

2013 No. 139

SHERIFF COURT

**Act of Sederunt (Sheriff Court Rules) (Miscellaneous
Amendments) (No. 2) 2013**

<i>Made</i> - - - -	<i>30th April 2013</i>
<i>Laid before the Scottish Parliament</i>	<i>2nd May 2013</i>
<i>Coming into force</i> - -	<i>3rd June 2013</i>

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 (Sheriff Court Rules) (Miscellaneous Amendments) (No. 2) 2013 and comes into force on 3rd June 2013.

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

(3) In this Act of Sederunt—

“Adoption Rules” means the Sheriff Court Adoption Rules 2009(b);

“Ordinary Cause Rules” means the Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907(c).

Amendment of the Ordinary Cause Rules

2.—(1) The Ordinary Cause Rules are amended in accordance with the following subparagraphs.

(2) In rule 9.12 (options hearing)(d)—

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- (a) 1971 c.58. Section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73) (the “1985 Act”), 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); the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (the “2007 asp”) section 33; and the Legal Services (Scotland) Act 2010 (asp 16) section 127(a). Section 32 is amended prospectively by the 2007 asp, schedule 5, paragraph 10; and the Children’s Hearings (Scotland) Act 2011 (asp 1), section 185. 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 section 2(4) of the 2000 asp.
- (b) The Sheriff Court Adoption Rules 2009 are contained in the Schedule to S.S.I. 2009/284, last amended by S.S.I. 2012/271.
- (c) 1907 c.51. Schedule 1 was substituted by S.I. 1993/1956 and amended by S.I. 1996/2167 and 2445; S.S.I. 2000/239 and 408; 2001/8 and 144; 2002/7, 128 and 560; 2003/25, 26 and 601; 2004/197 and 350; 2005/20, 189, 638 and 648; 2006/198, 207, 293, 410 and 509; 2007/6, 339, 440 and 463; 2008/121, 223 and 365; 2009/107, 164, 284, 285, 294 and 402; 2010/120, 279, 324, 340 and 416; 2011/193, 289 and 386; 2012/188, 221 and 271; and 2013/135.
- (d) Rule 9.12 was last amended by S.S.I. 2007/463.

- (a) after paragraph (3)(e) insert—
 - “(f) where the cause has been appointed to proof or proof before answer and Chapter 33AA applies, assign a case management hearing.”;
- (b) after paragraph (8) insert—
 - “(9) Paragraph (8) does not apply where Chapter 33AA applies.”.
- (3) In rule 10.6 (procedural hearing)(a)—
 - (a) after paragraph (3)(e) insert—
 - “(f) where the cause has been appointed to proof or proof before answer and Chapter 33AA applies, assign a case management hearing.”;
 - (b) after paragraph (5) insert—
 - “(6) Paragraph (5) does not apply where Chapter 33AA applies.”.
- (4) After rule 14.10 (notice of opposition or answers lodged)(b) insert—

“Orders under section 11 of the Children (Scotland) Act 1995

14.10A.—(1) This rule applies where a notice of opposition or answers are lodged in respect of a minute including a crave for an order under section 11 of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc.)(c).

(2) The sheriff, having regard to the measures referred to in Chapter 33AA (expeditious resolution of certain causes), may make such orders as the sheriff considers appropriate to ensure the expeditious resolution of the issues in dispute.”.

- (5) In rule 28A.1 (pre-proof hearing)
 - (a) at the beginning of paragraph(1) insert “Subject to paragraph (1A)”;
 - (b) after paragraph (1) insert—
 - “(1A) Where Chapter 33AA applies, the sheriff will fix a pre-proof hearing at the case management hearing.”;
 - (c) in paragraph (3)(b) for “or 10.6(3)(a) or (b)” substitute “, 10.6(3)(a) or (b) or Chapter 33AA.”
- (6) After Chapter 33A (civil partnership actions)(d) insert—

“CHAPTER 33AA

EXPEDITIOUS RESOLUTION OF CERTAIN CAUSES

Application of Chapter

33AA.1. This Chapter applies where a cause is proceeding to proof or proof before answer in respect of a crave for an order under section 11 of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc.).

Fixing date for Case Management Hearing

33AA.2.—(1) The sheriff shall fix a date for a case management hearing—

- (a) at the Options Hearing in accordance with rule 9.12(3)(f);
- (b) at the Procedural Hearing in accordance with rule 10.6(3)(f);

(a) Rule 10.6 was last amended by S.S.I. 2007/463.
 (b) Rule 14.10 was inserted by S.I. 1996/2445.
 (c) 1995 c. 36.
 (d) Chapter 33A was inserted by S.S.I. 2005/638 and last amended by S.S.I. 2012/188.

- (c) on the motion of any party; or
- (d) on the sheriff's own motion.

(2) Except on cause shown, the date and time to be fixed under paragraph (1) shall be not less than 14 days and not more than 28 days after the interlocutor appointing the cause to a proof or proof before answer.

Pre-hearing conference

33AA.3.—(1) In advance of the case management hearing the parties shall hold a pre-hearing conference, at which parties must—

- (a) discuss settlement of the action;
- (b) agree, so far as is possible, the matters which are not in dispute between them;
- (c) discuss the information referred to in rule 33AA.4(1).

(2) Prior to the case management hearing the pursuer shall lodge with the court a joint minute of the pre-hearing conference or explain to the sheriff why such a minute has not been lodged.

(3) If a party is not present during the pre-hearing conference, that party's representative must be able to contact the party during the conference, and be in full possession of all relevant facts.

Case Management Hearing

33AA.4.—(1) At the case management hearing the parties must provide the sheriff with sufficient information to enable the sheriff to ascertain—

- (a) the nature of the issues in dispute, including any questions of admissibility of evidence or any other legal issues;
- (b) the state of the pleadings and whether amendment will be required;
- (c) the state of preparation of the parties;
- (d) the scope for agreement of facts, questions of law and matters of evidence;
- (e) the scope for use of affidavits and other documents in place of oral evidence;
- (f) the scope for joint instruction of a single expert;
- (g) the number and availability of witnesses;
- (h) the nature of productions;
- (i) whether sanction is sought for the employment of counsel;
- (j) the reasonable estimate of time needed by each party for examination-in-chief, cross-examination and submissions.

(2) Subject to paragraph (4), at the case management hearing the sheriff will fix—

- (a) a diet for proof or a proof before answer;
- (b) a pre-proof hearing in accordance with Chapter 28A.

(3) The diet fixed under paragraph (2)(a)—

- (a) shall be assigned for the appropriate number of days for resolution of the issues with reference to the information provided under paragraph (1) and subject to paragraph (4);
- (b) may only be extended or varied on exceptional cause shown and subject to such orders (including awards of expenses) as the sheriff considers appropriate.

(4) The sheriff may make such orders as thought fit to ensure compliance with this rule and the expeditious resolution of the issues in dispute, including—

- (a) restricting the issues for proof;
- (b) excluding specified documents, reports and/or witnesses from proof;

(c) fixing other hearings and awarding expenses.

(5) A case management hearing may, on cause shown, be continued to a further case management hearing.

(6) For the purposes of rules 16.2 (decrees where party in default), 33.37 (decree by default in family action) and 33A.37 (decree by default in civil partnership action), a case management hearing shall be a diet in accordance with those rules.”.

Amendment of the Adoption Rules

3.—(1) Chapter 2 of the Adoption Rules (adoption orders) is amended in accordance with the following subparagraphs.

(2) In rule 10 (protection of identity of petitioner) after paragraph (4) insert—

“(5) Where a serial number has been assigned the applicant must provide the sheriff clerk with an appropriate service copy petition as required under rule 14(1).”.

(3) In rule 12 (duties of reporting officer and curator *ad litem*), after paragraph (1)(c)(ii) insert—

“(iia) to ascertain whether that person consents to the making of an adoption order or order under section 59 of the 2007 Act;”;

(4) In rule 14 (intimation of application)—

(a) in paragraph (1)(a) after “hearing” insert “, which must take place (except on cause shown)”;

(b) in paragraph (1)(b) and (d) for “a copy of the petition” substitute “a service copy of the petition in Form 1A”;

(c) in paragraph (1)(c) for “a copy of the petition” substitute “a service copy of the petition in Form 2A”.

(5) In rule 16 (form of response) for paragraph (2) substitute—

“(2) A form of response under paragraph (1)—

(a) must contain a brief statement of the respondent’s reasons for opposing the application but shall be without prejudice to any answers lodged under rule 18(1)(b)(ix);

(b) must be intimated by the respondent to the petitioner at the time of lodging.”.

(6) After rule 16 insert—

“Opposed applications

16A. Within 14 days of a form of response being lodged, the petitioner shall lodge and intimate to all other parties a brief statement in numbered paragraphs setting out the facts upon which the petitioner intends to rely including averments in relation to—

(a) considerations under section 14 of the 2007 Act;

(b) terms and conditions under section 28(3) of the 2007 Act;

(c) consent under section 31 of the 2007 Act.”.

(7) In rule 18 (preliminary hearing)—

(a) for paragraph (1)(b) substitute—

“(b) if a form of response has been lodged—

(i) ascertain the nature of the issues in dispute, including any questions of admissibility of evidence or any legal issues;

(ii) ascertain the names of all witnesses, including expert witnesses, parties intend to call and whose evidence they intend to rely on at proof;

(iii) consider the scope for use of affidavits and other documents in place of oral evidence;

- (iv) consider whether sanction is sought for the employment of counsel;
 - (v) consider the reasonable estimate of time needed by each party for examination-in-chief, cross-examination and submissions;
 - (vi) order the lodging of joint minutes of agreement, affidavits, expert reports and any other documents within such period as the sheriff considers appropriate;
 - (vii) fix a diet of proof not less than 12 and not more than 16 weeks after the date of the preliminary hearing or any continuation thereof unless, on cause shown, a longer period is appropriate;
 - (viii) fix a pre-proof hearing not less than 6 and not more than 8 weeks before the diet of proof;
 - (ix) order answers to the statement referred to in rule 16A to be lodged within 14 days of the date of the preliminary hearing or any continuation thereof or such other period as the sheriff considers appropriate; and
 - (x) ascertain from the parties what, if any, expert evidence is required and consider the scope for joint instruction of a single expert.”;
- (b) for paragraph (2) substitute—
- “(2) The sheriff may, if satisfied that there is sufficient reason for doing so for the expeditious resolution of the cause, continue the preliminary hearing for such period or periods as he or she thinks fit.”;
- (c) for paragraph (4) substitute—
- “(4) The answers lodged under paragraph (1)(b)(ix) must be in numbered paragraphs and respond to the statement referred to in rule 16A.”.
- (8) After rule 18 insert—

“List of witnesses etc.

18A. Not later than 7 days prior to the pre-proof hearing the parties shall lodge in process and intimate to all other parties—

- (a) a list of the witnesses, including expert witnesses, they intend to call and whose evidence they intend to rely on at proof;
 - (b) all documents upon which they intend to rely at proof;
 - (c) a notice of agreed facts;
 - (d) a notice of disputed issues.”.
- (9) In rule 19 (pre-proof hearing)—
- (a) for paragraph (2) substitute—
- “(2) At the pre-proof hearing the sheriff must consider—
- (a) the extent to which the parties have complied with any orders made by the sheriff under rule 18;
 - (b) the extent to which further information or orders are required in respect of matters referred to in rule 18;
 - (c) the state of preparation of the parties;
 - (d) the availability of witnesses;
 - (e) the nature of productions.
- (2A) At the pre-proof hearing the sheriff must ascertain, so far as is reasonably practicable, whether the case is likely to proceed to proof on the date fixed for that purpose, whether the appropriate number of days have been allowed and if further days may be required.”;
- (b) in paragraph (3)—
- (i) omit subparagraph (c);

- (ii) at the end of subparagraph (d) insert “including restricting the issues for proof and, on the motion of either party, on cause shown, or of the sheriff’s own motion, excluding specified documents, reports and/or witnesses from proof”.

(10) For rule 20 (proof to be taken continuously) substitute—

“Proof

20.—(1) A proof shall be taken on the allocated days and parties shall adhere to the estimates provided under rule 18(1)(b)(v) or 19(2)(b), but the sheriff may adjourn the diet from time to time.

(2) Except where the sheriff otherwise directs, at the proof no witnesses other than those named on a witness list may be called to give evidence.”.

4.—(1) Chapter 4 of the Adoption Rules (permanence orders) is amended in accordance with the following subparagraphs.

(2) In rule 33 (intimation of application)—

- (a) in paragraph (1)(a) after “hearing” insert “, which must take place (except on cause shown)”;
- (b) in paragraph (1)(b) and (c) for “a copy of the petition” in every case substitute “a service copy of the petition in Form 11A”;
- (c) in paragraph (1)(e) after “such other person” insert “and in such terms”.

(3) In rule 34 (form of response)—

- (a) the existing paragraph becomes paragraph (1);
- (b) after paragraph (1) insert—

“(2) A form of response lodged under paragraph (1) must be intimated by the respondent to the petitioner at the time of lodging.”.

(4) After rule 34 (form of response) insert—

“Opposed applications

34A. Within 14 days of a form of response being lodged, the petitioner shall lodge and intimate to all other parties a brief statement in numbered paragraphs setting out the facts upon which the petitioner intends to rely including averments in relation to—

- (a) considerations under section 14 of the 2007 Act;
- (b) ancillary provisions under section 82 of the 2007 Act;
- (c) conditions under section 83 of the 2007 Act;
- (d) conditions and considerations under section 84 of the 2007 Act.”.

(5) In rule 35 (preliminary hearing)—

- (a) for paragraph (1)(b) substitute—

“(b) if a form of response has been lodged—

- (i) ascertain the nature of the issues in dispute, including any questions of admissibility of evidence or any legal issues;
- (ii) ascertain the names of all witnesses, including expert witnesses, parties intend to call and whose evidence they intend to rely on at proof;
- (iii) consider the scope for use of affidavits and other documents in place of oral evidence;
- (iv) consider whether sanction is sought for the employment of counsel;
- (v) consider the reasonable estimate of time needed by each party for examination-in-chief, cross-examination and submissions;

- (vi) order the lodging of joint minutes of agreement, affidavits, expert reports and any other documents within such period as the sheriff considers appropriate;
 - (vii) fix a diet of proof not less than 12 and not more than 16 weeks after the date of the preliminary hearing or any continuation thereof unless, on cause shown, a longer period is appropriate;
 - (viii) fix a pre-proof hearing not less than 6 and not more than 8 weeks before the diet of proof;
 - (ix) order answers to the statement referred to in rule 34A to be lodged within 14 days of the date of the preliminary hearing or any continuation thereof or such other period as the sheriff considers appropriate; and
 - (x) ascertain from the parties what, if any, expert evidence is required and consider the scope for joint instruction of a single expert.”;
- (b) for paragraph (2) substitute—
- “(2) The sheriff may, if satisfied that there is sufficient reason for doing so for the expeditious resolution of the cause, continue the preliminary hearing for such period or periods as he or she thinks fit.”;
- (c) for paragraph (4) substitute—
- “(4) The answers lodged under paragraph (1)(b)(ix) must be in numbered paragraphs and respond to the statement referred to in rule 34A.”.
- (6) After rule 35 insert—

“List of witnesses etc.

35A. Not later than 7 days prior to the pre-proof hearing the parties shall lodge in process and intimate to all other parties—

- (a) a list of the witnesses, including expert witnesses, they intend to call and whose evidence they intend to rely on at proof;
 - (b) all documents upon which they intend to rely at proof;
 - (c) a notice of agreed facts;
 - (d) a notice of disputed issues.”.
- (7) In rule 36 (pre-proof hearing)—
- (a) for paragraph (2) substitute—
- “(2) At the pre-proof hearing the sheriff must consider—
- (a) the extent to which the parties have complied with any orders made by the sheriff under rule 35;
 - (b) the extent to which further information or orders are required in respect of matters referred to in rule 35;
 - (c) the state of preparation of the parties;
 - (d) the availability of witnesses;
 - (e) the nature of productions.
- (2A) At the pre-proof hearing the sheriff must ascertain, so far as is reasonably practicable, whether the case is likely to proceed to proof on the date fixed for that purpose, whether the appropriate number of days have been allowed and if further days may be required.”;
- (b) in paragraph (3)—
- (i) omit subparagraph (c);
 - (ii) at the end of subparagraph (d) insert “including restricting the issues for proof and, on the motion of either party, on cause shown, or of the sheriff’s own motion, excluding specified documents, reports and/or witnesses from proof”.

(8) For rule 37 (proof to be taken continuously) substitute—

“Proof

37.—(1) A proof shall be taken on the allocated days and parties shall adhere to the estimates provided under rule 35(1)(b)(v) or 36(2)(b), but the sheriff may adjourn the diet from time to time.

(2) Except where the sheriff otherwise directs, at the proof no witnesses other than those named on a witness list may be called to give evidence.”.

(9) In rule 44 (duties of reporting officer and curator *ad litem*), after paragraph (1)(c)(ii) insert—
“(iia) ascertain whether that person consents to the making of an adoption order;”.

5.—(1) The Appendix to the Adoption Rules (forms) is amended in accordance with the following subparagraphs.

(2) After the following forms insert the relevant forms set out in the Schedule to this Act of Sederunt—

- (a) after Form 1 insert Form 1A;
- (b) after Form 2 insert Form 2A;
- (c) after Form 11 insert Form 11A.

(3) In the following forms for “COPY OF THE PETITION” (whether expressed in capitals or lower case) substitute “service copy of the petition”—

- (a) Form 5;
- (b) Form 6;
- (c) Form 7;
- (d) Form 12;
- (e) Form 13;
- (f) Form 14.

Transitional and saving provision

6. The Adoption Rules and the Ordinary Cause Rules as they applied immediately before 3rd June 2013 continue to have effect for the purpose of any proceedings raised but not determined prior to that date.

BRIAN GILL
Lord President
I.P.D.

Edinburgh
30th April 2013

SCHEDULE

Paragraph 5(2)

Form 1A

Rule 14(1)(b) and (d)

SERVICE COPY APPLICATION FOR AN ADOPTION ORDER UNDER SECTION 29 OR 30 OF THE ADOPTION AND CHILDREN (SCOTLAND) ACT 2007

Petition of

[A.B.] (full name of first petitioner)
..... (insert any previous surname(s))

*delete as appropriate

*and

[C.D.] (full name of second petitioner)
..... (insert any previous surname(s))
..... (insert address)

*[or serial number where allocated]
for authority to adopt the child
.....
(insert full name of child as shown on birth certificate)

who was born on (insert child's date of birth)

The petitioner(s) crave(s) the court to make an adoption order in his/her/their favour under section 29 [or 30] of the Adoption and Children (Scotland) Act 2007, in relation to the child

*and to dispense with the consent of.....

.....
(insert the name(s) of the natural parent(s)

on the ground that

(Signed)
[Petitioner or solicitor to the petitioner or sheriff clerk]
[Address]
(Date)

Form 2A

Rule 14(1)(c)

**SERVICE COPY APPLICATION FOR AN ORDER UNDER SECTION 59(1)
OF THE ADOPTION AND CHILDREN (SCOTLAND) ACT 2007**

Petition of

[A.B.] (full name of first petitioner)

..... (insert any previous surname(s))

*delete as
appropriate

*and

[C.D.] (full name of second petitioner)

..... (insert any previous surname(s))

..... (insert address)

*[or serial number where allocated]
for an order vesting in *him/her/them the parental responsibilities and parental
rights relating to the child

.....
(insert full name of child as shown on birth certificate)

who was born on (insert child's date of birth)

The petitioner(s) crave(s) the court to make an order vesting in him/her/them the
parental responsibilities and parental rights in relation to the child

*and to dispense with the consent of.....

.....
(insert the name(s) of the natural parent(s)

on the ground that

(Signed)
[Petitioner or solicitor to the petitioner or
sheriff clerk]
[Address]
(Date)

Form 11A

Rule 33(1)(b) and (c)

SERVICE COPY APPLICATION FOR A PERMANENCE ORDER UNDER SECTION 80 OF THE ADOPTION AND CHILDREN (SCOTLAND) ACT 2007

Petition of

[A.B.]
(designation of local authority)

.....
(insert full name of child as shown on birth certificate)

who was born on (insert child's date of birth)

..... (insert child's present address)

*[or serial number where allocated]

*delete as appropriate

The petitioner craves the court to make a permanence order under section 80 of the Adoption and Children (Scotland) Act 2007, in relation to the child including the mandatory provision

*and to include the following ancillary provisions (*insert ancillary provisions sought in terms of section 82 of the Adoption and Children (Scotland) Act 2007*)

*and to include in that order provision granting authority for the child to be adopted

*and to dispense with the consent of

.....

(insert the name(s) of the parent(s) or guardian(s))

on the ground that

(Signed)
[Petitioner or solicitor to the petitioner or sheriff clerk]
[Address]
(Date)

EXPLANATORY NOTE

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

This Act of Sederunt inserts new rules into the Ordinary Cause Rules and Adoption Rules to provide for enhanced judicial case management in certain cases. The majority of these changes are being made to address some of the concerns raised by the Supreme Court in *NJDB v JEG and another* [2012] UKSC 21 and *ANS and another v ML* [2012] UKSC 30.

Paragraph 2 inserts new Chapter 33AA into the Ordinary Cause Rules. The new Chapter applies where a cause is proceeding to proof or proof before answer in respect of a crave for an order under section 11 of the Children (Scotland) Act 1995.

In such cases a case management hearing will now be fixed in accordance with rule 33AA.2. New rule 33AA.4 sets out the matters to be addressed at the case management hearing; in general terms the purpose of the case management hearing is to allow the sheriff to understand the scope of the case and draw out any issues that may affect the conduct of the proof [or proof before answer]. Based on the information provided at the case management hearing the sheriff will fix a diet for proof or a proof before answer, which diet will only be extended or varied on exceptional cause shown.

New rule 33AA.3 provides that in advance of the case management hearing parties are required to hold a pre-hearing conference to discuss settlement, agree matters not in dispute and discuss the information that the sheriff will require at the case management hearing. The pursuer is required to lodge a joint minute of the pre-hearing conference in advance of the case management hearing, or explain to the sheriff why such a minute has not been lodged.

Paragraph 3 amends Chapter 2 of the Schedule to the Adoption Rules in respect of adoption orders to provide for enhanced judicial case management at the preliminary hearing and pre-proof hearing in similar terms to what is being provided in the Ordinary Cause Rules.

Paragraph 4 amends Chapter 4 of the Schedule to the Adoption Rules in similar terms in respect of permanence orders.

Paragraph 5 provides for new forms of service copy petitions in respect of applications for orders under section 29, 30, 59(1) or 80 of the Adoption and Children (Scotland) Act 2007. The new forms have been designed to alleviate concerns that birth parents are currently receiving unnecessarily detailed personal information about applicants.

Paragraph 6 contains a transitional and saving provision.

This Act of Sederunt comes into force on 3rd June 2013.