
STATUTORY INSTRUMENTS

1986 No. 1966 (S. 152)

SHERIFF COURT, SCOTLAND

Act of Sederunt (Miscellaneous Amendments) 1986

Made - - - - 18th November 1986

Coming into Operation 8th December 1986

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 32 of the Sheriff Courts (Scotland) Act 1971(a), section 24 of the Child Abduction and Custody Act 1985(b) and of all other powers enabling them in that behalf, do hereby enact and declare:—

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Miscellaneous Amendments) 1986 and shall come into operation on 8th December 1986.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

(3) In paragraph 2 of this Act of Sederunt, “Ordinary Cause Rules” means the First Schedule to the Sheriff Court (Scotland) Act 1907(c).

Amendment to Ordinary Cause Rules

2.—(1) The Ordinary Cause Rules shall be amended in accordance with the following provisions of this paragraph.

(2) In rule 3(8) (forms of consent) —

(a) after the words “consent of the parent”, insert the words, “tutor, curator”; and

(b) for “section 47(2)”, substitute “section 47”.

(3) After rule 20 (remit of cause to Court of Session) insert the following rule:—

“Remit of cause from the Court of Session

20A.—(1) On receipt of the process in an action which has been remitted from the Court of Session, the sheriff clerk shall —

(a) record the date of such receipt on the interlocutor sheet;

(b) enrol the cause for further procedure on the first court day occurring not earlier than 14 days after the date of receipt of the process; and

(a) 1971 c.58.

(b) 1985 c.60.

(c) 1907 c.51; First Schedule substituted by S.I. 1983/747 and amended by S.I. 1984/255, 1986/513 and 1230.

- (c) forthwith send written notice of the date of calling of the action to the parties.
- (2) The action shall thereafter proceed on the existing process unless the sheriff otherwise directs.”.
- (4) For paragraph (2) of rule 21, substitute the following paragraph:—
 - “(2) Paragraph (1) does not apply to actions —
 - (a) of divorce or of separation;
 - (b) relating to tutory, curatory, custody or access or any right or authority relating to the welfare or upbringing of a child conferred on a parent by any rule of law;
 - (c) for declarator of parentage, non-parentage, legitimacy, legitimation or illegitimacy.”.
- (5) In rule 22 (procedure in certain undefended actions) —
 - (a) in the heading, for the words “*for custody of children*”, substitute the words “*relating to parental rights*”;
 - (b) in paragraph (1), for the words “for custody of children”, substitute the words “relating to tutory, curatory, custody or access or any right or authority relating to the welfare or upbringing of a child conferred on a parent by any rule of law”; and
 - (c) in paragraph (2), for the words “In an action for custody of children”, substitute the words “In any such action”.
- (6) In rule 23 —
 - (a) for the heading, substitute the heading “*Procedure where actions of divorce or separation or actions affecting parentage are undefended*”;
 - (b) in paragraph (1) (a), for the words “and of separation”, substitute the words, “actions of separation and actions for declarator of parentage, non-parentage, legitimacy, legitimation or illegitimacy”; and
 - (c) in paragraph (1), (b), for the words “action of divorce and of separation”, substitute the words “such action”.
- (7) In rule 72(1) (affidavit evidence) —
 - (a) in sub-paragraph (a), for the words “separation and of divorce”, substitute the words “divorce, of separation and of declarator of parentage, non-parentage, legitimacy, legitimation or illegitimacy”;
 - (b) in sub-paragraph (b) —
 - (i) for the words “separation or of divorce”, substitute the words “divorce, of separation or of declarator of parentage, non-parentage, legitimacy, legitimation or illegitimacy”; and
 - (ii) for the word “the” where it occurs after the words “appears to the sheriff that”, substitute the word “a”.
- (8) After rule 84 (orders for inspection), insert the following rule:—

“Orders to disclose identity of persons

84A.—(1) An application for an order under section 1 (1A) of the Administration of Justice (Scotland) Act 1972(a) requiring a person to disclose such information as he has as to the identity of any person who might be a witness in a cause in dependence before that sheriff court shall be made by minute in the process of that cause craving such an order and specifying the order sought.

(2) On a minute being lodged under paragraph (1), the sheriff shall appoint forthwith —

(a) the application to be heard at a diet to be fixed by him; and

(b) intimation to be made to any other party to the cause and to such other person as appears to him to have an interest in the application.

(3) After hearing parties, the sheriff may either grant or refuse the order sought in whole or in part, or as amended, and subject to such conditions, including caution, as he thinks fit.

(4) An application for an order under section 1(1A) of the Administration of Justice (Scotland) Act 1972 requiring a person to disclose such information as he has as to the identity of any person who might be a witness or defender in any civil proceedings which are likely to be brought, shall be made by summary application.

(5) A summary application under paragraph (4) shall crave the order which is sought and shall specify the nature of the proposed proceedings and the information required.

(6) On presentation of a summary application under paragraph (4), the sheriff may make an order for intimation to such persons as appear to him to have an interest in the application.

(7) After the hearing of the summary application, the sheriff may grant the order sought in whole or in part, or as amended, subject to such conditions, including caution, as he thinks fit.

(8) Subject to paragraph (9), a certified copy interlocutor granting an order made under this rule shall —

(a) be served upon the person to whom it is directed; and

(b) be intimated to any other person to whom intimation of the minute or application, as the case may be, has been made,

by the party in whose favour it has been granted.

(9) An interlocutor granting an order under this rule shall not be served upon, or intimated to, a person who was present or represented when the application under this rule was determined.

(10) An interlocutor of the court under this rule shall be obtempered by the person to whom it is directed in the manner and within the time specified.”.

(9) In rule 130(8) (intimation), for the words “section 47(1)”, substitute the words “section 47”.

(a) 1972 c.59; section 1(1A) was inserted by section 19 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73).

(10) After rule 132A, insert the following rule:—

“Applications to declare removal of a child unlawful

132B. Where, in any proceedings for custody of a child, an interested party wishes to make an application under section 23(2) of the Child Abduction and Custody Act 1985 for declarator that the removal of the child from the United Kingdom was unlawful, he shall make such application in the initial writ or counter-claim, or by separate minute in the process, as the case may be.”.

(11) In Form T1, in the Appendix —

- (a) in the heading, after the word “parent” insert the words “, tutor, curator”; and
- (b) after the words “mother/father/guardian”, insert the words “/tutor/-curator”.

Amendment of Act of Sederunt (Summary Cause Rules, Sheriff Court) 1976

3. In paragraph 3(2) of the Act of Sederunt (Summary Cause Rules, Sheriff Court) 1976(a) —

- (a) after “14”, insert “20A.”; and
- (b) after “84”, insert “84A.”.

Emslie,
Lord President,
I.P.D.

Edinburgh,
18th November 1986.

(a) S.I.1976/476; relevant amending instrument is S.I. 1983/747.

EXPLANATORY NOTE

(This Note is not part of the Act of Sederunt.)

This Act of Sederunt amends —

- (a) the Ordinary Cause Rules of the sheriff court and the Act of Sederunt (Summary Cause Rules, Sheriff Court) to make provision for —
 - (i) remitting a cause from the Court of Session to a sheriff court under section 14 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73) (paragraphs 2(3) and 3);
 - (ii) applications for orders under section 1(1A) of the Administration of Justice (Scotland) Act 1972 (c.59) (as amended by section 19 of the Act of 1985) requiring the identifying of persons who may be witnesses or defenders in civil proceedings (paragraphs 2(8) and 3);
- (b) the Ordinary Cause Rules of the sheriff court —
 - (i) by making minor amendments in consequence of the Law Reform (Parent and Child) (Scotland) Act 1986 (c.9) (paragraphs 2(2), (4) to (7), (9) and (11)); and
 - (ii) to provide for applications to declare the removal of a child unlawful under section 23(2) of the Child Abduction and Custody Act 1985 (paragraph 2(10)).