
SCOTTISH STATUTORY INSTRUMENTS

2012 No. 271

**Act of Sederunt (Sheriff Court Rules)
(Miscellaneous Amendments) (No. 3) 2012**

Citation, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) (No. 3) 2012 and comes into force on 1st November 2012.

(2) A certified copy of this Act of Sederunt is to be inserted in the Books of Sederunt.

(3) In this Act of Sederunt—

“Ordinary Cause Rules” means the Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907(1);

“Summary Application Rules” means the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(2).

Lodging audio or audio-visual recordings of children

2.—(1) The Ordinary Cause Rules are amended in accordance with the following subparagraph.

(2) After Chapter 49 (admiralty actions)(3) insert—

“CHAPTER 50

LODGING AUDIO OR AUDIO-VISUAL RECORDINGS OF CHILDREN

Interpretation

50.1. In this Chapter “child” is a person under the age of 16 on the date of commencement of the proceedings and “children” shall be construed accordingly.

Lodging an audio or audio-visual recording of a child

50.2.—(1) Where a party seeks to lodge an audio or audio-visual recording of a child as a production, such party must—

- (a) ensure that the recording is in a format that can be heard or viewed by means of equipment available in court;

(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, 26 and 601; 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; 2009/107, 164, 284, 285, 294 and 402; 2010/120, 279, 324, 340 and 416; 2011/193, 289 and 386; and 2012/188 and 221.

(2) 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, 445, 473, 504 and 648; 2006/198, 410, 437 and 509; 2007/6, 233, 339, 440 and 463; 2008/9, 41, 111, 223, 335, 365 and 375; 2009/107, 109, 164, 294, 320 and 402; 2010/324, 340 and 416; 2011/193 and 386; and 2012/188.

(3) Chapter 49 was inserted by S.S.I. 2012/188.

- (b) place the recording together with a copy of the relevant inventory of productions in a sealed envelope marked with—
 - (i) the names of the parties to the court action;
 - (ii) the case reference number;
 - (iii) (where available) the date and time of commencement and of termination of the recording; and
 - (iv) “recording of a child – confidential”.
- (2) The sealed envelope must be lodged with the sheriff clerk.
- (3) In the remainder of this Chapter a “recording of a child” means any such recording lodged under this rule.

Separate inventory of productions

- 50.3.**—(1) On each occasion that a recording of a child is lodged, a separate inventory of productions shall be lodged in process.
- (2) The sheriff clerk will mark the date of receipt and the number of process on the sealed envelope containing a recording of a child.

Custody of a recording of a child

- 50.4.**—(1) A recording of a child—
- (a) must be kept in the safe custody of the sheriff clerk;
 - (b) subject to rule 50.5, will not form a borrowable part of the process.
- (2) The seal of the envelope containing a recording of a child shall be broken only with the authority of the sheriff and on such conditions as the sheriff thinks fit (which conditions may relate to listening to or viewing the recording).

Access to a recording of a child

- 50.5.**—(1) A party may lodge a written motion to gain access to and listen to or view a recording of a child.
- (2) The sheriff may refuse a motion or grant it on such conditions as the sheriff thinks fit, including—
- (a) allowing only such persons as the sheriff may specify to listen to or view the recording;
 - (b) specifying the location where such listening or viewing is to take place;
 - (c) specifying the date and time when such listening or viewing is to take place;
 - (d) allowing a copy of the recording to be made (in the same or different format) and arrangements for the safe-keeping and disposal of such copy;
 - (e) arrangements for the return of the recording and re-sealing the envelope.

Incidental appeal against rulings on access to a recording of a child

- 50.6.**—(1) Where a party is dissatisfied with the ruling of the sheriff under rule 50.5, such party may express immediately his or her formal dissatisfaction with the ruling and, with leave of the sheriff, appeal to the sheriff principal.
- (2) The sheriff principal must dispose of an appeal under paragraph (1) with the least possible delay.

Exceptions

50.7.—(1) The sheriff may, on the application of a party and on cause shown, disapply the provisions of this Chapter.

- (2) An application under paragraph (1) shall be made—
 - (a) at the time of presenting the recording for lodging;
 - (b) by letter addressed to the sheriff clerk stating the grounds on which the application is made.

Application of other rules

50.8.—(1) The following rules do not apply to a recording of a child—

- (a) rule 9A.2(2) (inspection of documents)(4);
- (b) rule 11.6(1) (intimation of parts of process and adjustments)(5), in so far as it would otherwise require a party to deliver a copy of a recording of a child to every other party;
- (c) rule 29.12(1) (copy productions)(6).”.

3.—(1) The Summary Application Rules are amended in accordance with the following subparagraph.

- (2) In Chapter 2 after rule 2.41 (form of intervention)(7) insert—

“Lodging audio or audio-visual recordings of children

2.42.—(1) In this rule “child” is a person under the age of 16 on the date of commencement of the proceedings and “children” shall be construed accordingly.

(2) Except where the sheriff otherwise directs, where a party seeks to lodge an audio or audio-visual recording of a child as a production in a summary application, this shall be done in accordance with and regulated by Chapter 50 of the Ordinary Cause Rules.

- (3) A party who has lodged a recording of a child shall—
 - (a) within 14 days after the final determination of the application, where no subsequent appeal has been marked, or
 - (b) within 14 days after the disposal of any appeal marked on the final determination of the application,

uplift the recording from process.

(4) Where a recording has not been uplifted as required by paragraph (3), the sheriff clerk shall intimate to—

- (a) the solicitor who lodged the recording, or
- (b) where no solicitor is acting, the party or such other party as seems appropriate,

that if he or she fails to uplift the recording within 28 days after the date of such intimation, it will be disposed of in such a manner as the sheriff directs.”.

(4) Rule 9A.2 was inserted by [S.S.I. 2004/197](#).

(5) Rule 11.6 was amended by [S.I. 1996/2445](#).

(6) Rule 29.12 was amended by [S.S.I. 2000/239](#).

(7) Rule 2.41 was inserted by [S.S.I. 2008/223](#).

4.—(1) The Act of Sederunt (Child Care and Maintenance Rules) 1997⁽⁸⁾ is amended in accordance with the following subparagraphs.

(2) In Chapter 1 after rule 1.5 (vulnerable witnesses)⁽⁹⁾ insert—

“Lodging audio or audio-visual recordings of children

1.6.—(1) In this rule “child” is a person under the age of 16 on the date of commencement of the proceedings and “children” shall be construed accordingly.

(2) Except where the sheriff otherwise directs, where a party seeks to lodge an audio or audio-visual recording of a child as a production in an application under this Act of Sederunt, this shall be done in accordance with and regulated by Chapter 50 of the Ordinary Cause Rules.

(3) A party who has lodged a recording of a child shall—

- (a) within 28 days after the final determination of the application, where no subsequent appeal has been marked, or
- (b) within 28 days after the disposal of any appeal marked on the final determination of the application,

uplift the recording from process.

(4) Where a recording has not been uplifted as required by paragraph (3), the sheriff clerk shall intimate to—

- (a) the solicitor who lodged the recording, or
- (b) where no solicitor is acting, the party or such other party as seems appropriate,

that if he or she fails to uplift the recording within 28 days after the date of such intimation, it will be disposed of in such a manner as the sheriff directs.”

(3) In Schedule 3 (exclusion of enactments), in column 3 (extent of exclusion) after “Chapter 45 (Vulnerable Witnesses (Scotland) Act 2004)” insert “and Chapter 50 (lodging recordings of children)”.

5.—(1) The Sheriff Court Adoption Rules in the Schedule to the Act of Sederunt (Sheriff Court Rules Amendment) (Adoption and Children (Scotland) Act 2007) 2009⁽¹⁰⁾ are amended in accordance with the following subparagraph.

(2) In Chapter 1 after rule 5 (vulnerable witnesses) insert—

“Lodging audio or audio-visual recordings of children

5A.—(1) In this rule “child” is a person under the age of 16 on the date of commencement of the proceedings and “children” shall be construed accordingly.

(2) Except where the sheriff otherwise directs, where a party seeks to lodge an audio or audio-visual recording of a child as a production in an application under these Rules, this must be done in accordance with and regulated by Chapter 50 of the Ordinary Cause Rules.

(3) A party who has lodged a recording of a child shall—

- (a) within 14 days after the final determination of the application, where no subsequent appeal has been marked, or
- (b) within 14 days after the disposal of any appeal marked on the final determination of the application,

⁽⁸⁾ S.I. 1997/291. Amended by S.I. 1998/2130; and by S.S.I. 2000/388; 2002/560; 2003/44, 2005/190; 2006/75 and 411; 2007/468; 2009/29, 284 and 449; 2010/137 and 279; 2011/386; and 2012/188.

⁽⁹⁾ Rule 1.5 was inserted by S.S.I. 2007/468.

⁽¹⁰⁾ S.S.I. 2009/284.

uplift the recording from process.

(4) Where a recording has not been uplifted as required by paragraph (3), the sheriff clerk shall intimate to—

(a) the solicitor who lodged the recording, or

(b) where no solicitor is acting, the party or such other party as seems appropriate,

that if he or she fails to uplift the recording within 28 days after the date of such intimation, it will be disposed of in such a manner as the sheriff directs.”.

Treaty of Lisbon terminology

6.—(1) The Ordinary Cause Rules are amended in accordance with the following subparagraphs.

(2) In rule 38.1 (interpretation of Chapter 38: European Court)(**11**)—

(a) in paragraph (1), in the definition of “reference”, at subparagraph (a), for “Article 234 of the E.E.C. Treaty” substitute “Article 267 of the Treaty on the Functioning of the European Union”;

(b) in paragraph (2), omit ““E.E.C. Treaty””;

(c) after paragraph (2) insert—

“(3) In paragraph (1), “the Treaty on the Functioning of the European Union” means the treaty referred to in section 1(2)(s) of the European Communities Act 1972(**12**).”.

(3) In rule 43.1 (intimation of actions to the Office of Fair Trading)(**13**)—

(a) in paragraph (1), for the definition of “the Treaty” substitute—

““the Treaty” means the Treaty on the Functioning of the European Union, as referred to in section 1(2)(s) of the European Communities Act 1972;”;

(b) in paragraphs (2) and (3), for “Article 81 or 82” substitute “Article 101 or 102”.

(4) The title of Chapter 43 becomes “CAUSES RELATING TO ARTICLES 101 AND 102 OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION”.

(5) In Appendix 1, in Form OFT1 (form of notice of intimation to the Office of Fair Trading)(**14**), for “Article 81 or 82 of the Treaty establishing the European Community” substitute “Article 101 or 102 of the Treaty on the Functioning of the European Union”.

7.—(1) The Summary Cause Rules in Schedule 1 to the Act of Sederunt (Summary Cause Rules) 2002(**15**) are amended in accordance with the following subparagraph.

(2) In rule 20.1 (interpretation of rules 20.2 to 20.5: European Court)—

(a) in paragraph (1), in the definition of “reference”, at subparagraph (a), for “Article 234 of the E.E.C. Treaty” substitute “Article 267 of the Treaty on the Functioning of the European Union”;

(b) in paragraph (2), omit ““E.E.C. Treaty””;

(c) after paragraph (2) insert—

“(3) In paragraph (1), “the Treaty on the Functioning of the European Union” means the treaty referred to in section 1(2)(s) of the European Communities Act 1972.”.

(11) Rule 38.1 was inserted by S.S.I. 2000/239.

(12) 1972 c.68. Section 1(2)(s) was inserted by the European Union (Amendment) Act 2008 (c.7), section 2.

(13) Rule 43.1 was inserted by S.S.I. 2006/293.

(14) Form OFT1 was inserted by S.S.I. 2006/293.

(15) S.S.I. 2002/132, amended by S.S.I. 2002/516; 2003/26 and 601; 2004/197; 2005/648; 2006/509; 2007/6, 339, 440 and 463; 2008/121, 223 and 365; 2009/107, 164, 294 and 402; 2010/279, 340 and 416; 2011/193 and 289; and 2012/144 and 188.

8.—(1) The Small Claim Rules in Schedule 1 to the Act of Sederunt (Small Claim Rules) 2002⁽¹⁶⁾ are amended in accordance with the following subparagraph.

(2) In rule 18.1 (interpretation of rules 18.2 to 18.5: European Court)—

- (a) in paragraph (1), in the definition of “reference”, at subparagraph (a), for “Article 234 of the E.E.C. Treaty” substitute “Article 267 of the Treaty on the Functioning of the European Union”;
- (b) in paragraph (2), omit ““E.E.C. Treaty””;
- (c) after paragraph (2) insert—

“(3) In paragraph (1), “the Treaty on the Functioning of the European Union” means the treaty referred to in section 1(2)(s) of the European Communities Act 1972.”.

Amendment of the Child Support Rules

9.—(1) The Act of Sederunt (Child Support Rules) 1993⁽¹⁷⁾ is amended in accordance with the following subparagraphs.

(2) In paragraph (3) of rule 1 (citation and commencement) omit “the Commission” and its associated definition.

(3) In each of the following places, for “Commission” substitute “Secretary of State”—

- (a) rule 2(1);
- (b) rule 5(2)(b);
- (c) rule 5AA(1);
- (d) rule 5AA(2)(b);
- (e) rule 5AB(1);
- (f) rule 5AB(2)(b);
- (g) rule 5AC(1);
- (h) rule 5AC(3)(b).

(4) In the Schedule in each of the following forms, for “Child Maintenance and Enforcement Commission” substitute “Secretary of State” in every place where that expression appears—

- (a) Form 1;
- (b) Form 3;
- (c) Form 4;
- (d) Form 5;
- (e) Form 5AA;
- (f) Form 5AB;
- (g) Form 5AC;
- (h) Form 5AD;
- (i) Form 6;
- (j) Form 9;
- (k) Form 10.

(5) In Form 5AC in paragraph numbered 5 for “its” substitute “[his or her]*”.

⁽¹⁶⁾ S.S.I. 2002/133, amended by S.S.I. 2003/26; 2004/197; 2005/648; 2006/509; 2007/6, 339, 440 and 463; 2008/121, 223 and 365; 2009/107, 164, 294 and 402; 2010/279, 340 and 416; and 2011/193.

⁽¹⁷⁾ S.I. 1993/920, last amended by S.S.I. 2009/365.

Applications under section 23B of the Regulation of Investigatory Powers Act 2000

10.—(1) The Summary Application Rules are amended in accordance with the following subparagraphs.

(2) After Part XLI (Reporting restrictions under the Contempt of Court Act 1981)(**18**) insert—

“PART XLII

REGULATION OF INVESTIGATORY POWERS ACT 2000

Interpretation

3.42.1. In this Part—

“the 2000 Act” means the Regulation of Investigatory Powers Act 2000(**19**);

and words and expressions used in this Part and in the 2000 Act shall have the same meaning given in the 2000 Act.

Authorisations requiring judicial approval

3.42.2.—(1) An application under section 23B(1) of the 2000 Act (procedure for judicial approval) for an order under section 23A(2) (authorisations requiring judicial approval)(**20**)—

- (a) approving the grant or renewal of an authorisation; or
- (b) the giving or renewal of a notice,

shall be in Form 59, which must be signed by a solicitor on behalf of the local authority.

(2) The application (and any order made in relation to it) must not be intimated to—

- (a) the person to whom the authorisation or notice which is the subject of the application or order relates; or
- (b) such person’s representatives.

(3) The application must be heard and determined by the sheriff in private.

(4) Where an application is granted by the sheriff the order shall be in Form 60.”.

(3) In Schedule 1 after Form 58(**21**) insert Forms 59 and 60 as set out in the Schedule to this Act of Sederunt.

Transitional and saving

11. The Act of Sederunt (Child Support Rules) 1993 as it applied immediately before 1st November 2012 continues to have effect for the purpose of any matter under a provision referred to in those Rules which continues before the sheriff, or which may be brought before the sheriff, in either case by virtue of a savings provision, transitional provision or transitory provision of the Public Bodies (Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions) Order 2012(**22**).

(18) Part XLI was inserted by [S.S.I.2011/386](#) and amended by [S.S.I. 2012/188](#).

(19) [2000 c.23](#).

(20) Sections 23A and 23B of the 2000 Act are inserted by section 37 of the Protection of Freedoms Act [2012 \(c.9\)](#).

(21) Form 58 was inserted by [S.S.I. 2009/320](#).

(22) [S.I. 2012/2007](#).

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

Edinburgh
4th October 2012

BRIAN GILL
Lord President
I.P.D.