
STATUTORY INSTRUMENTS

1993 No. 919 (S.126)

SHERIFF COURT, SCOTLAND

Act of Sederunt (Child Support Act 1991) (Amendment of Ordinary Cause and Summary Cause Rules) 1993

Made - - - - 26th March 1993

Coming into force - - 5th April 1993

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 32 of the Sheriff Courts (Scotland) Act 1971⁽¹⁾ and of all other powers enabling them in that behalf, having approved, with modifications, draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of that Act, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Child Support Act 1991) (Amendment of Ordinary Cause and Summary Cause Rules) 1993 and shall come into force on 5th April 1993.

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

Amendment of Ordinary Cause Rules

2.—(1) The Ordinary Cause Rules of the sheriff court⁽²⁾ shall be amended in accordance with the following paragraph.

(2) After rule 149 of the Ordinary Cause Rules (Applications for further awards of damages) insert the following rules:—

“CHILD SUPPORT ACT 1991

Interpretation

150. In this Part of the Rules—

“the Act of 1991” means the Child Support Act 1991⁽³⁾;

(1) 1971 c. 58.

(2) 1907 c. 51; First Schedule substituted by S.I.1983/747; relevant amendments are contained in S.I. 1984/255, 1986/513, 1230, 1946 and 1966, 1986/614 and 1978, 1990/661 and 2238.

(3) 1991 c. 48.

“child” has the meaning assigned in section 55 of the Act of 1991; and

“crave relating to aliment” means—

- (a) for the purposes of rule 151(1), a crave for decree of aliment in relation to a child or for recall or variation of such a decree; and
- (b) for the purposes of rule 151(3), a crave for decree of aliment in relation to a child or for the recall or variation of such a decree or for the variation or termination of an agreement on aliment in relation to a child; and

“maintenance assessment” has the meaning assigned in section 55 of the Act of 1991.

Initial writs etc.

151.—(1) An initial writ, minute or counterclaim which contains a crave relating to aliment, and to which section 8(6), (7), (8) or (10) of the Act of 1991 (top up maintenance orders) applies shall—

- (a) include an article of condescendence stating, where appropriate—
 - (i) that a maintenance assessment under section 11 of the Act of 1991 (maintenance assessments); is in force;
 - (ii) the date of the maintenance assessment;
 - (iii) the amount and frequency of periodical payments of child support maintenance fixed by the maintenance assessment; and
 - (iv) the grounds on which the sheriff retains jurisdiction under section 8(6), (7), (8) or (10) of the Act of 1991; and
- (b) unless the sheriff on cause shown otherwise directs, be accompanied by any document issued by the Secretary of State to the party intimating the making of the maintenance assessment referred to in paragraph (1)(a) above.

(2) An initial writ, minute or counterclaim which contains a crave relating to aliment, and to which section 8(6), (7), (8) or (10) of the Act of 1991 does not apply, shall include an article of condescendence stating either—

- (a) that the habitual residence of the absent parent, person with care or qualifying child, within the meaning of section 3 of the Act of 1991, is outwith the United Kingdom; or
- (b) that the child is not a child within the meaning of section 55 of the Act of 1991.

(3) In an action for declarator of non-parentage or illegitimacy—

- (a) the initial writ shall include an article of condescendence stating whether the pursuer previously has been alleged to be the parent in an application for a maintenance assessment under sections 4, 6 or 7 of the Act of 1991 (applications for maintenance assessment); and
- (b) where an allegation of paternity has been made against the pursuer, the Secretary of State shall be named as a defender in the action and rule 152 shall apply to the award of expenses in any such case.

(4) An initial writ, minute or counterclaim which involves parties in respect of whom a decision has been made in any application, review or appeal under the Act of 1991 relating to any child of those parties, shall—

- (a) include an article of condescendence stating that such a decision has been made and giving details of that decision; and
- (b) unless the sheriff on cause shown otherwise directs, be accompanied by any document issued by the Secretary of State to the parties intimating that decision.

Restriction of expenses

152. Where the Secretary of State is named as a defender in an action for declarator of non-parentage or illegitimacy to which rule 151(3) applies, and the Secretary of State does not defend the action, no expenses shall be awarded against the Secretary of State.

Effect of maintenance assessments

153. The sheriff clerk shall, on receiving notification that a maintenance assessment has been made, cancelled or has ceased to have effect so as to affect an order of a kind prescribed for the purposes of section 10 of the Act of 1991, endorse on the interlocutor sheet relating to that order a certificate, in either Form CSA 1 or CSA 2, as set out in the Appendix to this Schedule.

Effect of maintenance assessments on extracts relating to alimony

154.—(1) Where an order relating to alimony is affected by a maintenance assessment, any extract of that order issued by the sheriff clerk shall be endorsed with the following certificate:—

“A maintenance assessment having been made under the Child Support Act 1991 on (*insert date*), this order, in so far as it relates to the making or securing of periodical payments to or for the benefit of (*insert name(s) of child/children*), ceases to have effect from (*insert date 2 days after the date on which the maintenance assessment was made*).”.

(2) Where an order relating to alimony has ceased to have effect on the making of a maintenance assessment, and that maintenance assessment is later cancelled or ceases to have effect, any extract of that order issued by the sheriff clerk shall be endorsed also with the following certificate:—

“The jurisdiction of the child support officer under the Child Support Act 1991 having terminated on (*insert date*), this order, in so far as it relates to (*insert name(s) of child/children*), again shall have effect as of (*insert date of termination of child support officer’s jurisdiction*).”.

Forms

3. In the Appendix to the Ordinary Cause Rules, at the end, insert the Forms set out in the Schedule to this Act of Sederunt.

Amendment of Summary Cause Rules

4.—(1) The Summary Cause Rules of the sheriff court(4) shall be amended in accordance with the following paragraph.

(2) After rule 93 of the Summary Cause Rules (incidental applications) insert the following rules:—

“CHILD SUPPORT ACT 1991

Interpretation

94. In this Part of the Rules

“the Act of 1991” means the Child Support Act 1991;

“child” has the meaning assigned in section 55 of the Act of 1991; and

(4) S.I. 1976/476; relevant amendments are contained in S.I. 1980/455, 1986/1946 and S.I. 1988/1978.

“claim relating to aliment” means a crave for decree of aliment in relation to a child or for recall or variation of such a decree.

Statement of claim

95.—(1) Any summons or counterclaim which contains a claim relating to aliment, and to which section 8(6), (7), (8) or (10) of the Act of 1991 applies shall—

- (a) include averments stating, where appropriate—
 - (i) that a maintenance assessment under section 11 of the Act of 1991 (maintenance assessments) is in force;
 - (ii) the date of the maintenance assessment;
 - (iii) the amount and frequency of periodical payments of child support maintenance fixed by the maintenance assessment; and
 - (iv) the grounds on which the sheriff retains jurisdiction under section 8(6), (7), (8) or (10) of the Act of 1991; and
- (b) unless the sheriff on cause shown otherwise directs, be accompanied by any document issued by the Secretary of State to the party intimating the making of the maintenance assessment referred to in paragraph (1)(a) above.

(2) Any summons or counterclaim which contains a claim relating to aliment and to which section 8(6), (7), (8) or (10) of the Act of 1991 does not apply shall include averments stating either—

- (a) that the habitual residence of the absent parent, person with care or qualifying child, within the meaning of section 3 of the Act of 1991, is outwith the United Kingdom; or
- (b) that the child is not a child within the meaning of section 55 of the Act of 1991.

(3) A summons or counterclaim which involves parties in respect of whom a decision has been made in any application, review or appeal under the 1991 Act shall—

- (a) include in the statement of claim averments that such a decision has been made and give details of that decision; and
- (b) unless the sheriff on cause shown otherwise directs, be accompanied by any document issued by the Secretary of State to the parties intimating that decision.

Effect of maintenance assessments

96.—(1) The sheriff clerk shall, on receiving notification that a maintenance assessment has been made, cancelled or has ceased to have effect so as to affect an order of a kind prescribed for the purposes of section 10 of the Act of 1991, enter in the Book of Summary Causes in respect of that order a note stating that either—

- (a) the order ceases or ceased to have effect from the date 2 days after the making of the maintenance assessment; or
- (b) the maintenance assessment has been cancelled or has ceased to have effect.

Effect of maintenance assessments on extracts of decrees relating to aliment

97.—(1) Where a decree relating to aliment is affected by a maintenance assessment, any extract of that decree issued by the sheriff clerk shall be endorsed with the following certificate:—

“A maintenance assessment having been made under the Child Support Act 1991 on (*insert date*), this order, in so far as it relates to the making or securing of periodical

payments to or for the benefit of (*insert name(s) of child/children*), ceases to have effect from (*insert date 2 days after the date on which the maintenance assessment was made*).”.

(2) Where a decree relating to aliment has ceased to have effect on the making of a maintenance assessment, and that maintenance assessment is later cancelled or ceases to have effect, any extract of that order issued by the sheriff clerk shall be endorsed also with the following certificate:—

“The jurisdiction of the child support officer under the Child Support Act 1991 having terminated on (*insert date*), this order, in so far as it relates to (*insert name(s) of child/children*), again shall have effect as of (*insert date of termination of child support officer’s jurisdiction*).”.”.

Edinburgh,
26th March 1993

J.A.D. Hope
Lord President, IPD

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

SCHEDULE

Rule 2

FORM CSA 1 Certificate relating to the making of a maintenance assessment under the Child Support Act 1991

Rule 153

(insert place)

(insert date)

Notification has been received from the child support officer of the making of a maintenance assessment under the Child Support Act 1991. I certify that the decree or order granted on *(insert date)* insofar as it relates to the making or securing of periodical payments for *(insert name(s) of child/children)* ceases to have effect from *(insert date, which should be the date 2 days after date on which the maintenance assessment was made)*.

signed *(signature of sheriff clerk)*

FORM CSA 2 Certificate relating to the cancellation or ceasing to have effect of a maintenance assessment under the Child Support Act 1991

Rule 153

(insert place)

(insert date)

I certify that notification has been received from the child support officer that the jurisdiction of the child support officer under the Child Support Act 1991 terminated on *(insert date of termination of child support officer's jurisdiction)*.

signed *(signature of sheriff clerk)*

EXPLANATORY NOTE

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

This Act of Sederunt amends the Ordinary Cause Rules, and the Summary Cause Rules, of the sheriff court.

Paragraph 2(2) inserts into the Ordinary Cause Rules a new Part containing rules relating to the Child Support Act 1991.

New rule 150 provides a number of definitions for use in that Part of the Rules.

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

New rules 151(1) and (2) set out the information which an initial writ, minute or counterclaim must contain, and what documents it should be accompanied by, where it contains a crave relating to aliment, and where section 8(6), (7), (8) or (10) of the Child Support Act 1991 applies.

Rule 151(3) sets out information which should be included in the initial writ in an action for declarator of non-parentage or illegitimacy, and also provides for the Secretary of State to be named as a defender where an allegation of parentage has been made against the pursuer.

New rule 152 makes provision for awards of expenses where the Secretary of State is named as a defender in certain actions for declarator of non-parentage or illegitimacy but does not choose to defend that action.

New rules 153 and 154 set out the duties of the sheriff clerk in ordinary actions where a maintenance assessment has been made which affects an existing court order. Forms of certificate for endorsement on the interlocutor sheets relating to that order, on receipt of notification that a maintenance assessment has been made, cancelled or ceased to have effect, are prescribed.

Paragraph 4(2) inserts into the Summary Cause Rules new rules 95, 96 and 97 of broadly similar effect with respect to summonses and counterclaims.