

2008 No. 375

SHERIFF COURT

Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (Adult Support and Protection (Scotland) Act 2007) (No. 3) 2008

Made - - - - *13th November 2008*

Coming into force - - *20th November 2008*

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), sections 26(2) and 27(1) and (2)(b) of the Adult Support and Protection (Scotland) Act 2007(c), 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 (Adult Support and Protection (Scotland) Act 2007) (No. 3) 2008 and shall come into force on 20th November 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(d) is amended in accordance with the following subparagraphs.

(2) Paragraph (3) of rule 3.35.4 (attachment of power of arrest)(e) is omitted.

(3) For rule 3.35.5 (notification to adult at risk)(f) substitute—

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- (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, the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43 and the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2) and was extended by the Child Support Act 1991 (c.48), sections 39(2) and 49 and by section 33 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 33.
- (b) Certain information may be prescribed under sections 26(2) and 27(1) and (2). By virtue of section 53 “prescribed” means prescribed by rules of court.
- (c) 2007 asp 10.
- (d) 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, 2004/197, 222, 334 and 455, 2005/61, 473, 504 and 648, 2006/198 and 410, 437 and 509, 2007/6, 233, 339, 440 and 463 and 2008/9, 41, 111, 223, 335 and 365.
- (e) Rule 3.35.4 was inserted by S.S.I. 2008/335.
- (f) Rule 3.35.5 was inserted by S.S.I. 2008/335.

“Notification to adult at risk etc.

3.35.5. Where section 26(1)(b) of the Act (notification to the adult at risk etc. on the variation or recall of a banning order or temporary banning order) applies, the person prescribed for the purposes of section 26(2) is the sheriff clerk.”.

(4) In rule 3.35.6 (certificate of delivery of documents)(a) for “section 25(2) or 26(2)” substitute “section 26(2), 27(1) or 27(2)”.

(5) For Form 34 in Schedule 1(b), substitute Form 34 set out in the Schedule to this Act of Sederunt.

A C HAMILTON
Lord President
I.P.D.

Edinburgh
13th November 2008

(a) Rule 3.35.6 was inserted by S.S.I. 2008/335.
(b) Form 34 was inserted by S.S.I. 2008/335.

SCHEDULE

Paragraph 2(5)

Rule 3.35.6

FORM 34

Form of certificate of delivery of document under section 26(2), 27(1) or 27(2) of the Adult Support and Protection (Scotland) Act 2007

Court ref no:

(Insert place and date) I, (insert name and designation), hereby certify that on (date) I duly delivered to (insert name and address) (insert details of the document delivered). This I did by (state method of delivery).

Signed

(add designation and address or business address)

EXPLANATORY NOTE

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

This Act of Sederunt amends Part XXXV of the Summary Application Rules, which was inserted by the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (Adult Support and Protection (Scotland) Act 2007) (No. 2) 2008 (S.S.I. 2008/335).

Paragraph (3) of rule 3.35.4 is omitted.

A new rule 3.35.5 is substituted prescribing that in relation to an application for a variation or recall of a banning order or temporary banning order delivery under section 26(2) of the Adult Support and Protection (Scotland) Act 2007 (asp 10) (“the Act”) should be carried out by the sheriff clerk.

Rule 3.35.6 is amended to provide that the requirement to certify delivery of documents applies to delivery under section 26(2) of the Act to the adult at risk and any other person with an interest as specified by the sheriff and to delivery under section 27 of the Act to the chief constable. A new Form 34 (certification of delivery under section 26(2) or 27(1) or (2) of the Act) is substituted.

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