
SCOTTISH STATUTORY INSTRUMENTS

2009 No. 29

Act of Sederunt (Child Care and Maintenance Rules) Amendment 2009

Amendment of Chapter 5 of the Child Care and Maintenance Rules

2.—(1) Chapter 5 (maintenance orders) of the Act of Sederunt (Child Care and Maintenance Rules) 1997⁽¹⁾ is amended in accordance with the following subparagraphs.

(2) In rule 5.1 (interpretation), omit the definitions “court in a specified state” and “specified state”⁽²⁾.

(3) In the cross-heading above rule 5.16A⁽³⁾, omit “in a specified state”.

(4) In rule 5.16A (application for transmission of order for enforcement in the USA), in paragraph (1), omit “a court in a specified state in” and “registration and”.

(5) After rule 5.17 (service on defender in Hague Convention Country) insert—

“Service of notice of proceedings on payer residing in USA

5.17A. Where service of a document is executed in accordance with section 5(4)(a) of the 1972 Act as applied to the United States of America, the Scottish Ministers shall obtain and lodge with the sheriff clerk a certificate by a person who is conversant with the law of the United States of America and who practises or who has practised law in that country or is a duly accredited representative of the Government of the United States of America, stating that the method of service employed is in accordance with the law of the place where service was executed.”

(6) In rule 5.22 (application under section 4 or 5 of the 1972 Act), for “be brought as an ordinary cause” substitute “proceed as an ordinary cause in accordance with the terms of Chapter 33 (family actions) or 33A (civil partnership actions), as the case may be, of the Ordinary Cause Rules”.

(7) After rule 5.22 insert—

“Representations or evidence by payer residing in the USA

5.22A.—(1) Where notices are provided in accordance with section 5(4) of the 1972 Act as applied to the United States of America, the sheriff clerk shall notify the recipients of the notices that if the payer wishes the court in Scotland to take into account any representations made by him or any evidence adduced by him or on his behalf, then such representations or evidence must be lodged with the sheriff clerk not later than 21 days before the date fixed for the hearing.

(2) Where such representations are lodged, or such evidence is lodged, the sheriff clerk shall serve a copy of the representations or evidence—

(a) where the payee is represented by a solicitor, on that solicitor, by—

(1) S.I. 1997/291, as amended by S.S.I. 2000/388, 2002/560, 2005/190, 2006/75 and 2007/468.

(2) The definitions of “court in specified state” and “specified state” were inserted by S.S.I. 2000/388, rule 2(2).

(3) Rule 5.16A was inserted by S.S.I. 2000/388, rule 2(3).

- (i) personal delivery;
 - (ii) facsimile transmission;
 - (iii) first class ordinary post; or
 - (iv) delivery to a document exchange; and
- (b) where the payee is not represented by a solicitor, on the payee, by any of the methods of service provided for in Chapter 5 of the Ordinary Cause Rules (citation, service and intimation).

Application by payer residing in the USA for variation or revocation of order

5.22B.—(1) Where an application is made in accordance with section 5(6) of the 1972 Act as applied to the United States of America, the sheriff clerk shall give notice of institution of the proceedings, including notice of the substance of the application, in accordance with subparagraph (2) or (3).

(2) Where the payee is represented by a solicitor, the document referred to in subparagraph (1) shall be served on that solicitor by—

- (a) personal delivery;
- (b) facsimile transmission;
- (c) first class ordinary post; or
- (d) delivery to a document exchange.

(3) Where the payee is not represented by a solicitor, the document referred to in subparagraph (1) shall be served on the payee by any of the methods of service provided for in Chapter 5 of the Ordinary Cause Rules (citation, service and intimation).”.

(8) In rule 5.23 (evidence), for subparagraph (1) substitute—

“(1) Where any request to take evidence is made by or on behalf of a court in terms of section 14 of the 1972 Act, or section 14 of the 1972 Act as amended by any Order in Council made under Part III of that Act, or by the Secretary of State in terms of section 38 thereof, such evidence shall be taken before a sheriff of the sheriffdom in which the witness resides and shall be—

- (a) recorded by tape recording or other mechanical means approved by the court; or
- (b) taken down by a shorthand writer, or where the sheriff so directs, by the sheriff,

and the extended notes of evidence certified by the sheriff shall be the notes of the evidence taken.”.

(9) After rule 5.23 insert—

“Taking of evidence at request of a court in the USA

5.23A. Where evidence is taken by a sheriff under section 14(1) of the 1972 Act as applied to the United States of America, rules 29.7 (citation of witnesses), 29.9 (second diligence against a witness) and 29.10 (failure of witness to attend) of the Ordinary Cause Rules shall apply in respect of the matters set out in those rules.

Requests for the taking of evidence by a court in the USA

5.23B. An application made to a sheriff for the purposes of section 14(5) of the 1972 Act as applied to the United States of America shall follow as nearly as may be the procedure set out in rule 28.14 of the Ordinary Cause Rules (letters of request), subject to any modifications necessitated by that provision of the 1972 Act as so applied.

Communication with courts in the USA

5.23C. In so far as applicable to outgoing orders under the 1972 Act to the United States of America, for the purposes of the provisions in Part I of the 1972 Act, the sheriff may communicate with a court or courts in the United States of America in such circumstances and in such manner as he thinks fit.

Disapplication of provisions where payer resides or has assets in the USA

5.23D. In any case in which the payer under a maintenance order made by a court in Scotland is residing or has assets in the United States of America, none of the provisions in this Part shall apply except this rule and rules 5.16A, 5.17A, 5.21, 5.22, 5.22A, 5.22B, 5.23, 5.23A, 5.23B and 5.23C.”

(10) After rule 5.37 (application to set aside registration of, or to set aside decision not to register, an order made in a Hague Convention Country) insert–

“Taking of evidence at the request of a court in the USA

5.37A. Where evidence is taken under section 38(2) of the 1972 Act in consequence of a request made by a court in the United States of America under section 38(1) of that Act, rules 29.7 (citation of witnesses), 29.9 (second diligence against a witness) and 29.10 (failure of witness to attend) of the Ordinary Cause Rules shall apply in respect of the matters set out in those rules.

Communication with courts in the USA

5.37B. In so far as applicable to incoming orders under the 1972 Act from the United States of America, for the purposes of the provisions in Part I of the 1972 Act, the sheriff may communicate with a court or courts in the United States of America in such circumstances and in such manner as he thinks fit.

Disapplication of provisions in respect of orders made by courts in the USA

5.37C. In any case in which a maintenance order is made by a court in the United States of America which falls to be dealt with under sections 6 to 11 of the 1972 Act as those provisions are applied to the United States of America, none of the provisions in this Part shall apply except this rule and rules 5.30, 5.32, 5.37A and 5.37B.”