

**2016 No. 102**

**COURT OF SESSION**

**SHERIFF COURT**

**Act of Sederunt (Rules of the Court of Session 1994 and Sheriff  
Court Rules Amendment) (Miscellaneous) 2016**

*Made* - - - - - *15th February 2016*

*Laid before the Scottish Parliament* *17th February 2016*

*Coming into force* - - - *21st March 2016*

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 appropriate.

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 Sheriff Court Rules Amendment) (Miscellaneous) 2016.

(2) It comes into force on 21st March 2016.

(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) In Rule 4.2(3) (signature of documents)(d) after subparagraph (b), insert—

“(ba) an application in Form 40.2 or Form 41A.2 may be signed by the applicant or an agent;”.

(3) In rule 4.7 (lodging of documents in Inner House causes)(e)—

(a) in paragraph (1)—

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(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016, schedule 1, paragraph 1(4).

(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. 2015/419).

(d) Rule 4.3 was last amended by S.S.I. 2014/371.

(e) Rule 4.7 was last amended by S.S.I. 2010/30.

- (i) in subparagraph (b), omit “application for leave to appeal,”;
- (ii) for “six copies” where it first appears, substitute “three copies”;
- (iii) omit “; and, unless otherwise agreed, send six copies of it to every other party”;
- (b) after paragraph (1) insert—
  - “(1A) A party, on lodging an application for leave to appeal in the Inner House, must—
    - (a) lodge in process a copy of the application; and
    - (b) unless otherwise agreed, send a copy to every other party.
  - (1B) A party who has lodged an application for leave to appeal in the Inner House must, if notified by a clerk of session that the application will be dealt with by a Division of the Inner House under rule 37A.2(3), lodge in process two additional copies of the application within the period of 7 days beginning with the date of notification.”;
- (c) in paragraph (2), for “four copies”, substitute “three copies”;
- (d) after paragraph (2) insert—
  - “(3) Unless rule 37A.2(3) applies, where a party intends to refer to a document (other than the application itself) at a hearing on an application for leave to appeal, the party shall lodge a copy of it in process by 12 noon on the second sederunt day before the hearing.”.
- (4) In rule 38.2(5)(g) (reclaiming days)(a), omit “, refusing”.
- (5) In rule 41.14(1) (appeals under statute: lodging of case in court)(b), omit subparagraph (b).
- (6) In rule 41.48(4) (modifications of Part II to stated cases under the Tribunals and Inquiries Act 1992)(c), omit modified rule 41.14(b).
- (7) In rule 41.50(4) (modifications of Part II to appeals under certain Social Security Acts)(d), omit modified rule 41.14(b).
- (8) In rule 49.22(10)(a) (child welfare reporters)(e), omit “and”.
- (9) In the Appendix—
  - (a) in Form 40.2 (form of application for leave to appeal), for “(*Signed by counsel or other person having a right of audience*)” substitute—

“(Signed)

Applicant

[or Solicitor [or Agent] for applicant]”;

- (b) in Form 41A.2 (form of application for permission to appeal to the Supreme Court)(f), for “(*signed by counsel or other person having a right of audience*)” substitute—

“(Signed)

Applicant

[or Solicitor [or Agent] for applicant]”;

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(a) Rule 38.2 was substituted by S.S.I. 2010/30.  
 (b) Rule 41.14 was substituted by S.S.I. 2011/303.  
 (c) Rule 41.48 was substituted by S.S.I. 2011/303.  
 (d) Rule 41.50 was substituted by S.S.I. 2011/303.  
 (e) Rule 49.22 was substituted by S.S.I. 2015/312.  
 (f) Form 41A.2 was inserted by S.S.I. 2015/228.

- (c) omit Form 41.52C (form of notice of intention to pursue application or appeal under the Nationality, Immigration and Asylum Act 2002)(a).

### **Amendment of the Ordinary Cause Rules 1993**

**3.**—(1) The Ordinary Cause Rules 1993(b) are amended in accordance with this paragraph.

(2) For rule 33A.21 (appointment of local authority or reporter to report on a child)(c), substitute—

#### **“Child welfare reporters**

**33A.21.**—(1) At any stage of a civil partnership 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 CP38.

(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 officer 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.

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(a) Form 41.52C was inserted by S.S.I. 2007/283.

(b) 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. 2015/424.

(c) Rule 33A.21 was inserted by S.S.I. 2005/638.

(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 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**

**33A.21A.**—(1) This rule applies where, in a civil partnership action, 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 a child.

(2) The following provisions of rule 33A.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, after Form CP37 (form of extract decree of dissolution of a civil partnership in an application for a simplified dissolution of a civil partnership)(a), insert the form set out in the Schedule to this Act of Sederunt.

#### **Amendment of the Summary Application Rules**

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

(2) In rule 3.46.2 (applications for extended detention of travel documents)(c), the heading becomes “Applications for extended retention of travel documents”.

(3) In rule 3.46.3 (further applications for extended detention of travel documents)(d), the heading becomes “Further applications for extended retention of travel documents”.

(4) In Schedule 1, in Form 69 (form of application for extension of the 14-day period under paragraph 8(1) of Schedule 1 to the Counter-Terrorism and Security Act 2015)(e)—

- (a) after “*insert designation, rank and address of applicant*” insert “)”;
- (b) in paragraph 1 (order(s) sought from the court)—
  - (i) after “Act” insert “2015”;
  - (ii) for “detention” substitute “retention”.

(5) In Schedule 1, in Form 70 (form of intimation of application for extension of the 14-day period under paragraph 8(1) of Schedule 1 to the Counter-Terrorism and Security Act 2015)(f), at the end insert—

“(signed)

Applicant

[or Solicitor for applicant

(add designation and business address)]”

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(a) Form CP37 was inserted by S.S.I. 2005/638.  
(b) S.I. 1999/929, last amended by S.S.I. 2015/419.  
(c) Rule 3.46.2 was inserted by S.S.I. 2015/283.  
(d) Rule 3.46.3 was inserted by S.S.I. 2015/283.  
(e) Form 69 was inserted by S.S.I. 2015/283.  
(f) Form 70 was inserted by S.S.I. 2015/283.

**Saving**

5. The Ordinary Cause Rules 1993 as they applied immediately before 21st March 2106 continue to apply to an appointment under rule 33A.21 made before that date.

Edinburgh  
15th February 2016

*CJM Sutherland*  
Lord President  
I.P.D.

## SCHEDULE

Paragraph 3(3)

### Form CP38

#### Rule 33A.21(4)

Form of annex to interlocutor appointing a child welfare reporter

- Appointment of Child Welfare Reporter under rule 33A.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 33A.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 Act of Sederunt (Rules of the Court of Session 1994) 1994.

Rule 4.7 is amended to reduce the number of copy documents that must be lodged in process and the number of copies that must be provided to other parties. Similarly, rules 41.14, 41.48 and 41.50 are amended to reduce the number of copy documents referred to in those rules.

Rule 38.2(5)(g) is amended to remove an interlocutor refusing a sist from the list of interlocutors that may be reclaimed against without leave

The Rules of the Court of Session 1994 are also amended in order to allow Form 40.2 (form of application for leave to appeal) and Form 41A.2 (form of application for permission to appeal to the Supreme Court) to be signed by an applicant or a solicitor rather than by counsel.

Form 41.52C (form of notice of intention to pursue application or appeal under the Nationality, Immigration and Asylum Act 2002) is revoked because it is no longer used. It was introduced by rule 41.52C, which was revoked by the Act of Sederunt (Rules of the Court of Session Amendment No.5) (Causes in the Inner House) 2011.

This Act of Sederunt also amends the Ordinary Cause Rules 1993 to make provision concerning the appointment of Child Welfare Reporters and local authorities to assist the court in relation to child welfare issues in civil partnership actions. The provision made replicates the provision previously made in relation to family actions by Act of Sederunt (Rules of the Court of Session 1994 and Ordinary Cause Rules 1993 Amendment) (Child Welfare Reporters) 2015.

Rule 49.22(10) of the Rules of the Court of Session 1994 is also amended to ensure consistency with the corresponding provision in the Ordinary Cause Rules.

Paragraph 4 of this Act of Sederunt makes a number of minor corrections to Part 46 (Counter-Terrorism and Security Act 2015) of Chapter 3 of the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc.) 1999.

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