STATUTORY INSTRUMENTS

1988 No. 615 (S.68)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Rules of the Court of Session Amendment No.1) (Family Law) 1988

Made - - - -	*23rd March 1988*
Coming into force	*4th April 1988*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 16 of the Administration of Justice (Scotland) Act 1933(**a**), sections 1(6), 27(2) and (4) and 28(1) of the Family Law Act 1986(**b**) and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No.1) (Family Law) 1988 and shall come into force on 4th April 1988.

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

Amendment of the Rules of the Court of Session

2.—(1) The Rules of the Court of Session(**c**) shall be amended in accordance with the following sub-paragraphs.

(2) In rule 170B (parental rights, care and supervision etc. of children)(**d**), at the end insert the following paragraphs:–

"(11) *Averments of other proceedings relating to children.* A party under this section to a cause which includes an application for a custody order (as defined by section 1(1)(b) of the Family Law Act 1986) shall make averments in his pleadings giving particulars of any other proceedings known to him (whether in Scotland or elsewhere and whether concluded or not) which relate to the child in respect of whom the custody order is sought.

(12) *Disclosure of information about child's whereabouts.* Where the court pronounces an interlocutor ordering a person to disclose information to the court as to a child's whereabouts under section 33(1) of the Family Law Act 1986, it may do so by ordaining that person to appear before it or to lodge an affidavit.

(13) *Applications for interdict under the Family Law Act 1986.* An application by a person mentioned in section 35(4)(b) or (c) of the Family Law Act 1986 for interdict or interim interdict under section 35(3) of that Act shall be made by minute in the cause in which the application is to be made.".

(3) After rule 260E (applications in petition process for custody)(**e**) insert the following rules:–

(**a**) 1933 c.41.
(**b**) 1986 c.55.
(**c**) S.I. 1965/321; relevant amending instruments are S.I. 1976/1994, 1977/1621, 1984/499, 1986/515, 1955 and 1987/2160.
(**d**) Rule 170B was inserted by S.I. 1976/1994 and amended by S.I. 1977/1621, 1984/499 and 1986/1955.
(**e**) Rule 260E was inserted by S.I. 1986/515.

"260EA. Averments of other proceedings relating to children

A party to a cause under this section for a custody order as defined by section 1(1)(b) of the Family Law Act 1986 shall make averments in his pleadings giving particulars of any other proceedings known to him (whether in Scotland or elsewhere and whether concluded or not) which relate to the child in respect of whom the custody order is sought.

260EB. Disclosure of information about child's whereabouts

Where the court pronounces an interlocutor ordering a person to disclose information to the court as to a child's whereabouts under section 33(1) of the Family Law Act 1986, it may do so by ordaining that person to appear before it or to lodge an affidavit.

260EC. Applications for interdict under the Family Law Act 1986

An application by a person mentioned in section 35(4)(b) or (c) of the Family Law Act 1986 for interdict or interim interdict under section 35(3) of that Act shall be made by minute in the cause in which the application is to be made.".

(4) After rule 260N (causes under the Financial Services Act 1986)(a), insert the following section and rules:—

"SECTION 18

REGISTRATION AND ENFORCEMENT OF CUSTODY ORDERS UNDER THE FAMILY LAW ACT 1986

260. Interpretation

(1) In this section –

"the Act of 1986" means the Family Law Act 1986;

"appropriate court" means the High Court in England and Wales or the High Court in Northern Ireland, as the case may be;

"custody order" has the meaning assigned to it by sections 1, 32, 40, 42(5) and 42(6) of the Act of 1986;

"Deputy Principal Clerk" means the Deputy Principal Clerk of Session or another officer authorised by him;

"proper officer" means the Secretary of the Principal Registry of the Family Division of the High Court in England and Wales or the Master (Care and Protection) of the High Court in Northern Ireland, as the case may be;

"Register" means the Custody Orders Register kept under rule 260Q.

(2) An application for the purposes of Part I of the Act of 1986 in relation to orders under section 1(1)(b) of that Act means an application by summons, petition, defences, answers or minute.

260Q. Custody Orders Register

(1) The Deputy Principal Clerk shall maintain a register to be called the Custody Orders Register.

(2) In Part I of the Register there shall be recorded applications for registration of a custody order in another part of the United Kingdom; and in Part II of the Register there shall be recorded custody orders registered for enforcement in Scotland.

260R. Applications for registration of custody orders in another court

(1) An application under section 27 of the Act of 1986 to register a custody order made by the Court of Session in an appropriate court in England and Wales or Northern Ireland shall be made by letter to the Deputy Principal Clerk.

(2) An application under paragraph (1) shall be accompanied by –

(a) a copy of the letter of application;

(a) Rule 260N was inserted by S.I. 1987/2160.

(b) an affidavit by the applicant;
(c) a copy of that affidavit;
(d) a certified copy interlocutor of the custody order;
(e) a certified copy interlocutor of any variation which is in force of the custody order; and
(f) any other document relevant to the application together with a copy of it.

(3) An affidavit required under this rule should set out –
(a) the name and address of the applicant and his right under the custody order;
(b) the name and date of birth of the child in respect of whom the custody order was made, the present whereabouts or suspected whereabouts of the child and the name of any person with whom he is alleged to be;
(c) the name and address of any other person who has an interest in the custody order;
(d) whether the custody order is to be registered in England and Wales or Northern Ireland or both jurisdictions and the court in which it is to be registered;
(e) whether the custody order is in force;
(f) whether the custody order is already registered and, if so, where it is registered; and
(g) details of any order known to the applicant which affects the child and is in force in the jurisdiction in which the custody order is to be registered.

(4) Where the Deputy Principal Clerk refuses to send an application under this rule to the appropriate court on the ground that the custody order is no longer in force, he shall notify the applicant in writing; and the applicant shall have the right to have the application brought before the Lord Ordinary for determination.

(5) The Deputy Principal Clerk shall retain the letter of application under this rule together with any documents which accompanied it and which are not transmitted to the appropriate court under section 27(3) of the Act of 1986.

260S. Transmission of application for registration

(1) Where the Deputy Principal Clerk is satisfied that the custody order is in force, he shall send the documents mentioned in section 27(3) of the Act of 1986 to the proper officer of the court in which the custody order is to be registered.

(2) For the purposes of section 27(3) (b) of the Act of 1986 the prescribed particulars of any variation which is in force of a custody order shall be a certified copy interlocutor of any such variation.

(3) On sending an application under paragraph (1), the Deputy Principal Clerk shall make an entry in Part I of the Register recording the date and particulars of the application and the custody order.

(4) On receiving notification from a proper officer of an appropriate court that the custody order has been registered in that court under section 27(4) of the Act of 1986, the Deputy Principal Clerk shall record the date of registration in Part I of the Register.

260T. Registration of custody orders from another court

(1) The prescribed officer under section 27(4) of the Act of 1986 shall be the Deputy Principal Clerk.

(2) Where the Deputy Principal Clerk receives a certified copy of a custody order from a court in England and Wales or Northern Ireland for registration under section 27(4) of the Act of 1986, he shall enter the following particulars in Part II of the Register –
(a) the name and address of the applicant and his interest under the custody order;
(b) a brief description of the nature of the custody order, the date and the court which made it; and
(c) the name and whereabouts or suspected whereabouts of the child who is the subject of the custody order, his date of birth and the date on which he will attain the age of sixteen.

(3) On registering the custody order, the Deputy Principal Clerk shall –

(a) retain the application and the documents which accompanied it; and

(b) give notice in writing –

(i) to the court from which he received the application; and

(ii) to the applicant who applied for registration,

that the custody order has been registered.

(4) Where the Deputy Principal Clerk notifies an applicant under paragraph (3), he shall state the date when the registration of the custody order will automatically cease to have effect on the child attaining the age of sixteen.

260U. Cancellation or variation of registered custody orders

(1) Where the Court of Session revokes, recalls or varies a custody order which it has made, the Deputy Principal Clerk, on being informed by the party who applied for the revocation, recall or variation that the custody order has been registered in an appropriate court, shall –

(a) send a certified copy interlocutor of the revocation, recall or variation to the proper officer of the court in which the custody order is registered;

(b) record the transmission of the certified copy in Part I of the Register; and

(c) record the revocation, recall or variation in Part I of the Register.

(2) On receiving notification from the proper officer of the court in which the custody order is registered that he has amended his record, the Deputy Principal Clerk shall record the fact that the amendment has been made in Part II of the Register.

(3) Where the Deputy Principal Clerk receives a certified copy of an order which revokes, recalls or varies a custody order registered in the Court of Session from a court in England and Wales or Northern Ireland, he shall –

(a) make an entry noting the change and the date of it in Part II of the Register; and

(b) give notice in writing –

(i) to the court from which he received the certified copy of an order which revokes, recalls or varies the custody order;

(ii) to the person who applied for registration of the custody order; and

(iii) if different, to the person who applied for the revocation, recall or variation of the custody order,

that he has amended the Register.

(4) An application to the Court of Session under section 28(2) of the Act of 1986 to cancel all or a part of the registration of a custody order which it has registered shall be made by petition and shall be served on –

(a) the person who applied for registration, if he is not the petitioner; and

(b) any other interested person.

(5) Where, under section 28(2) of the Act of 1986, the court cancels all or a part of the registration of a custody order which it has registered, the Deputy Principal Clerk shall –

(a) make an entry noting the cancellation and the date of it in Part II of the Register; and

(b) give notice in writing to –

(i) the court which made the custody order;

(ii) the person who applied for registration; and

(iii) if different, the person who applied for cancellation of the custody order.

260V. Enforcement of registered custody orders in Scotland

(1) Proceedings under section 29(1) of the Act of 1986 to enforce a custody order registered in the Court of Session shall be by petition presented to the Outer House.

(2) Where the petitioner in an application under section 29(1) of the Act of 1986 is not the person who applied for registration, the petition shall be served on that person.

(3) Subject to paragraph (4), rules 191 and 193 to 198 apply to a petition under this rule.

(4) There shall be such intimation and service of a petition under this rule as the court may require.

260W. Applications to sist or refuse enforcement proceedings

(1) An application under section 30(1) of the Act of 1986 to sist enforcement proceedings shall be made –

(a) by lodging answers at any time in the process of the petition for enforcement; or

(b) where answers have been lodged by the party making the application, by motion,

and served or intimated (as the case may be) on every other party and, if he is not a party, the applicant for registration of the custody order.

(2) An application under section 30(3) of the Act of 1986 to recall a sist of enforcement proceedings shall be made by motion.

(3) An application under section 31(1) of the Act of 1986 to dismiss a petition for enforcement shall be made–

(a) by lodging answers at any time in the process of the petition for enforcement;

(b) where answers have been lodged by the party making the application, by motion; or

(c) at a hearing assigned for that purpose,

and served or intimated (as the case may be) on every other party and, if he is not a party, the applicant for registration of the custody order.

(4) Where the court pronounces an interlocutor under section 30(2) or (3) or section 31(3) of the Act of 1986, the Deputy Principal Clerk shall –

(a) make an entry noting the terms of the interlocutor and the date in Part II of the Register; and

(b) give notice in writing –

(i) to the person who applied for registration where he was not a party to the application under section 30(1) or section 31(1) or (2) of the Act of 1986; and

(ii) to the court from which the application for registration was received,

of the terms of the interlocutor.

260X. Miscellaneous provisions

(1) Where the court pronounces an interlocutor ordering a person to disclose information to the court as to a child's whereabouts under section 33(1) of the Act of 1986, it may do so by ordaining that person to appear before it or to lodge an affidavit.

(2) An application by a person mentioned in section 35(4) (b) or (c) of the Act of 1986 for interdict or interim interdict under section 35(3) of that Act shall be made by minute in the cause in which the application is to be made.

(3) The Register may be inspected by –

(a) the person who applied for registration; and

(b) any other person who satisfies the Deputy Principal Clerk that he has an interest to do so.".

Edinburgh
23rd March 1988

Emslie
Lord President, I.P.D.

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session in relation to the Family Law Act 1986. The Act of Sederunt provides (a) for rules for averments in certain consistorial causes and petitions for custody about other proceedings relating to children and in relation to disclosure of information and applications for interdict (paragraph 2(2) and (3)), and (b) for rules for the registration and enforcement of custody orders under the Act of 1986 (paragraph 2(4)).

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