
SCOTTISH STATUTORY INSTRUMENTS

2019 No. 123

**Act of Sederunt (Rules of the Court of
Session 1994 and Ordinary Cause Rules
1993 Amendment) (Views of the Child) 2019**

Amendment of the Rules of the Court of Session 1994

- 2.—(1) The Rules of the Court of Session 1994⁽¹⁾ are amended in accordance with this paragraph.
- (2) In rule 49.8 (warrants for intimation in family actions)⁽²⁾—
- (a) in paragraph (1)—
 - (i) for “paragraphs (5) and (8)”, substitute “paragraph (5) and rule 49.8A (warrants and forms for intimation to a child and for seeking a child’s views)”;
 - (ii) omit sub-paragraph (h);
 - (b) omit paragraphs (7) and (8).
- (3) After rule 49.8, insert—

“Warrants and forms for intimation to a child and for seeking a child’s views

- 49.8A.**—(1) Subject to paragraph (2), in an action which includes a conclusion for a section 11 order in respect of a child who is not a party to the action, the pursuer must—
- (a) include in the condescence of the summons averments setting out the reasons why it is appropriate to send Form 49.8A to the child;
 - (b) when the summons is presented for signeting—
 - (i) apply by motion for a warrant for intimation and the seeking of the child’s views in Form 49.8A, specifying the articles of condescence in the summons which contain the reasons for the request;
 - (ii) submit a draft Form 49.8A, showing the details that the pursuer proposes to include when the form is sent to the child.
- (2) Where the pursuer considers that it would be inappropriate to send Form 49.8A to the child (for example, where the child is under 5 years of age), the pursuer must—
- (a) when the summons is presented for signeting, apply by motion for the court to dispense with intimation and the seeking of the child’s views in Form 49.8A, specifying the articles of condescence in the summons which contain the reasons for the request;
 - (b) include in the condescence of the summons averments setting out the reasons why it is inappropriate to send Form 49.8A to the child.

⁽¹⁾ The Rules of the Court of Session 1994 are in schedule 2 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443, last amended by S.S.I. 2019/97).

⁽²⁾ Rule 49.8 was last amended by S.S.I. 2006/206.

- (3) The court must be satisfied that the draft Form 49.8A submitted under paragraph (1) (b) has been drafted appropriately~~(3)~~.
- (4) The court may dispense with intimation and the seeking of views in Form 49.8A or make any other order it considers appropriate.
- (5) An order granting warrant for intimation and the seeking of the child's views in Form 49.8A under this rule must—
- (a) state that the Form 49.8A must be sent in accordance with rule 49.8A(6);
 - (b) be signed by the Lord Ordinary.
- (6) The Form 49.8A must be sent in accordance with—
- (a) rule 49.20 (views of the child – undefended actions), where the action is undefended;
 - (b) rule 49.20A (views of the child – section 11 order sought by pursuer only), where the action is defended and a section 11 order is sought by the pursuer only;
 - (c) rule 49.20B (views of the child – section 11 order sought by defender only), where a section 11 order is sought by the defender only; or
 - (d) rule 49.20C (views of the child – section 11 orders sought by both pursuer and defender), where a section 11 order is sought by both parties.”.
- (4) In rule 49.15 (orders for intimation by the court)~~(4)~~—
- (a) in paragraph (1)—
 - (i) for “In any”, substitute “Except in relation to intimation to a child in Form 49.8A, in any”;
 - (ii) in sub-paragraph (a), omit “subject to paragraph (2),”;
 - (b) omit paragraph (2).
- (5) For rule 49.20 (procedure in respect of children)~~(5)~~, substitute—

“Views of the child – undefended actions

49.20.—(1) This rule applies to undefended actions in which a section 11 order is sought and warrant has been granted for intimation and the seeking of the child's views in Form 49.8A.

- (2) The pursuer must—
- (a) following the expiry of the period for lodging defences, send the child the Form 49.8A that was submitted and approved under rule 49.8A (warrants and forms for intimation to a child and for seeking a child's views);
 - (b) lodge with the minute for decree a certificate of intimation in Form 49.8B;
 - (c) not send the child a copy of the summons.
- (3) Except on cause shown, the court must not grant decree in the period of 28 days following the date on which the Form 49.8A was sent to the child.

Views of the child – section 11 order sought by pursuer only

49.20A.—(1) This rule applies to defended actions in which only the pursuer seeks a section 11 order and warrant has been granted for intimation and the seeking of the child's views in Form 49.8A.

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- (3) The Scottish Civil Justice Council has published guidance on the preparation of Form 49.8A in child-friendly language. This document can be viewed online at the “Publications” page of its website (www.scottishciviljusticecouncil.gov.uk). Alternatively, a copy can be requested by emailing scjc@scotcourts.gov.uk.
- (4) Rule 49.15 was last amended by S.S.I. 2005/632.
- (5) Rule 49.20 was substituted by S.I. 1996/2587.

- (2) The pursuer must—
 - (a) no later than 14 days after defences are lodged, send the child the Form 49.8A that was submitted and approved under rule 49.8A (warrants and forms for intimation to a child and for seeking a child's views);
 - (b) on the same day, lodge a certificate of intimation in Form 49.8B;
 - (c) not send the child a copy of the summons or the defences.

Views of the child – section 11 order sought by defender only

49.20B.—(1) This rule applies to defended actions in which only the defender seeks a section 11 order and warrant has been granted for intimation and the seeking of the child's views in Form 49.8A.

- (2) The defender must—
 - (a) no later than 14 days after warrant to intimate to the child is granted under rule 49.31(7) (defences in family actions), send the child the Form 49.8A that was submitted and approved under rule 49.31;
 - (b) on the same day, lodge a certificate of intimation in Form 49.8B;
 - (c) not send the child a copy of the summons or the defences.

Views of the child – section 11 orders sought by both pursuer and defender

49.20C.—(1) This rule applies to defended actions in which section 11 orders are sought by both the pursuer and the defender and warrant has been granted for intimation and the seeking of the child's views in Form 49.8A.

- (2) The pursuer must—
 - (a) no later than 14 days after defences are lodged, send the child the Form 49.8A that was submitted and approved under rule 49.8A (warrants and forms for intimation to a child and for seeking a child's views), amended so as also to narrate the section 11 order sought by the defender;
 - (b) on the same day—
 - (i) lodge a certificate of intimation in Form 49.8B;
 - (ii) send the defender a copy of the Form 49.8A that was sent to the child;
 - (c) not send the child a copy of the summons or the defences.

Views of the child – the court's role

49.20D.—(1) In a family action, in relation to any matter affecting a child, where that child has—

- (a) returned a Form 49.8A to the court; or
- (b) otherwise indicated to the court a wish to express views,

the court must not grant any order unless an opportunity has been given for the views of that child to be obtained or heard.

(2) Where the court is considering making an interim section 11 order before the views of the child have been obtained or heard, the court must consider whether, and if so how, to seek the child's views in advance of making the order.

(3) Where a child has indicated a wish to express views, the court must order any steps to be taken that it considers appropriate to obtain or hear the views of that child.

(4) The court must not grant an order in a family action, in relation to any matter affecting a child who has expressed views, unless the court has given due weight to the views expressed by that child, having regard to the child's age and maturity.

(5) In any action in which a section 11 order is sought, where Form 49.8A has not been sent to the child concerned or where it has been sent but the court considers that the passage of time requires it to be sent again, the court may at any time order any party to—

- (a) send the Form 49.8A to that child within a specified timescale;
- (b) on the same day, lodge—
 - (i) a copy of the Form 49.8A that was sent to the child;
 - (ii) a certificate of intimation in Form 49.8C.”.

(6) In rule 49.22(3) (interlocutor appointing a child welfare reporter)(6)—

- (a) in sub-paragraph (c), after “sought”, insert “and include a direction as to whether a copy of the report is to be provided to the parties under paragraph (9)(d)”;
- (b) following sub-paragraph (c), omit “and”;
- (c) after sub-paragraph (d), insert—

“; and

- (e) where the appointment is under paragraph (1)(b) and seeking the views of the child forms part of the enquiries to be undertaken, include a direction as to whether the views of the child should be recorded in a separate report and, if so, whether a copy of that report is to be provided to the parties under paragraph (9)(d).”.

(7) In rule 49.28(1) (evidence in certain undefended family actions)(7), omit sub-paragraph (a)(i).

(8) After rule 49.31(2) (defences in family actions), insert—

“(3) Subject to paragraph (4), where the defences include a conclusion for a section 11 order in respect of a child who is not a party to the action and where the summons does not include a conclusion for a section 11 order, the defender must, when the defences are lodged—

- (a) apply by motion for a warrant for intimation and the seeking of the child's views in Form 49.8A;
- (b) submit a draft Form 49.8A, showing the details that the defender proposes to include when the form is sent to the child.

(4) Where the defender considers that it would be inappropriate to send Form 49.8A to the child (for example, where the child is under 5 years of age), the defender must—

- (a) when the defences are lodged, apply by motion for the court to dispense with intimation and the seeking of the child's views in Form 49.8A, specifying which numbered paragraphs of the defences contain the reasons for the request;
- (b) include in the defences averments setting out the reasons why it is inappropriate to send Form 49.8A to the child.

(5) The court must be satisfied that the draft Form 49.8A submitted under paragraph (3)

(b) has been drafted appropriately(8).

(6) Rule 49.22 was substituted by [S.S.I. 2015/312](#).

(7) Rule 49.28 was last amended by [S.S.I. 2014/302](#).

(8) The Scottish Civil Justice Council has published guidance on the preparation of Form 49.8A in child-friendly language. This document can be viewed online at the “Publications” page of its website (www.scottishciviljusticecouncil.gov.uk). Alternatively, a copy can be requested by emailing scjc@scotcourts.gov.uk.

- (6) The court may dispense with intimation and the seeking of views in Form 49.8A or make any other order that it considers appropriate.
- (7) An order granting warrant for intimation and the seeking of the child's views in Form 49.8A under this rule must—
- (a) state that the Form 49.8A must be sent to the child in accordance with rule 49.20B (views of the child – section 11 order sought by defender only);
 - (b) be signed by the Lord Ordinary.”
- (9) In rule 49.34 (late appearance by defenders)(9), after paragraph (2), insert—
- “(3) Where the court makes an order under paragraph (1)(a), it must order any steps to be taken that it considers appropriate to obtain or hear the views of the child in relation to any section 11 order that may be sought by the defender.”
- (10) In rule 49.41(1) (applications after decree relating to a section 11 order)(10), omit “other than a contact order”.
- (11) For rule 49.42 (applications after decree relating to a contact order)(11), substitute—

“Warrants for intimation to child and permission to seek views relating to section 11 order

- 49.42.**—(1) Subject to paragraph (2), when lodging a minute under rule 49.41 (applications after decree relating to a section 11 order) which includes a crave after final decree for, or the variation or recall of, a section 11 order in respect of a child who is not a party to the action, the minuter must—
- (a) include in the minute a crave for a warrant for intimation and the seeking of the child's views in Form 49.8A;
 - (b) when lodging the minute, submit a draft Form 49.8A, showing the details that the minuter proposes to include when the form is sent to the child.
- (2) Where the minuter considers that it would be inappropriate to send Form 49.8A to the child (for example, where the child is under 5 years of age), the minuter must include in the minute—
- (a) a crave to dispense with intimation and the seeking of the child's views in Form 49.8A;
 - (b) averments setting out the reasons why it is inappropriate to send Form 49.8A to the child.
- (3) The court must be satisfied that the draft Form 49.8A submitted under paragraph (1) (b) has been drafted appropriately(12).
- (4) The court may dispense with intimation and the seeking of views in Form 49.8A or make any other order that it considers appropriate.
- (5) An order granting warrant for intimation and the seeking of the child's views in Form 49.8A under this rule must—
- (a) state that the Form 49.8A must be sent in accordance with rule 49.42(6);
 - (b) be signed by the Lord Ordinary.

(9) Rule 49.34 was amended by [S.S.I. 2007/548](#).

(10) Rule 49.41 was amended by [S.I. 1996/2587](#).

(11) Rule 49.42 was amended by [S.I. 1996/2587](#).

(12) The Scottish Civil Justice Council has published guidance on the preparation of Form 49.8A in child-friendly language. This document can be viewed online at the “Publications” page of its website (www.scottishciviljusticecouncil.gov.uk). Alternatively, a copy can be requested by emailing scjc@scotcourts.gov.uk.

- (6) The Form 49.8A must be sent in accordance with—
- (a) rule 49.42A (views of the child – unopposed minutes relating to a section 11 order), where the minute is unopposed;
 - (b) rule 49.42B (views of the child – craves relating to a section 11 order sought by minuter only), where the minute is opposed and a section 11 order is sought by the minuter only; or
 - (c) rule 49.42C (views of the child – craves relating to a section 11 order sought by both minuter and respondent), where a section 11 order is sought by both the minuter and the respondent.

Views of the child – unopposed minutes relating to a section 11 order

49.42A.—(1) This rule applies to minutes which include a crave after final decree for, or the variation or recall of, a section 11 order in respect of which no answers are lodged and warrant has been granted for intimation and the seeking of the child’s views in Form 49.8A.

- (2) The minuter must—
- (a) send the child the Form 49.8A that was submitted and approved under rule 49.42 (warrants for intimation to child and permission to seek views relating to section 11 order);
 - (b) on the same day, lodge a certificate of intimation in Form 49.8B;
 - (c) not send the child a copy of the minute.
- (3) Except on cause shown, the court must not determine the minute in the period of 28 days following the date on which the Form 49.8A was sent to the child.

Views of the child – craves relating to a section 11 order sought by minuter only

49.42B.—(1) This rule applies where answers have been lodged in respect of a minute after final decree and a crave for, or the variation or recall of, a section 11 order is sought by the minuter only and warrant has been granted for intimation and the seeking of the child’s views in Form 49.8A.

- (2) The minuter must—
- (a) no later than 14 days after answers are lodged, send the child the Form 49.8A that was submitted and approved under rule 49.42 (warrants for intimation to child and permission to seek views relating to section 11 order);
 - (b) on the same day, lodge a certificate of intimation in Form 49.8B;
 - (c) not send the child a copy of the minute or answers.

Views of the child – craves relating to a section 11 order sought by both minuter and respondent

49.42C.—(1) This rule applies where answers have been lodged in respect of a minute after final decree and craves for, or the variation or recall of, a section 11 order are sought by both the minuter and the respondent and warrant has been granted for intimation and the seeking of the child’s views in Form 49.8A.

- (2) The minuter must—
- (a) no later than 14 days after answers are lodged, send the child the Form 49.8A that was submitted and approved under rule 49.42 (warrants for intimation to child and permission to seek views relating to section 11 order), amended so as also to narrate the section 11 order sought by the respondent;

- (b) on the same day—
 - (i) lodge a certificate of intimation in Form 49.8B;
 - (ii) send the respondent a copy of the Form 49.8A that was sent to the child;
 - (c) not send the child a copy of the minute or answers.”.
- (12) In rule 49.63 (applications after decree)(13)—
- (a) in paragraph (1), omit “other than a contact order”;
 - (b) for paragraph (3), substitute—

“(3) Rules 49.42 (warrants for intimation to child and permission to seek views relating to section 11 order) to 49.42C (views of the child – craves relating to a section 11 order sought by both minuter and respondent) apply (with the necessary modifications) to the seeking of the child’s views in relation to a minute lodged in accordance with this rule.”.
- (13) For rule 70.16 (intimation on child in child abduction cases where the Council Regulation applies)(14), substitute—

“Warrants and forms for intimation to a child and for seeking a child’s views

70.16.—(1) Subject to paragraph (2), in a petition under rule 70.5(1) (form of applications under this Part)(15) where the Council Regulation applies, the petitioner must—

- (a) include in the prayer of the petition a crave for a warrant for intimation and the seeking of the child’s views in Form 49.8A;
 - (b) include in the statement of facts in the petition averments setting out the reasons why it is appropriate to send Form 49.8A to the child;
 - (c) when presenting the petition for first orders, submit a draft Form 49.8A, showing the details that the petitioner proposes to include when the form is sent to the child.
- (2) Where the petitioner considers that it would be inappropriate to send Form 49.8A to the child (for example, where the child is under 5 years of age), the petitioner must —
- (a) include in the prayer of the petition a crave to dispense with intimation and the seeking of the child’s views in Form 49.8A;
 - (b) include in the statement of facts in the petition averments setting out the reasons why it is inappropriate to send Form 49.8A to the child.
- (3) The court must be satisfied that the draft Form 49.8A submitted under paragraph (1) (c) has been drafted appropriately(16).
- (4) The court may dispense with intimation and the seeking of views in Form 49.8A or make any other order that it considers appropriate.
- (5) An order granting warrant for intimation and the seeking of the child’s views in Form 49.8A under this rule must be signed by the Lord Ordinary.
- (6) Where the court orders intimation and the seeking of the child’s views in Form 49.8A, the petitioner must—
- (a) send Form 49.8A to the child as soon as possible;
 - (b) on the same day, lodge—

(13) Rule 49.63 was amended by [S.I. 1996/2587](#).

(14) Rule 70.16 was inserted by [S.S.I. 2005/135](#).

(15) Rule 70.5(1) was last amended by [S.S.I. 2005/135](#).

(16) The Scottish Civil Justice Council has published guidance on the preparation of Form 49.8A in child-friendly language. This document can be viewed online at the “Publications” page of its website (www.scottishciviljusticecouncil.gov.uk). Alternatively, a copy can be requested by emailing scjc@scotcourts.gov.uk.

- (i) a copy of the Form 49.8A that was sent to the child;
 - (ii) a certificate of intimation in Form 49.8B;
 - (c) not send the child a copy of the petition.”.
- (14) In rule 70.17(1)(a) (views of child)(17), for “Form 49.8–N (form of notice of intimation to a child)”, insert “Form 49.8A”.

(15) In the Appendix (forms)—

- (a) omit Form 49.8–N (form of notice of intimation to a child of a family action in which an order under section 11 of the Children (Scotland) Act 1995 or Article 12 of the Hague Convention when regulated by [Council Regulation \(E.C.\) No. 2201/2003](#) of 27th November 2003, is sought)(18);
- (b) after Form 49.8–P (form of intimation for financial provision on intestacy under section 29(2) of the Family Law (Scotland) Act 2006(19), insert Form 49.8A (form for intimation to a child and for seeking a child’s views) in schedule 1;
- (c) after Form 49.8A (form for intimation to a child and for seeking a child’s views), insert Form 49.8B (form of certificate of intimation of Form 49.8A) in schedule 2;
- (d) after Form 49.8B (form of certificate of intimation of Form 49.8A), insert Form 49.8C (form of certificate of intimation of Form 49.8A (where ordered under rule 49.20D)) in schedule 3;
- (e) in Form 49.22 (form of annex to interlocutor appointing a child welfare reporter)(20)—

(i) at the end of Part 1, insert—

“

Is a copy of the report to be provided to the parties under rule 49.22(9)(d)?

Yes

No;

”

(ii) at the end of Part 3, insert—

“

Where the views of the child form part of the enquiries to be undertaken, should the views of the child be recorded in a separate report?

Yes

No

If yes, is a copy of that report to be provided to the parties under rule 49.22(9)(d)?

Yes

No.

”

(17) Rule 70.17 was inserted by [S.S.I. 2005/135](#).
(18) Form 49.8–N was substituted by [S.S.I. 2005/135](#).
(19) Form 49.8–P was inserted by [S.S.I. 2006/206](#).
(20) Form 49.22 was inserted by [S.S.I. 2015/312](#).