

2015 No. 424

SHERIFF COURT

**Act of Sederunt (Sheriff Court Rules Amendment)
(Miscellaneous) 2015**

Made - - - - - *11th December 2015*

Laid before the Scottish Parliament *15th December 2015*

Coming into force - - - *1st February 2016*

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(a), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council with such modifications as it thinks appropriate.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by section 104(1) of the Courts Reform (Scotland) Act 2014(b) and all other powers enabling it to do so.

Citation, commencement etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Rules Amendment) (Miscellaneous) 2015.

(2) It comes into force on 1st February 2016.

(3) A certified copy is to be inserted in the Books of Sederunt.

Amendment of the Ordinary Cause Rules 1993

2.—(1) The Ordinary Cause Rules 1993(c) are amended in accordance with this paragraph.

(2) For rule 42.2(1) (transfer of proceedings to the Tribunal)(d), substitute—

“(1) Where proceedings (or any part of them) relate to an infringement issue, within the meaning of section 16(6) of the Enterprise Act 2002, the sheriff may make an order transferring those proceedings (or that part of them) to the Tribunal—

(a) of the sheriff’s own accord, or

(b) on the motion of a party.

(1A) Where the sheriff orders that such proceedings (or any part of them) are transferred to the Tribunal, the sheriff may make such orders as the sheriff thinks fit to allow the Tribunal to determine the issue.”.

(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3).

(b) 2014 asp 18.

(c) The Ordinary Cause Rules 1993 are in Schedule 1 to the Sheriff Courts (Scotland) Act 1907 (c.51). Schedule 1 was substituted by S.I. 1993/1956 and was last amended by S.S.I. 2015/419.

(d) Rule 42.2 was inserted by S.S.I. 2004/350.

Amendment of the Act of Sederunt (Child Care and Maintenance Rules) 1997

3.—(1) The Act of Sederunt (Child Care and Maintenance Rules) 1997(a) is amended in accordance with this paragraph.

(2) In rule 3.1 (interpretation)(b)—

(a) in paragraph (1), after the definition of “2011 Act”, insert—

““CPSA 1995” means the Criminal Procedure (Scotland) Act 1995 and (except where the context otherwise requires) references to terms defined in that Act have the same meaning here as given there;”;

(b) in paragraph (1), in the definition of “relevant person” for subparagraph (bb), substitute—

“(bb) a person deemed a relevant person by virtue of section 81(3), 160(4)(b) or 164(6) of the 2011 Act;”;

(c) in paragraph (3), for “the 1995 Act or the 2011 Act.” substitute “the 1995 Act, the 2011 Act or section 44A of the CPSA 1995.”.

(3) In rule 3.2 (application of rules 3.3 to 3.5A)(c) after paragraph (2), insert—

“(3) Rules 3.3, 3.3A, 3.5 and 3.5A apply in respect of appeals to the sheriff under section 44A of the CPSA 1995.”.

(4) In rule 3.3A (child to attend hearing)(d) for paragraph (1), substitute—

“(1) This rule applies where an application is made to the sheriff under—

(a) the 2011 Act, other than where section 103 or 112 of the 2011 Act applies; or

(b) section 44A of the CPSA 1995.”.

(5) In rule 3.5 (procedure for obtaining a child’s view)(e) for paragraph (1), substitute—

“(1) Subject to section 27(3) of the 2011 Act and regulation 11A(5) and (6) of the Secure Accommodation (Scotland) Regulations 2013, the sheriff—

(a) may order such steps to be taken as he considers appropriate to ascertain the views of that child; and

(b) shall not come to a decision about a matter relating to a child within the meaning of section 27 of the 2011 Act or in respect of an appeal under section 44A of the CPSA 1995 unless an opportunity has been given for the views of that child to be obtained or heard.”.

(6) In rule 3.13(2) (period of notice)(f) after subparagraph (a), insert—

“(aa) an appeal under section 44A of the CPSA 1995;”.

(7) After Part VIIIA (applications for review by local authority)(g), insert—

“PART VIIIB

PROCEDURE IN APPEALS TO THE SHERIFF UNDER SECTION 44A OF THE CPSA 1995

Form of appeal

3.58C.—(1) An appeal to the sheriff under section 44A of the CPSA 1995 must be—

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- (a) S.I. 1997/291, last amended by S.S.I. 2015/419.
(b) Rule 3.1 was last amended by S.S.I. 2013/172.
(c) Rule 3.2 was last amended by S.S.I. 2013/172.
(d) Rule 3.3A was substituted by S.S.I. 2013/172.
(e) Rule 3.5 was last amended by S.S.I. 2013/172.
(f) Rule 3.13 was last amended by S.S.I. 2013/172.
(g) Part VIIIA was inserted by S.S.I. 2013/172.

- (a) made in Form 64C;
 - (b) accompanied by a copy of the decision complained of and any document relevant to it that was taken into account by the local authority when making that decision;
 - (c) lodged with the sheriff clerk of the sheriff court district in which the child is habitually resident or, on cause shown, such other court as the sheriff may direct.
- (2) The appeal must be signed by the appellant or the appellant's representative.

Appointment and intimation of appeal hearing

3.58D.—(1) On the lodging of an appeal, the sheriff clerk must—

- (a) assign a date for the hearing;
- (b) intimate the date of the hearing to the appellant or the appellant's representative;
- (c) intimate the date of the hearing, together with a copy of the appeal, to the persons specified in paragraph (2).

(2) Those persons are—

- (a) the child, unless the child is the appellant;
- (b) the chief social work officer of the appropriate local authority;
- (c) any relevant person, other than a relevant person who is the appellant;
- (d) any other person that the sheriff considers necessary.

(3) The sheriff clerk must endorse a certificate of execution on the appeal.

(4) Where an appeal is intimated to a child, that intimation must be in Form 64D.

(5) The sheriff may dispense with intimation to a child if the sheriff considers it appropriate to do so.

Procedure at hearing of appeal

3.58E.—(1) At any appeal the sheriff may hear evidence where he or she considers it appropriate to do so.

(2) The sheriff must hear the appellant or the appellant's representative and any party to the appeal before examining—

- (a) the chief social work officer;
- (b) the authors or compilers of any reports or statements;
- (c) the Principal Reporter.

(3) Where the nature of the appeal or of any evidence is such that the sheriff is satisfied that it is in the interests of the child not to be present at any stage of the appeal, the sheriff may exclude the child from the hearing during that stage.

(4) Where the sheriff excludes a child, any relevant person or representative of the child will be permitted to remain during the child's absence.

(5) Where the sheriff is satisfied that—

- (a) it is necessary in order to obtain the views of the child in relation to the hearing; or
- (b) the presence of the person or persons in question is causing, or is likely to cause, significant distress to the child,

the sheriff may exclude the persons mentioned in paragraph (6) from the hearing for so long as the sheriff considers it necessary in the interests of the child.

(6) Those persons are—

- (a) a relevant person;
- (b) any representative of a relevant person.

(7) After the exclusion of any person under paragraph (5), the sheriff must—

- (a) explain the substance of what has taken place in that person’s absence;
- (b) give that person an opportunity to respond to any evidence given by the child by leading evidence or otherwise.

Adjournment or continuation of appeals

3.58F.—(1) The sheriff may adjourn or continue the hearing of the appeal on the motion of any party or on the sheriff’s own motion.

(2) Where the sheriff adjourns or continues a hearing, the sheriff may make any order that is necessary to secure the expeditious determination of the appeal.

Decision of sheriff in appeals

3.58G.—(1) The sheriff must give his or her decision orally, either at the conclusion of the appeal or on such day as the sheriff may appoint.

(2) The sheriff may issue a note of the reasons for his or her decision.

(3) Any note in terms of paragraph (2) must be issued at the time the sheriff’s decision is given or within 7 days after the date of the decision.

(4) The sheriff clerk must immediately send to the persons mentioned in paragraph (5)—

- (a) a copy of the interlocutor containing the sheriff’s decision;
- (b) where a note of reasons has been issued, a copy of that note.

(5) Those persons are—

- (a) the appellant;
- (b) the child, unless the child is the appellant;
- (c) any relevant person, other than a relevant person who is the appellant;
- (d) any other person that the sheriff may direct.

(6) The sheriff clerk must return to the Principal Reporter any documents that the Principal Reporter may have lodged with the sheriff clerk.”.

(8) For rule 3.66 (extent of application of Part XI)(a), substitute—

“Extent of application of this Part

3.66. This Part of Chapter 3 shall apply to proceedings where—

- (a) an application is made to the sheriff under section 93(2)(a), 94(2)(a) or 110 of the 2011 Act;
- (b) an appeal is made to the sheriff under Part 15 of the 2011 Act; or
- (c) an appeal is made under section 44A of the CPSA 1995.”.

(9) The heading of Chapter 3 becomes “Children’s hearings, secure accommodation, etc.: application to the sheriff”(b).

(10) In Schedule 1—

- (a) after Form 64B (Form of application under section 166(2) of the Children’s Hearings (Scotland) Act 2011: Form of warrant to cite)(c), insert Forms 64C and 64D set out in the Schedule to this Act of Sederunt;

(a) Rule 3.66 was last amended by S.S.I. 2013/172.
 (b) The heading of Chapter 3 was amended by S.S.I. 2013/172.
 (c) Form 64B was substituted by S.S.I. 2013/172.

- (b) in Form 75 (Form of child witness notice)(a), in paragraph 1 after “[an appeal under Part 15 of the 2011 Act]”, insert “or [an appeal under section 44A of the Criminal Procedure (Scotland) Act 1995]”;
- (c) in Form 76A (Form of vulnerable witness application)(b), in paragraph 1 after “[an appeal under Part 15 of the 2011 Act]”, insert “or [an appeal under section 44A of the Criminal Procedure (Scotland) Act 1995]”;
- (d) in Form 77 (Form of application for review of arrangements for vulnerable witness)(c), in paragraph 1 after “[an appeal under Part 15 of the 2011 Act]”, insert “or [an appeal under section 44A of the Criminal Procedure (Scotland) Act 1995]”.

CJM SUTHERLAND
Lord Justice Clerk
I.P.D.

Edinburgh
11th December 2015

(a) Form 75 was last amended by S.S.I. 2015/283.
(b) Form 76A was last amended by S.S.I. 2013/172.
(c) Form 77 was last amended by S.S.I. 2013/172.

SCHEDULE

Paragraph 3(10)(a)

Form 64C

Rule 3.58C(1)(a)

APPEAL TO SHERIFF UNDER SECTION 44A OF THE CRIMINAL
PROCEDURE (SCOTLAND) ACT 1995

Court ref. no.

SHERIFF COURT AT *(insert place of sheriff court)*

Appeal under section 44A of the Criminal Procedure (Scotland) Act 1995

[insert name of child and/or name and address of relevant person(s)]

Appellant

against

a decision of the chief social work officer at *[insert location of local authority]*

1. On *[insert date]*, the chief social work officer at *[insert location of local authority]* decided that *[insert details of the decision to detain child in secure accommodation as referred to in section 44A of the Criminal Procedure (Scotland) Act 1995]*. A copy of the decision is attached.
2. The following person(s) is/are relevant persons *[insert name(s) and address(es) of relevant person(s) (within the meaning of section 44A of the Criminal Procedure (Scotland) Act 1995)]*.
3. The decision is not justified because *[state briefly the reasons why the decision is being appealed against]*.
4. The said *[insert name of child and/or relevant person(s)]* appeals to the sheriff against the decision.

[Signed]

[Appellant(s)] or [Solicitor for the Appellant(s)]

[insert name and address]

[insert place and date]

The sheriff assigns *[insert date]* at *[insert time]* within chambers at *[insert name and address of sheriff court]* for the hearing of the application;

The sheriff—

1. Appoints the sheriff clerk to immediately intimate a copy of the application and this warrant to—
 - *(a) the child together with a notice in Form 64D;
 - *(b) *[insert name of relevant person(s) (within the meaning of Rule 3.1(1))];*
 - *(c) *[insert name of any other person the sheriff thinks necessary];*
 - (d) *[insert the name of the chief social work officer].*
2. Dispenses with service on the child for the following reason *[insert details]*.
3. Grants warrant to cite witnesses and havers.

[Signed]

[Sheriff or Sheriff Clerk]

Intimated this day by me in terms of Rule 3.58D.

[Signed]

[Sheriff Clerk/Depute]

[Date]

*(*delete as appropriate)*

Form 64D

Rule 3.58D(4)

INTIMATION TO CHILD IN RESPECT OF APPEAL TO SHERIFF UNDER SECTION 44A OF THE CRIMINAL PROCEDURE (SCOTLAND) ACT 1995

Court ref. no.

Dear *[insert name by which child is known]*,

As you know, the chief social work officer at *[insert location of local authority]* decided that you *[insert details of the decision to place the child into secure accommodation]*. Not everyone agrees with that decision. Since it was not accepted by *[insert name of person(s) who have appealed the decision]*, your case has been sent to a sheriff who will decide whether the decision made by the chief social work officer is correct.

WHAT THE SHERIFF DOES: A sheriff assists for lots of different reasons, but this time the purpose is to decide if the chief social work officer made the right decision. If the sheriff decides that the chief social work officer did make the right decision, the decision will be confirmed. If the sheriff decides that the chief social work officer made the wrong decision, the chief social work officer will be told that you should be moved to a new place to stay, which is not secure accommodation.

HEARING: The sheriff has set a date for hearing your case. The hearing will take place on *[insert time and date of hearing]* at *[insert address of sheriff court]*. [**You must attend court on that date or You do not have to attend court on that date, but you can attend if you want to.*]

At the hearing the sheriff will listen to the evidence in your case, and will make a decision. This decision is very important for you [**and it is necessary for you to attend the hearing to tell the sheriff about your circumstances and how you feel. You might be asked some questions. You can be represented by a solicitor or another person.*].

***[IMPORTANT NOTE: IT IS VERY IMPORTANT THAT YOU ATTEND** on the date and time given. If an emergency arises and you cannot attend you must contact the Sheriff Clerk on *(insert telephone number)* because it is possible, if you do not attend, that you may be detained and kept in a safe place until a later date.]

**[The sheriff has said that you do not have to attend the hearing on [insert date] at [insert time] at [insert name and address of sheriff court], but if you want to go along to hear what is said at the hearing, then you can. If you do not want to go to court, you can still let the sheriff know what you think by filling in the attached form or you can write down what you want to say on a separate sheet of paper and send it back in the enclosed addressed envelope before [insert date], which is the date on which the sheriff will hear the appeal. If you would prefer, you can ask a lawyer to go to the hearing to tell the sheriff your views.]*

If you are unsure about what to do you can get free legal advice from a lawyer or local advice agency or law centre about the appeal and about legal aid. The Scottish Child Law Centre can refer you to specially trained lawyers who can help you. They give advice on their free phone number (0800 328 8970) any time between 9.30am and 4.00pm Monday to Friday.

You will see that, along with this letter, there is a copy of the appeal to the sheriff and the sheriff's order fixing the hearing. If you decide to get advice, or to ask someone to go with you to see the sheriff, make sure that you give them a copy of the appeal and the sheriff's order.

(Signed)

(Date)

*(*delete as appropriate)*

To the Sheriff Clerk:

I would like the sheriff to know what I have to say before he or she makes a decision *(write what you want to say here, or you can use a separate piece of paper):*

Your name:

Your address:

Court reference number (if you know it):

EXPLANATORY NOTE

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

This Act of Sederunt amends the Ordinary Cause Rules 1993 in implementation of the Section 16 Enterprise Act 2002 Regulations 2015.

Those Regulations allow for the transfer to the Competition Appeal Tribunal of so much of any proceedings before the High Court or county court (in England and Wales) and the Court of Session or sheriff court (in Scotland) as relates to an infringement issue, that is, whether a prohibition in Chapters 1 or 2 of the Competition Act 1998 (c.41) or Articles 101 or 102 of the Treaty on the Functioning of the European Union (O.J. C. 326, pp. 1 – 390, 26 October 2012) has been or is being committed.

This Act of Sederunt amends Chapter 42 of the Ordinary Cause Rules 1993 to allow for transfer to the Competition Appeal Tribunal of such a question of the sheriff's own accord or on the application of a party to the proceedings

This Act of Sederunt also amends the Act of Sederunt (Child Care and Maintenance Rules) 1997 in consequence of the coming into force of section 44A of the Criminal Procedure (Scotland) Act 1995 and the Secure Accommodation (Scotland) Amendment (No. 2) Regulations 2015.

Section 44A provides for a new right of appeal to the sheriff against a decision by a local authority to detain in secure accommodation a child found guilty of an offence punishable by imprisonment.

As a result, the scope of Chapter 3 of the Child Care and Maintenance Rules has been widened so as to apply to appeals under section 44A. A new Part VIII B has been inserted into Chapter 3 to make provision for the procedure to be followed in such an appeal. A new Form 64C (form of appeal) and Form 64D (form of intimation to child) are prescribed for this purpose.

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