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## EXPLANATORY NOTE

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

This Act of Sederunt makes various amendments to the Ordinary Cause Rules, the Summary Application Rules, the Summary Cause Rules, the Small Claim Rules and the 1988 Rules.

Paragraphs 2 to 6 amend the rules in relation to applications for time to pay directions and time orders by:

- (a) inserting a new rule 3.2A into the Ordinary Cause Rules which requires, in actions relating to regulated agreements under the Consumer Credit Act 1974, that the initial writ includes a specific averment that such an agreement exists and details of the agreement (paragraph 2(2));
- (b) providing in the Ordinary Cause Rules and Summary Application Rules for intimation of a copy of an application for a time to pay direction or time order to the pursuer and for a form of response where the pursuer applies for a time to pay direction or a time order (paragraphs 2(3) and 3(3));
- (c) providing in each set of Rules for separate forms of application for time to pay directions and time orders (paragraphs 2(4), 3(3), 4(4) and 5(4));
- (d) amending rule 2.22(2) of the Summary Application Rules to increase the period for lodging an application for a time to pay direction or time order from 7 to 14 days before the diet fixed for the hearing of the summary application or the expiry of the period of notice (paragraph 3(3));
- (e) inserting new provision into the Summary Cause Rules and Small Claim Rules to require the sheriff clerk to intimate a copy of an application for a time to pay direction or time order to the pursuer and to increase the period for the pursuer lodging his response to such an application from 2 to 9 days before the calling date (paragraphs 4(3) and 5(3));
- (f) substituting in the Summary Cause Rules and Small Claim Rules new forms 1a (summons) providing more detailed guidance in the defender's copy summons in relation to applying for time to pay directions and time orders (paragraphs 4(4) and 5(4));
- (g) substituting in the Summary Cause and Small Claim Rules a new form of minute for a pursuer opposing an application for a time to pay direction or a time order (paragraphs 4(5) and 5(5)).

Paragraph 7 amends the period between the return day and calling date in summary cause actions and between the return day and hearing date in small claim actions from 7 to 14 days.

Paragraph 8 updates Form 2 in the 1988 Rules (form of application for a time to pay order).

Paragraph 9(2) amends Form 43 in those Rules (application for a conjoined arrestment order) to provide for details of the debtor's place of employment to be given and for an averment that the debtor was given a debt advice and information package. Paragraph 9(3) to (5) amends Forms 45 (conjoined arrestment order), 46 (notice of service of conjoined arrestment order) and 51 (notice of service of an order varying a conjoined arrestment order) to provide instructions to the employer to notify the sheriff clerk if the debtor ceases to be employed by him and to provide details of the new employer, if known.

Paragraphs 10 to 13 make other minor amendments to the Ordinary Cause, Summary Cause, Small Claim Rules and the 1988 Rules.

**Status:** *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Paragraphs 14 and 15 insert rules into the Ordinary Cause Rules and the Summary Cause Rules setting out procedure for the dismissal of actions due to delay on the part of another party in progressing the action. Such applications are made by motion in actions proceeding under the Ordinary Cause Rules and by incidental application in actions proceeding under the Summary Cause Rules. Provision is made for the other party to lodge a notice of opposition to the motion or application. The court may dismiss the action if it considers that the delay has been inordinate or inexcusable and has resulted in unfairness.

Paragraph 16 amends a rule in the Ordinary Cause Rules regarding the insolvency or death of a cautioner or guarantor, to reflect the introduction of powers under the Banking Act 2009 to obtain orders in respect of failing banks or building societies.

Paragraph 17 amends the definition of “Her Majesty’s Forces” in Chapter 2 of the Child Care and Maintenance Rules 1997 in consequence of the Armed Forces Act 2006.

Paragraph 18 inserts a new Part XXXVIII into Chapter 3 of the Summary Application Rules. This new Part provides a new rule 3.38 relating to applications to the sheriff for variation, renewal or recall of foreign travel restriction orders under Schedule 5 of the Counter-Terrorism Act 2008.