

2003 No. 556

SHERIFF COURT

Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (International Protection of Adults) 2003

Made - - - - *13th November 2003*

Coming into force - - *14th November 2003*

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(a) 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 may be cited as the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (International Protection of Adults) 2003, and shall come into force on 14th November 2003.

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

Amendment of the Summary Applications Rules

2.—(1) The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(b) is amended in accordance with paragraph (2).

(2) In Chapter 3, after Part XXIII (Ethical Standards in Public Life Etc. (Scotland) Act 2000) insert—

“PART XXIV

INTERNATIONAL PROTECTION OF ADULTS

Interpretation

3.24.1. In this Part—

“the Act” means the Adults with Incapacity (Scotland) Act 2000(c);

(a) 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), 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.

(b) S.I. 1999/929. Amended by S.S.I. 2000/148 and 387, 2001/142, 2002/7, 129, 130, 146 and 563, and 2003/26, 27, 98, 261, 316 and 346.

(c) 2000 asp 4.

“the Convention” means the Hague Convention of 13th January 2000 on the International Protection of Adults;

“international measure” means any measure taken under the law of a country other than Scotland for the personal welfare, or the protection of property, of an adult with incapacity, where—

- (a) jurisdiction in the other country was based on the adult’s habitual residence there; or
- (b) the other country and the United Kingdom were when that measure was taken parties to the Convention, and jurisdiction in that other country was based on a ground of jurisdiction in the Convention; and

“Public Guardian” shall be construed in accordance with section 6 (the public guardian and his functions) of the Act.

Application

3.24.2—(1) An application to register an international measure under paragraph 8(1) of schedule 3 to the Act shall be by summary application made under this Part.

(2) The original document making the international measure, or a copy of that document duly certified as such by an officer of the issuing or a requesting body, shall be lodged with an application under paragraph (1), together with (as necessary) an English translation of that document and that certificate.

(3) Any translation under paragraph (2) must be certified as a correct translation by the person making it, and the certificate must contain the full name, address and qualifications of the translator.

Intimation of application

3.24.3—(1) The sheriff shall order intimation of an application to register an international measure—

- (a) except where the sheriff is satisfied that the person to whom the international measure relates had an opportunity to be heard in the country where that measure was taken, to that person;
- (b) which if registered would have the effect of placing the adult to whom the international measure relates in an establishment in Scotland, to the—
 - (i) Scottish Central Authority; and
 - (ii) Mental Welfare Commission;
- (c) to the Public Guardian; and
- (d) to any other person whom the sheriff considers appropriate.

(2) In this rule—

- (a) “Scottish Central Authority” means an authority—
 - (i) designated under Article 28 of the Convention for the purposes of acting as such; or
 - (ii) appointed by the Scottish Ministers for the purposes of carrying out the functions to be carried out under schedule 3 of the Act by the Scottish Central Authority, where no authority is designated for the purposes of sub-paragraph (i); and
- (b) “Mental Welfare Commission” means the Mental Welfare Commission for Scotland continued in being by section 2 of the Mental Health (Scotland) Act 1984(a).

(a) 1984 c.36.

Notice to the Public Guardian

3.24.4. The sheriff clerk shall within 7 days after the date of an order registering an international measure, provide the Public Guardian with—

- (a) a copy of that order; and
- (b) a copy of the international measure, and of any translation.

Register of recognised foreign measures

3.24.5.—(1) There shall be a register of international measures (“the register”) registered by order under this Part.

(2) The register shall include—

- (a) the nature of the international measure;
- (b) the date of the international measure;
- (c) the date of the order under this Part granting recognition of the international measure;
- (d) the name and address of—
 - (i) the person who applied for recognition of the international measure under this Part;
 - (ii) the person in respect of whom the international measure was taken; and
 - (iii) if applicable, the person on whom any power is conferred by the international measure; and
- (e) a copy of the international measure, and of any translation.

(3) The Public Guardian shall maintain the register, and make it available during normal office hours for inspection by members of the public.

(4) The Public Guardian shall if requested by any person certify that an international measure registered under this Part has been entered in the register.”.

CULLEN OF WHITEKIRK
Lord President,
I.P.D.

Edinburgh
13th November 2003

EXPLANATORY NOTE

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

This Act of Sederunt amends the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 (“the 1999 Rules”).

Article 2 inserts a new Part XXIV into Chapter 3 of the 1999 Rules. The new Part provide rules for applications by any interested party for registration of a measure, made under the law of a country other than Scotland, for the personal welfare or the protection of property of an adult with incapacity.

Schedule 3 to the Adults with Incapacity (Scotland) Act 2000 (“the 2000 Act”) provides at paragraph 7 that such a measure may be recognised in Scotland if–

- (b) jurisdiction in the country where it was taken was based on the habitual residence of the person to whom the measure relates; or
- (c) the United Kingdom and that other country were, at the time the measure was taken, both parties to the Hague Convention of 13th January 2000 on the International Protection of Adults (which the United Kingdom intends to ratify in 2003).

Schedule 3 to the 2000 Act also provides at paragraph 7 the circumstances in which recognition may be refused. It is for the court to determine whether a measure is to be recognised, which it will do on an application under paragraph 8 of that schedule for registration of the measure.

In the new Part–

- (i) rule 3.24.2 provides that an application for registration shall be by summary application, and shall include a copy of the measure (translated, if required);
- (ii) rule 3.24.3 specifies those persons to whom intimation of an application shall be given;
- (iii) rule 3.24.4 provides for intimation of any order made under that Part to the Public Guardian; and
- (iv) rule 3.24.5 provides for a register of international measures that have been registered by an order made under that Part.

£1.75

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under the authority and superintendence of Carol Tullo, the Queen’s Printer for Scotland
150 11/03 19593

