

2000 No. 239

SHERIFF COURT

**Act of Sederunt (Sheriff Court Ordinary Cause Rules
Amendment) (Miscellaneous) 2000**

Made

12th July 2000

Coming into force

2nd October 2000

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 13 of the Sheriff Courts (Scotland) Extracts Act 1892(a), section 32 of the Sheriff Courts (Scotland) Act 1971(b) and of all other powers enabling them in that behalf, having approved, with modifications, 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 (Sheriff Court Ordinary Cause Rules Amendment) (Miscellaneous) 2000 and shall come into force on 2nd October 2000.

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

Amendment of Savings

2. For paragraph 6 of the Act of Sederunt (Sheriff Court Ordinary Cause Rules) 1993(c) there is substituted the following:—

“Savings for causes already commenced

6.—(1) Subject to paragraph (2) below, nothing in this Act of Sederunt shall affect any cause commenced before the date of the coming into force of this Act of Sederunt, and any such cause shall proceed according to the law and practice in force immediately before that date.

(2) Where—

- (a) a family action as defined in rule 33.1 of the Ordinary Cause Rules 1993 was commenced prior to 1st January 1994;
- (b) decree has been granted in that action; and
- (c) an application is made to the court on or after 2nd October 2000 to vary that decree,

that application, and any subsequent application in the same process, shall proceed in accordance with the Ordinary Cause Rules 1993.”.

(a) 1892 c.17.

(b) 1971 c.58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 2, paragraph 12, by the Civil Evidence (Scotland) Act 1988 (c.32), section 2(4), and by the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 18(2).

(c) 1993/1956.

Amendment of Ordinary Cause Rules 1993

3.—(1) The Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907(**a**) shall be amended in accordance with the following paragraphs.

(2) In rule 8.1 (reponing) after paragraph (4), there is inserted the following:–

“(4A) Where an initial writ has been served on a defender furth of the United Kingdom under rule 5.5(1)(b) (service on persons furth of Scotland) and decree in absence has been pronounced against him as a result of his failure to enter appearance, the court may, on the defender applying to be reponed in accordance with paragraph (1) above, recall the decree and allow defences to be received if–

- (a) without fault on his part, he did not have knowledge of the initial writ in sufficient time to defend;
- (b) he has disclosed a *prima facie* defence to the action on the merits; and
- (c) the reponing note is lodged within a reasonable time after he had knowledge of the decree or in any event before the expiry of one year from the date of decree.”.

(3) In rule 9.2 (fixing date for Options Hearing)–

- (a) in paragraph (1), at the beginning insert the words “Subject to paragraph (1A),”; and
- (b) after paragraph (1), there is inserted the following:–

“(1A) Where in a family action–

- (i) the only matters in dispute are an order in terms of section 11 of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc.)(**b**); or
- (ii) the matters in dispute include an order in terms of section 11 of that Act, there shall be no requirement to fix an Options Hearing in terms of paragraph (1) above insofar as the matters in dispute relate to an order in terms of section 11(2) of the Children (Scotland) Act 1995.

(1B) In paragraph (1A) above, “family action” has the meaning given to it in rule 33.1(1).”.

(4) In rule 9.14 (exchange of lists of witnesses)–

- (a) for paragraph (1), there is substituted the following:–

“(1) Within 28 days after the date of the interlocutor allowing a proof or proof before answer, each party shall–

- (a) intimate to every other party a list of witnesses, including any skilled witnesses, on whose evidence he intends to rely at proof; and
- (b) lodge a copy of that list in process.”; and

- (b) in paragraph (2)–

- (i) for the words “call as a witness” there are substituted the words “rely on the evidence of”;
- (ii) for the words “a witness being called” there are substituted the words “evidence being admitted”; and
- (iii) for the words “call that person as a witness” there are substituted the words “admit that evidence whether it is to be given orally or not”.

(5) After rule 15.5 (hearing of motions), there is inserted the following:–

“Motions to sist

15.6.—(1) Where a motion to sist is made, either orally or in writing in accordance with rule 15.1(1)(a) or (b)–

- (a) the reason for the sist shall be stated by the party seeking the sist; and
- (b) that reason shall be recorded in the interlocutor.

(2) Where a cause has been sisted, the sheriff may, after giving parties an opportunity to be heard, recall the sist.”.

(a) 1907 c.51; Schedule 1 was substituted by S.I. 1993/1956 and amended by S.I. 1996/2167 and 2445.

(b) 1995 c.36.

- (6) In rule 17.2 (applications for summary decree), paragraph (3) is omitted.
- (7) In rule 18.3 (applications to amend) after paragraph (2) there is inserted the following:–
- “(3) Any adjustment to any minute of amendment or answers shall be exchanged between parties and not lodged in process.
- (4) Parties shall be responsible for maintaining a record of adjustment made and the date of their intimation.
- (5) No adjustments shall be permitted after the period of adjustment allowed, except with leave of the sheriff.
- (6) Each party shall, no later than 2 days before the hearing fixed in terms of paragraph (2), lodge in process a copy of their minute of amendment or answers with all adjustments made thereto in italic or bold type, or underlined.”.
- (8) In rule 22.1 (note of basis of preliminary plea), in paragraph (4), after the word “may” insert the words “on cause shown”.
- (9) In rule 24.1 (intimation of withdrawal to court)–
- (a) in paragraph (1), at the beginning of that paragraph insert the words “Subject to paragraph (3),”;
- (b) in paragraph (2), after the word “shall” insert the word “forthwith”; and
- (c) after paragraph (2), insert the following–
- “(3) Where a solicitor withdraws from acting on behalf of a party in open court and in the presence of the other parties to the action or their representatives, paragraph (1) shall not apply.”.
- (10) In rule 24.2 (intimation to party whose solicitor has withdrawn)–
- (a) in paragraph (1), at the beginning insert “Subject to paragraph (1A),”;
- (b) after paragraph (1) insert–
- “(1A) Where any previously fixed diet is to occur within 14 days from the date when the sheriff first considers the solicitor’s withdrawal, the sheriff may either–
- (a) pronounce an interlocutor in accordance with paragraph (1); or
- (b) consider the matter at the previously fixed diet.”.
- (11) Rule 29.3 (evidence generally) is omitted.
- (12) In rule 29.11 (lodging productions), in paragraph (1), after the words “productions” insert the words “and affidavits”.
- (13) In rule 29.12 (copy productions), in paragraph (1), after the word “every” insert the word “documentary”.
- (14) In rule 29.14 (notices to admit and notices of non-admission)–
- (a) in paragraph (1), for the words “a proof has been allowed” there are substituted the words “the record has closed”; and
- (b) after paragraph (6), there is inserted the following:–
- “(7) The sheriff may, at any time, allow a party to amend or withdraw an admission made by him on such conditions, if any, as he thinks fit.
- (8) A party may, at any time, withdraw in whole or in part a notice of non-admission by intimating a notice of withdrawal.”.
- (15) In rule 33.44 (applications after decree relating to a section 11 order), after the word “order” in paragraph (1) there shall be inserted the words “or in relation to the enforcement of such an order”.
- (16) In rule 33.62 (defenders in action for a section 11 order), paragraph (e) is omitted.
- (17) In rule 33.76 (citation and intimation)–
- (a) for paragraph (4) there is substituted the following:–
- “(4) The citation or intimation required by paragraph (2) shall be made–
- (a) by the sheriff clerk by registered post or the first class recorded delivery service in accordance with rule 5.3 (postal service or intimation);

- (b) on payment of an additional fee, by a sheriff officer in accordance with rule 5.4(1) and (2) (service within Scotland by sheriff officer); or
 - (c) where necessary, by the sheriff clerk in accordance with rule 5.5 (service on persons furth of Scotland).”; and
- (b) after paragraph (4), there is inserted the following:–

“(5) Where citation or intimation is made in accordance with paragraph (4)(c), the translation into an official language of the country in which service is to be executed required by rule 5.5(6) shall be provided by the party lodging the simplified divorce application.”.

- (18) After rule 34.10 (applications under Part II of the Conveyancing and Feudal Reform (Scotland) Act 1970), there is inserted the following:–

“Service on unnamed occupiers

34.11.—(1) Subject to paragraph (2), this rule applies only to a crave for removing in an action of removing against a person or persons in possession of heritable property without right or title to possess the property.

(2) This rule shall not apply with respect to a person who has or had a title or other right to occupy the heritable property and who has been in continuous occupation since that title or right is alleged to have come to an end.

(3) Where this rule applies, the pursuer may apply by motion to shorten or dispense with the period of notice or other period of time in these Rules relating to the conduct of the action or the extracting of any decree.

(4) Where the name of a person in occupation of the heritable property is not known and cannot reasonably be ascertained, the pursuer shall call that person as a defender by naming him as an “occupier”.

(5) Where the name of a person in occupation of the heritable property is not known and cannot reasonably be ascertained, the initial writ shall be served (whether or not it is also served on a named person), unless the court otherwise directs, by a sheriff officer–

- (a) affixing a copy of the initial writ and a citation in Form H5 addressed to “the occupiers” to the main door or other conspicuous part of the premises, and if practicable, depositing a copy of each of those documents in the premises; or
- (b) in the case of land only, inserting stakes in the ground at conspicuous parts of the occupied land to each of which is attached a sealed transparent envelope containing a copy of the initial writ and a citation in Form H5 addressed to “the occupiers”.

- (19) In Chapter 36 (actions of damages), after Part IV (management of damages payable to persons under legal disability), insert the following–

“PART IV A

PRODUCTIONS IN CERTAIN ACTIONS OF DAMAGES

Application of this Part

36.17A. This Part applies to an action of damages for personal injuries or the death of a person in consequence of personal injuries.

Averments of medical treatment

36.17B. The condescendence of the initial writ in an action to which this Part applies shall include averments naming–

- (a) every general medical practitioner or general medical practice from whom; and
 - (b) every hospital or other institution in which,
- the pursuer or, in an action in respect of the death of a person, the deceased received treatment for the injuries sustained, or disease suffered, by him.

Lodging of medical reports

36.17C.—(1) In an action to which this Part applies, the pursuer shall lodge as productions, with the initial writ when it is presented for warranting in accordance with rule 5.1, all medical reports on which he intends, or intends to reserve the right, to rely in the action.

(2) Where no medical report is lodged as required by paragraph (1), the defender may apply by motion for an order specifying a period within which such a report shall be lodged in process.”.

(20) In rule 37.2 (parties to, and service and intimation of, actions of declarator)—

(a) for paragraph (1), there is substituted the following:—

“(1) In an action of declarator—

(a) the missing person shall be named as the defender;

(b) subject to paragraph (2), service on that person shall be executed by advertisement in such newspaper or other publication as the sheriff thinks fit of such facts relating to the missing person and set out in the initial writ as the sheriff may specify; and

(c) the period of notice shall be 21 days from the date of publication of the advertisement unless the sheriff otherwise directs.”;

(b) for paragraph (2), substitute—

“(2) The advertisement mentioned in paragraph (1) shall be in Form P1.”; and

(c) in paragraph (4), for the word “summons” substitute the words “initial writ”.

(21) In rule 38.1 (interpretation of this Chapter), in paragraph (1)(a), for “177” substitute “234”(a).

(22) In rule 38.2 (applications for reference), paragraph (2) is omitted.

(23) In rule 38.3 (preparation of case for reference), after paragraph (1) there is inserted—

“(1A) Except in so far as the sheriff may otherwise direct, a reference shall be prepared in accordance with Form E1, having regard to the guidance set out in the Notes for Guidance issued by the Court of Justice of the European Communities(b).”

(24) After Chapter 38 (European Court), insert the following—

“CHAPTER 39

PROVISIONS IN RELATION TO CURATORS *AD LITEM*

Fees and outlays of curators *ad litem* in respect of children

39.1.—(1) This rule applies to any civil proceedings whether or not the child is a party to the action.

(2) In an action where the sheriff appoints a curator *ad litem* to a child, the pursuer shall in the first instance, unless the court otherwise directs, be responsible for the fees and outlays of the curator *ad litem* incurred during the period from his appointment until the occurrence of any of the following events:—

(a) he lodges a minute stating that he does not intend to lodge defences or to enter the process;

(b) he decides to instruct the lodging of defences or a minute adopting defences already lodged; or

(c) the discharge, before the occurrence of the events mentioned in sub-paragraphs (a) and (b), of the curator.”.

(25) In Appendix 1 (forms)—

(a) for Form E1 substitute Form E1 set out in Schedule 1 to this Act of Sederunt;

(a) Article 177 was renumbered as article 234 by the Treaty signed at Amsterdam on 2nd October 1997 amending the Treaty on European Union, the Treaty establishing the European Communities and certain related Acts O.J. 97/C340/01.

(b) The Notes for Guidance are reproduced in the Parliament House Book.

- (b) for Forms F26, F41 and G13, substitute Forms F26, F41 and G13 set out in Schedule 1 to this Act of Sederunt;
 - (c) after Form H4, insert Form H5 set out in Schedule 1 to this Act of Sederunt;
 - (d) for Forms 04, 05 and 07, substitute Forms 04, 05 and 07 set out in Schedule 1 to this Act of Sederunt; and
 - (e) in Form P1, after the first paragraph, insert the following:–
“*(insert such facts relating to the missing person as set out in the initial writ as the sheriff may specify)*”.
- (26) In Appendix 2 (forms for extract decrees)–
- (a) for Forms 10, 11 and 12, substitute Forms 10, 11 and 12 set out in Schedule 2 to this Act of Sederunt; and
 - (b) Form 13 shall be omitted.

Revocation

4. The Act of Sederunt (Presumption of Death) 1978(a) is hereby revoked.

Rodger of Earlsferry
Lord President
I.P.D.

Edinburgh
12th July 2000

SCHEDULE 1

“FORM E1

Form of reference to the European Court

REQUEST

for

PRELIMINARY RULING

of

THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

from

THE SHERIFFDOM OF *(insert name of sheriffdom)* at *(insert place of court)*

in the cause

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

Pursuer

against

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

Defender

[Here set out a clear and succinct statement of the case giving rise to the request for the ruling of the European Court in order to enable the European Court to consider and understand the issues of Community law raised and to enable governments of Member States and other interested parties to submit observations. The statement of the case should include:

- (a) particulars of the parties;*
- (b) the history of the dispute between the parties;*
- (c) the history of the proceedings;*
- (d) the relevant facts as agreed by the parties or found by the court or, failing such agreement or finding, the contentions of the parties on such facts;*
- (e) the nature of the issues of law and fact between the parties;*
- (f) the Scots law, so far as relevant;*
- (g) the Treaty provisions or other acts, instruments or rules of Community law concerned; and*
- (h) an explanation of why the reference is being made.]*

The preliminary ruling of the Court of Justice of the European Communities is accordingly requested on the following questions:

1, 2, etc. *[Here set out the question on which the ruling is sought, identifying the Treaty provisions or other acts, instruments or rules of Community law concerned.]*

Dated the day of 20 .”.

FORM F26

Form of notice of intention to defend in family action
NOTICE OF INTENTION TO DEFEND

PART A

PART A

(This section to be completed by the pursuer's solicitor before service.)

[Insert name and business address of solicitor for the pursuer]

Court ref. No.
In an action brought in Sheriff Court

.....
.....
.....

Pursuer
.....
.....

Defender

Date of service:

Date of expiry of period of notice

PART B

(This section to be completed by the defender or defender's solicitor, and both parts of the form to be returned to the Sheriff Clerk at the above Sheriff Court on or before the date of expiry of the period of notice referred to in Part A above.)

(Insert place and date)

[C.D.] (Insert designation and address), Defender, intends to

- (a) challenge the jurisdiction of the court;
(b) oppose a crave in the initial writ;
(c) make a claim;
(d) seek an order;

in the action against him [or her] raised by [A.B.], (insert designation and address), Pursuer.

PART C

(This section to be completed by the defender or the defender's solicitor where an order under section 11 of the Children (Scotland) Act 1995 in respect of a child is sought by the pursuer or is to be sought by the defender).

DO YOU WISH TO OPPOSE THE MAKING OF ANY ORDER CRAVED BY THE PURSUER IN RESPECT OF A CHILD?

YES/NO*

*delete as appropriate

If you answered YES to the above question, please state here the order(s) which you wish to oppose and the reasons why the court should not make such order(s).

DO YOU WISH THE COURT TO MAKE ANY ORDER UNDER SECTION 11 OF THE CHILDREN (SCOTLAND) ACT 1995 IN RESPECT OF A CHILD?

YES/NO*

*delete as appropriate

If you answered YES to the above question, please state here the order(s) which you wish the court to make and the reasons why the court should make such order(s).

PART D

IF YOU HAVE COMPLETED PART C OF THIS FORM YOU MUST INCLUDE EITHER CRAVE (1) OR (2) BELOW (*delete as appropriate)

(1)*Warrant for intimation of notice in terms of Form F9 on the child(ren) (*insert full name(s) and date(s) of birth*) is sought.

(2)*I seek to dispense with intimation on the child(ren) (*insert full name(s) and date(s) of birth*) for the following reasons:–

Signed

[C.D.] Defender

or [X.Y.] (*add designation and business address*)

Solicitor for Defender

FORM F41

Form of intimation to parties of a Child Welfare Hearing

Sheriff Court (*insert address and telephone number*)

Court Ref No:

In the action [A.B.], (*design*), Pursuer against [C.D.], (*design*), Defender

YOU ARE GIVEN NOTICE that a Child Welfare Hearing has been fixed for (*insert time*) on (*insert date*) at (*insert place*).

Date (*insert date*) Signed

Sheriff Clerk (Depute)

NOTE

Please note that in terms of Rule 33.22A(5) parties to the action must attend personally

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

*This section to be deleted where service is to be made on a solicitor.

FORM G13

Form of citation of witness or haver

CITATION

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

To [K.L.] *(design)*

You are required to attend the above sheriff court on *(insert date)* at *(insert time)* as a witness for the pursuer [*or* defender] in the action by [A.B.] *(design)*, Pursuer, against [C.D.] *(design)*, Defender, [and to bring with you *(specify documents)*].

If you fail to attend, warrant may be granted for your arrest.

Date *(insert date)*

Signed

[P.Q.], Sheriff Officer,

or [X.Y.], *(add designation and business address)*

Solicitor for the pursuer [*or* defender]

NOTE

Claims for necessary outlays and loss of earnings within certain specified limits will be paid. Claims should be made to the person who has cited you to attend court. Proof of any loss of earnings should be given to that person.

If you wish your travelling expenses to be paid prior to your attendance you should apply for payment to the person who has cited you.

If you fail to attend without reasonable cause, having requested and been paid your travelling expenses, you may be ordered to pay a penalty not exceeding £250.

FORM H5

Form of citation of unnamed occupiers

CITATION

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

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

Pursuer

against

The Occupier[s] of *(address)*

Defender

An action has been brought in the above Sheriff Court by [A.B.]. [A.B.] calls as a defender the occupier[s] of the property at *(insert address)*. If the occupier[s] [*or any of them*] wish[es] to challenge the jurisdiction of the court or to defend the action, he [*or she [or it] [or they]*] should contact the sheriff clerk at *(insert address of sheriff court)* immediately and in any event by *(date on which period of notice expires)*.

Signed

Sheriff [*or Sheriff Clerk*]

FORM 04

Form of Citation

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 place and date). You [C.D.], are hereby served with this copy writ and warrant, with Form 07 (notice of intention to defend).

Form 07 is served on you for use should you wish to intimate an intention to defend this action.

IF YOU WISH TO DEFEND THIS ACTION you should consult a solicitor with a view to lodging a notice of intention to defend (Form 07). The notice of intention to defend, together with the court fee of £*(insert amount)* must be lodged with the Sheriff Clerk at the above address within 21 days *(or insert the appropriate period of notice)* of *(insert the date on which service was executed)*. NB Rule 5.3(2) relating to postal service).

A copy of any notice of intention to defend should be sent to the Solicitor for the pursuer at the same time as your notice of intention to defend is lodged with the Sheriff Clerk.

IF YOU ARE UNCERTAIN WHAT 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.

PLEASE NOTE THAT IF YOU DO NOTHING IN ANSWER TO THIS DOCUMENT the court may regard you as admitting the claim made against you and the pursuer may obtain decree against you in your absence.

Signed

[P.Q.], Sheriff Officer

or [X.Y.] *(add designation and business address)*

Solicitor for the Pursuer

FORM 05

Form of citation where time to pay direction may be applied for

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 place and date). You [C.D.], are hereby served with this copy writ and warrant, together with the following forms–

Form 03 (application for time to pay direction); and

Form 07 (notice of intention to defend).

Form 03 is served on you because it is considered that you may be entitled to apply for a time to pay direction [and for the recall or restriction of an arrestment used on the dependence of the action or in security of the debt referred to in the copy writ]. See Form 03 for further details.

IF YOU ADMIT THE CLAIM AND WISH TO APPLY FOR A TIME TO PAY DIRECTION, you must complete Form 03 and return it to the Sheriff Clerk at *(insert address)* within 21 days *(or insert the appropriate period of notice)* of *(insert the date on which service was executed. NB Rule 5.3(2) relating to postal service)*.

IF YOU ADMIT THE CLAIM AND WISH TO AVOID A COURT ORDER BEING MADE AGAINST YOU, the whole sum claimed including interest and any expense due should be paid to the pursuer or his solicitor in good time before the expiry of the period of notice.

Form 07 is served on you for use should you wish to intimate an intention to defend the action.

IF YOU WISH TO DEFEND THIS ACTION you should consult a solicitor with a view to lodging a notice of intention to defend (Form 07). The notice of intention to defend, together with the court fee of £*(insert amount)* must be lodged with the Sheriff Clerk at the above address within 21 days *(or insert the appropriate period of notice)* of *(insert the date on which service was executed. NB Rule 5.3(2) relating to postal service)*.

A copy of any notice of intention to defend should be sent to the Solicitor for the pursuer at the same time as your notice of intention to defend is lodged with the Sheriff Clerk.

IF YOU ARE UNCERTAIN WHAT 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.

PLEASE NOTE THAT IF YOU DO NOTHING IN ANSWER TO THIS DOCUMENT the court may regard you as admitting the claim made against you and the pursuer may obtain decree against you in your absence.

Signed

[P.Q.], Sheriff Officer

or [X.Y.], (add designation and business address)

Solicitor for the Pursuer

FORM 07

Form of notice of intention to defend

NOTICE OF INTENTION TO DEFEND

in an action raised at Sheriff Court

*PART A

Court Ref No

(Insert name and business address of solicitor for the Pursuer)

Pursuer

Defender

Solicitor for the Pursuer

*(This section to be completed by the Pursuer before service)

Date of service:

Date of expiry of period of notice:

PART B

(This section to be completed by the defender or defender’s solicitors, and both parts of this form to be returned to the Sheriff Clerk (*insert address of Sheriff Clerk*) on or before the date of expiry of the period of notice referred to in PART A above. At the same time a copy of the form should be sent to the Solicitor for the Pursuer).

(Insert place and date)

[C.D.], *(insert designation and address)*, Defender, intends to defend the action raised by [A.B.], *(insert designation and address)*, Pursuer, against him (and others).

Signed
[C.D.], Defender
or [X.Y.], (add designation and business address)
Solicitor for the defender

SCHEDULE 2

FORM 10

Form of extract decree of divorce

EXTRACT DECREE OF DIVORCE

Sheriff Court Court Ref No

Date of Decree *In absence

Pursuer Defender

Date of parties marriage Place of parties marriage

The sheriff granted decree

(1) divorcing the defender from the Pursuer;

* (2) ordering that the following child(ren):

Full name(s) Date(s) of birth

Reside with the *pursuer/defender

and finding the *pursuer/defender entitled to be in contact with the following child(ren): as follows:

All in terms of the Children (Scotland) Act 1995.

* (3) ordaining payment

* (a) by the to the of a periodical allowance of £ per

* (b) by the to the of a capital sum of £

* (c) by the to the of £ per as aliment for each child until that child attains years of age, said sum payable in advance and beginning at the date of this decree with interest thereon at the rate of per cent a year until payment;

* (d) by the to the of £ of expenses;

*(4) finding the liable to the in expenses as the same may be subsequently taxed.

This extract is warrant for all lawful execution hereon.

Date: *(insert date)*

Sheriff Clerk (depute)

*Delete as appropriate.

This extract is warrant for all lawful execution hereon.

Date: *(insert date)*

Sheriff Clerk (Depute)

*Delete as appropriate.

EXPLANATORY NOTE

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

This Act of Sederunt amends the Ordinary Cause Rules 1993 by:–

- (a) amending the savings provisions in the Act of Sederunt (Sheriff Court Ordinary Cause Rules) 1993 so that the Ordinary Cause Rules 1993 apply where an application is made to the court on or after the date of coming into force of this Act of Sederunt to vary a decree granted in a family action which was commenced prior to 1st January 1994 (paragraph 2);
- (b) amending rule 8.1 (reponing) so as to properly implement the provisions in Article 16 of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters dated 15th November 1965 (paragraph 3(2));
- (c) amending rule 9.2 (fixing date for Options Hearing) so as to make it clear that where the only matters in dispute between the parties are orders in terms of section 11(2) of the Children (Scotland) Act 1995, there is no requirement to fix an Options hearing (paragraph 3(3));
- (d) amending rule 9.14 (exchange of lists of witnesses) so as to require parties to lodge a copy of the list of witnesses in process within 28 days after the date of the interlocutor allowing a proof or proof before answer (paragraph 3(4));
- (e) inserting rule 15.6 (motions to sist) so as to require parties to state a reason for seeking a sist to require the reason to be recorded in the interlocutor and making provision for the sheriff to recall a sist (paragraph 3(5));
- (f) amending rule 17.2 (applications for summary decree) by omitting paragraph (3) which contradicted the term of rule 15.1(2) (lodging of motions) (paragraph 3(6));
- (g) amending rule 18.3 (applications to amend) to amend the procedure for the adjustment of a minute of amendment and answers (paragraph 3(7));
- (h) amending rule 22.1 (note of basis of preliminary plea) so as to require agents to address the sheriff on whether matters not included in a rule 22.1 note should be admitted to debate (paragraph 3(8));
- (i) amending rule 24.1 (intimation of withdrawal to court) so as to require the sheriff clerk to lodge forthwith in process any letter received from a solicitor who has withdrawn from acting on behalf of a party and to make it clear that where a solicitor withdraws from acting in open court and in the presence of the other parties to the action or their representatives, there shall be no requirement for him to intimate his withdrawal to the sheriff clerk and to every other party (paragraph 3(9));
- (j) amending rule 24.2 (intimation to party whose solicitor has withdrawn) so as to provide that the diet fixed by the sheriff for the party whose solicitor has withdrawn from acting to appear to state whether or not he intends to proceed may take place within 14 days after the date of the interlocutor fixing such diet where an earlier diet has already been fixed or where the sheriff otherwise directs (paragraph 3(10));
- (k) omitting rule 29.3 (evidence generally) (paragraph 3(11));
- (l) amending rule 29.11 (lodging productions) to require affidavits which are to be referred to at a proof to be lodged not later than 14 days before the date of proof (paragraph 3(12));
- (m) amending rules 29.12 (copy productions) and 29.14 (notices to admit and notices of non-admission) and inserting a new Part IV A (productions in certain actions of damages) into Chapter 36 (actions of damages) so as to harmonise these rules with the provisions in the Rules of the Court of Session 1994 (paragraphs 3(13), (14) and (19));
- (n) amending rule 33.44 (applications after decree relating to a section 11 Order) so as to provide that an application for the enforcement of an Order under section 11 of the Children (Scotland) Act 1995 may be made by minute in the process of the action to which the application relates (paragraph 3(15));
- (o) amending rule 33.62 (defenders in action for a section 11 Order) so as to omit the requirement on the pursuer to call the Lord Advocate as a defender where there is no person falling within paragraphs (a) to (d) of that rule (paragraph 3(16));
- (p) amending rule 33.76 (citation and intimation) so as to allow the sheriff clerk to cite any person or intimate any document in connection with a simplified divorce application in accordance with rule 5.5 (service on persons furth of Scotland) as opposed to the sheriff clerk having to arrange for such citation or intimation to be done by a solicitor or a sheriff officer; and to provide that where the sheriff clerk does effect citation or

intimation in this way, the translation into an official language required by rule 5.5(6) shall be provided by the party lodging the simplified divorce application (paragraph 3(17));

- (q) inserting rule 34.11 (service on unnamed occupiers), so as to include provision for service, time periods and applications to be sisted as a defender in actions against unnamed occupiers who are in possession of heritable property without right or title so as to harmonise these rules with the Rules of the Court of Session 1994 (paragraph 3(18));
- (r) amending rule 37.2 (parties to, and service and intimation of actions of declarator) so as to provide for service on the defender (missing person) to be made by newspaper advertisement and to prescribe as a period of notice the period of 21 days from the date of publication of the advertisement unless the sheriff directs otherwise (paragraph 3(20));
- (s) amending rule 38.1 (interpretation of this Chapter) so as to reflect the provisions in the Treaty signed at Amsterdam on 2 October 1997 (paragraph 3(21));
- (t) omitting rule 38.2 (applications for reference) (paragraph 3(22));
- (u) amending rule 38.3 (preparation of case for reference) so as to ensure that a reference is drafted having regard to the Notes for Guidance issued by the Court of Justice of the European Communities (paragraph 3(23));
- (v) inserting a new Chapter 39 which contains additional provisions in relation to the fees of curators *ad litem* appointed in respect of children (paragraph 3(24));
- (w) amending the Forms in Appendix 1 by–
 - (i) substituting Forms E1, F26, F41, G13, 04, 05 and 07;
 - (ii) inserting new Form H5; and
 - (iii) amending Form P1 (paragraph 25);
- (x) amending the forms for extract decrees in Appendix 2 by–
 - (i) substituting Forms 10, 11 and 12; and
 - (ii) omitting Form 13 (paragraph 26);
- (y) revoking the Act of Sederunt (Presumption of Death) 1978.

2000 No. 239

SHERIFF COURT

Act of Sederunt (Sheriff Court Ordinary Cause Rules
Amendment) (Miscellaneous) 2000

£4.00

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Queen's Printer of Acts of Parliament
550 07/00 19593

