) In this Act of Sederunt—

(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 2000 (asp 4), schedule 5, paragraph 13; the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43; the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2); the Consumer Credit Act 2006 (c.14), section 16(4); the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 33 and Schedule 5, paragraph 10 (in part); the Legal Services (Scotland) Act 2010 (asp 16), section 127(a); the Children’s Hearings (Scotland) Act 2011 (asp 1), section 185; and the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), section 15(2).

(b) 1988 c.36. Section 5 was amended by the Civil Evidence (Scotland) Act 1988 (c.32), section 2(3); the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 45; the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(1); the Judiciary and Courts (Scotland) Act 2008 (asp 6), section 46(3); and the Legal Services (Scotland) Act 2010 (asp 16), section 126(a).

(c) 2013 asp 3.

“the Ordinary Cause Rules” means the Ordinary Cause Rules 1993 in Schedule 1 to the Sheriff Courts (Scotland) Act 1907(a);

“the Rules of the Court of Session” means the Rules of the Court of Session 1994 in Schedule 2 to the Act of Sederunt (Rules of the Court of Session 1994) 1994(b);

“the Summary Application Rules” means the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(c).

Amendment of the Rules of the Court of Session

2.—(1) The Rules of the Court of Session are amended in accordance with subparagraph (2).

(2) For Chapter 102 (reporting restrictions under the Contempt of Court Act 1981)(d), substitute—

“CHAPTER 102 REPORTING RESTRICTIONS

Interpretation and application of this Chapter

102.1.—(1) This Chapter applies to orders which restrict the reporting of proceedings.

(2) In this Chapter, “interested person” means a person—

- (a) who has asked to see any order made by the court which restricts the reporting of proceedings, including an interim order; and
- (b) whose name is included on a list kept by the Lord President for the purposes of this Chapter.

Interim orders: notification to interested persons

102.2.—(1) Where the court is considering making an order, it may make an interim order.

(2) Where the court makes an interim order, the clerk of court shall immediately send a copy of the interim order to any interested person.

(3) The court shall specify in the interim order why it is considering making an order.

Interim orders: representations

102.3.—(1) Paragraph (2) applies where the court has made an interim order.

(2) An interested person who would be directly affected by the making of an order shall have an opportunity to make representations to the court before an order is made.

(3) Representations shall—

- (a) be made by note in process;
- (b) where an urgent hearing is sought, include reasons explaining why an urgent hearing is necessary;
- (c) be lodged no later than 2 days after the interim order is sent to interested persons in accordance with rule 102.2(2).

(4) On representations being made—

(a) 1907 c.51. Schedule 1 was substituted by S.I. 1993/1956 and last amended by S.S.I. 2014/371.

(b) S.I. 1994/1443, last amended by S.S.I. 2015/35.

(c) S.S.I. 1999/929, last amended by S.S.I. 2014/371.

(d) Chapter 102 was inserted by S.S.I. 2011/385.

- (a) the court shall appoint a date for a hearing—
 - (i) on the first suitable court day thereafter; or
 - (ii) where the court is satisfied that an urgent hearing is necessary, at such earlier date and time as the court may determine;
- (b) the clerk of court shall—
 - (i) notify the date and time of the hearing to the parties to the proceedings and the person who has made representations; and
 - (ii) send a copy of the representations to the parties to the proceedings.

(5) Where no interested person makes representations in accordance with rule 102.3(2), the clerk of court shall put the interim order before the court in chambers in order that the court may resume consideration of whether to make an order.

(6) Where the court, having resumed consideration under rule 102.3(5), makes no order, it shall recall the interim order.

(7) Where the court recalls an interim order, the clerk of court shall immediately notify any interested person.

Notification of reporting restrictions

102.4. Where the court makes an order, the clerk of court shall immediately—

- (a) send a copy of the order to any interested person;
- (b) arrange for the publication of the making of the order on the Scottish Court Service website.

Applications for variation or revocation

102.5.—(1) A person aggrieved by an order may apply to the court for its variation or revocation.

(2) An application shall be made by note in process.

(3) On an application being made—

- (a) the court shall appoint the application for a hearing;
- (b) the clerk of court shall—
 - (i) notify the date and time of the hearing to the parties to the proceedings and the applicant;
 - (ii) send a copy of the application to the parties to the proceedings.

(4) The hearing shall, so far as reasonably practicable, be before the judge or judges who made the order.”.

Amendment of the Ordinary Cause Rules

3.—(1) The Ordinary Cause Rules are amended in accordance with subparagraph (2).

(2) For Chapter 48 (reporting restrictions under the Contempt of Court Act 1981)(a), substitute—

(a) Chapter 102 was inserted by S.S.I. 2011/386.

**“CHAPTER 48
REPORTING RESTRICTIONS**

Interpretation and application of this Chapter

- 48.1.**—(1) This Chapter applies to orders which restrict the reporting of proceedings.
- (2) In this Chapter, “interested person” means a person—
- (a) who has asked to see any order made by the sheriff which restricts the reporting of proceedings, including an interim order; and
 - (b) whose name is included on a list kept by the Lord President for the purposes of this Chapter.

Interim orders: notification to interested persons

- 48.2.**—(1) Where the sheriff is considering making an order, the sheriff may make an interim order.
- (2) Where the sheriff makes an interim order, the sheriff clerk shall immediately send a copy of the interim order to any interested person.
- (3) The sheriff shall specify in the interim order why the sheriff is considering making an order.

Interim orders: representations

- 48.3.**—(1) Paragraph (2) applies where the sheriff has made an interim order.
- (2) An interested person who would be directly affected by the making of an order shall have an opportunity to make representations to the sheriff before an order is made.
- (3) Representations shall—
- (a) be made by letter addressed to the sheriff clerk;
 - (b) where an urgent hearing is sought, include reasons explaining why an urgent hearing is necessary;
 - (c) be lodged no later than 2 days after the interim order is sent to interested persons in accordance with rule 48.2(2).
- (4) Where the period for lodging representations expires on a Saturday, Sunday, or public or court holiday, it shall be deemed to expire on the next day on which the sheriff clerk’s office is open for civil court business.
- (5) On representations being made—
- (a) the sheriff shall appoint a date and time for a hearing—
 - (i) on the first suitable court day thereafter; or
 - (ii) where the sheriff is satisfied that an urgent hearing is necessary, at such earlier date and time as the sheriff may determine;
 - (b) the sheriff clerk shall—
 - (i) notify the date and time of the hearing to the parties to the proceedings and the person who has made representations; and
 - (ii) send a copy of the representations to the parties to the proceedings.
- (6) Where no interested person makes representations in accordance with rule 48.3(2), the sheriff clerk shall put the interim order before the sheriff in chambers in order that the sheriff may resume consideration as to whether to make an order.
- (7) Where the sheriff, having resumed consideration under rule 48.3(6), makes no order, the sheriff shall recall the interim order.

(8) Where the sheriff recalls an interim order, the sheriff clerk shall immediately notify any interested person.

Notification of reporting restrictions

48.4. Where the court makes an order, the sheriff clerk shall immediately—

- (a) send a copy of the order to any interested person;
- (b) arrange for the publication of the making of the order on the Scottish Court Service website.

Applications for variation or revocation

48.5.—(1) A person aggrieved by an order may apply to the sheriff for its variation or revocation.

(2) An application shall be made by letter addressed to the sheriff clerk.

(3) On an application being made—

- (a) the sheriff shall appoint the application for a hearing;
- (b) the sheriff clerk shall—
 - (i) notify the date and time of the hearing to the parties to the proceedings and the applicant;
 - (ii) send a copy of the application to the parties to the proceedings.

(4) The hearing shall, so far as reasonably practicable, be before the sheriff who made the order.”.

Amendment of the Summary Application Rules

4.—(1) The Summary Application Rules are amended in accordance with subparagraph (2).

(2) For Part XLI (reporting restrictions under the Contempt of Court Act 1981) of Chapter 3 (rules on applications under specific statutes)(a), substitute—

“PART XLI REPORTING RESTRICTIONS

Interpretation and application of this Part

3.41.1.—(1) This Part applies to orders which restrict the reporting of proceedings.

(2) In this Part, “interested person” means a person—

- (a) who has asked to see any order made by the sheriff which restricts the reporting of proceedings, including an interim order; and
- (b) whose name is included on a list kept by the Lord President for the purposes of this Part.

Interim orders: notification to interested persons

3.41.2.—(1) Where the sheriff is considering making an order, the sheriff may make an interim order.

(2) Where the sheriff makes an interim order, the sheriff clerk shall immediately send a copy of the interim order to any interested person.

(a) Part XLI was inserted by S.S.I. 2011/386 and amended by S.S.I. 2012/188.

(3) The sheriff shall specify in the interim order why the sheriff is considering making an order.

Interim orders: representations

3.41.3.—(1) Paragraph (2) applies where the sheriff has made an interim order.

(2) An interested person who would be directly affected by the making of an order shall have an opportunity to make representations to the sheriff before an order is made.

(3) Representations shall—

- (a) be made by letter addressed to the sheriff clerk;
- (b) where an urgent hearing is sought, include reasons explaining why an urgent hearing is necessary;
- (c) be lodged no later than 2 days after the interim order is sent to interested persons in accordance with rule 3.41.2(2).

(4) Where the period for lodging representations expires on a Saturday, Sunday, or public or court holiday, it shall be deemed to expire on the next day on which the sheriff clerk's office is open for civil court business.

(5) On representations being made—

- (a) the sheriff shall appoint a date and time for a hearing—
 - (i) on the first suitable court day thereafter; or
 - (ii) where the sheriff is satisfied that an urgent hearing is necessary, at such earlier date and time as the sheriff may determine;
- (b) the sheriff clerk shall—
 - (i) notify the date and time of the hearing to the parties to the proceedings and the person who has made representations; and
 - (ii) send a copy of the representations to the parties to the proceedings.

(6) Where no interested person makes representations in accordance with rule 3.41.3(2), the sheriff clerk shall put the interim order before the sheriff in chambers in order that the sheriff may resume consideration as to whether to make an order.

(7) Where the sheriff, having resumed consideration under rule 3.41.3(6), makes no order, the sheriff shall recall the interim order.

(8) Where the court recalls an interim order, the clerk of court shall immediately notify any interested person.

Notification of reporting restrictions

3.41.4. Where the sheriff makes an order, the sheriff clerk shall immediately—

- (a) send a copy of the order to any interested person;
- (b) arrange for the publication of the making of the order on the Scottish Court Service website.

Applications for variation or revocation

3.41.5.—(1) A person aggrieved by an order may apply to the sheriff for its variation or revocation.

(2) An application shall be made by letter addressed to the sheriff clerk.

(3) On an application being made—

- (a) the sheriff shall appoint the application for a hearing;
- (b) the sheriff clerk shall—

- (i) notify the date and time of the hearing to the parties to the proceedings and the applicant;
 - (ii) send a copy of the application to the parties to the proceedings.
- (4) The hearing shall, so far as reasonably practicable, be before the sheriff who made the order.”.

Edinburgh
26th February 2015

BRIAN GILL
Lord President
I.P.D.

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session, the Ordinary Cause Rules and the Summary Application Rules in respect of orders which restrict the reporting of proceedings.

The changes extend the current rules which deal with orders made under section 4(2) of the Contempt of Court Act 1981 to all orders that restrict the reporting of proceedings.

In addition, the new rules allow a court considering making such an order to make an interim order. This allows an interested person who would be directly affected by the making of an order an opportunity to make representations to the court before an order is made.

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