
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 335

Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (Adult Support and Protection (Scotland) Act 2007) (No.2) 2008

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 (Adult Support and Protection (Scotland) Act 2007) (No. 2) 2008 and shall come into force on 29th October 2008.

(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(1) is amended in accordance with subparagraphs (2) and (3).

(2) After Part XXXIV(2) insert—

“PART XXXV

ADULT SUPPORT AND PROTECTION (SCOTLAND) ACT 2007

Interpretation

3.35.1. In this Part—

“the Act” means the Adult Support and Protection (Scotland) Act 2007;

“the adult at risk” has the same meaning as in section 3 of the Act.

Variation or recall of removal order

3.35.2.—(1) An application under section 17 of the Act (variation or recall of removal order) for variation or recall of a removal order shall be made by minute in the process relating to the removal order.

(2) A minute under paragraph (1) shall be made in accordance with and regulated by Chapter 14 of the Ordinary Cause Rules.

(1) S.I.1999/929, amended by S.S.I. 2000/18 and 387, 2001/142, 2002/7, 129, 130, 146 and 563, 2003/26, 27, 98, 261, 319, 346 and 556, 2004/197, 222, 334 and 455, 2005/61, 473, 504 and 648, 2006/198, 410, 437 and 509, 2007/6, 233, 339, 440 and 463 and 2008/9, 41, 111 and 223.

(2) Part XXXIV was inserted by S.S.I. 2008/9.

Applications – banning orders and temporary banning orders

3.35.3.—(1) Where in an application under subsection (1) of section 19 of the Act (banning orders) an order is sought under subsection (2)(a) or (b) of that section there shall, where appropriate and unless the sheriff otherwise directs, be lodged a plan which clearly identifies the area specified in the application.

(2) An application under section 21 of the Act (temporary banning orders) shall—

- (a) be made by crave in the application for the banning order concerned; and
- (b) once craved, be moved by motion to that effect.

(3) Where a temporary banning order is granted, the related application for a banning order shall be determined within 6 months of the date of the lodging of that application.

(4) An application under section 24(1)(a) of the Act (variation or recall of banning order) shall be made by minute in the process relating to the banning order.

(5) An application under section 24(1)(b) of the Act (variation or recall of temporary banning order) shall be moved by motion to that effect in the process relating to the application for the banning order concerned.

(6) A minute under paragraph (4) shall be made in accordance with and regulated by Chapter 14 of the Ordinary Cause Rules.

Attachment of power of arrest

3.35.4.—(1) The following documents shall be served under section 25(2) of the Act (powers of arrest) along with a power of arrest:—

- (a) a copy of the application for the order;
- (b) a copy of the interlocutor granting the order and the power of arrest; and
- (c) where the application to attach the power of arrest was made after the order was granted, a copy of the certificate of service of the order.

(2) The following documents shall be delivered to the chief constable in accordance with section 27(1) of the Act (notification to police):—

- (a) a copy of the application for the order;
- (b) a copy of the interlocutor granting the order;
- (c) a copy of the certificate of service of the order; and
- (d) where the application to attach the power of arrest was made after the order was granted—
 - (i) where applicable, a copy of the application for the power of arrest;
 - (ii) a copy of the interlocutor granting it; and
 - (iii) a copy of the certificate of service of the power of arrest and the documents that required to be served along with it in accordance with section 25(2).

(3) Delivery under section 27(1) and (2) of the Act may be carried out by the applicant's solicitor, a sheriff officer or such other person as may be authorised by the sheriff.

Notification to adult at risk

3.35.5. Where section 26 of the Act (notification to adult at risk etc.) applies, the document referred to in subsection (3) of that section shall be delivered to the adult at risk by the applicant's solicitor, a sheriff officer or such other person as may be authorised by the sheriff.

Certificate of delivery of documents

3.35.6. Where a person is in any circumstances required to comply with section 25(2) or 26(2) of the Act he shall, after such compliance, lodge in process a certificate of delivery in Form 34.

Warrants for entry

3.35.7.—(1) An application for a warrant for entry under section 38(2) of the Act (criteria for granting warrants of entry under section 7) shall be in Form 35.

(2) The application may be granted without a hearing.

Form of appeal to the sheriff principal

3.35.8.—(1) An appeal under section 51(2) of the Act (appeals) against an interlocutor of the sheriff granting, or refusing to grant, a banning order shall be lodged within 14 days after the date of the interlocutor concerned.

(2) An application for leave to appeal against an interlocutor of the sheriff granting, or refusing to grant, a temporary banning order under section 51(2) of the Act shall be made within 7 days after the date of the interlocutor concerned.

(3) An appeal against an interlocutor referred to in paragraph (2) shall be lodged within 7 days after the date of the interlocutor granting leave to appeal.

Privacy of any hearing

3.35.9. The sheriff may, where he considers it appropriate in all the circumstances, appoint that the hearing of an application or other proceedings under this Part shall take place in private.”

(3) After Form 33 in Schedule 1, insert Forms 34 and 35 set out in the Schedule to this Act of Sederunt.

Edinburgh
3rd October 2008

A. C. Hamilton
Lord President I.P.D.