
 STATUTORY INSTRUMENTS

1985 No. 781 (S. 71)

SHERIFF COURT, SCOTLAND

Act of Sederunt (Social Work) (Sheriff Court Procedure Rules 1971) (Amendment) 1985

Made - - - - - 17th May 1985
Coming into Operation 30th June 1985

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 34A(2) of the Social Work (Scotland) Act 1968(a), section 32 of the Sheriff Courts (Scotland) Act 1971(b) and of all other powers competent to them in that behalf, do hereby enact and declare:—

Citation, commencement and interpretation

1.— (1) This Act of Sederunt may be cited as the Act of Sederunt (Social Work) (Sheriff Court Procedure Rules 1971) (Amendment) 1985 and shall come into operation on 30th June 1985.

(2) In this Act of Sederunt, a rule or a form referred to by number means the rule or form so numbered in Schedule 1 to the Act of Sederunt (Social Work) (Sheriff Court Procedure Rules) 1971(c).

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

Amendments

2. In rule 2(1) (interpretation), after the definition of “reporter”, insert the following definition:—

““safeguarder” means a person appointed under section 34A of the Act for the purpose of safeguarding the interests of a child”;

3. In rule 4, at the end, insert the following paragraph:—

“(3) Where a safeguarder has been appointed by the chairman at the children’s hearing, the reporter shall intimate such appointment to the sheriff clerk and shall lodge any report made by the safeguarder, along with the application.”.

(a) 1968 c.49; section 34A was inserted by section 66 of the Children Act 1975 (c.72).
 (b) 1971 c.58. (c) S.I. 1971/92.

4. After rule 4, insert the following rule:—

“Appointment of Safeguarder

4A— (1) The sheriff—

(a) shall, as soon as reasonably practicable, consider whether it is necessary to appoint a safeguarder in the proceedings; and

(b) may, at any later stage of the proceedings, if he thinks fit, appoint a safeguarder.

(2) A safeguarder appointed by the sheriff under paragraph (1) shall be selected from a panel of persons appointed under the Social Work (Panels of Persons to Safeguard the Interests of Children) (Scotland) Regulations 1984^(a) and may be the same person appointed as safeguarder by the chairman at the children’s hearing.

(3) A safeguarder appointed under paragraph (1)—

(a) shall be entitled to receive from the reporter, copies of the application, all of the productions in the proceedings and any papers which were before the children’s hearing; and

(b) may make such enquiries with regard to the proceedings as he considers appropriate.

(4) Without delay and, if practicable, before the hearing on the application, a safeguarder appointed under paragraph (1) shall intimate in writing to the sheriff clerk whether or not he intends to become a party to the proceedings.

(5) Where a safeguarder intimates that he does not intend to become a party to the proceedings he shall, at the same time, report in writing to the sheriff on the extent of his enquiries and his conclusions as to the interests of the child in the proceedings.

(6) The sheriff clerk shall intimate to a safeguarder appointed by the sheriff all subsequent interlocutors in the proceedings whether or not the safeguarder has become a party to those proceedings.

(7) Where a safeguarder becomes a party to the proceedings he shall have all of the powers and duties at common law of a curator *ad litem* in respect of the child and may appear personally in the proceedings or instruct an advocate or a solicitor to appear on his behalf.

(8) Where an advocate or a solicitor is appointed to act as a safeguarder, he shall not act also as an advocate or a solicitor for the child in the proceedings.”

5. In rule 6(2), after the word “him” where it second occurs, insert the words “and to any safeguarder appointed by the sheriff”.

6. In rule 7, after the word “parent” insert the words “and to any safeguarder appointed by the sheriff”.

(a) S.I. 1984/1442.

7. In rule 8—

- (a) in paragraph (2), after the word “representative”, insert the words “and any safeguarder appointed”;
- (b) in paragraph (3), after the word “event”, insert the words “any safeguarder appointed and”; and
- (c) at the end, insert the following paragraph:—

“(5) Where evidence in a referral has been heard in part and a safeguarder thereafter intimates under paragraph (4) of rule 4A that he intends to become a party to such proceedings, the sheriff may order the hearing of evidence to be commenced of new.”.

8. In rule 11, after the word “parents”, insert the words “, any safeguarder appointed by the sheriff”.**9. In rule 12—**

- (a) in paragraph (2), after the word “parent”, insert the words “or any safeguarder appointed by the chairman at the children’s hearing on behalf of the child”; and
- (b) in paragraph (3), after the word “parent”, insert the words “or any safeguarder appointed by the chairman at the children’s hearing”.

10. After rule 12, insert the following rule:—***“Appointment of Safeguarder*****12A— (1) The sheriff—**

- (a) shall, as soon as reasonably practicable, consider whether it is necessary to appoint a safeguarder in the appeal; and
- (b) may, at any later stage of the appeal, if he thinks fit, appoint a safeguarder in the appeal.

(2) Where the appeal has been signed by a safeguarder appointed by the chairman of a children’s hearing, the sheriff shall appoint him to act as a safeguarder in the appeal.

(3) A safeguarder appointed by the sheriff under paragraphs (1) or (2) shall be appointed in the same manner, and shall have the same powers and duties, as a safeguarder appointed under rule 4A.

(4) The sheriff clerk shall intimate to a safeguarder appointed by the sheriff all subsequent interlocutors in the appeal whether or not the safeguarder has become a party to the appeal.

(5) Where an advocate or a solicitor is appointed to act as a safeguarder, he shall not act also as an advocate or a solicitor for the child in the appeal.”.

11. In rule 13, after the word “reporter”, insert the words “, and any person other than the appellant who was concerned in the original proceedings,”.

12. In rule 14—

- (a) in paragraph (1), after the word “representative”, insert the words “including any safeguarder appointed”;
- (b) in paragraph (3), after the words “representative of the child”, insert the words “including a safeguarder”; and
- (c) at the end, insert the following paragraph:—

“(5) Where evidence in an appeal has been heard in part and a safeguarder thereafter intimates that he intends to become a party to the appeal, the sheriff may order the hearing of evidence to be commenced of new.”.

13. In rule 15(2), after the word “representative”, insert the words “including a safeguarder”.

14. In rule 16(3), after the word “appellant”, insert the words “and to any safeguarder appointed by the sheriff”.

15. In rule 19(1)(c) for the word “to” where it third occurs substitute the words “and any safeguarder”.

16. In Schedule 1—

- (a) in form 1, in paragraph 2 after the word “hereto”, insert “together with any report of the safeguarder appointed for the purpose of safeguarding the interests of the child in the proceedings”;
- (b) in form 2, after the word “known”, insert the words “and to (AB) (*name and design*) the safeguarder appointed by the sheriff”;
- (c) in form 4—
 - (i) in the heading, for the word “Invitation” substitute the word “Intimation”; and
 - (ii) after the word “parent” wherever it occurs, insert the words “or safeguarder”;
- (d) in form 5, after the word “parent” wherever it occurs, insert the words “or safeguarder”;
- (e) in form 6A—
 - (i) after paragraph 1, insert the following paragraph:—

“2. DE (*design*) was appointed to act as safeguarder [*or No safeguarder was appointed*].”; and
 - (ii) renumber the following paragraphs accordingly;
- (f) in form 6B—
 - (i) after paragraph 1, insert the following paragraph:—

“2. DE (*design*) was appointed to act as safeguarder [*or No safeguarder was appointed*].”; and
 - (ii) renumber the following paragraphs accordingly;

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- (g) in form 6C—
- (i) after paragraph 1, insert the following paragraph:—
“2. DE (*design*) was appointed to act as safeguarder [or No safeguarder was appointed].”; and
 - (ii) renumber the following paragraphs accordingly; and
- (h) in form 7, after the words “to the reporter”, insert the words “and to (*name and design*) the safeguarder appointed by the sheriff.”.

Emslie,
Lord President,
I.P.D.

Edinburgh,
14th May 1985.

EXPLANATORY NOTE

(This Note is not part of the Act of Sederunt.)

This Act of Sederunt amends the Act of Sederunt (Social Work) (Sheriff Court Procedure Rules) 1971 to make provision for the appointment of safeguarders under section 34A of the Social Work (Scotland) Act 1968 as inserted by section 66 of the Children Act 1975 and the conduct of proceedings in which they are involved. This Act of Sederunt comes into operation on the date that section 66 of the 1975 Act comes into force under the Children Act 1975 (Commencement No. 5) Order 1984 (S.I. 1984/1702).

SI 1985/781
ISBN 0-11-056781-1



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