SCOTTISH STATUTORY INSTRUMENTS

2018 No. 369

SHERIFF COURT

Act of Sederunt (Child Support Rules Amendment) (Disqualification) 2018

Made - - - -	*5th December 2018*
Laid before the Scottish Parliament	*7th December 2018*
Coming into force - -	*21st January 2019*

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(**a**), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council with such modifications as it thinks appropriate.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by section 104(1) of the Courts Reform (Scotland) Act 2014(**b**), section 39F of the Child Support Act 1991(**c**) and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Child Support Rules Amendment) (Disqualification) 2018.

(2) It comes into force on 21st January 2019.

(3) A certified copy is to be inserted in the Books of Sederunt.

Amendment of Child Support Rules

2.—(1) The Act of Sederunt (Child Support Rules) 1993(**d**) is amended in accordance with this paragraph.

(2) After rule 5A (application for commitment to prison or disqualification from driving)(**e**), insert—

> **"Application for disqualification from holding or obtaining a United Kingdom passport**

(**a**) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).
(**b**) 2014 asp 18.
(**c**) 1991 c.48. The Child Support Act 1991 was relevantly amended by section 27 of the Child Maintenance and Other Payments Act 2008 (c.6).
(**d**) S.I. 1993/920, last amended by S.S.I. 2016/242.
(**e**) Rules 5A to 5F were inserted by S.S.I. 2001/143; rules 5B, 5D and 5E were amended by S.S.I. 2015/351.

5AZA.—(1) An application under section 39B(1)(**a**) of the Act of 1991 is made by summary application.

(2) Citation, where necessary, of a liable person in respect of an application under paragraph (1) must be in Form 5AZA.".

(3) In rule 5B(1) (warrant of arrest)—

(a) in sub-paragraph (a), after "rule 5A(2)", insert "or 5AZA(2)"; and

(b) in sub-paragraph (b), after "section 39A(3)", insert "or 39B(4)".

(4) In rule 5C (evidence of means), after "rule 5A(1)", insert "or 5AZA(1)".

(5) After rule 5E (order for disqualification from driving), insert—

"Order for disqualification from holding or obtaining a United Kingdom passport

5EA.—(1) An order made under section 39B of the Act of 1991 must be in Form 5EA.

(2) An application made under section 39E of the Act of 1991 for a reduction in a period of disqualification or for revocation of an order is to be made by minute.".

(6) In rule 5F (renewal of application)—

(a) after "section 39A(1)", insert "or 39B(1)";

(b) for "that section", substitute "the same section"; and

(c) after "rule 5A(1)", insert "or 5AZA(1) respectively".

(7) In the schedule (forms)(**b**)—

(a) after Form 5A (form of citation for summary application for commitment to prison or disqualification from driving), insert Form 5AZA in schedule 1 of this Act of Sederunt;

(b) in Form 5E (form of order of disqualification from holding or obtaining a driving licence), after "in respect of which this Order is made is paid*.", insert—

"[*Where the defender did not bring his or her driving licence to the hearing,* Orders the defender to attend a hearing at (*insert address of sheriff court*) on (*insert date*) at (*insert time*) with his [*or* her] driving licence for the purpose of surrendering it.]

[[*Where the sheriff decides under section 40B(1)(b) of the Child Support Act 1991 to suspend the operation of the disqualification,* Orders that the operation of the disqualification be suspended until (*insert date*)] [*if the sheriff imposes any conditions on the suspension,* on the following conditions (*describe the conditions here*)].]"; and

(c) after Form 5E, insert Form 5EA in schedule 2 of this Act of Sederunt.

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
5th December 2018

(**a**) Sections 39B to 39G of the Child Support Act 1991 (c.48) were inserted by the Child Maintenance and Other Payments Act 2008 (c.6), section 27.
(**b**) The schedule was substituted by S.S.I. 2015/351.

SCHEDULE 1

Paragraph 2(7)(a)

Form 5AZA

Rule 5AZA(2)

Form of citation for summary application for disqualification from holding or obtaining a United Kingdom passport

CITATION

SHERIFFDOM OF (*insert name of sheriffdom*)

AT (*insert place of sheriff court*)

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

Pursuer

against

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

Defender

Court Ref. No. (*insert ref. no.*)

(*insert place and date*).

You [C.D.] are hereby served with this copy writ and warrant and are required to appear within the Sheriff Court House at (*insert address of sheriff court*) on (*insert date*) at (*insert time*).

YOU MUST APPEAR IN PERSON AT THE HEARING.

IF YOU ARE UNCERTAIN AS TO WHAT FURTHER ACTION TO TAKE you should consult a solicitor. You may be eligible for legal aid depending on your income and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

IF YOU HOLD A UNITED KINGDOM PASSPORT, YOU MUST BRING IT WITH YOU TO THE HEARING.

IN ORDER TO ASSIST THE COURT TO INQUIRE INTO YOUR MEANS, YOU SHOULD COMPLETE AND BRING WITH YOU THE ATTACHED STATEMENT OF YOUR FINANCIAL POSITION. YOU SHOULD ALSO BRING WITH YOU DOCUMENTARY EVIDENCE OF YOUR FINANCIAL POSITION.

IF YOU DO NOT APPEAR IN PERSON IN ANSWER TO THIS DOCUMENT THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST.

(*Signed*)

[E.F.], Solicitor for Pursuer

[*or* [X.Y.], Officer of Court]

(*insert business address of solicitor or sheriff officer*)

STATEMENT OF DEFENDER'S FINANCIAL POSITION

My Weekly	Fortnightly	Monthly
☐	☐	☐

Outgoings are:

Housing costs (rent/mortgage/ Council Tax)	£
Electricity/gas/ heating oil	£
Food	£
Credit payments	£
Other	£
Total	£

My Weekly	Fortnightly	Monthly
☐	☐	☐

Income is:

Wages/Pensions	£
Benefits	£
Other	£
Total	£

Dependent children – how many ☐ Dependent adult relatives – how many ☐

Here list all capital (if any) e.g. value of house; amounts in bank or building society accounts; shares or other investments:

SCHEDULE 2

Paragraph 2(7)(c)

Form 5EA

Rule 5EA(1)

Form of order of disqualification from holding or obtaining a United Kingdom passport

ORDER OF DISQUALIFICATION FROM HOLDING OR OBTAINING A UNITED KINGDOM PASSPORT UNDER SECTION 39B OF THE CHILD SUPPORT ACT 1991

(*insert place and date*)

The Sheriff, being satisfied–

(a) that the Secretary of State for Work and Pensions has sought to recover an amount of child support maintenance under section 38 of the Child Support Act 1991;

(b) that such amount, or a portion of it, remains unpaid; and

(c) having inquired in the defender's presence as to his [*or* her] means, that there has been wilful refusal or culpable neglect on his [*or* her] part,

Disqualifies (*insert name of defender*) from holding or obtaining a United Kingdom passport (within the meaning of section 33(1) of the Immigration Act 1971) for a period of (*insert period not exceeding two years*), unless the aggregate amount in respect of which this Order is made is paid*.

[W*here the defender did not bring his or her passport to the hearing,* Orders the defender to attend a hearing at (*insert address of sheriff court*) on (*insert date*) at (*insert time*) with his [*or* her] passport for the purpose of surrendering it.]

[[*Where the sheriff decides under section 39C(2) of the Child Support Act 1991 to suspend the running of the period for which the order is to have effect,* Orders that the operation of the disqualification be suspended until (*insert date*)] [*if the sheriff imposes any conditions on the suspension,* on the following conditions (*describe the conditions here*)].]

This warrant is made in respect of–

Amount outstanding under section 38 of the Child Support Act 1991, exclusive of collection fees and enforcement fees	£
Amount outstanding in respect of collection fees and enforcement fees	£
Amount in respect of the expenses of the application	£
Aggregate amount	£

(*Signed*)

Sheriff

*Note: If part payment of the aggregate amount is made, the period of disqualification may be reduced as provided by section 39E(1)(a) of the Child Support Act 1991. Alternatively, the order may be revoked under section 39E(1)(b). If full payment is made of the aggregate amount, the order will be revoked under section 39E(2) of the Child Support Act 1991. An application for reduction of the period of disqualification or for revocation of this order requires to be made by way of minute in the court process.

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 ("the Child Support Rules") to make provision about disqualification from holding or obtaining a United Kingdom passport. This new type of court order is created by provisions inserted into the Child Support Act 1991 by section 27 of the Child Maintenance and Other Payments Act 2008.

Paragraph 2(2) inserts a new rule 5AZA, which provides that (i) an application for disqualification from holding or obtaining a United Kingdom passport is to be made by summary application; and (ii) citation of a liable person must be in Form 5AZA.

Paragraph 2(3), (4) and (6) insert at the relevant places in the Child Support Rules references to the new rules and relevant provisions which were inserted into the Child Support Act 1991 by the Child Maintenance and Other Payments Act 2008.

Paragraph 2(5) inserts a new rule 5EA, which provides that (i) an order disqualifying a person from holding or obtaining a United Kingdom passport must be made in Form 5EA; and (ii) an application for a reduction in the period of disqualification is to be made by minute.

Paragraph 2(7) inserts Form 5AZA and Form 5EA. It also makes some amendments to Form 5E, in order to make it consistent with Form 5EA.

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