

1988 No. 613 (S.66)

**SHERIFF COURT, SCOTLAND**

**Act of Sederunt (Rules for the Registration of Custody Orders of the Sheriff Court) 1988**

*Made* - - - - - *23rd March 1988*

*Coming into force* *4th April 1988*

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(a), sections 27(2) and 28(1) of the Family Law Act 1986(b) and of all other powers enabling them in that behalf, after consultation with the Sheriff Court Rules Council, do hereby enact and declare:

**Citation and commencement**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules for the Registration of Custody Orders of the Sheriff Court) 1988 and shall come into force on 4th April 1988.

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

**Interpretation**

2. In this Act of Sederunt:—

“the Act of 1986” means the Family Law Act 1986;

“appropriate court” means the High Court in England and Wales or the High Court in Northern Ireland, as the case may be;

“appropriate register” means the court book in which there is registered the action in which the custody order was originally sought;

“custody order” has the meaning assigned to it by sections 1, 32, 40, 42(5) and 42(6) of the Act of 1986;

“proper officer” means the Secretary of the Principal Registry of the Family Division of the High Court in England and Wales or the Master (Care and Protection) of the High Court in Northern Ireland, as the case may be.

**Applications for registration of custody orders in another court**

3.—(1) An application under section 27 of the Act of 1986 to register a custody order made by a sheriff court in an appropriate court in England and Wales or Northern Ireland shall be made by letter to the sheriff clerk of the court in which the order was made.

(2) An application under paragraph (1) of this rule shall be accompanied by—

(a) a copy of the letter of application;

(b) an affidavit by the applicant;

(c) a copy of that affidavit;

(d) a certified copy interlocutor of the custody order;

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(a) 1971 c.58.  
(b) 1986 c.55.

- (e) a certified copy interlocutor of any variation which is in force of the custody order; and
  - (f) any other document relevant to the application together with a copy of it.
- (3) An affidavit required under this rule should set out—
- (a) the name and address of the applicant and his right under the custody order;
  - (b) the name and date of birth of the child in respect of whom the custody order was made, the present whereabouts or suspected whereabouts of the child and the name of any person with whom he is alleged to be;
  - (c) the name and address of any other person who has an interest in the custody order;
  - (d) whether the custody order is to be registered in England and Wales or Northern Ireland or both jurisdictions and the court in which it is to be registered;
  - (e) whether the custody order is in force;
  - (f) whether the custody order is already registered and, if so, where it is registered; and
  - (g) details of any order known to the applicant which affects the child and is in force in the jurisdiction in which the custody order is to be registered.

(4) Where the court refuses to send an application under this rule to the appropriate court on the ground that the custody order is no longer in force, the sheriff clerk shall notify the applicant in writing of the court's decision.

(5) The sheriff clerk shall retain the letter of application under this rule together with any documents which accompanied it and which are not transmitted to the appropriate court under section 27(3) of the Act of 1986.

#### **Transmission of application for registration**

4.—(1) Unless it appears to the court that the custody order is no longer in force, the sheriff clerk shall send the documents mentioned in section 27(3) of the Act of 1986 to the proper officer of the court in which the custody order is to be registered.

(2) For the purposes of section 27(3)(b) of the Act of 1986 the prescribed particulars of any variation which is in force of a custody order shall be a certified copy interlocutor of any such variation.

(3) On sending an application under paragraph (1) of this rule, the sheriff clerk shall record the date and particulars of the application and the custody order in the appropriate register.

(4) On receiving notification from the proper officer of an appropriate court that the custody order has been registered in that court under section 27(4) of the Act of 1986, the sheriff clerk shall record the date of registration in the appropriate register.

#### **Cancellation or variation of registered custody order**

5.—(1) Where the court revokes, recalls or varies a custody order which it has made, the sheriff clerk shall—

- (a) send a certified copy interlocutor of the revocation, recall or variation to the proper officer of the court in which the custody order is registered;
- (b) record the transmission of the certified copy in the appropriate register; and
- (c) record the revocation, recall or variation in the appropriate register.

(2) On receiving notification from the proper officer of the court in which the custody order is registered that he has amended his record, the sheriff clerk shall record the fact that the amendment has been made in the appropriate register.

Edinburgh  
23rd March 1988

*Emslie*  
Lord President, I.P.D.

**EXPLANATORY NOTE**

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

This Act of Sederunt provides for the application for registration of custody orders of the sheriff court under the Family Law Act 1986.