SCOTTISH STATUTORY INSTRUMENTS

2024 No. 197

SHERIFF COURT

Act of Sederunt (Proceedings for Determination of Compatibility Questions Rules) 2024

Made - - - -	*27th June 2024*
Laid before the Scottish Parliament	*28th June 2024*
Coming into force - -	*16th July 2024*

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.

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 44(2) and (3) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024(**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 (Proceedings for Determination of Compatibility Questions Rules) 2024.

(2) It comes into force on 16th July 2024.

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

Interpretation

2.—(1) In this Act of Sederunt—

"the 2024 Act" means the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024;

"compatibility question" has the meaning given by section 31(1) of the 2024 Act;

"initiating document" means the initial writ, summons, petition or other document by which the proceedings are initiated;

"relevant authority" means the Commissioner for Children and Young People in Scotland, the Lord Advocate and the Scottish Commission for Human Rights.

(2) Any reference in this Act of Sederunt to a numbered Form is a reference to the Form so numbered in schedule 1 of this Act of Sederunt.

(**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**) 2024 asp 1.

Proceedings for determination of a compatibility question

3. Where the initiating document contains an averment or crave which raises a compatibility question, the initiating document must include a crave for warrant to intimate it to the relevant authority, unless it is a party to the action.

Time for raising compatibility question

4. It is not competent for a party to any proceedings to raise a compatibility question after proof is commenced, unless the sheriff, on cause shown, otherwise determines.

Specification of compatibility question

5.—(1) Any party raising a compatibility question must specify—

(a) where the party initiates the action, in the initiating document;

(b) in the written defences or answers; or

(c) in any other case, in Form 1,

the facts or circumstances and contentions of law on the basis of which it is alleged that the compatibility question arises in sufficient detail to enable the sheriff to determine whether such a question arises in the proceedings.

(2) Where a party wishes to raise a compatibility question after lodging any document mentioned in paragraph (1), the party must do so—

(a) by way of adjustment or minute of amendment; or

(b) in proceedings in which there is no procedure for adjustment or amendment, in Form 1,

so as to provide specification of the matters mentioned in that paragraph.

Intimation of compatibility question

6.—(1) Intimation of a compatibility question must be given to the relevant authority (unless it is a party to the proceedings) in accordance with this rule.

(2) Where the compatibility question is raised in the initiating document, the sheriff is to order intimation of the compatibility question as craved in the warrant for service.

(3) In any case other than that described in paragraph (2), the party raising the compatibility question must lodge a motion or incidental application, as the case may be, craving a warrant for intimation of the compatibility question on the relevant authority, and on considering the motion or incidental application, where it appears to the sheriff that a compatibility question arises, the sheriff is to order such intimation of the compatibility question.

(4) Where intimation is ordered in accordance with paragraphs (2) or (3), such intimation must be in Form 2 and be made in such manner as the sheriff considers appropriate in the circumstances.

(5) The intimation of a compatibility question must specify 14 days, or such other period as the sheriff thinks fit, as the period within which the relevant authority may take part as a party in the proceedings.

(6) Where, after determination at first instance of any proceedings in which a compatibility question has been raised under this Act of Sederunt, a party to those proceedings appeals to the Sheriff Appeal Court in accordance with Chapter 6 of the Act of Sederunt (Sheriff Appeal Court Rules) 2021(**a**), that party must, unless the relevant authority is already a party to the proceedings, intimate the note of appeal to the relevant authority, together with a notice in Form 2A.

Response to intimation of compatibility question

7.—(1) This rule applies where the relevant authority receives intimation of a compatibility question.

(2) Where the relevant authority intends to take part as a party in the proceedings, it must lodge a minute stating that it intends to do so.

(3) Upon receipt of the minute lodged in accordance with paragraph (2), the sheriff is to sist the relevant authority as a party to the action.

(4) Upon the relevant authority being sisted as a party in accordance with paragraph (3), the sheriff is to order the relevant authority to lodge a note of its written submissions in respect of the compatibility question specifying those matters mentioned in rule 5(1) within 7 days, or such other period as the sheriff thinks fit.

(5) A copy of the minute lodged in accordance with paragraph (2) and a copy of any note lodged in accordance with paragraph (4) must, at the same time as lodging the minute or any note, be intimated by the party lodging such to all other parties in the proceedings.

(6) At any time after the note mentioned in paragraph (4) has been lodged, the sheriff may regulate such further procedure in the proceedings as the sheriff thinks fit.

(7) Where a relevant authority does not take part as a party in the proceedings at first instance, the court may allow it to take part as a party in any subsequent appeal to the Sheriff Appeal Court.

Reference to Inner House or Supreme Court

8.—(1) This rule applies where—

(a) any reference of a compatibility question is made to the Inner House of the Court of Session under section 35(1) of the 2024 Act; or

(b) the sheriff is required by the Lord Advocate to refer a compatibility question to the Supreme Court under section 36 of the 2024 Act.

(2) Where a reference is made in accordance with paragraph (1), the sheriff is to pronounce an interlocutor giving directions about the manner and time in which the reference is to be drafted and adjusted.

(3) When the reference has been drafted and adjusted in accordance with paragraph (2), the sheriff is to sign the reference.

(4) The reference must—

(a) include such matters as are prescribed in schedule 2 of this Act of Sederunt;

(b) have annexed to it the interlocutor making the reference and any other order of the court in the cause.

(5) The sheriff clerk must send a copy of the reference by first class recorded delivery post to—

(a) the parties to the proceedings;

(b) the relevant authority (if it is not already a party),

and must certify on the back of the principal reference that a copy has been sent and to whom.

(**a**) S.S.I. 2021/468, last amended by S.S.I. 2024/195.

(6) In this rule "first class recorded delivery post" means a postal service which seeks to deliver documents or other things by post no later than the next working day in all or the majority of cases and which provides for the delivery of the document or other thing by post to be recorded.

Sist of cause on reference to Inner House or Supreme Court

9. On a reference being made in accordance with rule 8, the cause must, unless the sheriff when making the reference otherwise orders, be sisted until the compatibility question has been determined.

Interim orders

10.—(1) Notwithstanding the reference of a compatibility question to the Inner House of the Court of Session or to the Supreme Court in accordance with rule 8, the sheriff has power to make any interim order which a due regard to the interests of the parties may require.

(2) The sheriff may recall a sist under rule 9 for the purpose of making the interim order mentioned in paragraph (1).

Transmission of reference

11.—(1) The sheriff clerk must forthwith transmit the principal copy of the reference, as the case may be, to—

(a) the Deputy Principal Clerk of the Court of Session; or

(b) together with 7 copies, the Registrar of the Supreme Court.

(2) Unless the sheriff otherwise directs, the principal copy of the reference must not be transmitted in accordance with paragraph (1) where an appeal against the making of the reference is pending.

(3) For the purpose of paragraph (2), an appeal is to be treated as pending either—

(a) until the expiry of the time for making that appeal; or

(b) where an appeal has been made, until that appeal has been determined.

Procedure following determination on reference or appeal

12.—(1) This rule applies where either the Inner House of the Court of Session or the Supreme Court has determined—

(a) a compatibility question referred to it in accordance with rule 8; or

(b) an appeal made to it.

(2) Upon receipt of the determination of the Inner House of the Court of Session or the Supreme Court, as the case may be, the sheriff clerk must immediately place before the sheriff a copy of the determination and the court process.

(3) The sheriff—

(a) of the sheriff's own motion, may; or

(b) upon the lodging of a motion or incidental application by any of the parties to the proceedings, is to,

pronounce an interlocutor ordering such further procedure as may be required.

(4) Where the sheriff of the sheriff's own motion pronounces an interlocutor in accordance with paragraph (3), the sheriff clerk must immediately intimate a copy of the interlocutor to all parties in the proceedings.

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
27th June 2024

SCHEDULE 1

Rule 2(2)

Form 1

Rules 5(1)(c) and (2)(b)

Form of specification of compatibility question

SHERIFFDOM OF (*insert name of sheriffdom*)

AT (*insert place of sheriff court*) Court Ref No.

In the action of

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

Pursuer

against

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

Defender

The Pursuer [*or* Defender] [*or* (*if other please specify*)] wishes to raise a compatibility question in the above action.

[*insert the following information—*

- *the facts and circumstances and contentions of law on the basis of which it is alleged that the compatibility question arises in sufficient detail to enable the sheriff to determine whether such a question arises in the proceedings;*
- *details of the relevant law including the relevant provisions of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024; and*
- *the reason why the resolution of the compatibility question is considered necessary for the purpose of disposing of the proceedings*]

Date (*insert date*) (*Signed*)

Solicitor for the Pursuer [*or* Defender] [*or other*]

Form 2

Rule 6(4)

Form of intimation to relevant authority of a compatibility question raised in civil proceedings in the sheriff court

To (*insert name and address*) Court Ref No.

1. You are given notice that in the Sheriff Court at (*insert address*),

   * an action has been raised which includes a crave in respect of a compatibility question [*or* a compatibility question has been raised in an action].

   A copy of the initial writ [*or* pleadings in the case] (*as adjusted*) is enclosed. A copy of the interlocutor appointing intimation is also enclosed.

2. If you wish to take part as a party to the proceedings, you must lodge with the Sheriff Clerk (*insert address of sheriff court*) a notice in writing stating that you intend to take part as a party in the proceedings. The notice must be lodged within 14 days of (*insert date on which intimation was given*).

Date (*insert date*)

(*Signed*)

Solicitor for the Pursuer [*or* Defender] [*or other*]

Form 2A

Rule 6(6)

Form of intimation to relevant authority of appeal in proceedings in which a compatibility question has been raised

To (*insert name and address of relevant authority*) Court Ref No.

You are given notice that an appeal has been marked in proceedings in which a compatibility question has been raised. A copy of the note of appeal is enclosed.

Date (*insert date*)

(*Signed*)

Solicitor for the Appellant

(*add designation and business address*)

SCHEDULE 2

Rule 8(4)(a)

Details to be included where reference made to Inner House of the Court of Session or Supreme Court

1. The question(s) referred.

2. The addresses of parties.

3. A concise statement of the background to the matter, including—

   (i) the facts of the case, including any relevant findings of fact by the referring court; and

   (ii) the main issues in the case and contentions of the parties with regard to them.

4. The relevant law including the relevant provisions of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.

5. The reasons why an answer to the question(s) is/are considered necessary for the purpose of disposing of the proceedings.

Note: A copy of the interlocutor making the reference and a copy of any judgment in the proceedings must be annexed to the reference.

EXPLANATORY NOTE

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

These Rules make provision for the procedures to be followed in civil proceedings in the sheriff court where a compatibility question, within the meaning of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, is raised by the parties to those proceedings.

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