

2005 No. 473

SHERIFF COURT

Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005) 2005

Made - - - - *27th September 2005*

Coming into force - - *7th October 2005*

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(a) and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules 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 (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005) 2005 and shall come into force on 7th October 2005.

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

Amendment of the Summary Application Rules

2.—(1) In the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(b), Chapter 3 (applications under specific statutes) shall be amended in accordance with the following sub-paragraphs.

(2) In Part XXV (Sexual Offences Act 2003)(c)—

(a) in rule 3.25.1 (interpretation) after “Sexual Offences Act 2003” there shall be inserted the following:—

“; “main application” has the same meaning as in section 109(1) of the Act,

and words and expressions used in this Part and in the Act shall have the meanings given in the Act.”.

(b) for rule 3.25.5 (remit of original process under section 108(1)) and rule 3.25.6 (remit of original process under section 118(1)) there shall be substituted the following:—

(a) 1971 c.58. Section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c.32), section 2(4), the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2001 (asp 4), Schedule 5, paragraph 13, the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43 and the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2) and was extended by the Child Support Act 1991 (c.48), sections 39(2) and 49.

(b) S.I. 1999/929, last amended by S.S.I. 2005/61.

(c) Part XXV was inserted by S.S.I. 2004/222.

“Variation, renewal or discharge of SOPOs

3.25.5.—(1) Where an application under section 108(1) of the Act for an order varying, renewing or discharging a sexual offences prevention order is made in a sheriff court other than the sheriff court in which the process relating to the sexual offences prevention order is held—

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

(2) For the purposes of paragraph (1), the sheriff court in which the process relating to the order is held is the sheriff court in which the sexual offences prevention order was granted or, where the process has been transferred under that paragraph, the last sheriff court to which the process has been transferred.

(3) A failure of the sheriff clerk to comply with paragraph (1) shall not invalidate the application.

Variation, renewal or discharge of FTOs

3.25.6.—(1) Subject to paragraph (2), an application under section 118 of the Act for an order varying, renewing or discharging a foreign travel order shall be made by minute in the process relating to the foreign travel order.

(2) Where an application under section 118(1) of the Act for an order varying, renewing or discharging a foreign travel order is made in a sheriff court other than the sheriff court in which the process relating to the foreign travel order is held—

- (a) the application shall be made by summary application;
- (b) the initial writ containing the application shall contain averments as to the sheriff court in which the process relating to the foreign travel order is held;
- (c) the sheriff clerk with whom the application is lodged shall notify the sheriff clerk of the sheriff court in which the process relating to the foreign travel order is held; and
- (d) the sheriff clerk of the sheriff court in which the process relating to the foreign travel order is held shall, not later than 4 days after receipt of such notification, transfer the process relating to the foreign travel 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 foreign travel order is held is the sheriff court in which the foreign travel 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) A minute under paragraph (1) shall be made in accordance with and regulated by Chapter 14 of the Ordinary Cause Rules.

(5) A failure of the sheriff clerk to comply with paragraph (2) shall not invalidate the application.

Interim SOPOs

3.25.7.—(1) Subject to paragraph (2), an application under section 109(2) of the Act for an interim sexual offences prevention order shall—

- (a) be made by crave in the initial writ containing the main application; and
- (b) once craved, be moved by motion to that effect.

(2) Where an application under section 109(2) of the Act for an interim sexual offences prevention order is made in a sheriff court other than the sheriff court in which the main application was lodged, the application for an interim sexual offences prevention order shall be made by summary application.

(3) The initial writ in a summary application under paragraph (2) shall contain averments as to the sheriff court in which the main application was lodged.

(4) On receipt of a summary application under paragraph (2), the sheriff clerk shall notify the sheriff clerk of the sheriff court in which the main application was lodged.

(5) There shall 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.

(6) The sheriff clerk shall 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.

(7) A failure of the sheriff clerk to comply with paragraph (4) or (6) shall not invalidate the main application or the summary application under paragraph (2).

(8) Paragraphs (3) to (7) shall apply to an application for the variation, renewal or discharge of an interim sexual offences prevention order subject to the following modifications:—

- (a) for references to a summary application under paragraph (2) there shall be substituted references to a summary application for the variation, renewal or discharge of an interim sexual offences prevention order;
- (b) references to the main application shall include references to any application for an interim sexual offences prevention order and any previous application for the variation, renewal or discharge of such an order; and
- (c) references to any interlocutors pronounced in the main application shall include any interlocutors pronounced in an application for an interim sexual offences prevention order or previous application for the variation, renewal or discharge of an interim sexual offences prevention order.”.

(3) After Part XXVIII (Land Reform (Scotland) Act 2003)(a) there shall be inserted the following:—

“PART XXIX

RISK OF SEXUAL HARM ORDERS

Interpretation

3.29.1. In this Part—

“the Act” means the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005(b);

“main application” has the same meaning as in section 5 of the Act,

and words and expressions used in this Part and in the Act shall have the meanings given in the Act.

(a) Part XXVIII was inserted by S.S.I. 2005/ 61.
(b) 2005 asp 9.

Variation, renewal or discharge of RSHOs

3.29.2.—(1) Subject to paragraph (2), an application under section 4(1) of the Act for an order varying, renewing or discharging a risk of sexual harm order shall be made by minute in the process relating to the risk of sexual harm order.

(2) Where an application under section 4(1) of the Act for an order varying, renewing or discharging a risk of sexual harm order is made in a sheriff court other than the sheriff court in which the process relating to the risk of sexual harm order is held—

- (a) the application shall be made by summary application;
- (b) the initial writ containing the application shall contain averments as to the sheriff court in which the process relating to the risk of sexual harm order is held;
- (c) the sheriff clerk with whom the application is lodged shall notify the sheriff clerk of the sheriff court in which the process relating to the risk of sexual harm order is held; and
- (d) the sheriff clerk of the sheriff court in which the process relating to the risk of sexual harm order is held shall, not later than 4 days after receipt of such notification, transfer the process relating to the risk of sexual harm 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 risk of sexual harm order is held is the sheriff court in which the risk of sexual harm 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) A minute under paragraph (1) shall be made in accordance with and regulated by Chapter 14 of the Ordinary Cause Rules.

(5) A failure of the sheriff clerk to comply with paragraph (2) shall not invalidate the application.

Interim RSHOs

3.29.3.—(1) Subject to paragraph (2), an application under section 5(2) of the Act for an interim risk of sexual harm order shall—

- (a) be made by crave in the initial writ containing the main application; and
- (b) once craved, be moved by motion to that effect.

(2) Where an application under section 5(2) of the Act for an interim risk of sexual harm order is made in a sheriff court other than the sheriff court in which the main application was lodged, the application for an interim risk of sexual harm order shall be made by summary application.

(3) The initial writ in a summary application under paragraph (2) shall contain averments as to the sheriff court in which the main application was lodged.

(4) On receipt of a summary application under paragraph (2), the sheriff clerk shall notify the sheriff clerk of the sheriff court in which the main application was lodged.

(5) There shall 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.

(6) The sheriff clerk shall 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.

(7) Rule 3.29.2 (variation, renewal or discharge of RSHOs) shall apply to an application for an order under section 5(6) of the Act for variation, renewal or discharge of an interim risk of sexual harm order subject to the following modifications:—

- (a) for references to section 4(1) of the Act there shall be substituted references to section 5(6) of the Act; and
- (b) for references to a risk of sexual harm order there shall be substituted references to an interim risk of sexual harm order.

(8) A failure of the sheriff clerk to comply with paragraph (4) or (6) shall not invalidate the main application or the summary application under paragraph (2).

Service of RSHOs

3.29.4.—(1) This rule applies to—

- (a) a risk of sexual harm order;
- (b) an interim risk of sexual harm order; and
- (c) an order varying or renewing an order mentioned in sub-paragraph (a) or (b).

(2) Where the person against whom the order has effect is present in court when the order is made, the sheriff clerk shall serve a copy of the order on the person by—

- (a) giving a copy of the order to the person and obtaining a receipt therefor; or
- (b) sending a copy of the order to the person by recorded delivery letter or registered post.

(3) Where the person against whom the order has effect is not present in court when the order is made, the sheriff clerk shall serve a copy of the order on the person by sending a copy of the order to the person by recorded delivery letter or registered post.

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

Edinburgh
27th September 2005

Cullen of Whitekirk
Lord President
I.P.D.

EXPLANATORY NOTE

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

This Act of Sederunt makes amendments to the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 (“the 1999 Rules”) consequential upon the Protection of Children and Prevention of Sexual Offences Act 2005 (asp 9) (“the 2005 Act”).

Paragraph 2(2) makes amendments to Part XXV of Chapter 3 of the 1999 Rules which are consequential upon amendments made to the Sexual Offences Act 2003 by the 2005 Act.

Paragraph 2(3) inserts new Part XXIX into Chapter 3 of the 1999 Rules. New rule 3.29.2 makes provision regarding applications under section 4 of the 2005 Act for the variation, renewal or discharge of risk of sexual harm orders. New rule 3.29.3 makes provision regarding interim risk of sexual harm orders under section 5 of the 2005 Act. New rule 3.29.4 makes provision regarding the service of orders under the 2005 Act.

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