
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 172

SHERIFF COURT

**Act of Sederunt (Children's Hearings (Scotland)
Act 2011) (Miscellaneous Amendments) 2013**

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| <i>Made</i> | - - - - | <i>28th May 2013</i> |
| <i>Laid before the Scottish Parliament</i> | - - - - | <i>30th May 2013</i> |
| <i>Coming into force</i> | - - | <i>24th June 2013</i> |

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971⁽¹⁾, section 91 of the Children (Scotland) Act 1995⁽²⁾ and section 43(1)(f) of the Children's Hearings (Scotland) Act 2011⁽³⁾ 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 (Children's Hearings (Scotland) Act 2011) (Miscellaneous Amendments) 2013 and subject to paragraph 8, comes into force on 24th June 2013.

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

(3) In this Act of Sederunt—

“the 1987 Act of Sederunt” means the Act of Sederunt (Legal Aid Rules) (Children) 1987⁽⁴⁾;

“the 1997 Act of Sederunt” means the Act of Sederunt (Child Care and Maintenance Rules) 1997⁽⁵⁾;

(1) 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); the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (the “2007 asp”) section 33 and schedule 5, paragraph 10 (in part). Section 32 is amended prospectively by the Children's Hearings (Scotland) Act 2011 (asp 1) (the “2011 asp”), section 185. 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 section 2(4) of the 2000 asp.

(2) 1995 c. 36.

(3) 2011 asp 1.

(4) S.I. 1987/427.

(5) S.I. 1997/291. Amended by S.I. 1998/2130; and by S.S.I. 2000/388; 2002/560; 2003/44, 2005/190; 2006/75 and 411; 2007/468; 2009/29, 284 and 449; 2010/137 and 279; 2011/386; and 2012/188 and 271.

“the Ordinary Cause Rules” means the Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907(6);

“the Sheriff Court Adoption Rules 2009” means the Sheriff Court Adoption Rules 2009 in the Schedule to the Act of Sederunt (Sheriff Court Rules Amendment) (Adoption and Children (Scotland) Act 2007) 2009(7).

Amendment of Chapter 1 of the 1997 Act of Sederunt

2.—(1) Chapter 1 of the 1997 Act of Sederunt is amended in accordance with the following subparagraph.

(2) In rule 1.2 (interpretation) for the definition of “Principal Reporter” substitute—

““Principal Reporter” is the person referred to in section 14 of the Children’s Hearings (Scotland) Act 2011 or any person carrying out the functions of the Principal Reporter by virtue of paragraph 10(1) of schedule 3 to that Act;”.

Amendment of Chapter 3 of the 1997 Act of Sederunt

3.—(1) Chapter 3 of the 1997 Act of Sederunt is amended in accordance with the following subparagraphs.

(2) The title of Chapter 3 becomes “Children’s Hearings: Applications to the sheriff”.

(3) In rule 3.1 (interpretation)—

(a) in paragraph (1)—

(i) the following definitions are inserted in the appropriate sequential order—

““1995 Act” means the Children (Scotland) Act 1995 and (except where the context otherwise requires) references to terms defined in that Act have the same meaning here as given there;

“2011 Act” means the Children’s Hearings (Scotland) Act 2011 and (except where the context otherwise requires) references to terms defined in that Act have the same meaning here as given there;

“relevant person” means—

(aa) a person referred to in section 200(1) of the 2011 Act or

(bb) a person deemed a relevant person by virtue of section 81(3) or 160(4) (b) of the 2011 Act;”;

(ii) omit the defined term “the Act” and its related definition;

(b) for paragraph (2) substitute—

“(2) In this Chapter any reference, however expressed, to disputed grounds shall be construed as a reference to a statement of grounds which forms the subject of an application under section 93(2)(a) or 94(2)(a) of the 2011 Act.

(3) Except as otherwise provided, this Chapter applies to applications to the sheriff (including reviews and appeals) under the 1995 Act or the 2011 Act.

(4) All hearings in respect of applications to the sheriff must be held in private.”.

(4) For rule 3.2 (application) substitute—

(6) 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; 2010/120, 279, 324, 340 and 416; 2011/193, 289 and 386; 2012/188, 221 and 271; and 2013/91, 135 and 139.

(7) S.S.I. 2009/284, as amended by S.S.I. 2012/271 and 2013/139.

“Application of rules 3.3 to 3.5A

3.2.—(1) Rules 3.3 to 3.5 apply where a sheriff is coming to a decision about a matter relating to a child within the meaning of section 27 of the 2011 Act.

(2) Rule 3.5A applies in the circumstances referred to in paragraph (1) and in respect of applications under Part V of this Chapter.”.

(5) For rule 3.3 (power to dispense with service on child) substitute—

“Power to dispense with service on child

3.3. Where the sheriff is satisfied, so far as practicable and taking account of the age and maturity of the child, that it would be inappropriate to order service on the child, the sheriff may dispense with service on the child.

Child to attend hearing

3.3A.—(1) This rule applies where an application is made to the sheriff under the 2011 Act, other than where section 103 or 112 of the 2011 Act applies.

(2) A child must attend all hearings, unless the sheriff otherwise directs.

(3) A child may attend a hearing even if the child is excused from doing so.

(4) If the child is not excused from attending the hearing but does not attend the sheriff may grant a warrant to secure attendance in relation to the child.

(5) Paragraph (6) applies if—

(a) the hearing of the application is to be continued to another day; and

(b) the sheriff is satisfied that there is reason to believe that the child will not attend on that day.

(6) The sheriff may grant a warrant to secure attendance in relation to the child.”.

(6) In rule 3.4 (service on child)—

(a) in paragraph (1)(b) for “set aside” substitute “terminate”;

(b) omit paragraph (1)(e);

(c) for paragraph (1)(f) substitute—

“(f) subject to subparagraph (g), in Form 31 in respect of an application under section 93(2)(a) or 94(2)(a) of the 2011 Act;

(g) Form 31A in respect of an application under section 94(2)(a) of the 2011 Act where a procedural hearing has been fixed; and

(h) Form 31B in respect of an application under section 110(2) of the 2011 Act.”.

(7) In rule 3.5 (procedure where child wishes to express a view)—

(a) in paragraph (1)—

(i) for the first line of paragraph (1) substitute “Subject to section 27(3) of the 2011 Act, the sheriff—”;

(ii) for subparagraph (b) substitute—

“(b) shall not come to a decision about a matter relating to a child within the meaning of section 27 of the 2011 Act unless an opportunity has been given for the views of that child to be obtained or heard.”;

(b) in paragraph (2)(c) omit—

(i) “or curator *ad litem* appointed by the court”;

- (ii) omit “or” at the end of the paragraph;
- (c) after paragraph (2)(c) insert—
 - “(ca) by any curator *ad litem*”;
- (d) the heading becomes “Procedure for obtaining a child’s view”.
- (8) After rule 3.5 insert—

“Confidentiality

- 3.5A.**—(1) Unless the sheriff otherwise directs, all documents lodged in process are to be available only to the sheriff, the reporter, the safeguarder, the curator *ad litem* and the parties; and such documents must be treated as confidential by all persons involved in, or party to, the proceedings and by the sheriff clerk.
- (2) The safeguarder and the curator *ad litem* must—
 - (a) treat all information obtained in the exercise of their duties as confidential; and
 - (b) not disclose any such information to any person unless disclosure of such information is necessary for the purpose of their duties.
 - (3) This rule is subject to rule 3.5.”.
 - (9) In rule 3.6 (application of rules for safeguarders)—
 - (a) for “to 3.10” substitute “to 3.9”;
 - (b) for “proceedings under section 57 of the Act” substitute “an application under section 37 of the 2011 Act”.
 - (10) In rule 3.7 (appointment of safeguarder)—
 - (a) in paragraph (1) for “The sheriff” substitute “Where a safeguarder has not been appointed for the child, the sheriff”;
 - (b) for paragraph (2) substitute—
 - “(2) Where a sheriff appoints a safeguarder, the appointment and the reasons for it must be recorded in an interlocutor.”.
 - (11) In rule 3.8 (rights, powers and duties of safeguarder etc.) after paragraph (e) insert—
 - “(f) whether or not a party, be entitled to receive from the sheriff clerk all interlocutors subsequent to his or her appointment.”.
 - (12) The heading of rule 3.9 becomes “Representation of safeguarder”.
 - (13) Rule 3.10 (provision where safeguarder intimates his decision not to become a party to the proceedings) is omitted.
 - (14) In rule 3.11 (assigning of diet for hearing) after “Form 32” insert “, Form 32A”.
 - (15) In rule 3.12 (service and notice to persons named in application)—
 - (a) in paragraph (1)—
 - (i) in subparagraph (b) for “set aside” substitute “terminate”;
 - (ii) omit subparagraph (e);
 - (iii) in subparagraph (f) substitute—
 - “(f) subject to subparagraph (g), in Form 39 in respect of an application under section 93(2)(a) or 94(2)(a) of the 2011 Act made under Part VII of this Chapter; or

- (g) in Form 39A where a procedural hearing has been fixed in respect of an application under section 94(2)(a) of the 2011 Act made under Part VII of this Chapter.”;
- (b) in paragraph (2) after “safeguarder” insert “or curator *ad litem*”.
- (16) In rule 3.13 (period of notice) in paragraph (2)—
 - (a) for subparagraph (a) substitute—
 - “(a) an appeal referred to in section 157(1), 160(1), 161(1) or 162(3) of the 2011 Act.”;
 - (b) for subparagraph (c) substitute—
 - “(c) a hearing on an application to vary or terminate a child protection order.”.
- (17) In rule 3.14 (citation of witnesses etc.) in paragraph (1)(a) for “first diet” substitute “hearing on evidence”.
- (18) In rule 3.16 (persons who may effect service)—
 - (a) in paragraph (1)(b) for “or (f)” substitute “to (g)”;
 - (b) for paragraph (3) substitute—
 - “(3) Where required by the sheriff, the sheriff clerk shall cite the Principal Reporter, the authors or compilers of any reports or statements and any other person whom the sheriff may wish to examine under section 155(5) of the 2011 Act (procedure in appeal to sheriff against decision of children’s hearing).”.
- (19) In rule 3.17 (production of certificates of execution of service) in paragraph (1)(b) for “the post office” substitute “a”.
- (20) For rule 3.22 (applications for evidence of children by television link) substitute—

“Applications for evidence by live link

3.22.—(1) On cause shown, a party may apply in the form prescribed in paragraph (3) for authority for the whole or part of—

- (a) the evidence of a witness or party; or
- (b) a submission,

to be made through a live link.

(2) In paragraph (1)—

“witness” means a person who has been or may be cited to appear before the sheriff as a witness (including a witness who is outwith Scotland), except in circumstances where such witness is a vulnerable witness within the meaning of section 11(1) of the Vulnerable Witnesses (Scotland) Act 2004;

“submission” means any oral submission which would otherwise be made to the court by the party or such party’s representative in person including an oral submission in support of an application;

“live link” means a live television link or such other arrangement as may be specified in the application by which the witness, party or representative, as the case may be, is able to be seen and heard in the proceedings or heard in the proceedings and is able to see and hear or hear the proceedings while at a place which is outside the courtroom.

(3) An application under paragraph (1) shall be made—

- (a) in Form 44A in the case of a witness or party;
- (b) in Form 44B in the case of a submission.