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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 648**

**SHERIFF COURT**

**Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2005**

*Made* - - - - *14th December 2005*

*Coming into force* - - *2nd January 2006*

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(1), and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of that Act, do hereby enact and declare:

**Citation and commencement**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2005 and shall come into force on 2nd January 2006.

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

**Amendment of Ordinary Cause Rules**

2.—(1) The Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907(2) are amended in accordance with sub-paragraphs (2) to (4).

(2) In rule 33.27A(1) (applications for European matrimonial certificates)(3) for “sheriff” substitute “sheriff clerk”.

(3) In rule 33.93 (intimation to Principal Reporter) for “that section” substitute “section 52 of that Act”.

(4) In Appendix 1—

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- (1) 1971 c. 58. Section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(4), the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2000 (asp 4), schedule 5, paragraph 13 and the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43 and was extended by the Child Support Act 1991 (c. 48), sections 39(2) and 49 and the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2).
- (2) 1907 c. 51. Schedule 1 was substituted by S.I. 1993/1956 and amended by S.I. 1996/2167 and 2445, S.S.I. 2000/239 and 408, 2001/8 and 144, 2002/7, 128 and 566, 2003/25 and 26, 2004/197 and 350 and 2005/20, 189 and 638.
- (3) Rule 33.27A was inserted by S.S.I. 2001/144.

- (a) for Form G11 substitute the form set out in Schedule 1 to this Act of Sederunt; and
- (b) for Form F26 substitute the form set out in Schedule 2 to this Act of Sederunt(4).

### **Amendment of Summary Application Rules**

**3.—**(1) The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(5) is amended in accordance with sub-paragraphs (2) and (3).

(2) In Part IX of Chapter 3 (Proceeds of Crime (Scotland) Act 1995) sub-paragraph (a) of rule 3.9.3(2) (note for recall or variation of restraint orders) shall be omitted.

(3) In Part XXVI of Chapter 3 (Protection of Children (Scotland) Act 2003)(6), rules 3.25.1 to 3.25.6 shall be renumbered as rules 3.26.1 to 3.26.6.

### **Amendment of Summary Cause Rules**

**4.—**(1) The Act of Sederunt (Summary Cause Rules) 2002(7) is amended in accordance with sub-paragraph (2).

(2) In Appendix 1, for Form 24 substitute the form set out in Schedule 3 to this Act of Sederunt.

### **Amendment of Small Claim Rules**

**5.—**(1) The Act of Sederunt (Small Claim Rules) 2002(8) is amended in accordance with sub-paragraphs (2) and (3).

(2) For rule 21.6(1) (expenses) there shall be substituted—

“**21.6.—**(1) This rule applies, subject to section 36B of the 1971 Act(9), to the determination of expenses—

- (a) in a claim, where the defender has—
  - (i) not stated a defence;
  - (ii) having stated a defence, has not proceeded with it; or
  - (iii) having stated a defence, has not acted in good faith as to its merits;
- (b) in a claim where there has been unreasonable conduct on the part of a party to that claim in relation to the proceedings or the claim; or
- (c) in an appeal to the sheriff principal.”

(3) In Appendix 1 for Form 15 substitute the form set out in Schedule 4 to this Act of Sederunt.

Edinburgh  
14th December 2005

*A.C. Hamilton*  
Lord President I.P.D.

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(4) Form F26 was amended by S.S.I. 2000/239.  
(5) S.I. 1999/929, amended by S.S.I. 2000/148 and 387, 2001/142, 2002/7, 129, 130, 146 and 563, 2003/26, 27, 98, 261, 319, 346 and 556, 2004/197, 222, 334 and 455, 2005/61, 473 and 504.  
(6) Part XXVI was inserted by S.S.I. 2004/334.  
(7) S.S.I. 2002/132, amended by S.S.I. 2002/516, 2003/26 and 2004/197.  
(8) S.S.I. 2002/133, amended by S.S.I. 2003/26 and 2004/197.  
(9) Section 36B of the Sheriff Courts (Scotland) Act 1971 was inserted by section 18(2) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73) and amended by article 2 of the Schedule to S.I. 1999/678.

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SCHEDULE 1

Rule 28.3(1)

FORM G11

**Form of notice in optional procedure for commission and diligence**

Order by the Sheriff Court at *(insert address)*

Court ref. no.

In the cause

[A.B.] *(design)* Pursuer

against

[C.D.] *(design)* Defender

To *(insert name and designation of party or parties or haver, from whom documents are sought to be recovered)*

You are given notice that you are required to produce to the sheriff clerk at the above address within seven days of *(insert date on which service was executed. N.B. Rule 5.3(2) relating to postal service or intimation)*:

- (1) **this order which must be produced intact;**
- (2) **a certificate signed and completed in terms of the form appended to this notice; and**
- (3) **all documents in your possession falling within the enclosed specification, with an inventory of such documents signed by you relating to this order and your certificate.**

Production may be made by lodging the documents with the sheriff clerk at the above address, by posting them by registered post or the first class recorded delivery service addressed to the sheriff clerk at the above address.

Date: *(insert date)*

Signed

*Solicitor for party (add designation and business address of the solicitor for the party in whose favour commission and diligence granted)*

**NOTE**

If you claim confidentiality for any of the documents produced by you, such documents must nevertheless be produced, but may be placed in a special sealed packet by themselves, marked "confidential".

Claims for necessary outlays within certain specified limits may be paid. Claims should be made in writing to the person who has obtained an order that you produce the documents.



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### CERTIFICATE

I hereby certify with reference to the order of the Sheriff Court at *(insert place of sheriff court)* in the cause *(insert court ref. no.)* and the relative specification of documents, served upon me and marked respectively X and Y;

(1) that the documents which are produced and which are numbered in the inventory signed by me and marked Z, are the whole documents in my possession falling under the specification [or that I have no documents in my possession falling within the specification];

(2) that, to the best of my knowledge and belief, there are in existence other documents falling within the specification, but not in my possession, namely *(describe them by reference to one or more of the descriptions of documents in the specification)*, which were last seen by me on or about *(insert date)*, at *(insert place)*, in the hands of *(insert name and address of the person)* [or that I know of the existence of no documents in the possession of any person, other than myself, which fall within the specification].

Signed

### SCHEDULE 2

Rules 33.11(1) and 33.34(2)(a)

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## 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.)  <i>[Insert name and business address of solicitor for the pursuer]</i>	Court ref. No.	Date of expiry of period of notice
	In an action brought in Sheriff Court.	
	_____	
	Pursuer	
	_____	
	Defender	
	Date of service:	

#### 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;

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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 opposed 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)

## PART D

**(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 defender).**

**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).

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## PART E

IF YOU HAVE COMPLETED PART D 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 19 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]

## SCHEDULE 3

Rule 18.2(1)

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## FORM 24

*Order by the court and certificate in optional procedure for recovery of documents*

Sheriff Court, *(place and address)*

In the cause *(court ref. no.)*

in which

AB *(design)* is the pursuer

and

CD *(design)* is the defender

To: *(name and designation of party or haver from whom the documents are sought to be recovered.)*

You are required to produce to the sheriff clerk at *(address)* within      days of the service upon you of this order:

- (1) This order itself (which must be produced intact);
- (2) The certificate marked 'B' attached;
- (3) All documents within your possession covered by the specification which is enclosed; and
- (4) A list of those documents.

You can produce the items listed above either:

- (a) by delivering them to the sheriff clerk at the address shown above; or
- (b) sending them to the sheriff clerk by registered or recorded delivery post.

*(date)* *(Signature, name, address and designation of person serving order)*

### **PLEASE NOTE:**

If you claim confidentiality for any of the documents produced by you, you must still produce them. However, they may be placed in a separate envelope by themselves, marked "confidential". The court will, if necessary, decide whether the envelope should be opened or not.

Claims for necessary outlays within certain specified limits may be paid. Claims should be made in writing to the person who has obtained an order that you produce the documents.



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### CERTIFICATE

B

Sheriff Court, *(place and address)*

In the cause *(court ref. no.)*

in which

AB *(design)* is the pursuer

and

CD *(design)* is the defender.

Order for recovery of documents dated.....

With reference to the above order and relative specification of documents, I certify:

*\* delete as appropriate*

\*that the documents produced herewith and the list signed by me which accompanies them are all the documents in my possession which fall under the specification.

\* I have no documents in my possession falling under the specification.

\* I believe that there are other documents falling within the specification which are not in my possession. These documents are *(list the documents as described in the specification.)* These documents were last seen by me on *(date)* in the possession of *(name and address of person/company, if known)*.

\* I know of no documents falling within the specification which are in the possession of any other person.

*(name) (date)*

### SCHEDULE 4

Rule 17.2(1)

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## FORM 15

### *Order by the court and certificate in optional procedure for recovery of documents*

Sheriff court at *(place)*

In the claim *(court ref. no.)*

in which

AB *(design)* is the pursuer

and

C.D. *(design)* is the defender

To: *(name and designation of party or haver from whom the documents are sought to be recovered).*

You are hereby required to produce to the sheriff clerk at *(address)* within  days of the service upon you of this order:

1. This order itself (which must be produced intact);
2. The certificate marked "B" attached;
3. All documents within your possession covered by the specification which is enclosed; and
4. A list of those documents.

You can produce the items listed above either:

- (a) by delivering them to the sheriff clerk at the address shown above; or
- (b) sending them to the sheriff clerk by registered or recorded delivery post.

*(date)*                      *(signature, name, address and designation of person serving order)*

#### **PLEASE NOTE:**

If you claim confidentiality for any of the documents produced by you, you must still produce them. However, they may be placed in a separate envelope by themselves, marked "confidential". The court will, if necessary, decide whether the envelope should be opened or not.

Where the person ordering you to produce the document is not the sheriff clerk, claims for necessary outlays within certain specified limits may be paid. Claims should be made in writing to the person who has obtained an order that you produce the documents.

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## CERTIFICATE

B

Sheriff Court at *(place)*

In the claim *(court ref. no.)*

in which

AB *(design)* is the pursuer

and

CD *(design)* is the defender

Order for recovery of documents dated *(insert date)*.

With reference to the above order and relative specification of documents, I hereby certify:

\* that the documents produced herewith and the list signed by me which accompanies them are all the documents in my possession which fall under the specification.

\* I have no documents in my possession falling under the specification.

\* I believe that there are other documents falling within the specification which are not in my possession. These documents are *(list the documents as described in the specification.)* These documents were last seen by me on *(date)* in the possession of *(name and address of person/company, if known)*.

\* I knew of no documents falling within the specification which are in the possession of any other person.

*\* delete as appropriate*

*(name) (date)*

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## EXPLANATORY NOTE

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

This Act of Sederunt makes miscellaneous amendments to the rules of procedure in the sheriff court. It amends the Ordinary Cause Rules, the Summary Applications, Statutory Applications and Appeals etc. Rules, the Summary Cause Rules and the Small Claim Rules.

Amendments are made to the forms of notice or order in optional procedure for the recovery of documents in each of the Ordinary Cause Rules, Summary Cause Rules and Small Claims Rules

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(Forms G11, 24 and 15, respectively) by the addition of a note regarding expenses recoverable for any necessary outlays incurred by havers.

In addition—

- (a) the Ordinary Cause Rules are amended by—
  - (i) the substitution of Form 26 with the revised Form F26 set out in Schedule 2; and
  - (ii) the substitution of an incorrect reference in rule 33.93 with the correct reference to section 52 of the Children (Scotland) Act 1995;
- (b) the Summary Application Rules are amended by—
  - (i) the deletion of rule 3.9.9(2)(a) imposing a time limit of 21 days after service for lodging a note to vary or recall a restraint order; and
  - (ii) renumbering rules 3.25.1 to 3.25.6 of Part XXVI of Chapter 3 of those Rules as rules 3.26.1 to 3.26.6; and
- (c) Rule 21.6(1) of the Small Claims Rules is amended to correspond with the exception contained in section 36B of the Sheriff Courts (Scotland) Act 1971.