
SCOTTISH STATUTORY INSTRUMENTS

2023 No. 62

Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules 1999 Amendment) (Sexual Harm Prevention Orders and Sexual Risk Orders) 2023

Amendment of the Summary Application Rules 1999

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

(2) In Chapter 3 (rules on applications under specific statutes) after Part LIII (Age of Criminal Responsibility (Scotland) Act 2019)(2), insert—

“PART LIV

SEXUAL HARM PREVENTION ORDERS AND SEXUAL RISK ORDERS

Interpretation

3.54.1. In this Part—

“the 2016 Act” means the Abusive Behaviour and Sexual Harm (Scotland) Act 2016(3);

“interim sexual harm prevention order” and “sexual harm prevention order” means an order under section 21 (interim orders) and 12 (making of order against qualifying offender on application to sheriff) of the 2016 Act respectively;

“interim sexual risk order” and “sexual risk order” means an order under section 31 (interim orders) and 27 (making of order) of the 2016 Act respectively.

Warrant, Form of Citation and notices

3.54.2.—(1) A warrant for citation in an application under this Part is to be in Form 2B (form of warrant of citation under Chapters 3 and 4 of Part 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016).

(2) Citation in respect of a warrant granted under paragraph (1) is to be in Form 3B (form of citation for summary application under Chapters 3 and 4 of Part 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016).

(3) Where a person on whom service has been executed wishes for a hearing to be held, that person is to—

(a) give, within 21 days of the date of service, notice under section 12(4) or 27(5) (making of an order) of the 2016 Act; and

(1) S.I. 1999/929, last amended by S.S.I. 2022/329.

(2) Part LIII was inserted by S.S.I. 2021/452.

(3) 2016 asp 22.

(b) lodge answers at the same time and send a copy of them to the applicant.

(4) Where a person has been served with an application under section 12 of the 2016 Act and disputes under section 15(4)(a) (qualifying offender: conviction etc. outside United Kingdom) of that Act that section 12(2)(b) is satisfied, the person is to serve a notice in accordance with section 15(4)(a) of that Act within 21 days of the date on which they were served with the application under section 12 of that Act.

Procedure where no notice under section 12(4) or 27(5) is given

3.54.3.—(1) Where no notice of a wish for a hearing under section 12(4) or 27(5) of the 2016 Act has been given to the sheriff within the period of notice contained in the warrant of citation, the applicant may return the application, together with a duly completed execution of service, to the sheriff clerk requesting the sheriff make an order for further procedure under section 12(3)(b)(i) or (ii) or section 27(4)(b)(i) or (ii) (as the case may be) of the 2016 Act.

(2) Where the sheriff gives an opportunity under section 12(3)(b)(ii) or section 27(4)(b)(ii) of the 2016 Act for written representations to be made, the sheriff is to specify the period for lodging the written representations with the court and any party lodging any written representations is at the same time to intimate a copy of them to the other party.

Variation, renewal or discharge of sexual harm prevention orders or sexual risk orders

3.54.4.—(1) Subject to paragraph (2), an application under—

- (a) section 20 (variation, renewal and discharge) of the 2016 Act to vary, renew or discharge a sexual harm prevention order; or
- (b) section 30 (variation, renewal and discharge) of the 2016 Act to vary, renew or discharge a sexual risk order,

is to be made by minute in the process relating to that order.

(2) Where an application to vary, renew or discharge a sexual harm prevention order or sexual risk order is made in a sheriff court other than the sheriff court in which the process relating to the order is held—

- (a) the application is to be made by summary application;
- (b) the initial writ containing the application is to contain averments as to the sheriff court in which the process relating to the order is held;
- (c) the sheriff clerk with whom the application is lodged is to notify the sheriff clerk of the sheriff court in which the process relating to the order is held; and
- (d) the sheriff clerk of the sheriff court in which the process relating to the order is held must, not later than 4 days after receipt of such notification, transfer the process relating to the order to the sheriff clerk of the sheriff court in which the application is made.

(3) For the purposes of paragraph (2), the sheriff court in which the process relating to the order is held is the sheriff court in which the order was granted or, where the process has been transferred under that paragraph, the last sheriff court to which the process has been transferred.

(4) Where—

- (a) a minute under paragraph (1) is lodged, the sheriff is to order intimation of the minute;
- (b) a person on whom intimation of a minute under paragraph (1) has been made wishes for a hearing to be held, that person is to—

- (i) give, within 21 days of the date of intimation of the minute, notice under section 20(8) or section 30(7) of the 2016 Act (as the case may be); and
 - (ii) lodge answers at the same time and send a copy of them to the minuter;
 - (c) no notice of a wish for a hearing under section 20(8) or 30(7) of the 2016 Act has been given to the sheriff within the period of notice contained in the warrant of citation, the minuter may return the minute, together with a duly completed certificate of intimation, to the sheriff clerk requesting the sheriff make an order for further procedure under section 20(7)(b)(i) or (ii) or section 30(6)(b)(i) or (ii) (as the case may be) of the 2016 Act.
- (5) Where an application referred to in paragraph (2) has been made—
- (a) if a person on whom service has been executed wishes for a hearing to be held, that person is to—
 - (i) give, within 21 days of the date of service, notice under section 20(8) or 30(7) of the 2016 Act (as the case may be); and
 - (ii) lodge answers at the same time and send a copy of them to the applicant;
 - (b) if no notice of a wish for a hearing under section 20(8) or 30(7) of the 2016 Act has been given to the sheriff within the period of notice contained in the warrant of citation, the applicant may return the application, together with a duly completed certificate of intimation, to the sheriff clerk requesting the sheriff make an order for further procedure under section 20(7)(b)(i) or (ii) or section 30(6)(b)(i) or (ii) (as the case may be) of the 2016 Act.
- (6) Where paragraph (4)(b) or paragraph (5)(b) applies and the sheriff gives an opportunity to make written representations under section 20(7)(b)(ii) or section 30(6)(b)(ii) of the 2016 Act—
- (a) the sheriff is to specify the period for lodging the written representations with the court; and
 - (b) any party lodging written representations is at the same time to intimate a copy of them to any other party.
- (7) If the sexual harm prevention order or sexual risk order to which the application to vary, renew or discharge relates is an order made in England or Wales or is a sexual offences prevention order, a foreign travel order or a risk of sexual harm order made in Northern Ireland under the Sexual Offences Act 2003(4)—
- (a) paragraph (4) does not apply and a first application is to be made by initial writ in Form 1 (form of initial writ); and
 - (b) where any subsequent application under sub-paragraph (a) is made, that application is to be made by minute in the process.
- (8) Where paragraph (7) applies the sheriff clerk is to send a certified copy of the interlocutor varying, renewing or discharging (as the case may be) the order to the court which originally imposed that order.
- (9) A failure of the sheriff clerk to comply with paragraph (2) does not invalidate the application.

Interim sexual harm prevention orders or interim sexual risk orders

3.54.5.—(1) Subject to paragraph (2), an application for an interim sexual harm prevention order or interim sexual risk order is to be made—

- (a) by crave in the initial writ containing the application for a sexual harm prevention order or sexual risk order, as the case may be (“the main application”); or
 - (b) if an application has already been made, by way of motion.
- (2) Where an application for an interim sexual harm prevention order or interim sexual risk order is made in a sheriff court other than the sheriff court in which the main application was lodged—
- (a) the application is to be made by summary application;
 - (b) the initial writ containing the application is to contain averments as to the sheriff court in which the main application was lodged; and
 - (c) the sheriff clerk with whom the application is lodged is to notify the sheriff clerk of the sheriff court in which the main application was lodged.
- (3) There is to be produced with a summary application under paragraph (2) copies of the following documents, certified as correct by the applicant’s solicitor or the sheriff clerk—
- (a) the initial writ containing the main application;
 - (b) any answers to the main application; and
 - (c) any interlocutors pronounced in the main application.
- (4) The sheriff clerk is to send a certified copy of any interlocutor disposing of a summary application under paragraph (2) to the sheriff clerk of the sheriff court in which the main application was lodged.
- (5) Rule 3.54.4 (variation, renewal or discharge of sexual harm prevention orders or sexual risk orders) applies for the purpose of an application for an order for variation, renewal or discharge of an interim sexual harm prevention order or interim sexual risk order, subject to any necessary modifications.
- (6) A failure of the sheriff clerk to comply with paragraph (2)(c) or (4) does not invalidate the main application or the summary application under paragraph (2).

Service of orders

- 3.54.6.**—(1) This rule applies to—
- (a) a sexual harm prevention order;
 - (b) an interim sexual harm prevention order;
 - (c) a sexual risk order;
 - (d) an interim sexual risk order;
 - (e) an order varying or renewing an order mentioned in sub-paragraphs (a) to (d).
- (2) The sheriff clerk must serve a copy of the order on the person against whom it has effect.
- (3) For the purposes of paragraph (2), a copy of the order is served—
- (a) where the person against whom the order has effect is present in court when the order is made—
 - (i) by giving it to the person and obtaining a receipt therefor;
 - (ii) by sending it to the person by recorded delivery or registered post; or
 - (iii) by causing it to be served by sheriff officer; or
 - (b) where the person against whom the order has effect is not present in court when the order is made—
 - (i) by sending it to the person by recorded delivery or registered post; or

(ii) by causing it to be served by sheriff officer.

(4) A failure by the sheriff clerk to comply with this rule does not invalidate the order.”.

(3) In schedule 1 (forms)—

(a) after Form 2A (form of warrant of application)(**5**), insert Form 2B (form of warrant of citation under Chapters 3 and 4 of Part 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016); and

(b) after Form 3A (form of citation for summary application)(**6**), insert Form 3B (form of citation for summary application under Chapters 3 and 4 of Part 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016),

as set out in the schedule of this Act of Sederunt.

(5) Form 2A was inserted by [S.S.I. 2002/130](#).

(6) Form 3A was inserted by [S.S.I. 2002/130](#).