SCOTTISH STATUTORY INSTRUMENTS

2004 No. 455

SHERIFF COURT

Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (Antisocial Behaviour etc. (Scotland) Act 2004) 2004

Made - - - - 21st October 2004
Coming into force in accordance with article 1(1)(b) and (2)

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 27(5)(e) of the Antisocial Behaviour etc. (Scotland) Act 2004(**2**), 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 and commencement

1.—(1) This Act of Sederunt–

(a) may be cited as the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (Antisocial Behaviour etc. (Scotland) Act 2004) 2004;

(b) shall, subject to the provisions of article 1(2), come into force on 28th October 2004; and

(c) shall be inserted in the Books of Sederunt.

(2) In Part XXVII of Chapter 3 of the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc.) Rules 1999(**3**) which is inserted by article 2(4)–

(a) Rule 3.27.18 shall come into force on 31st January 2005;

(b) Rules 3.27.5 and 3.27.15 to 3.27.17 shall come into force on 4th April 2005; and

(c) Rules 3.27.12 to 3.27.14 shall come into force on 15th November 2005.

(**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 2001 (asp 4), schedule 5, paragraph 13 and the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43 and was extended by the Child Support Act 1991 (c. 48), sections 39(2) and 49.
(**2**) 2004 asp 8.
(**3**) S.I.1999/929. Amended by S.S.I. 2000/148 and 387, 2001/142, 2002/7, 129, 130, 146 and 563, 2003/26, 27, 98, 261, 319, 346 and 556 and 2004/197, 222 and 334.

Amendment, revocation and saving of the Summary Application Rules

2.—(1) In the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999, Chapter 3 (rules on applications under specific statutes) is amended in accordance with the following paragraphs.

(2) Part XXII (Crime and Disorder Act 1998)(**4**) is hereby revoked.

(3) Notwithstanding the revocation of Part XXII by article 2(2), the provisions of Part XXII shall continue in force in relation to applications for an antisocial behaviour order under section 19(3) of the Crime and Disorder Act 1998(**5**) commenced before the date of that revocation.

(4) After Part XXVI (Protection of Children (Scotland) Act 2003)(**6**) insert–

"PART XXVII

ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) ACT 2004

Interpretation

3.27.1.—(1) In this Part–

"the Act" means the Antisocial Behaviour etc. (Scotland) Act 2004;

"ASBO" means an antisocial behaviour order under section 4(1) of the Act;

"interim ASBO" means an interim ASBO under section 7(2) of the Act;

"parenting order" means a parenting order under section 13 or 102 of the Act; and

"the Principal Reporter" means the Principal Reporter appointed under section 127 of the Local Government etc. (Scotland) Act 1994(**7**).

(2) Any reference to a section shall, unless the context otherwise requires, be a reference to a section of the Act.

Applications for variation or revocation of ASBOs to be made by minute in the original process

3.27.2.—(1) An application under section 5 (variation and revocation of antisocial behaviour orders) shall be made by minute in the original process of the application for the ASBO in relation to which the variation or revocation is sought.

(2) Where the person subject to the ASBO is a child, a written statement containing the views of the Principal Reporter on the application referred to in rule 3.27.2(1) shall, where practicable, be lodged with that application.

Application for an interim ASBO

3.27.3.—(1) An application for an interim ASBO shall be made by crave in the initial writ in which an ASBO is sought.

(2) An application for an interim ASBO once craved shall be moved by motion to that effect.

(3) The sheriff shall not consider an application for an interim ASBO until after the initial writ has been intimated to the person in respect of whom that application is made and, where

(**4**) Part XXII was inserted by S.S.I. 2003/319.
(**5**) 1998 c. 37
(**6**) Part XXVI was inserted by S.S.I. 2004/334.
(**7**) 1994 c. 39.

that person is a child, a written statement containing the views of the Principal Reporter on that application has been lodged.

Notification of making etc. of ASBOs and interim ASBOs

3.27.4.—(1) Where a person is present in court at the time an ASBO or interim ASBO is made or an ASBO to which that person is subject is varied, service of a copy of the order making the ASBO or interim ASBO or varying the ASBO, as the case may be, shall be made under section 8(5)(a) or (b) and may be effected by the sheriff clerk–

(a) giving such copy to and obtaining a receipt therefor from that person; or

(b) sending such copy to that person by recorded delivery letter or registered post.

(2) Where a person is not present in court at the time an ASBO or interim ASBO is made or an ASBO to which that person is subject is varied, service of a copy of the order making the ASBO or interim ASBO or varying the ASBO, as the case may be, shall be made under section 8(5)(b) and shall be effected by such copy being sent to the person subject to the ASBO or interim ASBO by recorded delivery letter or registered post.

Parenting orders

3.27.5.—(1) Where a sheriff is considering making a parenting order under section 13 (sheriff's power to make parenting order), the sheriff shall order the applicant for the ASBO to–

(a) intimate to any parent in respect of whom the parenting order is being considered–

(i) that the court is considering making a parenting order in respect of that parent;

(ii) that if that parent wishes to oppose the making of such a parenting order, he or she may attend or be represented at the hearing at which the sheriff considers the making of the parenting order;

(iii) the place, date and time of the hearing set out in sub-paragraph (a)(ii) above; and

(iv) that if that parent fails to appear and is not represented at the hearing, a parenting order may be made in respect of the parent; and

(b) serve on any parent in respect of whom the parenting order is being considered a copy of the initial writ in which the ASBO is sought.

(2) Any parent in respect of whom a parenting order under section 13 is being considered may be sisted as a party to the action on their own motion, on the motion of either party or by the sheriff of his own motion.

Closure notice

3.27.6.—(1) A closure notice served under section 27 (service etc.) shall be in the form of Form 25 and shall (in addition to the requirements set out in section 27(5))–

(a) state that it has been authorised by a senior police officer(**8**);

(b) specify the date, time and place of the hearing of the application for a closure order under section 28; and

(c) state that any person living on or having control of, responsibility for or an interest in the premises to which the closure notice relates who wishes to oppose the application should attend or be represented.

(**8**) In section 19(1), for authorisations in relation to dispersals a senior police officer must be of or above the rank of superintendent.

(2) Certification of service of a copy of the closure notice to all persons identified in accordance with section 27(2)(b) shall be in the form of Form 26.

Application for closure orders

3.27.7. An application to the sheriff for a closure order under section 28 shall be in the form of Form 27.

Application for extension of closure orders

3.27.8. An application to the sheriff for an extension of a closure order under section 32 shall be by minute in the form of Form 28 lodged in the original process of the application for the closure order in relation to which the extension is sought and shall be lodged not less than 21 days before the closure order to which it relates is due to expire.

Application for revocation of closure order

3.27.9. An application to the sheriff for revocation of a closure order under section 33 shall be by minute in the form of Form 29 lodged in the original process of the application for the closure order in relation to which the revocation is sought.

Application for access to premises

3.27.10. An application to the sheriff for an order for access to premises under section 34 shall be by minute in the form of Form 30 lodged in the original process of the application for the closure order in relation to which the access order is sought.

Applications by summary application

3.27.11. An application under section 35 (Reimbursement of expenditure), 63 (Appeal against graffiti removal notice) or 64 (Appeal against notice under section 61(4)) shall be by summary application.

3.27.12. An application under section 71 (Failure to comply with notice: order as to rental income), 74 (Failure to comply with notice: management control order) or 97 (Appeals against notice under section 94) shall be by summary application.

Revocation and suspension of order as to rental income

3.27.13. An application under section 73(2) for the revocation or suspension of an order relating to rental income shall be by minute lodged in the original process of the application for the order relating to rental income in relation to which the order for revocation or suspension is sought.

Revocation of management control order

3.27.14. An application under section 76(1) for the revocation of a management control order shall be by minute lodged in the original process of the application for the management control order in relation to which the order for revocation is sought.

Review of parenting order

3.27.15.—(1) An application under section 105(1) for revocation or variation of a parenting order shall be by minute lodged in the original process of the application for the parenting order in relation to which the order for revocation or variation is sought.

(2) Where the court that made a parenting order makes an order under section 105(5) that court shall within 4 days transmit the original process relating to the parenting order to the court specified in that order.

Procedural requirements relating to parenting orders

3.27.16. Where the sheriff is considering making a parenting order, or a revocation or variation of a parenting order, and it is practicable, having regard to the age and maturity of the child to–

(a) give the child an opportunity to indicate whether the child wishes to express views; and

(b) if the child so wishes, give the child an opportunity to express those views,

the sheriff shall order intimation in the form of Form 31 to the child in respect of whom the order was or is proposed to be made.

3.27.17. Where the sheriff is considering making a parenting order or revoking or varying a parenting order and does not already have sufficient information about the child, the sheriff shall order intimation in the form of Form 32 to the local authority for the area in which the child resides.

Enforcement of local authorities' duties under section 71 of the Children (Scotland) Act 1995

3.27.18. An application under section 71A(2) of the Children (Scotland) Act 1995 by the Principal Reporter shall be by summary application to the sheriff principal of the Sheriffdom in which the principal office of the local authority is situated.".

(5) In Schedule 1 (Forms), after Form 24 insert Forms 25 to 32 as set out in the Schedule to this Act of Sederunt.

Edinburgh
21st October 2004

Cullen of Whitekirk
Lord President I.P.D.