

2015 No. 312

COURT OF SESSION

SHERIFF COURT

**Act of Sederunt (Rules of the Court of Session 1994 and
Ordinary Cause Rules 1993 Amendment) (Child Welfare
Reporters) 2015**

<i>Made</i>	- - - -	<i>26th August 2015</i>
<i>Laid before the Scottish Parliament</i>		<i>28th August 2015</i>
<i>Coming into force</i>	- -	<i>26th October 2015</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 with such modifications as it thinks fit.

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).

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 Ordinary Cause Rules 1993 Amendment) (Child Welfare Reporters) 2015.

(2) It comes into force on 26th October 2015.

(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) For rule 49.22 (appointment of local authority or reporter to report on a child)(d), substitute—

(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3).

(b) 2014 asp 18.

(c) 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. 2015/283.

(d) Rule 49.22 was amended by S.I. 1996/2587.

“Child welfare reporters

49.22.—(1) At any stage of a family action the court may, in relation to any matter affecting a child, appoint a person (referred to in this rule as a “child welfare reporter”)—

- (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 court 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 49.22.

(5) Where the court 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 Office of Court is not open, unless cause is shown for specifying a later date.

(6) On appointing a child welfare reporter, the court 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 entered appearance; and
 - (iii) any other person who has been sisted as a party to the proceedings; 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 Deputy Principal 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 Deputy Principal Clerk by the date specified;
 - (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 Deputy Principal Clerk to be given further directions by the court; and
 - (b) bring to the attention of the Deputy Principal 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 court 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

49.22A.—(1) This rule applies where the court 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 the child.

(2) The following provisions of rule 49.22 apply as if the reference to the child welfare reporter was a reference to the local authority appointed by the court—

- (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 Deputy Principal Clerk; and
- (b) unless otherwise directed by the court, send a copy of the report to each party to the proceedings.”.

(3) In the Appendix, after Form 49.14A-G (form of notice to defender in action of dissolution of civil partnership on grounds under section 117(2)(b) of the Civil Partnership Act 2004(a), insert the form set out in Schedule 1 to this Act of Sederunt.

Saving: the Rules of the Court of Session 1994

3. The Rules of the Court of Session 1994 as they applied immediately before 26th October 2015 continue to apply to an appointment under rule 49.22 made before that date.

(a) Form 49.14A-G was inserted by S.S.I. 2005/632.

Amendment of the Ordinary Cause Rules 1993

4.—(1) The Ordinary Cause Rules 1993(a) are amended in accordance with this paragraph.

(2) For rule 33.21 (appointment of local authority or reporter to report on a child)(b), substitute—

“Child welfare reporters

33.21.—(1) At any stage of a family 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”)—

- (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 F44.

(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 reporter 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,

(a) 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. 2015/296.

(b) Rule 33.21 was amended by S.I. 1996/2167.

- (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

33.21A.—(1) This rule applies where 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 the child.

(2) The following provisions of rule 33.21 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—

- (a) omit forms F42 and F43 (forms of certificate under Article 32 of Council Regulation (EC) No. 1347/2000 of 29th May 2000)(a);
- (b) after Form F41 (form of intimation to parties of a Child Welfare Hearing)(b), insert the form set out in Schedule 2 to this Act of Sederunt.

Saving: the Ordinary Case Rules 1993

5. The Ordinary Cause Rules 1993 as they applied immediately before 26th October 2015 continue to apply to an appointment under rule 33.21 made before that date.

CJM SUTHERLAND
Lord Justice Clerk
I.P.D.

Edinburgh
26th August 2015

(a) Forms F42 and F43 were inserted by S.S.I. 2001/144 for use in conjunction with rule 33.27A. The forms were rendered otiose when that rule was replaced by a rule of the same number by S.S.I. 2006/207.
(b) Form F41 was substituted by S.S.I. 2000/239.

SCHEDULE 1

Paragraph 2(3)

Form 49.22

Rule 49.22(4)

Form of annex to interlocutor appointing a child welfare reporter

- Appointment of Child Welfare Reporter under rule 49.22(1)(a).

Where this box is ticked the Child Welfare Reporter is required to seek the views of the child [or children] on the issue(s) specified in Part 1 below.

- Appointment of Child Welfare Reporter under rule 49.22(1)(b).

Where this box is ticked the Child Welfare Reporter is required to carry out the enquiries specified in Part 2 below, and to address the issue(s) specified in Part 3 below.

PART 1

Issue(s) in respect of which views of the child [or children] are to be sought [*specify*]

PART 2

Enquiries to be undertaken—

- Seek views of child
- Visit home of [*specify*]

- Visit nursery / school / child minder / other [*specify*]
- Interview mother / father
- Interview other family members [*specify*]
- Interview child minder / nanny
- Interview teacher / head teacher
- Interview child's health visitor / GP / other health professional [*specify*]
- Interview a party's GP / other health professional [*specify*]
- Interview social worker [*specify*]
- Interview domestic abuse case worker [*specify*]
- Interview other persons [*specify*]
- Obtain criminal conviction certificate under section 112 of the Police Act 1997 in respect of [*specify party*]
- Observe contact [*specify*]
- Observe child in home environment pre/post contact [*specify*]
- Obtain record of parties' attendance from contact centre
- Other [*specify*]

PART 3

Issues to be addressed in report [*specify*]

SCHEDULE 2

Paragraph 4(3)(b)

Form F44

Rule 33.21(4)

Form of annex to interlocutor appointing a child welfare reporter

- Appointment of Child Welfare Reporter under rule 33.21(1)(a).

Where this box is ticked the Child Welfare Reporter is required to seek the views of the child [or children] on the issue(s) specified in Part 1 below.

- Appointment of Child Welfare Reporter under rule 33.21(1)(b).

Where this box is ticked the Child Welfare Reporter is required to carry out the enquiries specified in Part 2 below, and to address the issue(s) specified in Part 3 below.

PART 1

Issue(s) in respect of which views of the child [or children] are to be sought [*specify*]

PART 2

Enquiries to be undertaken—

- Seek views of child
- Visit home of [*specify*]
- Visit nursery / school / child minder / other [*specify*]
- Interview mother / father

- Interview other family members [*specify*]
- Interview child minder / nanny
- Interview teacher / head teacher
- Interview child's health visitor / GP / other health professional [*specify*]
- Interview a party's GP / other health professional [*specify*]
- Interview social worker [*specify*]
- Interview domestic abuse case worker [*specify*]
- Interview other persons [*specify*]
- Obtain criminal conviction certificate under section 112 of the Police Act 1997 in respect of [*specify party*]
- Observe contact [*specify*]
- Observe child in home environment pre/post contact [*specify*]
- Obtain record of parties' attendance from contact centre
- Other [*specify*]

PART 3

Issues to be addressed in report [*specify*]

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session 1994, and the Ordinary Cause Rules 1993, to make provision concerning the appointment of reporters and local authorities to assist the court in relation to child welfare issues in family actions in the Court of Session and Sheriff Court.

The new rules make provision for the appointment of child welfare reporters who can be appointed either to seek the views of the child and to report the child's views to the court (in accordance with section 11(7) of the Children (Scotland) Act 1995), or to undertake enquiries and to report to the court. A child welfare reporter can only be appointed to undertake enquiries and report where the court is satisfied that the appointment is in the best interests of the child, and that the appointment will promote the effective and prompt determination of an issue.

Certain matters have to be specified in any interlocutor appointing a child welfare reporter. Where the reporter is appointed to seek the views of a child the interlocutor must specify the issues in respect of which views are to be sought. Where the reporter is appointed to undertake enquiries and report the interlocutor must specify the enquiries to be undertaken, and the issues to be addressed in the report. These matters may be specified in a prescribed form of annex to the interlocutor. The interlocutor must also specify the date by which the report is to be submitted, and include a direction regarding initial liability for the reporter's fee.

It is for the Deputy Principal Clerk of Session or sheriff clerk, rather than a party to the proceedings, to give the child welfare reporter a certified copy of the appointing interlocutor. Once appointed, the child welfare reporter's functions are prescribed in the rules.

The rules make separate provision regarding the appointment of local authorities to investigate and report under section 11 of the Matrimonial Proceedings (Children) Act 1958.

© Crown copyright 2015

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland.

£6.00

S201508261001 09/2015 19585

<http://www.legislation.gov.uk/id/ssi/2015/312>

ISBN 978-0-11-102915-2



9 780111 029152