

2010 No. 416

SHERIFF COURT

**Act of Sederunt (Sheriff Court Rules) (Miscellaneous
Amendments) (No. 2) 2010**

Made - - - - *24th November 2010*

Coming into force in accordance with paragraph 1(1) and (2)

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) and section 132(9) of the Licensing (Scotland) Act 2005(b) and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the said Act of 1971, do hereby enact and declare:

Citation, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) (No. 2) 2010 and, subject to subparagraph (2), comes into force on 1st January 2011.

(2) Paragraph 9 comes into force on 13th December 2010.

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

(4) In this Act of Sederunt—

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

“Small Claim Rules” means the Small Claim Rules in Schedule 1 to the Act of Sederunt (Small Claim Rules) 2002(d);

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

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- (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) (the “2000 asp”), 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); and the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (the “2007 asp”) section 33. Section 32 is amended prospectively by the 2007 asp, schedule 5, paragraph 10. Section 32 was extended by the Debtors (Scotland) Act 1987 (c.18), section 97; the Child Support Act 1991 (c.48), sections 39(2) and 49; and by section 2(4) of the 2000 asp.
- (b) 2005 asp 16.
- (c) 1907 c.51. Schedule 1 was substituted by S.I. 1993/1956 and amended by S.I. 1996/2167 and 2445; S.S.I. 2000/239 and 408; 2001/8 and 144; 2002/7, 128 and 560; 2003/25, 26 and 601; 2004/197 and 350; 2005/20, 189, 638 and 648; 2006/198, 207, 293, 410 and 509; 2007/6, 339, 440 and 463; 2008/121, 223 and 365; 2009/107, 164, 284, 285, 294 and 402; and 2010/120, 279, 324 and 340.
- (d) S.S.I. 2002/133, amended by S.S.I. 2003/26; 2004/197; 2005/648; 2006/509; 2007/6, 339, 440 and 463; 2008/121, 223 and 365; 2009/107, 164, 294 and 402; 2010/279 and 340.
- (e) S.I. 1999/929, amended by S.S.I. 2000/148 and 387; 2001/142; 2002/7, 129, 130, 146 and 563; 2003/26, 27, 98, 261, 319, 346 and 556; 2004/197, 222, 334 and 455; 2005/61, 445, 473, 504 and 648; 2006/198, 410, 437 and 509; 2007/6, 233, 339, 440 and 463; 2008/9, 41, 111, 223, 335, 365 and 375; 2009/107, 109, 164, 294, 320 and 402; and 2010/324 and 340.

“Summary Cause Rules” means the Summary Cause Rules in Schedule 1 to the Act of Sederunt (Summary Cause Rules) 2002(a).

Lay support for party litigants

- 2.—(1) The Ordinary Cause Rules are amended in accordance with the following subparagraph.
(2) After rule 1.3 (representation)(b) insert—

“Lay support

1.3A.—(1) At any time during proceedings the sheriff may, on the request of a party litigant, permit a named individual to assist the litigant in the conduct of the proceedings by sitting beside or behind (as the litigant chooses) the litigant at hearings in court or in chambers and doing such of the following for the litigant as he or she requires—

- (a) providing moral support;
- (b) helping to manage the court documents and other papers;
- (c) taking notes of the proceedings;
- (d) quietly advising on—
 - (i) points of law and procedure;
 - (ii) issues which the litigant might wish to raise with the sheriff;
 - (iii) questions which the litigant might wish to ask witnesses.

(2) It is a condition of such permission that the named individual does not receive from the litigant, whether directly or indirectly, any remuneration for his or her assistance.

(3) The sheriff may refuse a request under paragraph (1) only if—

- (a) the sheriff is of the opinion that the named individual is an unsuitable person to act in that capacity (whether generally or in the proceedings concerned); or
- (b) the sheriff is of the opinion that it would be contrary to the efficient administration of justice to grant it.

(4) Permission granted under paragraph (1) endures until the proceedings finish or it is withdrawn under paragraph (5); but it is not effective during any period when the litigant is represented.

(5) The sheriff may, of his or her own accord or on the motion of a party to the proceedings, withdraw permission granted under paragraph (1); but the sheriff must first be of the opinion that it would be contrary to the efficient administration of justice for the permission to continue.

(6) Where permission has been granted under paragraph (1), the litigant may—

- (a) show the named individual any document (including a court document); or
- (b) impart to the named individual any information,

which is in his or her possession in connection with the proceedings without being taken to contravene any prohibition or restriction on the disclosure of the document or the information; but the named individual is then to be taken to be subject to any such prohibition or restriction as if he or she were the litigant.

(7) Any expenses incurred by the litigant as a result of the support of an individual under paragraph (1) are not recoverable expenses in the proceedings.”.

(a) S.S.I. 2002/132, amended by S.S.I. 2002/516; 2003/26 and 601; 2004/197; 2005/648; 2006/509; 2007/6, 339, 440 and 463; 2008/121, 223 and 365; 2009/107, 164, 294 and 402; and 2010/279 and 340.

(b) Rule 1.3 was last amended by S.S.I. 2007/6.

3.—(1) The Summary Application Rules are amended in accordance with the following subparagraph.

(2) After rule 2.2 (application) insert—

“Lay support

2.2A—(1) At any time during proceedings the sheriff may, on the request of a party litigant, permit a named individual to assist the litigant in the conduct of the proceedings by sitting beside or behind (as the litigant chooses) the litigant at hearings in court or in chambers and doing such of the following for the litigant as he or she requires—

- (a) providing moral support;
- (b) helping to manage the court documents and other papers;
- (c) taking notes of the proceedings;
- (d) quietly advising on—
 - (i) points of law and procedure;
 - (ii) issues which the litigant might wish to raise with the sheriff;
 - (iii) questions which the litigant might wish to ask witnesses.

(2) It is a condition of such permission that the named individual does not receive from the litigant, whether directly or indirectly, any remuneration for his or her assistance.

(3) The sheriff may refuse a request under paragraph (1) only if—

- (a) the sheriff is of the opinion that the named individual is an unsuitable person to act in that capacity (whether generally or in the proceedings concerned); or
- (b) the sheriff is of the opinion that it would be contrary to the efficient administration of justice to grant it.

(4) Permission granted under paragraph (1) endures until the proceedings finish or it is withdrawn under paragraph (5); but it is not effective during any period when the litigant is represented.

(5) The sheriff may, of his or her own accord or on the motion of a party to the proceedings, withdraw permission granted under paragraph (1); but the sheriff must first be of the opinion that it would be contrary to the efficient administration of justice for the permission to continue.

(6) Where permission has been granted under paragraph (1), the litigant may—

- (a) show the named individual any document (including a court document); or
- (b) impart to the named individual any information,

which is in his or her possession in connection with the proceedings without being taken to contravene any prohibition or restriction on the disclosure of the document or the information; but the named individual is then to be taken to be subject to any such prohibition or restriction as if he or she were the litigant.

(7) Any expenses incurred by the litigant as a result of the support of an individual under paragraph (1) are not recoverable expenses in the proceedings.”.

4.—(1) The Summary Cause Rules are amended in accordance with the following subparagraph.

(2) After rule 2.1 (representation)(a) insert—

(a) Rule 2.1 was last amended by S.S.I. 2007/6.

“Lay support

2.2.—(1) At any time during proceedings the sheriff may, on the request of a party litigant, permit a named individual to assist the litigant in the conduct of the proceedings by sitting beside or behind (as the litigant chooses) the litigant at hearings in court or in chambers and doing such of the following for the litigant as he or she requires—

- (a) providing moral support;
- (b) helping to manage the court documents and other papers;
- (c) taking notes of the proceedings;
- (d) quietly advising on—
 - (i) points of law and procedure;
 - (ii) issues which the litigant might wish to raise with the sheriff;
 - (iii) questions which the litigant might wish to ask witnesses.

(2) It is a condition of such permission that the named individual does not receive from the litigant, whether directly or indirectly, any remuneration for his or her assistance.

(3) The sheriff may refuse a request under paragraph (1) only if—

- (a) the sheriff is of the opinion that the named individual is an unsuitable person to act in that capacity (whether generally or in the proceedings concerned); or
- (b) the sheriff is of the opinion that it would be contrary to the efficient administration of justice to grant it.

(4) Permission granted under paragraph (1) endures until the proceedings finish or it is withdrawn under paragraph (5); but it is not effective during any period when the litigant is represented.

(5) The sheriff may, of his or her own accord or on the incidental application of a party to the proceedings, withdraw permission granted under paragraph (1); but the sheriff must first be of the opinion that it would be contrary to the efficient administration of justice for the permission to continue.

(6) Where permission has been granted under paragraph (1), the litigant may—

- (a) show the named individual any document (including a court document); or
- (b) impart to the named individual any information,

which is in his or her possession in connection with the proceedings without being taken to contravene any prohibition or restriction on the disclosure of the document or the information; but the named individual is then to be taken to be subject to any such prohibition or restriction as if he or she were the litigant.

(7) Any expenses incurred by the litigant as a result of the support of an individual under paragraph (1) are not recoverable expenses in the proceedings.”

5.—(1) The Small Claim Rules are amended in accordance with the following subparagraph.

(2) After rule 2.1 (representation)(a) insert—

“Lay support

2.2.—(1) At any time during proceedings the sheriff may, on the request of a party litigant, permit a named individual to assist the litigant in the conduct of the proceedings by sitting beside or behind (as the litigant chooses) the litigant at hearings in court or in chambers and doing such of the following for the litigant as he or she requires—

- (a) providing moral support;
- (b) helping to manage the court documents and other papers;

(a) Rule 2.1 was last amended by S.S.I. 2007/6.

- (c) taking notes of the proceedings;
- (d) quietly advising on—
 - (i) points of law and procedure;
 - (ii) issues which the litigant might wish to raise with the sheriff;
 - (iii) questions which the litigant might wish to ask witnesses.

(2) It is a condition of such permission that the named individual does not receive from the litigant, whether directly or indirectly, any remuneration for his or her assistance.

(3) The sheriff may refuse a request under paragraph (1) only if—

- (a) the sheriff is of the opinion that the named individual is an unsuitable person to act in that capacity (whether generally or in the proceedings concerned); or
- (b) the sheriff is of the opinion that it would be contrary to the efficient administration of justice to grant it.

(4) Permission granted under paragraph (1) endures until the proceedings finish or it is withdrawn under paragraph (5); but it is not effective during any period when the litigant is represented.

(5) The sheriff may, of his or her own accord or on the incidental application of a party to the proceedings, withdraw permission granted under paragraph (1); but the sheriff must first be of the opinion that it would be contrary to the efficient administration of justice for the permission to continue.

(6) Where permission has been granted under paragraph (1), the litigant may—

- (a) show the named individual any document (including a court document); or
- (b) impart to the named individual any information,

which is in his or her possession in connection with the proceedings without being taken to contravene any prohibition or restriction on the disclosure of the document or the information; but the named individual is then to be taken to be subject to any such prohibition or restriction as if he or she were the litigant.

(7) Any expenses incurred by the litigant as a result of the support of an individual under paragraph (1) are not recoverable expenses in the proceedings.”.

Amendment of Ordinary Cause Rule 30.5

6.—(1) The Ordinary Cause Rules are amended in accordance with the following subparagraph.

(2) In rule 30.5 (extract of certain awards notwithstanding appeal)—

- (a) for “an award of custody, access or aliment” substitute “an order under section 11 of the Children (Scotland) Act 1995(a) or in respect of aliment”;
- (b) for “had” substitute “has”;
- (c) for “rule 31.5 (appeals in connection with custody, access or aliment)” substitute “rule 31.9 (appeals in connection with orders under section 11 of the Children (Scotland) Act 1995 or aliment)(b)”.

Intimation to local authority in family and civil partnership actions

7.—(1) The Ordinary Cause Rules are amended in accordance with the following subparagraphs.

(2) In Chapter 33 (family actions)—

- (a) omit—

(a) 1995 c.36.

(b) Rule 31.9 was inserted by S.I. 1996/2445.

- (i) rule 33.7(1)(g);
- (ii) rule 33.7(4);
- (b) for rule 33.12 (execution of service on, or intimation to, local authority) substitute—

“Intimation to local authority

33.12.—(1) In any family action where the pursuer craves a residence order in respect of a child, the sheriff may, if the sheriff thinks fit, order intimation to the local authority in which area the pursuer resides; and such intimation shall be in Form F8.

(2) Where an order for intimation is made under paragraph (1), intimation to that local authority shall be given within 7 days after the date on which an order for intimation has been made.”.

- (3) In Chapter 33A (civil partnership actions)—

- (a) omit—
 - (i) rule 33A.7(1)(e);
 - (ii) rule 33A.7(4);
- (b) for rule 33A.12 (execution of service on, or intimation to, local authority) substitute—

“Intimation to local authority

33A.12.—(1) In any civil partnership action where the pursuer craves a residence order in respect of a child, the sheriff may, if the sheriff thinks fit, order intimation to the local authority in which area the pursuer resides; and such intimation shall be in Form CP6.

(2) Where an order for intimation is made under paragraph (1), intimation to that local authority shall be given within 7 days after the date on which an order for intimation has been made.”.

- (4) In Appendix 1 (forms)—

- (a) In Form F8 (Form of notice to local authority requesting a report in respect of a child)—
 - (i) For the paragraph numbered “2” substitute—

“2. If you wish to oppose this action, or oppose the granting of any order applied for by the pursuer in respect of the child, you must lodge a notice of intention to defend (Form F26). See Form F26 attached for further details.”;
 - (ii) The title of the Form becomes “Form of notice to local authority”.
- (b) In Form CP6 (Form of notice to local authority requesting a report in respect of a child in a civil partnership action)—
 - (i) For the paragraph numbered “2” substitute—

“2. If you wish to oppose this action, or oppose the granting of any order applied for by the pursuer in respect of the child, you must lodge a notice of intention to defend (Form CP16). See Form CP16 attached for further details.”;

- (ii) The title of the Form becomes “Form of notice to local authority”.

(5) But the Ordinary Cause Rules as they applied immediately before 1st January 2011 continue to have effect for the purpose of any family action or civil partnership action, as the case may be, in respect of which an initial writ is lodged before that date.

Foreign decrees in family actions

8.—(1) The Ordinary Cause Rules are amended in accordance with the following subparagraphs.

(2) In rule 8.1 (reponing)(a), in paragraph (1)(a), for “rule 33.1(1)(a) to (h) (n) or (o)” substitute “rule 33.1(a) to (h) or (n) to (p)”.

(3) In rule 33.1 (interpretation of Chapter 33)(b), in paragraph (1), after subparagraph (o) insert—

“(p) an action for declarator of recognition, or non-recognition, of a relevant foreign decree within the meaning of section 7(9) of the Domicile and Matrimonial Proceedings Act 1973(c);”.

(4) In rule 33.28 (evidence in certain undefended family actions), after paragraph (1)(a)(iv), insert—

“(v) for declarator of recognition, or non-recognition, of a relevant foreign decree within the meaning of section 7(9) of the Domicile and Matrimonial Proceedings Act 1973;”.

(5) In rule 33.33A (late appearance and application for recall by defenders)(d), in paragraph (1), for “rule 33.1(a) to (h), (n) or (o)” substitute “rule 33.1(a) to (h) or (n) to (p)”.

(6) In rule 33.37 (decree by default), in paragraph (2)(a), for “rule 33.1(1)(a) to (h), (n) or (o)” substitute “rule 33.1(a) to (h) or (n) to (p)”.

(7) After Part XV of Chapter 33 (management of money payable to children)(e), insert—

“PART XVI

ACTION OF DECLARATOR OF RECOGNITION OR NON-RECOGNITION OF A FOREIGN DECREE

Action of declarator in relation to certain foreign decrees

33.96.—(1) This rule applies to an action for declarator of recognition, or non-recognition, of a decree of divorce, nullity or separation granted outwith a member state of the European Union.

(2) In an action to which this rule applies, the pursuer shall state in the condescendence of the initial writ—

- (a) the court, tribunal or other authority which granted the decree;
- (b) the date of the decree of divorce, annulment or separation to which the action relates;
- (c) the date and place of the marriage to which the decree of divorce, nullity or separation relates;
- (d) the basis on which the court has jurisdiction to entertain the action;
- (e) whether to the pursuer’s knowledge any other proceedings whether in Scotland or in any other country are continuing in respect of the marriage to which the action relates or are capable of affecting its validity or subsistence; and
- (f) where such proceedings are continuing—
 - (i) the court, tribunal or authority before which the proceedings have been commenced;
 - (ii) the date of commencement;
 - (iii) the names of the parties; and

(a) Rule 8.1 was amended by S.S.I. 2000/239, 2004/197, 2006/207.

(b) Rule 33.1 was amended by S.I. 1996/2167, S.S.I 2005/189 and 2006/207.

(c) 1973 c.45. Section 7 was amended by the Presumption of Death (Scotland) Act 1977 (c.27), section 19 and Schedule 2; the Family Law (Scotland) Act 2006 (asp 2), section 37(2) and schedule 2, paragraph (1); and S.S.I. 2001/36 and 2005/42.

(d) Rule 33.33A was inserted by S.S.I. 2008/223.

(e) Part XV of Chapter 33 was inserted by S.I. 1996/2167.

(iv) the date, or expected date of any proof (or its equivalent), in the proceedings.

(3) Where—

- (a) such proceedings are continuing;
- (b) the action before the sheriff is defended; and
- (c) either—
 - (i) the initial writ does not contain the statement referred to in paragraph (2)(e), or
 - (ii) the particulars mentioned in paragraph (2)(f) as set out in the initial writ are incomplete or incorrect,

any defences or minute, as the case may be, lodged by any person to the action shall include that statement and, where appropriate, the further or correct particulars mentioned in paragraph (2)(f).

(4) Unless the sheriff otherwise directs, a declarator of recognition, or non-recognition, of a decree under this rule shall not be granted without there being produced with the initial writ—

- (a) the decree in question or a certified copy of the decree;
- (b) the marriage extract or equivalent document to which the action relates.

(5) Where a document produced under paragraph (4)(a) or (b) is not in English it shall, unless the sheriff otherwise directs, be accompanied by a translation certified by a notary public or authenticated by affidavit.

(6) For the purposes of this rule, proceedings are continuing at any time after they have commenced and before they are finally disposed of.”.

The Criminal Justice and Licensing (Scotland) Act 2010

9.—(1) The Summary Application Rules are amended in accordance with the following subparagraphs.

(2) For rules 3.34.1 to 3.34.8 of Part XXXIV (Licensing (Scotland) Act 2005)(a) of Chapter 3 substitute—

“Appeals

3.34.—(1) An appeal under section 131 of the Licensing (Scotland) Act 2005(b) is to be made by summary application.

(2) An application under paragraph (1) must be lodged with the sheriff clerk of the sheriff court district in which the principal office of the Licensing Board is situated not later than 21 days after the relevant date.

(3) In paragraph (2) “relevant date” means—

- (a) the date of the decision of the Licensing Board; or
- (b) where a statement of reasons has been required under section 51(2) of the 2005 Act, the date of issue of the statement of reasons.”.

(3) In Schedule 1 (forms)—

- (a) in Form 27 in the introductory paragraph of the second form of interlocutor, for “section 30(2)” substitute “[section (30(2))][section 30(2A)]”;
- (b) in Form 28—
 - (i) in statement 3 of Part B, for “relevant harm” substitute “[relevant harm][the commission of an exploitation offence] (*delete as appropriate*)”;

(a) Part XXXIV of Chapter 3 was inserted by S.S.I. 2008/9.

(b) 2005 asp 16. Section 131 was amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 194.

- (ii) in the introductory paragraph of the second form of interlocutor, for “section 32(1)” substitute “[section 32(1)][section 32(1A)]”;
- (c) in Form 29 —
 - (i) in statement 2 of Part B, for “the occurrence of relevant harm” substitute “[the occurrence of relevant harm][the commission of an exploitation offence] (*delete as appropriate*)”;
 - (ii) in the introductory paragraph of the second form of interlocutor, for “the occurrence of relevant harm” substitute “[the occurrence of relevant harm][the commission of an exploitation offence]”;
- (d) omit Form 33(a).

(4) Rules 3.34.1 to 3.34.8 and Form 33 as they applied immediately before 13th December 2010 continue to have effect for all purposes in respect of decisions that may be appealed under section 131(1) of, and Schedule 5 to, the Licensing (Scotland) Act 2005 made by a Licensing Board before 13th December 2010.

A.C. HAMILTON
Lord President
I.P.D.

Edinburgh
24th November 2010

(a) Form 33 was inserted by S.S.I. 2008/9.

EXPLANATORY NOTE

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

This Act of Sederunt makes miscellaneous amendments to the Ordinary Cause Rules, the Summary Application Rules, the Summary Cause Rules and the Small Claim Rules.

Paragraphs 2 to 5 introduce new rules to regulate the provision of lay support to party litigants in the conduct of proceedings. The rules apply to ordinary cause procedure, summary application procedure, summary cause procedure and small claim procedure.

Paragraph 6 makes minor amendments to Ordinary Cause Rule 30.5.

Paragraph 7 amends the Ordinary Cause Rules in respect of intimation to local authorities in family and civil partnership actions where a residence order is sought. The effect of the amendments is to provide that the sheriff has discretion about when an order for intimation is made to a local authority. The requirement for a local authority to prepare a report on receiving such intimation is removed.

Paragraph 8 inserts a new Part XVI and rule 33.96 into Chapter 33 of the Ordinary Cause Rules (family actions), relating to the procedure to be followed in actions for declarator or recognition, or non-recognition, of a decree of divorce, nullity or separation granted outwith a member state of the European Union.

Paragraph 8(3) amends the definition of “family action” in rule 33.1 so as to include such actions.

Paragraphs 8(2) and (4) to (6) make consequential amendments to rules relating to reponing, evidence in undefended actions, late appearance and application for recall by defenders and decree by default.

Paragraph 9 amends the summary application rules in consequence of the amendments made to the Licensing (Scotland) Act 2005 and the Antisocial Behaviour etc. (Scotland) Act 2004 by the Criminal Justice and Licensing (Scotland) Act 2010. Paragraph 9(4) contains transitional provisions.

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