
STATUTORY INSTRUMENTS

1997 No. 1720 (S.129)

COURT OF SESSION, SCOTLAND

**Act of Sederunt (Rules of the Court of Session
Amendment No. 7) (Judicial Factors) 1997**

Made - - - - *11th July 1997*

Coming into force - - *1st August 1997*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 5 of the Court of Session Act 1988(1) 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 (Rules of the Court of Session Amendment No. 7) (Judicial Factors) 1997 and shall come into force on 1st August 1997.

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

Signature of petition for appointment of judicial factor

2. In rule 4.2(3) (exceptions to requirement that petitions etc. be signed by counsel or by some other person having a right of audience), after paragraph (c) insert—

“(cc) a petition in form 61.2 shall be signed only by the Accountant of Court;”.

Exception to requirement that process be lodged in cause commenced by petition

3. In rule 4.3 (requirement for lodging of process), after paragraphs (a) and (b) add—

“except that the foregoing provisions of this rule shall not apply where the petition is in form 61.2”.

Exception to requirements for service by post

4. In rule 16.4(1) (service of document by post), at the end add—

“but is subject to rule 61.2(3) and (4) (order as respects intimation of petition for appointment of judicial factor)”.

(1) 1988 c. 36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(3) and by the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 45.

Amendment of Chapter 49 of the Rules of the Court of Session

5. After Part XIV(2) of Chapter 49 (family actions) of the Rules of the Court of Session 1994(3) insert—

“PART XV MANAGEMENT OF CHILD’S PROPERTY BY VIRTUE OF SECTION 9(5)(a) OR 11(2)(g) OF THE ACT OF 1995

49.89. In making an appointment under section 9(5)(a) or 11(2)(g) of the Act of 1995, or when it receives a report under the said section 11(2)(g), the court may give such directions as it thinks fit regarding the management of the property concerned, and it may from time to time, on the application of a judicial factor so appointed, of the Accountant of Court or of any other person having an interest, give further such directions.”.

Amendment of Chapter 61 of the Rules of the Court of Session

6.—(1) Chapter 61 (judicial factors) of the Rules of the Court of Session 1994 shall be amended in accordance with the following paragraphs.

(2) In rule 61.1(2) (interpretation), after the definition of “the Act of 1849” insert—

““the Act of 1995” means the Children (Scotland) Act 1995(4) and”.

(3) For rule 61.2 substitute—

‘Application for appointment of judicial factor

61.2.—(1) An application for the appointment of a judicial factor shall be made by petition.

(2) An application under section 9(5)(a) of the Act of 1995 (application by Accountant of Court for appointment of judicial factor to administer certain property of a child) shall be made by petition in Form 61.2; and Chapter 14 shall not apply as respects any such petition.

(3) A petition in Form 61.2 shall, after being lodged in the Petition Department and recorded in the Petitions Register but without appearing in the Motion Roll, be presented to the Lord Ordinary in court or in chambers; and he may—

(a) forthwith make the appointment sought; or

(b) make an order—

(i) for such intimation, service and advertisement of the petition as he considers appropriate; and

(ii) for a hearing, on such date as he may specify, as respects the petition.

(4) Without prejudice to the generality of paragraph (3)(b)(i), any order under that paragraph as to intimation may specify that Rule 16.4 shall not apply and that the Accountant of Court shall make intimation by post in such manner as the Lord Ordinary thinks fit.

(5) In rule 61.5 (intimation and service)—

(a) in paragraph (1), after the word ‘Court’ insert ‘(except where the petition is in Form 61.2)’; and

(b) at the end add—

“(4) After a petition for the appointment of a judicial factor is lodged in the Petition Department, the Clerk of Session in that department may (whether or not any order is

(2) Part XIV was inserted by rule 2(37) of [S.I. 1996 No.2587](#).

(3) [S.I.1994/1443](#).

(4) [1995 c. 36](#).

made, or is competent, under rule 14.5(1)(a)) provide any interested party with details of the petition.”.

(6) In rule 61.13 (applications to encroach on capital)—

(a) for paragraph (3) substitute—

“(3) On receipt of such an application, the Accountant of Court—

(a) may, if the proposed encroachment does not exceed 5% of the capital value of the estate as at the date when application is first made under paragraph (1), consent to the application subject to such conditions as he thinks fit to impose; and

(b) if he is unable, or declines, to consent under sub-paragraph (a), shall—

(i) ordain the judicial factor to intimate, in accordance with paragraphs (5) and (6), the making of the application; or

(ii) ordain him to apply by note to the Lord Ordinary for special powers.”;

(b) in paragraph (5)—

“(i) for the words ‘(3)(a)’ substitute ‘(3)(b)(i)’; and

(ii) in sub-paragraph (b), at the end add ‘(other than a petitioner using Form 61.2)’; and

(c) in each of paragraphs (6) and (7), for the words ‘(3)(a)’ substitute ‘(3)(b)(i)’.

(7) In rule 61.14(3) (applications under section 2(3) of the Trusts (Scotland) Act 1961), for sub-paragraph (b) substitute—

“(b) any person who petitioned for the judicial factor to be appointed (except where the petition was in Form 61.2);”.

Form of petition of Accountant of Court under section 9(5)(a) of the Children (Scotland) Act 1995(5) 5 for appointment of judicial factor

7. After Form 59.1-D insert the form set out in the Schedule to this Act of Sederunt.

Edinburgh,
11th July 1997

Rodger of Earlsferry
Lord President, I.P.D.

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SCHEDULE

Rule 61.2(2)

Form 61.2

Form of petition under section 9(5)(a) of the Act of 1995 for appointment of a judicial factor

Unto The Right Honourable

The Lords of Council and Session

Petition

of

The Accountant of Court

Under section 9(5)(a) of the Children (Scotland) Act 1995 for the appointment of a judicial factor to [C.D.] (*name of child as in birth certificate*)

HUMBLY SHEWETH:—

1. That an application has been made to the petitioner under section 9(2) or (3) of the Children (Scotland) Act 1995 for a direction as to the administration of the property of [C.D.] [*name and address of child*].

2. That [C.D.] [*name of child*] was born on [*date of birth of child*].

3. That the property is of the following description:- [*description of property*].

4. That the property's value is not less than [*minimum value of property*].

5. That the property is for the time being held by [*name, address and designation of person holding property owned by or due to the child*].

6. That for the following reason[s] the appointment of a judicial factor is more appropriate than the making of a direction under paragraph (b) or (c) of section 9(5) of the Children (Scotland) Act 1995; that is to say [*statement of reason[s]*].

MAY IT THEREFORE please your Lordships to appoint (*name and address of proposed judicial factor*), or such other person as the court shall think proper, to be judicial factor to [*name and address of child*] to administer, in terms of section 9(5)(a) of the Children (Scotland) Act 1995, the property owned by or due to the child, as described at paragraph 4 above.

According To Justice etc.

(Signed)

Accountant of Court.

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 in relation to judicial factors. In particular it makes such provision as is requisite to take account of the new provisions for the appointment of judicial factors made by sections 9(5)(a) and 11(2)(g) of the Children (Scotland) Act 1995.

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