SCOTTISH STATUTORY INSTRUMENTS

2009 No. 365

SHERIFF COURT

Act of Sederunt (Child Support Rules) (Amendment) 2009

Made - - - -	*22nd October 2009*
Coming into force - -	*11th November 2009*

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 and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Child Support Rules) (Amendment) 2009 and comes into force on 11th November 2009.

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

Amendment of the Child Support Rules

2.—(1) The Act of Sederunt (Child Support Rules) 1993(**b**) is amended in accordance with the following subparagraphs.

(2) In paragraph (3) of rule 1 (interpretation)—

(a) after the definition of "the Act of 1991" insert—

""the Commission" means the Child Maintenance and Enforcement Commission;";

(b) after the definition of "liable person" insert—

""lump sum deduction order" means an order under section 32F of the Act of 1991(**c**); and

"regular deduction order" means an order under section 32A of the Act of 1991(**d**).".

(3) In paragraph (1) of rule 2 (application for a liability order)(**e**)—

(a) for "Secretary of State" substitute "Commission";

(**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 and 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), section 33 and 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.I. 1993/920, amended by S.S.I. 2001/143.

(**c**) Section 32F was inserted into the Child Support Act 1991 by section 23 of the Child Maintenance and Other Payments Act 2008 (c.6).

(**d**) Section 32A was inserted by section 22 of the Child Maintenance and Other Payments Act 2008.

(**e**) Rule 2 was amended by S.S.I. 2001/143.

(b) omit ", and rule 3 of the Ordinary Cause Rules of the sheriff court shall not apply to such an application".

(4) In rule 5 (appeal against a deduction from earnings order)(**a**)—

(a) in paragraph (1) omit ", and rule 3 and Form A1 of the Ordinary Cause Rules of the sheriff court shall not apply to such an appeal";

(b) in paragraph (2)(b) for "Secretary of State" substitute "Commission";

(c) after paragraph (2) insert—

"(3) The sheriff may order intimation of the application to such persons as appear to the sheriff to have an interest in the application.".

(5) After rule 5 insert—

"Deduction from earnings order: exclusion decision appeals

5AA.—(1) An appeal against a decision by the Commission that, in relation to a deduction from earnings order, the exclusion in section 29(4)(a) of the Act of 1991(**b**) does not apply, as provided for in regulations made under section 29(4)(b) of the Act of 1991, shall be by summary application in Form 5AA.

(2) The sheriff clerk, on receiving an application under paragraph (1) above, shall—

(a) fix a date for the hearing of the appeal; and

(b) order service of the application on the Commission.

(3) The sheriff may order intimation of the application to such persons as appear to the sheriff to have an interest in the application.

Regular deduction order: appeals

5AB.—(1) An appeal against a regular deduction order or against any decision made by the Commission on an application for a review of such an order, as provided for in regulations made under section 32C(4) of the Act of 1991(**c**), shall be by summary application in Form 5AB.

(2) The sheriff clerk, on receiving an application under paragraph (1) above, shall—

(a) fix a date for the hearing of the appeal; and

(b) order service of the application on the Commission.

(3) The sheriff may order intimation of the application to such persons as appear to the sheriff to have an interest in the application.

Lump sum deduction order: appeals

5AC.—(1) An appeal against the withholding of consent by the Commission in relation to a lump sum deduction order, as provided for in regulations made under section 32I(4) of the Act of 1991(**d**), shall be by summary application in Form 5AC.

(2) An appeal against the making of a lump sum deduction order as provided for in regulations made under section 32J(5) of the Act of 1991(**e**) shall be by summary application in Form 5AD.

(3) The sheriff clerk, on receiving an application under paragraph (1) or (2) above, shall—

(a) fix a date for the hearing of the appeal; and

(**a**) Rule 5 was amended by S.S.I. 2001/143.
(**b**) Paragraph (4) of section 29 was inserted by section 20 of the Child Maintenance and Other Payments Act 2008 (c.6).
(**c**) Section 32C was inserted by section 22 of the Child Maintenance and Other Payments Act 2008.
(**d**) Section 32I was inserted by section 23 of the Child Maintenance and Other Payments Act 2008.
(**e**) Section 32J was inserted by section 23 of the Child Maintenance and Other Payments Act 2008.

(b) order service of the application on the Commission.

(4) The sheriff may order intimation of the application to such persons as appear to the sheriff to have an interest in the application.".

(6) For "Secretary of State" or, as the case may be, "Secretary of State for Social Security", in every place where those expressions appear in Forms 1, 3, 4, 5, 6, 9 and 10 substitute "Child Maintenance and Enforcement Commission".

(7) After Form 5 in the Schedule, insert the forms set out in the Schedule to this Act of Sederunt.

Saving provision

3. The Act of Sederunt (Child Support Rules) 1993 as it applied immediately before 11th November 2009 continues to have effect for the purpose of any legal proceedings continuing or brought against the Secretary of State by virtue of paragraph 55 of Schedule 3 to the Child Maintenance and Other Payments Act 2008(**a**).

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

Edinburgh
22nd October 2009

(**a**) 2008 c.6.

SCHEDULE

Paragraph 2(7)

Rule 5AA(1)

Form 5AA

Form of application for appeal against a decision of the Child Maintenance and Enforcement Commission that the good reason exclusion in respect of a deduction from earnings order does not apply

by

[A.B.]
(*insert full name and address of appellant*)

Appellant

against

CHILD MAINTENANCE AND ENFORCEMENT COMMISSION
(*insert address*)

Respondent

1. The appellant is (*insert full name and address of appellant*).

2. The respondent is the Child Maintenance and Enforcement Commission.

3. The appellant is a liable person within the meaning of section 31 of the Child Support Act 1991.

4. On (*insert date*) the respondent decided that there is no good reason not to use a deduction from earnings order as a method of payment.

5. The appellant appeals against the decision that there is no good reason not to make the deduction from earnings order for the following reasons (*set out grounds*).

6. The appellant asks the court to award expenses to the appellant.

Date: (*insert date*) Signed: (*signature of appellant*)

Rule 5AB(1)

Form 5AB

Form of application for appeal against a regular deduction order [or a decision made on a review of regular deduction order*]

by

[A.B.]
(*insert full name and address of appellant*)

Appellant

against

CHILD MAINTENANCE AND ENFORCEMENT COMMISSION
(*insert address*)

Respondent

1. The appellant is (*insert full name and address of appellant*).

2. The respondent is the Child Maintenance and Enforcement Commission.

3. The appellant [or (*insert name and address of liable person if not the appellant*)]* is the liable person within the meaning of regulation 25C of the Child Support (Collection and Enforcement) Regulations 1992.

4. *(a) The appellant is affected by a regular deduction order because (*insert grounds for claim to be affected by the order*).

   *(b) The appellant is affected by a decision of the respondent on an application for review of a regular deduction order because (*insert grounds for claim to be affected by the decision*).

5. On (*insert date*) a regular reduction order was made against the (*appellant/liable person**) by the respondent. The making of the order was intimated to the appellant on (*insert date*).

6. [*On (*insert date*) the respondent reviewed the regular deduction order. The decision made on review was intimated to the appellant on (*insert date*).]

7. The appellant appeals against the making of the regular deduction order [*or* the decision made on review of the regular deduction order]* for the following reasons (*set out grounds*).

8. The appellant asks the court to award expenses to the appellant.

Date: (*insert date*)
*(*delete as appropriate*)

Signed: (*signature of appellant*)

Rule 5AC(1)

Form 5AC

Form of application for appeal against withholding of consent to the disapplication of sections 32C(1) [*or* 32H(2)(b) of the Child Support Act 1991

by

[A.B.]
(*insert full name and address of appellant*)

Appellant

against

CHILD MAINTENANCE AND ENFORCEMENT COMMISSION
(*insert address*)

Respondent

1. The appellant is (*insert full name and address of appellant*).

2. The respondent is the Child Maintenance and Enforcement Commission.

3. *(a) The appellant is a liable person within the meaning of section 32E of the Child Support Act 1991.

   *(b) The appellant is a deposit-taker within the meaning of section 54 of the Child Support Act 1991. The liable person, within the meaning of section 32E of the Child Support Act 1991, is (*insert name and address*).

4. On (*insert date*) a lump sum deduction order was made against the liable person by the respondent. The making of the lump sum deduction order was intimated to the appellant on (*insert date*).

5. On (*insert date*) the appellant [*or* the liable person] [*or* the deposit taker at which the lump sum deduction order is directed]* applied to the respondent for consent to disapply section 32G(1) [*or* section 32H(2)(b)]* of the Child Support Act 1991. On (*insert date*) the respondent intimated its decision to withhold consent.

6. The appellant appeals against the decision to withhold consent for the following reasons (*set out grounds*).

7. The appellant asks the court to award expenses to the appellant.

Date: (*insert date*) Signed: (*signature of appellant*)

*(*delete as appropriate*)

Rule 5AC(2)

Form 5AD

Form of application for appeal against a lump sum deduction order

by

[A.B.]
(*insert full name and address of appellant*)

Appellant

against

CHILD MAINTENANCE AND ENFORCEMENT COMMISSION
(*insert address*)

Respondent

1. The appellant is (*insert full name and address of appellant*).

2. The respondent is the Child Maintenance and Enforcement Commission.

3. The appellant is affected by a lump sum deduction order because (*insert grounds for claim to be affected by the lump sum deduction order*).

4. The appellant [or *insert name of liable person if not the appellant*]* is the liable person, within the meaning of section 32E of the Child Support Act 1991.

5. On (*insert date*) a lump sum deduction order was made against the appellant [*or* liable person]* by the respondent. The making of the lump sum deduction order was intimated to the appellant on (*insert date*).

6. The appellant appeals against the decision to make the lump sum deduction order for the following reasons (*set out grounds*).

7. The appellant asks the court to award expenses to the appellant.

Date: (*insert date*) Signed: (*signature of appellant*)

*(*delete as appropriate*)

EXPLANATORY NOTE

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

This Act of Sederunt amends the Act of Sederunt (Child Support Rules) 1993 in consequence of the Child Maintenance and Other Payments Act 2008.

Paragraph 2(2) to (4) makes various amendments which include inserting new definitions into rule 1 and changing references from the "Secretary of State" and "Secretary of State for Social Security" to the "Commission".

Paragraph 2(5) inserts new rules 5AA to 5AC providing application forms for appeals in relation to deduction from earnings orders, regular deduction orders and lump sum deduction orders.

Paragraph 2(6) changes references in various forms from the "Secretary of State" and "Secretary of State for Social Security" to the "Child Maintenance and Enforcement Commission".

By virtue of paragraph 55 of Schedule 3 to the Child Maintenance and Other Payments Act 2008, the Secretary of State retains responsibility for his actions and omissions before the date of the commencement of section 13 of that Act. Paragraph 3 of this Act of Sederunt accordingly provides that the Act of Sederunt (Child Support Rules) 1993 as it applied immediately before 11th November 2009 continues to have effect for the purpose of proceedings relating to those actions and omissions.

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