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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 102**

**Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (Miscellaneous) 2016**

**Citation and commencement, etc.**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (Miscellaneous) 2016.

(2) It comes into force on 21st March 2016.

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

**Amendment of the Rules of the Court of Session 1994**

2.—(1) The Rules of the Court of Session 1994<sup>(1)</sup> are amended in accordance with this paragraph.

(2) In Rule 4.2(3) (signature of documents)<sup>(2)</sup> after subparagraph (b), insert—

“(ba) an application in Form 40.2 or Form 41A.2 may be signed by the applicant or an agent;”.

(3) In rule 4.7 (lodging of documents in Inner House causes)<sup>(3)</sup>—

(a) in paragraph (1)—

(i) in subparagraph (b), omit “application for leave to appeal;”;

(ii) for “six copies” where it first appears, substitute “three copies”;

(iii) omit “; and, unless otherwise agreed, send six copies of it to every other party”;

(b) after paragraph (1) insert—

“(1A) A party, on lodging an application for leave to appeal in the Inner House, must—

(a) lodge in process a copy of the application; and

(b) unless otherwise agreed, send a copy to every other party.

(1B) A party who has lodged an application for leave to appeal in the Inner House must, if notified by a clerk of session that the application will be dealt with by a Division of the Inner House under rule 37A.2(3), lodge in process two additional copies of the application within the period of 7 days beginning with the date of notification.”;

(c) in paragraph (2), for “four copies”, substitute “three copies”;

(d) after paragraph (2) insert—

“(3) Unless rule 37A.2(3) applies, where a party intends to refer to a document (other than the application itself) at a hearing on an application for leave to appeal, the party shall lodge a copy of it in process by 12 noon on the second sederunt day before the hearing.”.

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(1) The Rules of the Court of Session 1994 are in Schedule 2 to the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443, last amended by S.S.I. 2015/419).

(2) Rule 4.3 was last amended by S.S.I. 2014/371.

(3) Rule 4.7 was last amended by S.S.I. 2010/30.

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

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- (4) In rule 38.2(5)(g) (reclaiming days)(4), omit “, refusing”.
- (5) In rule 41.14(1) (appeals under statute: lodging of case in court)(5), omit subparagraph (b).
- (6) In rule 41.48(4) (modifications of Part II to stated cases under the Tribunals and Inquiries Act 1992)(6), omit modified rule 41.14(b).
- (7) In rule 41.50(4) (modifications of Part II to appeals under certain Social Security Acts)(7), omit modified rule 41.14(b).
- (8) In rule 49.22(10)(a) (child welfare reporters)(8), omit “and”.
- (9) In the Appendix—
  - (a) in Form 40.2 (form of application for leave to appeal), for “(Signed by counsel or other person having a right of audience)” substitute—

*“(Signed)*

**Applicant**

*[or Solicitor [or Agent] for applicant]”;*

- (b) in Form 41A.2 (form of application for permission to appeal to the Supreme Court)(9), for “(signed by counsel or other person having a right of audience)” substitute—

*“(Signed)*

**Applicant**

*[or Solicitor [or Agent] for applicant]”;*

- (c) omit Form 41.52C (form of notice of intention to pursue application or appeal under the Nationality, Immigration and Asylum Act 2002)(10).

### **Amendment of the Ordinary Cause Rules 1993**

- 3.—(1) The Ordinary Cause Rules 1993(11) are amended in accordance with this paragraph.
- (2) For rule 33A.21 (appointment of local authority or reporter to report on a child)(12), substitute—

#### **“Child welfare reporters**

**33A.21.—**(1) At any stage of a civil partnership action the sheriff may, in relation to any matter affecting a child, appoint a person (referred to in this rule as a “child welfare reporter”)

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(4) Rule 38.2 was substituted by [S.S.I. 2010/30](#).  
(5) Rule 41.14 was substituted by [S.S.I. 2011/303](#).  
(6) Rule 41.48 was substituted by [S.S.I. 2011/303](#).  
(7) Rule 41.50 was substituted by [S.S.I. 2011/303](#).  
(8) Rule 49.22 was substituted by [S.S.I. 2015/312](#).  
(9) Form 41A.2 was inserted by [S.S.I. 2015/228](#).  
(10) Form 41.52C was inserted by [S.S.I. 2007/283](#).  
(11) 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. 2015/424](#).  
(12) Rule 33A.21 was inserted by [S.S.I. 2005/638](#).

- (a) to seek the views of the child and to report any views expressed by the child to the court; or
  - (b) to undertake enquiries and to report to the court.
- (2) A child welfare reporter may only be appointed under paragraph (1)(b) where the sheriff is satisfied that the appointment—
- (a) is in the best interests of the child; and
  - (b) will promote the effective and expeditious determination of an issue in relation to the child.
- (3) An interlocutor appointing a child welfare reporter must—
- (a) specify a date by which the report is to be submitted to the court;
  - (b) include a direction as to the fees and outlays of the child welfare reporter;
  - (c) where the appointment is under paragraph (1)(a), specify the issues in respect of which the child’s views are to be sought; and
  - (d) where the appointment is under paragraph (1)(b), specify the enquiries to be undertaken, and the issues requiring to be addressed in the report.
- (4) An interlocutor complies with subparagraph (c) or (d) of paragraph (3) if the issues or, as the case may be the enquiries, referred to in that subparagraph are specified in an annex to the interlocutor in Form CP38.
- (5) Where the sheriff has appointed a child welfare reporter with a view to the report being considered at an assigned hearing, the date specified in accordance with paragraph (3)(a) must be a date no less than three clear days before that hearing, excluding any day on which the sheriff clerk’s office is not open for civil court business, unless cause exists for specifying a later date.
- (6) On appointing a child welfare officer the sheriff may also—
- (a) make such further order as may be required to facilitate the discharge of the child welfare reporter’s functions;
  - (b) direct that a party to the proceedings is to be responsible for providing the child welfare reporter with copies of such documents lodged in the process as may be specified; and
  - (c) give the child welfare reporter directions.
- (7) The direction referred to in paragraph (3)(b) must assign liability for payment of the child welfare reporter’s fees and outlays in the first instance, and require that liability to be borne—
- (a) in equal shares by—
    - (i) the pursuer,
    - (ii) any defender who has lodged a notice of intention to defend, and
    - (iii) any minuter who has been granted leave to enter the process; or
  - (b) by one or more parties to the proceedings on such other basis as may be justified on cause shown.
- (8) On the granting of an interlocutor appointing a child welfare reporter the sheriff clerk must—
- (a) give the child welfare reporter—
    - (i) a certified copy of the interlocutor, and

- (ii) sufficient information to enable the child welfare reporter to contact the solicitor for each party to the proceedings, or any party not represented by a solicitor; and
  - (b) intimate the name and address of the child welfare reporter to any local authority to which intimation of the proceedings has been made.
- (9) A child welfare reporter appointed under this rule must—
- (a) where the appointment is under paragraph (1)(a)—
    - (i) seek the child’s views on the specified issues, and
    - (ii) prepare a report for the court reporting any such views;
  - (b) where the appointment is under paragraph (1)(b)—
    - (i) undertake the specified enquiries, and
    - (ii) prepare a report for the court having regard to the specified issues;
  - (c) send the report to the sheriff clerk by the date specified; and
  - (d) unless otherwise directed, send a copy of the report to each party to the proceedings by that date.
- (10) A child welfare reporter may—
- (a) apply to the sheriff clerk to be given further directions by the sheriff;
  - (b) bring to the attention of the sheriff clerk any impediment to the performance of any function arising under this rule.
- (11) Where a child welfare reporter acts as referred to in paragraph (10), the sheriff may, having heard parties, make any order or direction that could competently have been made under paragraph (6).

### **Appointment of local authority to report on a child**

**33A.21A.**—(1) This rule applies where, in a civil partnership action, the sheriff appoints a local authority to investigate and report to the court on the circumstances of a child and on the proposed arrangements for the care and upbringing of a child.

(2) The following provisions of rule 33A.21 apply as if the reference to the child welfare reporter was a reference to the local authority appointed by the sheriff—

- (a) paragraph (3)(a) and (b);
- (b) paragraph (6)(a) and (b);
- (c) paragraph (7); and
- (d) paragraph (8).

(3) On completion of the report referred to in paragraph (1), the local authority must—

- (a) send the report to the sheriff clerk; and
- (b) unless otherwise directed by the sheriff, send a copy of the report to each party to the proceedings.”.

(3) In Appendix 1, after Form CP37 (form of extract decree of dissolution of a civil partnership in an application for a simplified dissolution of a civil partnership)(**13**), insert the form set out in the Schedule to this Act of Sederunt.

### **Amendment of the Summary Application Rules**

4.—(1) The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc.) Rules 1999(14) is amended in accordance with this paragraph.

(2) In rule 3.46.2 (applications for extended detention of travel documents)(15), the heading becomes “Applications for extended retention of travel documents”.

(3) In rule 3.46.3 (further applications for extended detention of travel documents)(16), the heading becomes “Further applications for extended retention of travel documents”.

(4) In Schedule 1, in Form 69 (form of application for extension of the 14-day period under paragraph 8(1) of Schedule 1 to the Counter-Terrorism and Security Act 2015)(17)—

(a) after “*insert designation, rank and address of applicant*” insert “)”;

(b) in paragraph 1 (order(s) sought from the court)—

(i) after “Act” insert “2015”;

(ii) for “detention” substitute “retention”.

(5) In Schedule 1, in Form 70 (form of intimation of application for extension of the 14-day period under paragraph 8(1) of Schedule 1 to the Counter-Terrorism and Security Act 2015)(18), at the end insert—

*“(signed)*

**Applicant**

**[or Solicitor for applicant**

*(add designation and business address)]”*

### **Saving**

5. The Ordinary Cause Rules 1993 as they applied immediately before 21st March 2106 continue to apply to an appointment under rule 33A.21 made before that date.

Edinburgh  
15th February 2016

*CJM Sutherland*  
Lord President  
I.P.D.

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(14) S.I. 1999/929, last amended by S.S.I. 2015/419.

(15) Rule 3.46.2 was inserted by S.S.I. 2015/283.

(16) Rule 3.46.3 was inserted by S.S.I. 2015/283.

(17) Form 69 was inserted by S.S.I. 2015/283.

(18) Form 70 was inserted by S.S.I. 2015/283.