

2020 No. 166

COURT OF SESSION

SHERIFF COURT

**Act of Sederunt (Rules of the Court of Session 1994 and Sheriff
Court Rules Amendment) (Miscellaneous) 2020**

<i>Made</i> - - - -	<i>29th May 2020</i>
<i>Laid before the Scottish Parliament</i>	<i>1st June 2020</i>
<i>Coming into force</i> - -	<i>2nd June 2020</i>

The Court of Session makes this Act of Sederunt under the powers conferred by sections 103(1) and 104(1) of the Courts Reform (Scotland) Act 2014^(a) and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (Miscellaneous) 2020.

(2) It comes into force on 2nd June 2020.

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

Amendment of the Rules of the Court of Session 1994

2.—(1) The Rules of the Court of Session 1994^(b) are amended in accordance with this paragraph.

(2) After Chapter 108 (challenges to validity of EU instruments (EU Exit))^(c), insert—

“CHAPTER 109

CARE HOMES: EMERGENCY INTERVENTION ORDERS

Interpretation and application of this Chapter

109.1.—(1) In this Chapter—

(a) 2014 asp 18.

(b) The Rules of the Court of Session 1994 are in schedule 2 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443, last amended by S.S.I. 2020/28).

(c) Chapter 108 was inserted by S.S.I. 2019/328.

“the 2010 Act” means the Public Services Reform (Scotland) Act 2010 as modified by paragraph 17 (emergency intervention orders) of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020(a);

“emergency intervention order” has the meaning given by section 65A(2) (care homes: emergency intervention orders) of the 2010 Act;

(2) This Chapter applies in relation to applications made under section 65A of the 2010 Act.

Applications under section 65A of the 2010 Act

109.2.—(1) An application for an emergency intervention order under section 65A(1) of the 2010 Act must be made by petition.

(2) An interim order under section 65A(3) of the 2010 Act must be sought by prayer in the petition for the emergency intervention order.

(3) An application under section 65A(13) of the 2010 Act for variation, extension or revocation of an emergency intervention order must be made by note in the process for the emergency intervention order to which it relates.

(4) An application under section 65A(14) of the 2010 Act for variation or recall of an interim order granted under section 65A(3) of that Act must be made by motion.”.

Amendment of the Ordinary Cause Rules 1993

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

(2) After rule 29.17 (proof to be taken continuously), insert—

“Proof management hearing

29.17A.—(1) Where a proof diet has been—

- (a) discharged;
- (b) adjourned, whether under rule 29.17 (proof to be taken continuously) or otherwise;
or
- (c) continued to a later date,

the sheriff may, of the sheriff’s own motion, fix a proof management hearing.

(2) It is the duty of the parties to provide the sheriff with sufficient information to enable the sheriff to conduct the hearing as provided for in this rule.

(3) At a proof management hearing the sheriff is to ascertain, so far as is reasonably practicable, whether the cause can proceed to proof or, as the case may be, continued proof and in particular—

- (a) when the parties expect to be able to proceed to proof or continued proof;
- (b) the likely availability of witnesses;
- (c) the extent to which the proof or continued proof, and the attendance of witnesses, may be conducted remotely and how that might be achieved; and
- (d) the extent to which affidavit evidence may be used.

(4) At a proof management hearing the sheriff may—

- (a) discharge the proof or continued proof;

(a) The Public Services Reform (Scotland) Act 2010 (asp 8) (“the 2010 Act”) was modified by paragraph 17 of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020 (asp 10) (“the 2020 Act”) to have effect as if after section 65 of the 2010 Act there were inserted the section 65A as narrated in paragraph 17(2) of schedule 1 of the 2020 Act.

(b) The Ordinary Cause Rules 1993 are in schedule 1 of the Sheriff Courts (Scotland) Act 1907 (c.51). Schedule 1 was substituted by S.I. 1993/1956 and last amended by S.S.I. 2020/28.

- (b) fix a date for the proof diet or, as the case may be, a new date for the continued proof;
 - (c) continue the proof management hearing to a later date;
 - (d) make such other order as the sheriff thinks fit to secure the expeditious progress of the cause.”.
- (3) After rule 36.H1(2) (applications for sist or for variation of timetable)(a) insert—
- “(2A) The sheriff may, on the sheriff’s own motion, vary the timetable where satisfied that the efficient determination of the action would be served by doing so and in consequence may—
- (a) discharge a diet ordered pursuant to rule 36.G1(5) or (7) (allocation of diets and timetables)(b); or
 - (b) sist the action.”.

Amendment of the Summary Application Rules 1999

4.—(1) The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(c) is amended in accordance with this paragraph.

- (2) After Part LI (drug dealing telecommunications restriction orders)(d), insert—

“PART LII

CARE HOMES: EMERGENCY INTERVENTION ORDERS

Interpretation

3.52.1. In this Part—

“the 2010 Act” means the Public Services Reform (Scotland) Act 2010 as modified by paragraph 17 (emergency intervention orders) of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020;

“emergency intervention order” has the meaning given by section 65A(2) (care homes: emergency intervention orders) of the 2010 Act.

Applications under section 65A of the 2010 Act

3.52.2.—(1) An application for an emergency intervention order under section 65A(1) of the 2010 Act must be made by summary application.

(2) An interim order under section 65A(3) of the 2010 Act must be sought by crave in the initial writ for the emergency intervention order.

(3) An application under section 65A(13) of the 2010 Act for variation, extension or revocation of an emergency intervention order must be made by minute in the process for the emergency intervention order to which it relates.

(a) Rule 36.H1 was inserted by S.S.I. 2009/285 and last amended by S.S.I. 2014/152.
 (b) Rule 36.G1 was inserted by S.S.I. 2009/285 and last amended by S.S.I. 2015/227.
 (c) S.I. 1999/929, last amended by S.S.I. 2020/28.
 (d) Part LI was inserted by S.S.I. 2017/460.

(4) An application under section 65A(14) of the 2010 Act for variation or recall of an interim order granted under section 65A(3) of that Act must be made by motion in the process of the emergency intervention order to which it relates.”.

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
29th May 2020

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session 1994 and the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 in consequence of modifications made by the Coronavirus (Scotland) (No.2) Act 2020 (asp 10) to the Public Services Reform (Scotland) Act 2010 (asp 8). The modifications provide that the Scottish Ministers may apply for an emergency intervention order in relation to a care home service in certain situations. The amendments made in paragraphs 2 and 4 of this instrument make provision for how those (and ancillary) orders are to be sought.

This instrument also amends the Ordinary Cause Rules 1993 to insert two new rules. First, a new rule which permits the sheriff to convene a proof management hearing with a view to dealing with any proof which has been disrupted so as to enable it to re-start. Second, a rule which permits the sheriff, on the sheriff's own motion, to vary the timetable of a personal injury action under Chapter 36 where satisfied that doing so would serve the efficient determination of the action and, in consequence, discharge any diet previously set under the rule mentioned or sist the action.

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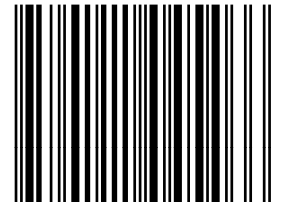
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