

2017 No. 242

COURT OF SESSION

SHERIFF COURT

**Act of Sederunt (Rules of the Court of Session 1994 and
Summary Application Rules 1999 Amendment) (Miscellaneous)
2017**

<i>Made</i>	- - - -	<i>11th July 2017</i>
<i>Laid before the Scottish Parliament</i>		<i>12th July 2017</i>
<i>Coming into force</i>	- -	<i>18th September 2017</i>

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(a), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by sections 103(1) and 104(1) of the Courts Reform (Scotland) Act 2014(b) and all other powers enabling it to do so.

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 Summary Application Rules 1999 Amendment) (Miscellaneous) 2017.

(2) It comes into force on 18th September 2017.

(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(c) are amended in accordance with this paragraph.

(2) After rule 49.32 (abandonment by pursuer), insert—

(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).
(b) 2014 asp 18.
(c) The Rules of the Court of Session 1994 are in schedule 2 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443, last amended by S.S.I. 2017/202).

“Case management hearing

49.32A.—(1) When defences are lodged, the court must fix a date for a case management hearing.

(2) The date fixed for the case management hearing must be not less than 4 weeks and not more than 8 weeks after the date on which defences were lodged.

(3) At the case management hearing, each party must address the court on—

- (a) any matters that are capable of agreement;
- (b) the matters that are in dispute between the parties;
- (c) any matters of potential complexity or difficulty;
- (d) any documents likely to be relevant to the matters in dispute;
- (e) any valuations that are likely to be required;
- (f) any expert evidence that is likely to be required;
- (g) whether steps require to be taken to give a child an opportunity to express views;
- (h) whether steps require to be taken to investigate any facts or circumstances relating to a child;
- (i) the estimated duration of the proof;
- (j) further procedure;
- (k) any other issues that the court considers appropriate.

(4) At the case management hearing, the court may—

- (a) order and fix a date for a further case management hearing;
- (b) order and fix a date for a pre-proof hearing not less than 6 weeks and not more than 8 weeks before the date fixed for the proof;
- (c) make such other orders as it considers appropriate for the expeditious progress of the cause.

Pre-proof hearing

49.32B.—(1) The purpose of a pre-proof hearing is to ascertain, so far as is reasonably practicable, whether the cause is likely to proceed to proof on the date fixed.

(2) Where the court appoints a pre-proof hearing, the parties must provide the court with sufficient information to enable it to conduct the hearing as provided for in this rule.

(3) At the pre-proof hearing, the court must consider—

- (a) the state of preparation of the parties;
- (b) whether the proof has been fixed for an appropriate number of days;
- (c) the extent to which the parties have complied with any orders made by the court;
- (d) whether special measures will be required for the purposes of taking the evidence of any vulnerable witnesses;
- (e) whether a live link may be required.

(4) At the pre-proof hearing, the court may—

- (a) discharge the proof and fix a new date for it;
- (b) continue the pre-proof hearing;
- (c) order parties to lodge joint minutes, affidavits, and expert reports within such period as it considers appropriate;
- (d) direct how evidence is to be given by expert witnesses;
- (e) make an order authorising the use of special measures for the purposes of taking the evidence of any vulnerable witnesses;

- (f) make an order authorising the use of a live link;
- (g) make such other orders as it considers appropriate to secure the expeditious progress of the cause.”.

Amendment of the Summary Application Rules 1999

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

(2) In rule 3.45.2(a)(iii) of Part XLV (mutual recognition of protection measures in civil matters)(b) of Chapter 3 after “order” insert “or an interim trafficking and exploitation prevention order”.

Amendment of the Act of Sederunt (Summary Application Rules 1999 Amendment) (Trafficking and Exploitation Orders) 2017

4.—(1) The Act of Sederunt (Summary Applications Rules 1999 Amendment) (Trafficking and Exploitation Orders) 2017(c) is amended in accordance with this paragraph.

(2) For paragraph 2(2)(b)(ii) substitute—

“(ii) in paragraph (a)(iii) after “order” where it second occurs insert “or a trafficking and exploitation risk order or an interim trafficking and exploitation risk order”.”.

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
11th July 2017

(a) S.I. 1999/929, last amended by S.S.I. 2017/211.
(b) Rule 3.45.2(a)(iii) was inserted by S.S.I. 2017/211.
(c) S.S.I. 2017/211.

EXPLANATORY NOTE

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

This Act of Sederunt amends Chapter 49 (Family Actions) of the Rules of the Court of Session 1994. Paragraph 2 inserts new rules 49.32A and 49.32B, which make provision for a case management hearing and a pre-proof hearing respectively.

Paragraph 3 amends Chapter 3 of Part XLV (Mutual Recognition of Protection Measures in Civil Matters) of the Summary Application Rules 1999 to make provision for interim trafficking and exploitation prevention orders.

Paragraph 4 amends the Act of Sederunt (Summary Applications Rules 1999 Amendment) (Trafficking and Exploitation Orders) 2017 to make provision for interim trafficking and exploitation risk orders.

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