

2005 No. 504

SHERIFF COURT

Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (Mental Health (Care and Treatment) (Scotland) Act 2003) 2005

Made - - - - *5th October 2005*

Coming into force - - *6th October 2005*

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 Sheriff Courts (Scotland) Act 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 (Mental Health (Care and Treatment) (Scotland) Act 2003) 2005 and shall come into force on 6th October 2005.

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

Amendment of the Summary Application Rules

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

(2) In Chapter 3, after Part XXIX (risk of sexual harm orders)(c), there shall be inserted the following:—

(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 2001 (asp 4), Schedule 5, paragraph 13 and the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43 and the Vulnerable Witnesses (Scotland) Act 2004 (asp3), section 14(2) 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, 2003/26, 27, 98, 261, 319, 346 and 556 and 2004/197, 222, 334 and 455 and 2005/61 and 473.

(c) Part XXIX was inserted by S.S.I. 2005/473.

“PART XXX

MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003

Interpretation

3.30.1. In this Part “the Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003(a).

Applications for removal orders

3.30.2.—(1) An application under section 293 of the Act (removal order to place of safety) shall be lodged with the sheriff clerk who shall fix a date for hearing the application.

(2) An order fixing a hearing shall be intimated in such manner and within such timescales as may be prescribed by the sheriff.

Applications for recall or variation of removal orders

3.30.3.—(1) An application under section 295 of the Act (recall or variation of removal order) shall be lodged with the sheriff clerk who shall fix a date for hearing the application.

(2) An order fixing a hearing shall be intimated by the sheriff clerk in such manner and within such timescales as may be prescribed by the sheriff.

Remit to Court of Session

3.30.4.—(1) Where the sheriff principal to whom an appeal is made remits the appeal to the Court of Session under section 320 of the Act (appeals), the sheriff clerk shall, within four days after the sheriff principal has pronounced the interlocutor remitting the appeal to the Court of Session, transmit the process to the Deputy Principal Clerk of Session.

(2) On transmitting the process under paragraph (1), the sheriff clerk shall—

- (a) send written notice of the remit and transmission of the process to each party; and
- (b) certify on the interlocutor sheet that he has done so.”.

Cullen of Whitekirk
Lord President
I.P.D.

Edinburgh
5th October 2005

(a) 2003 asp 13.

EXPLANATORY NOTE

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

This Act of Sederunt further amends the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 (the “1999 Rules”) to make provision for miscellaneous procedure under the Mental Health (Care and Treatment) (Scotland) Act 2003 (the “Act”).

Article 2 inserts a new Part XXX.

The new Part provides that–

- (a) applications for a removal order under section 293 and applications for the recall or variation of a removal order under section 295 of the Act shall be lodged with the sheriff clerk who will fix a date for a hearing; and
- (b) where the sheriff principal remits an appeal to the Court of Session under section 320 of the Act, the process shall be transmitted to the Deputy Principal Clerk of Session within 4 days.

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