
SCOTTISH STATUTORY INSTRUMENTS

2009 No. 284

**Act of Sederunt (Sheriff Court Rules Amendment)
(Adoption and Children (Scotland) Act 2007) 2009**

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Rules Amendment) (Adoption and Children (Scotland) Act 2007) 2009 and comes into force on 28th September 2009.

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

Sheriff Court Adoption Rules

2. The Schedule to this Act of Sederunt provides rules for applications in the sheriff court under the Adoption and Children (Scotland) Act 2007.

Amendment of Ordinary Cause Rules

3.—(1) The Ordinary Cause Rules in the first Schedule to the Sheriff Courts (Scotland) Act 1907(1) are amended in accordance with the following subparagraphs.

(2) In rule 33.3(1) (averments where section 11 order sought), after subparagraph (b) insert—

“(c) where the party seeks an order such as is mentioned in any of paragraphs (a) to (e) of subsection (2) of that section, an averment that no permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007) is in force in respect of the child.”.

(3) In rule 33A.3(1) (averments where section 11 order sought), after subparagraph (b) insert—

“(c) where the party seeks an order such as is mentioned in any of paragraphs (a) to (e) of subsection (2) of that section, an averment that no permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007) is in force in respect of the child.”.

(4) After rule 33.65 (application after decree) insert—

“Application for leave

33.65A.—(1) Where leave of the court is required under section 11(3)(aa)(2) of the Act of 1995 for the making of an application for a contact order under that section, the applicant must lodge along with the initial writ a written application in the form of a letter addressed to the sheriff clerk stating—

- (a) the grounds on which leave is sought;
- (b) whether or not the applicant has applied for legal aid.

(1) 1907 c.51. Schedule 1 was substituted by S.I. 1993/1956 and amended by S.I. 1996/2167 and 2445, S.S.I. 2000/239 and 408, 2001/8 and 144, 2002/7, 128 and 560, 2003/25 and 26, 2004/197 and 350, 2005/20, 189, 638 and 648, 2006/198, 207, 293, 410 and 509, 2007/6, 339, 440 and 463, 2008/121, 223 and 365 and 2009/107 and 164.

(2) Section 11(3)(aa) was inserted by section 107 of the Adoption and Children (Scotland) Act 2007.

(2) Where the applicant has applied for legal aid he must also lodge along with the initial writ written confirmation from the Scottish Legal Aid Board that it has determined, under regulation 7(2)(b) of the Civil Legal Aid (Scotland) Regulations 2002⁽³⁾, that notification of the application should be dispensed with or postponed pending the making by the sheriff of an order for intimation under paragraph (4)(b).

(3) Subject to paragraph (4)(b), an application under paragraph (1) shall not be served or intimated to any party.

(4) The sheriff shall consider an application under paragraph (1) without hearing the applicant and may—

- (a) refuse the application and pronounce an interlocutor accordingly; or
- (b) if he is minded to grant the application order the applicant—
 - (i) to intimate the application to such persons as the sheriff considers appropriate; and
 - (ii) to lodge a certificate of intimation in, as near as may be, Form G8.

(5) If any person who receives intimation of an application under paragraph (4)(b) wishes to be heard he shall notify the sheriff clerk in writing within 14 days of receipt of intimation of the application.

(6) On receipt of any notification under paragraph (5) the sheriff clerk shall fix a hearing and intimate the date of the hearing to the parties.

(7) Where an application under paragraph (1) is granted, a copy of the sheriff's interlocutor must be served on the defender along with the warrant of citation.”.

(5) After rule 33A.57 (application after decree) insert—

“Application for leave

33A.—(1) Where leave of the court is required under section 11(3)(aa) of the Act of 1995 for the making of an application for a contact order under that section, the applicant must lodge along with the initial writ a written application in the form of a letter addressed to the sheriff clerk stating—

- (a) the grounds of which leave is sought; and
- (b) whether or not the applicant has applied for legal aid.

(2) Where the applicant has applied for legal aid he must also lodge along with the initial writ written confirmation from the Scottish Legal Aid Board that it has determined, under regulation 7(2)(b) of the Civil Legal Aid (Scotland) Regulations 2002, that notification of the application for legal aid should be dispensed with or postponed pending the making by the sheriff of an order for intimation under paragraph (4)(b).

(3) Subject to paragraph (4)(b) an application under paragraph (1) shall not be served or intimated to any party.

(4) The sheriff shall consider an application under paragraph (1) without hearing the applicant and may—

- (a) refuse the application and pronounce an interlocutor accordingly; or
- (b) if he is minded to grant the application order the applicant—
 - (i) to intimate the application to such persons as the sheriff considers appropriate; and
 - (ii) to lodge a certificate of intimation in, as near as may be, Form G8.

(5) If any person who receives intimation of an application under paragraph (4)(b) wishes to be heard he shall notify the sheriff clerk in writing within 14 days of receipt of intimation of the application.

(6) On receipt of any notification under paragraph (5) the sheriff clerk shall fix a hearing and intimate the date of the hearing to the parties.

(7) Where an application under paragraph (1) is granted, a copy of the sheriff's interlocutor must be served on the defender along with the warrant of citation."

Revocation, savings and transitional provision

4.—(1) Subject to subparagraphs (2) to (7), the following provisions of Chapter 2 (adoption of children) of the Act of Sederunt (Child Care and Maintenance Rules) 1997⁽⁴⁾ are revoked—

(a) in Part 1—

(i) in rule 2.1 (interpretation), the definitions of “the 2002 Act” and “adoption agency”; and

(ii) rules 2.3 (intimation to principal reporter) and 2.4 (timetables under section 25A of the Act); and

(b) Parts II to V⁽⁵⁾.

(2) The provisions of Part II (applications for an order declaring a child free for adoption) as they applied immediately before 28th September 2009 shall continue to have effect for the purpose of any application for a freeing order under section 18 of the 1978 Act made and not yet determined before that date.

(3) The provisions of Part III (revocation etc. of a freeing order) as they applied immediately before 28th September 2009 shall continue to have effect for the purpose of any application under section 20 of the 1978 Act made before 28th September 2010.

(4) The provisions of Part IV (adoption orders) as they applied immediately before 28th September 2009 shall continue to have effect for the purpose of any application for—

(a) an adoption order under section 14 or 15 of the 1978 Act made and not yet determined before that date;

(b) leave under section 28 or an order under section 29 of that Act made in an application mentioned in paragraph (a); or

(c) an order under section 49 of that Act made and not yet determined before that date.

(5) The provisions of Part IVA (convention adoption orders) and Part IV as applied by Part IVA as they applied immediately before 28th September 2009 shall continue to have effect for the purpose of any application for a Convention adoption order under section 17 of the 1978 Act made and not yet determined before that date.

(6) The provisions of Part V (parental responsibilities orders) as they applied immediately before 28th September 2009 shall continue to have effect for the purpose of any application for a parental responsibilities order made and not yet determined before that date.

(7) The provisions of Part I (general) shall continue to have effect as they did immediately before 28th September 2009 to the extent that they are required for the purposes of subparagraphs (2) to (6).

(8) In this paragraph, “the 1978 Act” means the Adoption (Scotland) Act 1978⁽⁶⁾.

(4) S.I. 1997/291, amended by S.S.I. 2005/190, 2006/75 and 2007/468.

(5) Part IVA was inserted by S.S.I. 2003/44.

(6) 1978 c.29.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Edinburgh
24th July 2009

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