

2013 No. 171

SHERIFF COURT

**Act of Sederunt (Sheriff Court Rules) (Miscellaneous
Amendments) (No. 3) 2013**

Made - - - - 28th May 2013

Laid before the Scottish Parliament 30th May 2013

Coming into force in accordance with paragraph 1(2) and (3)

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(a) 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 the said Act of 1971, do hereby enact and declare:

Citation, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) (No. 3) 2013.

(2) Subject to subparagraph (3) it comes into force on 25th June 2013.

(3) Paragraph 3 comes into force on 7th June 2013.

(4) A certified copy of this Act of Sederunt is to be inserted in the Books of Sederunt.

(5) In this Act of Sederunt “Summary Applications Rules” means the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(b).

Adults with incapacity

2.—(1) The Summary Application Rules are amended in accordance with the following subparagraphs.

(2) For rule 3.16.4(1) (service of application)(c) substitute—

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- (a) 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) (the “2000 asp”), schedule 5, paragraph 13; the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43; the Vulnerable Witnesses (Scotland) Act 2003 (asp 3), section 14(2); the Consumer Credit Act 2006 (c.14), section 16(4); the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (the “2007 asp”) section 33; and the Legal Services (Scotland) Act 2010 (asp 16) (the “2010 asp”), section 127(a). Section 32 is amended prospectively by the 2007 asp, schedule 5, paragraph 10; and the Children’s Hearings (Scotland) Act 2011 (asp 1), section 185. Section 32 was extended by the Debtors (Scotland) Act 1987 (c.18), section 97; the Child Support Act 1991 (c.48), sections 39(2) and 49; and section 2(4) of the 2000 asp.
- (b) S.I.1999/929, amended by S.S.I. 2000/148 and 387; 2002/7, 129, 130, 146, and 563; 2003/26, 27, 98, 261, 319, 346 and 556; 2004/197, 222, 334 and 455; 2005/61, 445, 473, 504 and 648; 2006/198, 410, 437 and 509; 2007/6, 233, 339, 440 and 463; 2008/9, 41, 111, 223, 335, 365 and 375; 2009/107, 109, 164, 294, 320 and 402; 2010/324, 340 and 416; 2011/193 and 386; 2012/188 and 271; 2013/91 and 135.
- (c) Rule 3.16.4 was amended by S.S.I. 2002/146 and 2008/111.

“3.16.4.—(1) Service of the application or other proceedings and subsequent proceedings, including proceedings for renewal of guardianship orders, shall be made in Form 20 on —

- (a) the adult;
- (b) the nearest relative of the adult;
- (c) the primary carer of the adult (if any);
- (d) the named person of the adult (if any);
- (e) any guardian, continuing attorney or welfare attorney of the adult who has any power relating to the application or proceedings;
- (f) the Public Guardian;
- (g) where appropriate, the Mental Welfare Commission;
- (h) where appropriate, the local authority;
- (i) where a guardianship order has been made under section 57(2)(c) or section 58(1A) of the Criminal Procedure (Scotland) Act 1995, to the Lord Advocate and, where the order was made by—
 - (i) the High Court of Justiciary, to the Clerk of Justiciary; or
 - (ii) a sheriff, to the sheriff clerk of the Sheriff Court in which the order was made;
- (j) any other person directed by the sheriff.”

(3) The heading of rule 3.16.4 becomes “Service of application and renewal proceedings”.

(4) Rule 3.16.8(5)(a) is omitted.

Amendment of the Sheriff Court Company Insolvency Rules

3.—(1) The Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986(b) is amended in accordance with the following subparagraphs.

(2) In rule 3 (interpretation)(c)—

(a) in paragraph (1) insert the following definitions in the appropriate sequential order—

““the Act of 2004” means the Energy Act 2004(d);

“the Act of 2011” means the Energy Act 2011(e);

“administration” shall include an energy administration under the Act of 2004 or the Energy Administration Rules and an energy supply company administration under the Act of 2011 or the Energy Supply Company Administration Rules and “administration order” and “administrator” shall be construed accordingly;

“the Energy Administration Rules” means the Energy Administration (Scotland) Rules 2006(f);

“the Energy Supply Company Administration Rules” means the Energy Supply Company Administration (Scotland) Rules 2013(g);

“non GB company” for the purposes of an energy administration shall have the meaning assigned in section 171 of the Act of 2004 and for the purposes of an energy supply company administration shall have the meaning assigned in section 102 of the 2011 Act;”;

(b) in paragraph 2—

(a) Rule 3.16.8(5) was inserted by S.S.I. 2008/111
(b) S.I. 1986/2297, last amended by S.S.I. 2008/223.
(c) Rule 3 was last amended by S.S.I. 2008/223.
(d) 2004 c.20.
(e) 2011 c.16.
(f) S.I. 2006/772.
(g) S.I. 2013/1047

- (i) after the words “Act of 1986” insert “, the Act of 2004, the Act of 2011, the Energy Administration Rules, the Energy Supply Company Administration Rules”;
 - (ii) for “that Act” substitute “those Acts”.
- (3) In rule 3A (representation)(a) omit “the Scottish” where it first occurs.
- (4) In rule 10(1) (petitions for administration orders)(b)—
- (a) at the beginning of subparagraph (c), insert “in the case of a petition under the Act of 1986,”;
 - (b) in subparagraph (h)—
 - (i) at the beginning, insert—
 - “in the case of a petition under the Act of 1986,”;
 - (ii) omit “and” where it appears at the end;
 - (c) for subparagraph (i), substitute—
 - “(i) the name and address of the person proposed to be appointed, and his or her qualification to act, as administrator;
 - (j) whether the Secretary of State has certified the case as one in which he or she considers it would be appropriate for him or her to petition under section 124A of the Act of 1986 (petition for winding up on grounds of public interest);
 - (k) so far as is known to the petitioner in a petition for an energy administration order or an energy supply company administration order, whether any steps have been taken for an administration order under Schedule B1 to the Act of 1986; and
 - (l) whether a protected energy company in a petition for an energy administration order, or an energy supply company in a petition for an energy supply company administration order, is a non GB company;”.
- (5) In rule 11 (notice of petition)(c), after the words “Insolvency Rules” insert “, section 156(2)(a) to (c) of the 2004 Act, rule 5(1) of the Energy Administration Rules or rule 6(1) of the Energy Supply Company Administration Rules,”.
- (6) In rule 12 (applications during an administration)(d), after the words “the Insolvency Rules,” insert “the Act of 2004, the Energy Administration Rules, the Act of 2011,”.
- (7) In Rule 14A (time and date of lodging in an administration)(e), omit the words “under the Act of 1986 or the Insolvency Rules”.

Other minor amendments

4.—(1) The Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) 2013(f) is amended in accordance with the following subparagraph.

(2) In paragraph 1(3) omit “‘Small Claims Rules’ means the Small Claim Rules in Schedule 1 to the Act of Sederunt (Small Claim Rules) 2002”(g).

5.—(1) Appendix 1 to the Summary Cause Rules in Schedule 1 to the Act of Sederunt (Summary Cause Rules) 2002(h) is amended in accordance with the following subparagraph.

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- (a) Rule 3A was inserted by S.S.I. 2008/223.
 - (b) Rule 10 was last amended by S.S.I. 2008/223.
 - (c) Rule 11 was last amended by S.S.I. 2003/388.
 - (d) Rule 12 was last amended by S.S.I. 2006/200.
 - (e) Rule 14A was substituted by S.S.I. 2003/388.
 - (f) S.S.I. 2013/135.
 - (g) S.S.I. 2002/133, amended by S.S.I. 2003/26; 2004/197; 2005/648; 2006/509; 2007/6, 339, 440 and 463; 2008/121, 223 and 365; 2009/107, 164, 294 and 402; 2010/279, 340 and 416; 2011/193 and 2012/271.
 - (h) S.S.I. 2002/132 amended by S.S.I. 2002/516; 2003/26 and 601; 2004/197; 2005/648; 2006/509; 2007/6, 339, 440 and 463; 2008/121, 223 and 363; 2009/107, 164, 294 and 402; 2010/279, 340 and 416; 2011/193 and 289; 2012/144, 188 and 271; and 2013/135.

(2) In Form 28BB (Form of extract decree – recovery of possession of heritable property in other cases (non-payment of rent) before the words “The amount is payable by lump sum” insert “*”.

Transitional and savings

6.—(1) The amendments made to the Summary Application Rules by paragraph 2 shall have no effect in respect of any action raised but not yet determined by 25th June 2013.

(2) The amendments made to the Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986 by paragraph 3 shall have no effect in respect of any action raised but not yet determined by 7th June 2013.

BRIAN GILL
Lord President
I.P.D.

Edinburgh
28th May 2013

EXPLANATORY NOTE

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

Paragraph 2(2) amends rule 3.16.4 of the Summary Application Rules to ensure that intimation of all relevant proceedings, including applications for renewals of guardianship orders, are made to the persons listed in that rule. The rule also provides for intimation on the Lord Advocate and the relevant clerk of court in appropriate cases which have originated from a court exercising criminal jurisdiction.

Paragraph 2(4) deletes rule 3.16.8(5) because it is unnecessary.

Paragraph 3 amends the Sheriff Court Company Insolvency Rules in consequence of the Energy Supply Company Administration (Scotland) Rules 2013.

Paragraphs 4 and 5 make minor corrections to the Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) 2013 and to the Act of Sederunt (Summary Cause Rules) 2002.

Paragraph 6 contains savings provisions in respect of paragraphs 2 and 3.

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