
STATUTORY INSTRUMENTS

1997 No. 206 (S.11)

SHERIFF COURT, SCOTLAND

Act of Sederunt (Judicial Factors Rules) (Amendment) 1997

Made - - - - - *28th January 1997*

Coming into force - - - - - *3rd March 1997*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 5 of the Judicial Factors (Scotland) Act 1880(1) and section 32 of the Sheriff Courts (Scotland) Act 1971(2) and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules in Council in accordance with section 34 of the Sheriff Courts (Scotland) Act 1971, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Judicial Factors Rules) (Amendment) 1997 and shall come into force on 3rd March 1997.

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

Amendment of the Act of Sederunt (Judicial Factors Rules) 1992

2. The Act of Sederunt (Judicial Factors Rules) 1992(3) shall be amended in accordance with the following provisions of this Act of Sederunt.

3. In rule 2(1) (interpretation)–

(a) after the definition of “the 1889 Act”, there shall be inserted the following definition:–

““the 1995 Act” means the Children (Scotland) Act 1995(4);”;

(b) after the definition of “factor”, there shall be inserted the following definition:–

““ward”, for the purpose of the appointment of a factor under section 9(5)(a) of the 1995 Act, means the child whose property is being administered by the factor.”.

4. In rule 3 (application)–

(a) the word “and” immediately following paragraph (1)(c) shall be deleted;

(1) 1880 c. 4.

(2) 1971 c. 58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 12, by the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(4) and by the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 18(2).

(3) S.I. 1992/272, amended by S.I. 1994/2354 and 1996/2167.

(4) 1995 c. 36.

- (b) in paragraph (1)(d), for the words “Children (Scotland) Act 1995” there shall be substituted the words “1995 Act”;
 - (c) in paragraph (1), there shall be inserted after the words “Rules 1993” the following:–
 - “; and
 - (e) except as provided in paragraph (3) of this rule, factors appointed under section 9(5)(a) of the 1995 Act”; and
 - (d) after paragraph (2), there shall be inserted the following paragraph:–
 - “(3) Rules 7, 8, 15(4)(b) and 16(3)(b) shall not have effect in relation to factors appointed under section 9(5)(a) of the 1995 Act.”.
- 5.** In rule 4 (applications to be summary), after the words “summary application” there shall be inserted the words “and, in the case of an application under section 9(5)(a) of the 1995 Act, shall be in Form 8”.
- 6.** In rule 6(1)(b) (intimation), for the words “intimation to the Accountant” there shall be substituted the words “where the Accountant is not the applicant, intimation to him”.
- 7.** In rule 15 (application to encroach on capital)–
- (a) after paragraph (2), there shall be inserted the following paragraph:–
 - “(2A) Where the amount of encroachment does not exceed 5% of the initial capital of the estate, the Accountant may in his discretion approve the encroachment.”; and
 - (b) in paragraph (3)(a), for the words “On receipt of such an application, the Accountant” there shall be substituted the words “Where the Accountant does not approve the encroachment in accordance with paragraph (2A), on receipt of an application under paragraph (1) of this rule he”.
- 8.** In the Schedule (forms), after Form 7 there shall be inserted the form set out in the Schedule to this Act of Sederunt.

Edinburgh
28th January 1997

Rodger of Earlsferry
Lord President, IPD

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE

Paragraph 8

FORM 8 FORM OF APPLICATION FOR APPOINTMENT OF A JUDICIAL FACTOR UNDER SECTION 9(5)(a) OF THE CHILDREN (SCOTLAND) ACT 1995

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 4

FORM OF APPLICATION FOR APPOINTMENT OF A JUDICIAL FACTOR UNDER SECTION 9(5)(a) OF THE CHILDREN (SCOTLAND) ACT 1995

SHERIFFDOM OF *[insert name of Sheriffdom]*
AT *[insert place of Court]*

Court Reference No.

APPLICATION BY THE ACCOUNTANT OF COURT

FOR

THE APPOINTMENT OF A JUDICIAL FACTOR UNDER SECTION 9(5)(a)
OF THE CHILDREN (SCOTLAND) ACT 1995

1. NAME AND ADDRESS OF CHILD:- *(Insert full name and address)*
 2. DATE OF BIRTH OF THE CHILD:- *(Insert date of birth)*
 3. NAME AND ADDRESS OF PARENT OR GUARDIAN OF CHILD:- *(Insert full name and address)*
 4. DESCRIPTION AND VALUE OF PROPERTY OWNED OR DUE TO THE CHILD:-
(Insert full description and value of property owned or due to the child)
 5. NAME, ADDRESS AND DESIGNATION OF PERSON HOLDING THE PROPERTY OWNED BY OR DUE TO THE CHILD:- *(Insert name, address and designation (eg Executor or trustee) of person holding property owned by or due to the child)*
 6. DATE OF RECEIPT BY THE ACCOUNTANT OF COURT OF APPLICATION UNDER SECTION 9(2) OR (3) OF THE CHILDREN (SCOTLAND) ACT 1995:- *(Insert date of receipt of application)*
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CRAVE

The Applicant craves the Court to appoint *[insert name and address of proposed judicial factor]* or other person as the court shall think proper to be judicial factor to *[insert name and address of child]* to administer the property owned or due to the child as described at paragraph 4 above in terms of Section 9(5)(a) of the Children (Scotland) Act 1995 and to find any person opposing the crave hereof liable in expenses.

CONDESCENDENCE

[State reasons for making the application including reasons why a direction in terms of Sections 9(5)(b) or (c) has not been made.]

Signed

[A.B.] Accountant of Court
or *[X.Y.]* Solicitor for the Applicant
(state designation and business address)

EXPLANATORY NOTE

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

This Act of Sederunt amends the Act of Sederunt (Judicial Factors Rules) 1992 so as to make provision in relation to judicial factors appointed under section 9(5)(a) of the Children (Scotland) Act 1995. It also amends rule 15 of those 1992 Rules so as to enable the Accountant of Court to approve, without further procedure, an application by a factor to encroach on the capital of the ward's estate where the amount of encroachment does not exceed 5% of the initial capital of that estate.