
SCOTTISH STATUTORY INSTRUMENTS

2009 No. 107

**Act of Sederunt (Sheriff Court Rules
Amendment) (Diligence) 2009**

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Rules Amendment) (Diligence) 2009 and comes into force on 22nd April 2009.

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

Amendment of the Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988

2.—(1) The Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988(1) is amended in accordance with subparagraphs (2) and (3).

(2) After Part V (warrants for diligence) insert—

“PART VA

ARRESTMENT IN EXECUTION

Certificate of execution

69A. A certificate of execution of an arrestment in execution shall be in Form 63B.

Service of final decree

69B. The copy final decree served under section 73C(2)(2) of the Act (arrestment on the dependence followed by decree) shall be in Form 63C.

Failure to disclose information

69C.—(1) An application under section 73H(1)(3) of the Act (failure to disclose information)—

(a) shall be in Form 63D; and

(b) must be intimated by the creditor to the debtor and to the arrestee.

(2) On the lodging of an application under paragraph (1) the sheriff may—

(a) fix a date for a hearing; and

(1) S.I.1988/2013, amended by S.I. 1991/1920, 1993/920, 1994/3086, 1995/1876, 1996/2709 and 1999/1820 and S.S.I. 2002/560, 2007/465 and 2008/121.
(2) Section 73C was inserted by the *Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)*, section 206.
(3) Section 73H was inserted by the *Bankruptcy and Diligence etc. (Scotland) Act 2007*, section 206.

- (b) order the sheriff clerk to intimate the date of the hearing in Form 63E to such persons as the sheriff considers appropriate.

Notice of objection

69D.—(1) A notice of objection under section 73M(4) of the Act (notice of objection) shall be in Form 63F.

- (2) On the lodging of a notice of objection under paragraph (1) the sheriff must—
 - (a) fix a date for the hearing; and
 - (b) order the sheriff clerk to intimate the date of the hearing in Form 63E to such persons as the sheriff considers appropriate.

Application for release of property where arrestment unduly harsh

69E.—(1) An application under section 73Q(2)(5) of the Act (application for release of property where arrestment unduly harsh) shall be in Form 63G.

- (2) On the lodging of an application under paragraph (1) the sheriff must—
 - (a) fix a date for the hearing of the Act; and
 - (b) order the sheriff clerk to intimate the date of the hearing in Form 63E to such persons as the sheriff considers appropriate.

Power of sheriff to make orders

69F. The sheriff may make such other order for the progress of an application under this Part as he considers appropriate in the circumstances of the case.

Service of documents

69G. Rules 5.3 to 5.6 of the Ordinary Cause Rules in the First Schedule to the Sheriff Courts (Scotland) Act 1907(6) are to apply to the service or intimation of any document under this Part as they apply to the service or intimation of any document under those Rules.”.

- (3) In the Schedule, after Form 63A insert the forms set out in Schedule 1 to this Act of Sederunt.

Amendment of the Ordinary Cause Rules

3.—(1) The Ordinary Cause Rules(7) are amended in accordance with subparagraphs (2) to (5).

(2) In rule 6.A3 (effect of authority for inhibition on the dependence)(8), for paragraph (2) substitute—

“(2) A notice of a certified copy of an interlocutor granting authority for inhibition under rule 6.A2 may be registered in the Register of Inhibitions and Adjudications; and such registration is to have the same effect as registration of a notice of inhibition under section 155(2) of the Titles to Land Consolidation (Scotland) Act 1868(9).”.

(4) Section 73M was inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007, section 206.

(5) Section 73Q was inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007, section 206.

(6) 1907 c. 51. Rule 5.4 was amended by S.S.I. 2003/26; rule 5.5 was amended by S.I. 1996/2445 and S.S.I. 2003/26, 2004/197 and 2007/440; rule 5.6 was amended by S.S.I. 2008/121.

(7) The Ordinary Cause Rules are contained in the first Schedule to the Sheriff Courts (Scotland) Act 1907 (c. 51), which 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 560, 2003/25 and 26, 2004/197 and 350, 2005/20, 189, 638 and 648 and 2006/207, 293, 410 and 509, 2007/6,339, 440 and 463 and 2008/121, 223 and 365.

(8) Rule 6.A3 was inserted by S.S.I. 2008/121.

(9) 1868 c. 101. Section 155(2) was substituted by the Bankruptcy and Diligence etc. (Scotland) Act 2007, section 149.

(3) Rule 6.A6 (form of schedule of inhibition on the dependence)(**10**) is revoked.

(4) After rule 6.A7 (service of inhibition on the dependence where address of the defender not known)(**11**) insert–

“Form of schedule of arrestment on the dependence

6.A8.—(1) An arrestment on the dependence shall be served by serving the schedule of arrestment on the arrestee in Form G4B.

(2) A certificate of execution shall be lodged with the sheriff clerk in Form G4C.”

(5) In Appendix 1, for Forms G4B and G4C(**12**) substitute the forms set out in Schedule 2 to this Act of Sederunt.

Amendment of Summary Application Rules

4.—(1) The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(**13**) is amended in accordance with subparagraphs (2) and (3).

(2) After rule 2.18 (service of schedule of arrestment) insert–

“Form of schedule of arrestment on the dependence

2.18A.—(1) An arrestment on the dependence shall be served by serving the schedule of arrestment on the arrestee in Form 10A.

(2) A certificate of execution shall be lodged with the sheriff clerk in Form 10B.”

(3) In Schedule 1, after Form 10 insert the forms set out in Schedule 3 to this Act of Sederunt.

Amendment of the Summary Cause Rules

5.—(1) The Summary Cause Rules(**14**) are amended in accordance with subparagraphs (2) to (5).

(2) In rule 6.A3 (effect of authority for inhibition on the dependence)(**15**), for paragraph (2) substitute–

“(2) A notice of a certified copy of an interlocutor granting authority for inhibition under rule 6.A2 may be registered in the Register of Inhibitions and Adjudications; and such registration is to have the same effect as registration of a notice of inhibition under section 155(2) of the Titles to Land Consolidation (Scotland) Act 1868.”

(3) Rule 6.A6 (form of schedule of inhibition on the dependence)(**16**) is revoked.

(4) After rule 6.A7 (service of inhibition on the dependence where address of the defender not known)(**17**) insert–

(10) Rule 6.A6 was inserted by S.S.I. 2008/121.

(11) Rule 6.A7 was inserted by S.S.I. 2008/121.

(12) Forms G4B and G4C were inserted by S.S.I. 2008/121.

(13) S.I. 1999/929, amended by S.S.I. 2000/18 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, 504 and 648, 2006/198, 410, 437 and 509, 2007/6, 233, 339, 440 and 463 and 2008/9, 41, 111, 223, 335 and 365.

(14) The Summary Cause Rules are contained in Schedule 1 to the Act of Sederunt (Summary Cause Rules) 2002 (S.S.I. 2002/132), which was amended by S.S.I. 2002/516, 2003/216, 2004/197, 2005/648, 2006/509, 2007/6, 339, 440 and 463 and 2008/121, 223 and 365.

(15) Rule 6.A3 was inserted by S.S.I. 2008/121.

(16) Rule 6.A6 was inserted by S.S.I. 2008/121.

(17) Rule 6.A7 was inserted by S.S.I. 2008/121.

“Form of schedule of arrestment on the dependence

6.A8.—(1) An arrestment on the dependence shall be served by serving the schedule of arrestment on the arrestee in Form 15b.

(2) A certificate of execution shall be lodged with the sheriff clerk in Form 15c.”.

(5) In Appendix 1, for Forms 15b and 15c(**18**) substitute the forms set out in Schedule 4 to this Act of Sederunt.

Amendment of Small Claim Rules

6.—(1) The Small Claim Rules(**19**) are amended in accordance with subparagraphs (2) to (5).

(2) In rule 7.A3 (effect of authority for inhibition on the dependence)(**20**), for paragraph (2) substitute—

“(2) A notice of a certified copy of an interlocutor granting authority for inhibition under rule 7.A2 may be registered in the Register of Inhibitions and Adjudications; and such registration is to have the same effect as registration of a notice of inhibition under section 155(2) of the Titles to Land Consolidation (Scotland) Act 1868.”.

(3) Rule 7.A6 (form of schedule of inhibition on the dependence)(**21**) is revoked.

(4) After rule 7.A7 (service of inhibition on the dependence where address of defender not known)(**22**) insert—

“Form of schedule of arrestment on the dependence

7.A8.—(1) An arrestment on the dependence shall be served by serving the schedule of arrestment on the arrestee in Form 9b.

(2) A certificate of execution shall be lodged with the sheriff clerk in Form 9c.”.

(5) In Appendix 1 to Schedule 1, for Forms 9b and 9c(**23**) substitute the forms set out in Schedule 5 to this Act of Sederunt.

Amendment of the Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) 2002

7.—(1) The Rules for Applications in the Sheriff Court under the Debt Arrangement and Attachment (Scotland) Act 2002(**24**) are amended in accordance with subparagraphs (2) and (3).

(2) For rule 8(3) substitute—

“(3) An attachment schedule under section 13A(**25**) shall be in Form 3.”.

(3) For rule 22 substitute—

“**22.**—(1) Before making an order under section 33(4)(b) or (c) the sheriff shall—

(a) order representations to be lodged by the persons mentioned in section 33(7) (a)(**26**) within such period as he considers appropriate; or

(18) Forms 15b and 15c were inserted by [S.S.I. 2008/121](#).

(19) The Small Claim Rules are contained in Schedule 1 to the Act of Sederunt (Small Claim Rules) 2002 ([S.S.I. 2002/133](#)), which was amended by [S.S.I. 2003/26](#), [2004/197](#), [2005/648](#), [2006/509](#), [2007/6](#), [339](#), [440](#) and [463](#) and [2008/121](#) and [223](#) and [365](#).

(20) Rule 6.A3 was inserted by [S.S.I. 2008/121](#).

(21) Rule 7.A6 was inserted by [S.S.I. 2008/121](#).

(22) Rule 7.A7 was inserted by [S.S.I. 2008/121](#).

(23) Forms 9b and 9c were inserted by [S.S.I. 2008/121](#).

(24) The rules are contained in Schedule 1 to [S.S.I. 2002/560](#) as amended by [S.S.I. 2004/505](#), [2007/466](#) and [2008/121](#).

(25) Section 13A was inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007, Schedule 5, paragraph 30(4).

(26) Section 33(7)(a) was amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007, Schedule 5, paragraph 30(4).

(b) fix a date for a hearing.

(2) The sheriff clerk shall intimate any order of the sheriff under paragraph (1) to the persons mentioned in section 33(7)(a) and to the officer of court who prepared the report of the auction.

(3) Where the sheriff makes an order under section 33(4)(b) or (c) the sheriff clerk shall intimate it to the officer of court who prepared the report of the auction.”.

Edinburgh
11th March 2009

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