

2011 No. 192

SHERIFF COURT

**Act of Sederunt (Jurisdiction in Respect of Parental
Responsibility and Measures for the Protection of Children
Rules) 2011**

Made - - - -

10th March 2011

Coming into force in accordance with paragraph 1(1)

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 said Act of 1971, do hereby enact and declare:

Citation, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Jurisdiction in Respect of Parental Responsibility and Measures for the Protection of Children Rules) 2011 and comes into force on the day on which the Parental Responsibility and Measures for the Protection of Children (International Obligations) (Scotland) Regulations 2010(b) come into force.

(2) A certified copy of this Act of Sederunt is to be inserted in the Books of Sederunt.

(3) In this Act of Sederunt—

“the 1996 Convention” means the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, signed at the Hague on 19th October 1996(c);

“Contracting State” means a State in which the 1996 Convention has entered into force;

“foreign authority” means a judicial or administrative authority in a Contracting State other than the United Kingdom;

“foreign court” means a court in a Contracting State other than the United Kingdom;

“these Rules” means the rules set out in this Act of Sederunt.

(4) A reference in these Rules to a numbered Article is a reference to the Article of the 1996 Convention so numbered.

(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 2000 (asp 4) (the “2000 asp”), schedule 5, paragraph 13; the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43; the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2); the Consumer Credit Act 2006 (c.14), section 16(4); and the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (the “2007 asp”) section 33. Section 32 is amended prospectively by the 2007 asp, schedule 5, paragraph 10. Section 32 was extended by the Debtors (Scotland) Act 1987 (c.18), section 97; the Child Support Act 1991 (c.48), sections 39(2) and 49; and by section 2(4) of the 2000 asp.

(b) S.S.I. 2010/213, regulation 1(2).

(c) Cm 7727.

(5) Except as provided for in these Rules or any order made by a sheriff hereunder, any action to which these Rules apply shall proceed as an ordinary cause under Schedule 1 to the Sheriff Courts (Scotland) Act 1907^(a).

(6) Notwithstanding paragraph (5), the following Chapters of the Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907 do not apply to an action under these Rules—

- Chapter 3 (commencement of causes),
- Chapter 5 (citation, service and intimation),
- Chapter 8 (reponing),
- Chapter 9 (standard procedure in defended causes).

Transfer of case involving matters of parental responsibility etc. to sheriff court

2.—(1) A request by parties to the sheriff court under Article 8(1) of the 1996 Convention (request to sheriff court to assume jurisdiction) shall be made by initial writ under these Rules.

(2) Where a sheriff court receives a request from a foreign authority under Article 8(1) of the 1996 Convention—

- (a) the sheriff clerk shall forthwith—
 - (i) acknowledge receipt of the request to the foreign authority; and
 - (ii) intimate the request to the parties to any action, their Scottish agents, if known, and any other party to whom the sheriff considers that intimation should be made; and
- (b) one of the parties shall lodge an initial writ under these Rules.

General provisions for transfer to sheriff court

3.—(1) An initial writ under these Rules shall—

- (a) include the following heading printed above the instance—

“ACT OF SEDERUNT (JURISDICTION IN RESPECT OF PARENTAL RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF CHILDREN RULES) 2011”; and

- (b) include averments stating—
 - (i) the full name, designation, postal address, telephone and facsimile numbers and, where appropriate, e-mail address of each of the parties to the action involving parental responsibility and measures for the protection of children, including any Scottish agent instructed to represent any of the parties;
 - (ii) the postal address and telephone and facsimile numbers of the foreign authority and the name and, where appropriate, e-mail address of any official of the foreign authority to whom any document may be sent by the sheriff clerk;
 - (iii) the full name, postal address and date of birth of the child;
 - (iv) if the foreign authority is a court, the status of proceedings in that court;
 - (v) the basis upon which the sheriff court is better placed to assess the best interests of the child, by reference to one or more of the circumstances referred to in Article 8(2).

(2) There shall be lodged with an initial writ under these Rules any document considered by the pursuer to be relevant to the action involving parental responsibilities and measures for the protection of children, including any papers forming part of the process of any case in a foreign court.

(a) 1907 c.51. Schedule 1 contains the Ordinary Cause Rules, which were last amended by S.S.I. 2010/416.

(3) A warrant for citation in respect of an initial writ under these Rules shall be signed by the sheriff.

(4) The sheriff may make such order as to intimation or service, fixing a hearing to determine jurisdiction or otherwise as he or she thinks fit.

(5) On the fixing of a date for a hearing to determine jurisdiction the pursuer shall, within any time limit specified by the sheriff—

- (a) intimate to every other party a notice in Form 1 as set out in the Schedule to this Act of Sederunt;
- (b) lodge a certificate of intimation in Form 2 as set out in the Schedule to this Act of Sederunt.

Acceptance of jurisdiction by sheriff court in matters of parental responsibility etc.

4.—(1) An interlocutor accepting or refusing to accept jurisdiction to hear an action commenced by initial writ under these Rules shall be signed by the sheriff.

(2) After the expiry of the time limit for any appeal the sheriff clerk shall intimate the decision of the sheriff court to the foreign authority by sending to the foreign authority—

- (a) a copy interlocutor by e-mail or facsimile transmission; and
- (b) a certified copy interlocutor by first class recorded delivery or registered post.

Request to foreign authority to assume jurisdiction in case involving matters of parental responsibility etc.

5.—(1) Where a sheriff pronounces an interlocutor sisting a case and inviting parties to introduce a request to a foreign authority or directly requesting a foreign authority to assume jurisdiction as referred to in Article 8(1), the sheriff shall append to the interlocutor a note specifying—

- (a) why the foreign authority would be better placed in the particular case to assess the best interests of the child; and
- (b) such other matters as the sheriff considers would be of assistance to the foreign authority in deciding whether it shall assume jurisdiction as referred to in Article 8(1).

(2) The sheriff clerk shall send a certified copy of the interlocutor and note to each of the parties.

(3) After the expiry of the time limit for any appeal against an interlocutor pronounced under Article 8(1) (request to foreign authority to assume jurisdiction), the sheriff clerk shall send to the foreign authority—

- (a) a copy of the interlocutor and note under paragraph (1) by e-mail or by facsimile transmission; and
- (b) a certified copy of the interlocutor and note by first class recorded delivery or registered post.

(4) Where a foreign authority assumes jurisdiction as referred to in Article 8(1), the foreign authority or one of the parties shall lodge in process a certificate stating the date on which jurisdiction was assumed.

(5) Within 14 days of the date of the decision of the foreign authority whether or not to assume jurisdiction as referred to in Article 8(1), the foreign authority or one of the parties shall lodge in process a certified copy of any court order or other document confirming that decision.

Application by a local authority for the sheriff court to make a request under Article 9

6.—(1) An application by a local authority to the sheriff court under regulation 4(2) of the Parental Responsibility and Measures for the Protection of Children (International Obligations)

(Scotland) Regulations 2010(a) (request to exercise power under Article 9) shall be made by initial writ.

- (2) An initial writ under paragraph (1) shall contain averments stating—
- (a) the full name, designation, and postal address, telephone and facsimile numbers and, where appropriate, e-mail address of all the parties to the case, including any agent instructed to represent the parties before the foreign authority; and
 - (b) why the sheriff court is better placed than the competent authority of the Contracting State of the habitual residence of the child to assess the child’s best interests.

Request by sheriff court to foreign authority for authorisation to exercise jurisdiction

7.—(1) Where in any action a sheriff decides to make a direct request to a competent authority of the Contracting State of the habitual residence of the child that the sheriff court be authorised to exercise jurisdiction as referred to in Article 9(1) (request for authorisation to exercise jurisdiction to take measures of protection) the sheriff shall append to the interlocutor a note specifying—

- (a) the full name, designation, and postal address, telephone and facsimile numbers and, where appropriate, e-mail address of all the parties to the case, including any agent instructed to represent the parties before the foreign authority;
- (b) why the sheriff court is better placed than the competent authority of the Contracting State of the habitual residence of the child to assess the child’s best interests; and
- (c) such other matters as the sheriff considers would be of assistance to the foreign authority in deciding whether the sheriff court should be authorised to exercise jurisdiction as referred to in Article 9(1).

- (2) The sheriff clerk shall forthwith send to the foreign authority—
- (a) a copy interlocutor and note under paragraph (1) by e-mail or by facsimile transmission; and
 - (b) a certified copy interlocutor and note by first class recorded delivery or registered post.

Translation of documents

8. Where any document received from a foreign authority or otherwise under these Rules is in a language other than English, the sheriff may order that there shall be lodged with that document a translation into English certified as correct by the translator; and the certificate shall include the translator’s full name, address and qualifications.

(a) S.S.I. 2010/213.

Amendment of Ordinary Cause Rules

9.—(1) The Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907**(a)** are amended in accordance with the following subparagraph.

(2) In rule 33.2(2)(b)(v) (averments in certain family actions about other proceedings)**(b)**, at the end insert “or the 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, signed at the Hague on 19th October 1996**(c)**.”.

A.C. HAMILTON
Lord President
I.P.D.

Edinburgh
10th March 2011

(a) 1907 c.51. Schedule 1 was last amended by S.S.I. 2010/416.
(b) Rule 33.2 was amended by S.S.I. 2001/144 and 2006/207.
(c) Cm 7727.

SCHEDULE

Paragraph 3(5)

Form 1

Rule 3(5)(a)

Form of notice of intimation of a hearing to determine jurisdiction under Article 8(1) of the 1996 Convention

Date: *(date of posting or other method of intimation)*

To: *(name and address)*

TAKE NOTICE

(Name and address of pursuer) has lodged an initial writ in the Sheriff Court at *(place)* against *(name and address of defender)*.

The parties are presently [engaged in proceedings *or* involved in a procedure] involving matters arising under the 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children and a request has been made to the sheriff court under Article 8(1) of the said 1996 Convention to assume jurisdiction [of those proceedings *or* in respect of that procedure] and for any action to be dealt with in the Sheriff Court.

A hearing has been fixed on *(date)* at *(time)* within the Sheriff Court to determine the issue of jurisdiction.

You may appear or be represented by a person having a right of audience before the Sheriff Court at the hearing.

You or your representative will be asked whether you agree to jurisdiction being assumed by the Sheriff Court and proceedings involving matters arising under the 1996 Convention being dealt with in the Sheriff Court.

If you do not appear or are not represented at the hearing the court may decide whether to assume jurisdiction in your absence.

(Signed)

Solicitor for pursuer

(add name and business address)

Form 2

Rule 3(5)(b)

Certificate of intimation of a hearing to determine jurisdiction under Article 8(1) of
the 1996 Convention

in causa

[A.B.] (*designation and address*)

Pursuer

[C.D.] (*designation and address*)

Defender

I certify that intimation of a hearing to determine jurisdiction under Article 8 of the 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children was made to:

Date: (*date of posting or other method of intimation*)

To: (*name and address*)

Date: (*date of posting or other method of intimation*)

To: (*name and address*)

Date: (*date of posting or other method of intimation*)

To: (*name and address*)

Date: (*insert date*)

(*Signed*)

Solicitor for pursuer

(*add name and business address*)

EXPLANATORY NOTE

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

This Act of Sederunt makes rules in respect of civil cases in the sheriff court involving jurisdiction in matters arising from the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.

Rules 2 to 8 provide for the procedure for the assumption of jurisdiction in cases involving the sheriff court and competent authorities in other Contracting States under Articles 8 and 9 of the 1996 Convention.

Rule 9 contains a consequential amendment to rule 33.2 of the Ordinary Cause Rules.

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