
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 139

**Act of Sederunt (Sheriff Court Rules)
(Miscellaneous Amendments) (No. 2) 2013**

Amendment of the Adoption Rules

3.—(1) Chapter 2 of the Adoption Rules (adoption orders) is amended in accordance with the following subparagraphs.

(2) In rule 10 (protection of identity of petitioner) after paragraph (4) insert—

“(5) Where a serial number has been assigned the applicant must provide the sheriff clerk with an appropriate service copy petition as required under rule 14(1).”.

(3) In rule 12 (duties of reporting officer and curator *ad litem*), after paragraph (1)(c)(ii) insert—

“(iia) to ascertain whether that person consents to the making of an adoption order or order under section 59 of the 2007 Act;”;

(4) In rule 14 (intimation of application)—

(a) in paragraph (1)(a) after “hearing” insert “, which must take place (except on cause shown)”;

(b) in paragraph (1)(b) and (d) for “a copy of the petition” substitute “a service copy of the petition in Form 1A”;

(c) in paragraph (1)(c) for “a copy of the petition” substitute “a service copy of the petition in Form 2A”.

(5) In rule 16 (form of response) for paragraph (2) substitute—

“(2) A form of response under paragraph (1)—

(a) must contain a brief statement of the respondent’s reasons for opposing the application but shall be without prejudice to any answers lodged under rule 18(1)(b)(ix);

(b) must be intimated by the respondent to the petitioner at the time of lodging.”.

(6) After rule 16 insert—

“Opposed applications

16A. Within 14 days of a form of response being lodged, the petitioner shall lodge and intimate to all other parties a brief statement in numbered paragraphs setting out the facts upon which the petitioner intends to rely including averments in relation to—

(a) considerations under section 14 of the 2007 Act;

(b) terms and conditions under section 28(3) of the 2007 Act;

(c) consent under section 31 of the 2007 Act.”.

(7) In rule 18 (preliminary hearing)—

(a) for paragraph (1)(b) substitute—

“(b) if a form of response has been lodged—

- (i) ascertain the nature of the issues in dispute, including any questions of admissibility of evidence or any legal issues;
 - (ii) ascertain the names of all witnesses, including expert witnesses, parties intend to call and whose evidence they intend to rely on at proof;
 - (iii) consider the scope for use of affidavits and other documents in place of oral evidence;
 - (iv) consider whether sanction is sought for the employment of counsel;
 - (v) consider the reasonable estimate of time needed by each party for examination-in-chief, cross-examination and submissions;
 - (vi) order the lodging of joint minutes of agreement, affidavits, expert reports and any other documents within such period as the sheriff considers appropriate;
 - (vii) fix a diet of proof not less than 12 and not more than 16 weeks after the date of the preliminary hearing or any continuation thereof unless, on cause shown, a longer period is appropriate;
 - (viii) fix a pre-proof hearing not less than 6 and not more than 8 weeks before the diet of proof;
 - (ix) order answers to the statement referred to in rule 16A to be lodged within 14 days of the date of the preliminary hearing or any continuation thereof or such other period as the sheriff considers appropriate; and
 - (x) ascertain from the parties what, if any, expert evidence is required and consider the scope for joint instruction of a single expert.”;
- (b) for paragraph (2) substitute—
- “(2) The sheriff may, if satisfied that there is sufficient reason for doing so for the expeditious resolution of the cause, continue the preliminary hearing for such period or periods as he or she thinks fit.”;
- (c) for paragraph (4) substitute—
- “(4) The answers lodged under paragraph (1)(b)(ix) must be in numbered paragraphs and respond to the statement referred to in rule 16A.”.
- (8) After rule 18 insert—

“List of witnesses etc.

- 18A.** Not later than 7 days prior to the pre-proof hearing the parties shall lodge in process and intimate to all other parties—
- (a) a list of the witnesses, including expert witnesses, they intend to call and whose evidence they intend to rely on at proof;
 - (b) all documents upon which they intend to rely at proof;
 - (c) a notice of agreed facts;
 - (d) a notice of disputed issues.”.
- (9) In rule 19 (pre-proof hearing)—
- (a) for paragraph (2) substitute—
- “(2) At the pre-proof hearing the sheriff must consider—
- (a) the extent to which the parties have complied with any orders made by the sheriff under rule 18;

- (b) the extent to which further information or orders are required in respect of matters referred to in rule 18;
- (c) the state of preparation of the parties;
- (d) the availability of witnesses;
- (e) the nature of productions.

(2A) At the pre-proof hearing the sheriff must ascertain, so far as is reasonably practicable, whether the case is likely to proceed to proof on the date fixed for that purpose, whether the appropriate number of days have been allowed and if further days may be required.”;

(b) in paragraph (3)—

(i) omit subparagraph (c);

(ii) at the end of subparagraph (d) insert “including restricting the issues for proof and, on the motion of either party, on cause shown, or of the sheriff’s own motion, excluding specified documents, reports and/or witnesses from proof”.

(10) For rule 20 (proof to be taken continuously) substitute—

“Proof

20.—(1) A proof shall be taken on the allocated days and parties shall adhere to the estimates provided under rule 18(1)(b)(v) or 19(2)(b), but the sheriff may adjourn the diet from time to time.

(2) Except where the sheriff otherwise directs, at the proof no witnesses other than those named on a witness list may be called to give evidence.”.