
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 197

Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004

Amendment of Ordinary Cause Rules

2.—(1) The Ordinary Cause Rules 1993⁽¹⁾ are amended in accordance with paragraphs (2) to (13).

(2) In rule 3.5 (warrants and precepts of arrestment)—

(a) in paragraph (2), omit “clerk”; and

(b) after paragraph (2), insert—

“(3) Averments to justify the granting of a warrant to arrest on the dependence, or a precept of arrestment, shall be included in the condescendence of an initial writ or the statement of claim in a counterclaim.”.

(3) In rule 5.1 (signature of warrants)—

(a) in paragraph (1), for “, intimation or arrestment on the dependence” substitute “ or intimation”; and

(b) for paragraph (2)(b) substitute—

“(b) a warrant for arrestment to found jurisdiction;

(ba) a warrant for arrestment on the dependence;”.

(4) In rule 5.5 (service on persons furth of Scotland)—

(a) in paragraph (1)—

(i) at the end of sub-paragraph (b)(v), insert “or”; and

(ii) omit sub-paragraph (d);

(b) after paragraph (1), insert—

“(1A) In a country to which the Council Regulation applies, service—

(a) may be effected by the methods prescribed in paragraph (1)(b)(ii) and (iii) only in exceptional circumstances; and

(b) is effected only if the receiving agency has informed the person that acceptance of service may be refused on the ground that the document has not been translated in accordance with paragraph (6).”;

(c) in paragraph (6), omit from “an official language” to the end of that paragraph and insert on a new line—

“(a) an official language of the country in which service is to be executed; or

⁽¹⁾ The Sheriff Courts (Scotland) Act 1907 (c. 51), Schedule 1. Schedule 1 was substituted by S.I.1993/1956, and amended by S.I. 1996/2167 and 2445 and by S.S.I. 2000/239 and 408, 2001/8 and 144, 2002/7, 128 and 560 and 2003/25 and 26.

- (b) in a country to which the Council Regulation applies, a language of the member state of transmission that is understood by the person on whom service is being executed.”; and
- (d) after paragraph (7), insert—
 - “(8) In this rule “the Council Regulation” means Council Regulation (EC) No. 1348/2000(2) on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.”.
- (5) In rule 8.1 (reponing)—
 - (a) in paragraph (1)—
 - (i) after “defender”, insert “or any party with a statutory title or interest”; and
 - (ii) after “defence”, insert “or the proposed order or direction.”;
 - (b) in paragraph (2), after “pursuer” insert “and any other party”;
 - (c) in paragraph (3)—
 - (i) after “if”, insert—
 - “_
 - (a)”;
 - and
 - (ii) at the end, insert—
 - “; or
 - (b) the party seeking the order or direction had lodged the appropriate application on the date when the decree was recalled”; and
 - (d) in paragraph (4), after “pursuer” insert “and any other party”.
- (6) In rule 9.12 (options hearing) in paragraph (3)(c), for “justifies a debate” substitute “if established following debate would lead to decree in favour of any party, or to limitation of proof to any substantial degree”.
- (7) Omit rules 9.13 to 9.15.
- (8) After Chapter 9 (standard procedure in defended causes), insert—

“CHAPTER 9A

DOCUMENTS AND WITNESSES

Application of this Chapter

9A.1. This Chapter applies to any cause proceeding under Chapters 9 and 10.

Inspection and recovery of documents

9A.2.—(1) Each party shall, within 14 days after the date of the interlocutor allowing proof or proof before answer, intimate to every other party a list of the documents, which are or have been in his possession or control and which he intends to use or put in evidence at the proof, including the whereabouts of those documents.

(2) A party who has received a list of documents from another party under paragraph (1) may inspect those documents which are in the possession or control of the party intimating the list at a time and place fixed by that party which is reasonable to both parties.

(3) A party who seeks to use or put in evidence at a proof a document not on his list intimated under paragraph (1) shall, if any other party objects to such document being used or put in evidence, seek leave of the sheriff to do so; and such leave may be granted on such conditions, if any, as the sheriff thinks fit.

(4) Nothing in this rule shall affect—

- (a) the law relating, or the right of a party to object, to the inspection of a document on the ground of privilege or confidentiality; or
- (b) the right of a party to apply under rule 28.2 for a commission and diligence for recovery of documents or an order under section 1 of the Administration of Justice (Scotland) Act 1972(3).

Exchange of lists of witnesses

9A.3.—(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.

(2) A party who seeks to rely on the evidence of a person not on his list intimated under paragraph (1) shall, if any other party objects to such evidence being admitted, seek leave of the sheriff to admit that evidence whether it is to be given orally or not; and such leave may be granted on such conditions, if any, as the sheriff thinks fit.

(3) The list of witnesses intimated under paragraph (1) shall include the name, occupation (where known) and address of each intended witness.

Applications in respect of time to pay directions, and arrestments

9A.4. An application for a time to pay direction under section 1(1) of the Debtors (Scotland) Act 1987(4), or for the recall or restriction of an arrestment under section 2(3) or 3(1) of that Act, in a cause which is defended, shall be made by motion lodged before the sheriff grants decree.”.

(9) In rule 10.6 (procedural hearing) in paragraph (3)(c), for “justifies a debate” substitute “if established following debate would lead to decree in favour of any party, or to limitation of proof to any substantial degree”.

(10) In rule 19.2 (warrants for diligence on counterclaims)—

- (a) in paragraph (2)(b), after “made” insert “by application”; and
- (b) in paragraph (3), omit “clerk”.

(11) After rule 29.2 (remit to persons of skill), insert—

(3) 1972 c. 59; section 1 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73); section 19 and Schedule 2, paragraph 15.

(4) 1987 c. 18; section 1 was repealed in part by the Social Security Act 1998 (c. 14) (“the 1998 Act”), Schedule 8 and by the Abolition of Poindings and Warrant Sales (Scotland) Act 2001 (asp 1) (now repealed), Schedule, Part 1 and was amended by the Child Support Act 1991 (c. 48), Schedule 5, paragraph 8, the Local Government Finance Act 1992 (c. 14), Schedule 13, paragraph 53, the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 151, the 1998 Act, Schedule 7, paragraph 12, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Schedule 9, paragraph 1, and the Water Industry (Scotland) Act 2002 (asp 3), schedule 7, paragraph 17.

“Written statements

29.3. Where a statement in a document is admissible under section 2(1)(b) of the Civil Evidence (Scotland) Act 1988⁽⁵⁾, any party who wishes to have that statement received in evidence shall—

(a) docquet that document as follows:—

“(Place and date)

This document contains a statement admissible under section 2(1)(b) of the Civil Evidence (Scotland) Act 1988.

(Signed)

(Designation and address)”;

(b) lodge that document in process; and

(c) provide all other parties with a copy of that document.”.

(12) After rule 32.1 (taxation before decree for expenses), insert—

“Order to lodge account of expenses

32.1A. A party found liable in expenses may from 4 months after the date of the interlocutor finding him so liable apply by motion for an order ordaining the party entitled to expenses to lodge an account of those expenses in process.”.

(13) In rule 36.9 (applications for interim payment of damages)—

(a) after paragraph (5)(b), omit “or”; and

(b) at the end of paragraph (5)(c), insert—

“; or

(d) the person’s liability will be met by—

(i) an insurer under section 151 of the Road Traffic Act 1988⁽⁶⁾; or

(ii) an insurer acting under the Motor Insurers Bureau Agreement, or the Motor Insurers Bureau where it is acting itself.”.

(5) 1988 c. 32.

(6) 1988 c. 52; section 151 repealed in part by the Road Traffic Act 1991 (c. 40), Schedule 8.