

2015 No. 351

SHERIFF COURT

**Act of Sederunt (Child Support Rules Amendment)
(Miscellaneous) 2015**

Made - - - - - *16th October 2015*

Laid before the Scottish Parliament *20th October 2015*

Coming into force - - - *21st December 2015*

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(a), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council with such modifications as it thinks appropriate.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by section 90(4) of the Debtors (Scotland) Act 1987(b), section 104(1) of the Courts Reform (Scotland) Act 2014(c) and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Child Support Rules Amendment) (Miscellaneous) 2015.

(2) It comes into force on 21st December 2015.

(3) A certified copy is to be inserted in the Books of Sederunt.

Amendment of Child Support Rules

2.—(1) The Act of Sederunt (Child Support Rules) 1993(d) is amended in accordance with this paragraph.

(2) In rule 2 (application for a liability order)(e)—

(a) in paragraph (1), for “Form 1” substitute “Form 2–A”;

(b) in paragraph (2), for “Form 2” substitute “Form 2–B”;

(c) in paragraph (7), for “Form 3” substitute “Form 2–C”;

(d) in paragraph (9), for “Form 4” substitute “Form 2–D”.

(3) In rule 4(1) (service of charge following the making of a liability order), for “Form 5” substitute “Form 4”.

(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3).
(b) 1987 c.18. Section 90 was amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 209(5).
(c) 2014 asp 18. The powers conferred by section 104 are extended by section 40A(8) of the Child Support Act 1991, c.48.
(d) S.I. 1993/920, last amended by S.S.I. 2012/271.
(e) Rule 2 was last amended by S.S.I. 2012/271.

- (4) In rule 5(1) (appeal against a deduction from earnings order)(a), for “Form 6” substitute “Form 5”.
- (5) In rule 5A(2) (application for commitment to prison or disqualification from driving)(b)—
- (a) for “respondent” substitute “liable person”;
 - (b) for “Form 7” substitute “Form 5A”.
- (6) In rule 5AC (lump sum deduction order: appeals)(c)—
- (a) in paragraph (1), for “Form 5AC” substitute “Form 5AC–A”;
 - (b) in paragraph (2), for “Form 5AD” substitute “Form 5AC–B”.
- (7) In rule 5B(2) (warrant of arrest)(d), for “Form 8” substitute “Form 5B”.
- (8) In rule 5D (warrant of commitment to prison)(e), for “Form 9” substitute “Form 5D”.
- (9) In rule 5E(1) (order for disqualification from driving)(f), for “Form 10” substitute “Form 5E”.
- (10) For the Schedule, substitute the Schedule set out in the Schedule to this Act of Sederunt.

CJM SUTHERLAND
Lord Justice Clerk
I.P.D.

Edinburgh
16th October 2015

(a) Rule 5 was last amended by S.S.I. 2012/271.
(b) Rule 5A was inserted by S.S.I. 2001/143.
(c) Rule 5AC was inserted by S.S.I. 2009/365 and amended by S.S.I. 2012/271.
(d) Rule 5B was inserted by S.S.I. 2001/143.
(e) Rule 5D was inserted by S.S.I. 2001/143.
(f) Rule 5E was inserted by S.S.I. 2001/143.

SCHEDULE

Paragraph 2(10)

“SCHEDULE

Paragraph 1(4)

Form 2–A

Rule 2(1)

Form of summary application for a liability order under section 33 of the Child Support Act 1991

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

Summary Application

for a liability order

under section 33 of the Child Support Act 1991

by

The Secretary of State for Work and Pensions *(insert address)*

Applicant

against

A.B.

(insert full name and address of liable person)

Respondent

1. The applicant is the Secretary of State for Work and Pensions. The respondent is a liable person within the meaning of section 33 of the Child Support Act 1991.
2. The court has jurisdiction to deal with this application by virtue of *(state ground of jurisdiction)*.
3. In terms of a maintenance calculation [*or maintenance assessment*] made by the applicant on *(insert date)*, the respondent is liable to pay child support maintenance in the sum of *(insert sum)* per *(insert period)*.
- [4. There are arrangements for collection of the child support maintenance payable by the respondent within the meaning of regulation 7 of the Child Support Fees Regulations 2014. The respondent is liable to pay collection fees to the applicant in accordance with that regulation.]

5. The respondent has failed to make payment of all sums payable in respect of child support maintenance [and collection fees]. The applicant served notice(s) of arrears on the respondent on (*insert date(s)*). At the date of this application there remains (*insert sum*) of child support maintenance [and (*insert sum*) of collection fees] unpaid.

6. In accordance with regulation 10 of the Child Support Fees Regulations 2014, the respondent is also liable to pay the applicant an enforcement fee of (*insert sum*) in relation to the bringing of this application.

7. It appears to the applicant that it is inappropriate to make a deduction from earnings order against the respondent because (*state reason*).

- [*or*

7. A deduction from earnings order was made against the respondent on (*insert date*) and it appears to the applicant that it has proved ineffective as a means of securing payment because (*state reason*).]

8. The applicant craves the court to make a liability order against the respondent in the sum of (*insert sum*). In addition the applicant asks the court to award expenses to the applicant.

Date (*insert date*)

(*Signed*)

[X.Y.], Solicitor for Applicant
(*insert business address of solicitor*)

Form 2–B

Rule 2(2)

Form of notice to liable person in an application for a liability order under the Child Support Act 1991

PART A

(to be completed by applicant before service)

Sheriff Court:

Court Ref. No.:

1. *(insert place and date)*

To: *(insert name and address of liable person)*

The application which accompanies this notice is served on you on *(insert date of service)*.

2. If you wish to object to the grant of the application you must complete PART B below stating the ground(s) upon which you object. Please note that in terms of section 33 of the Child Support Act 1991 the sheriff may not question a maintenance assessment or maintenance calculation. The sheriff will therefore be unable to consider whether or not a maintenance assessment or maintenance calculation relied on in the application was correctly made.

3. If you decide to object to the application you must return this form to the court with PART B completed within 21 days of the date of service of this notice, together with the court fee of *(insert sum)*.

The address of the court is: *(insert name and address of court)*.

4. You will be advised by the sheriff clerk of the date which has been fixed for the hearing of the application. On that date you should attend or be represented at court.

5. If you–

(a) fail to return this form to the court as directed; or

(b) fail to attend or be represented at the hearing,

the application may be granted in your absence.

(Signed)

[A.B.], Solicitor for Applicant

[or [X.Y.], Officer of Court]

(insert business address of solicitor or sheriff officer)

**IF YOU REQUIRE ANY FURTHER ADVICE, CONTACT A SOLICITOR, CITIZENS
ADVICE BUREAU OR OTHER ADVICE CENTRE.**

PART B

(to be completed by liable person)

I object to the grant of the application on the following ground(s)

(state grounds of objection, and provide relevant supporting information, e.g. if you claim that payments are not due, provide details of payments made. If space is insufficient continue on a separate paper and attach to this form).

Date *(insert date)*

(Signed)

Liable Person

Form 2-C

Rule 2(7)

Form of liability order under the Child Support Act 1991

(insert place and date)

The sheriff makes a liability order against the liable person named in the application for payment of the undernoted sums to the Secretary of State for Work and Pensions.

Unpaid child support maintenance	£
Unpaid collection fees	£
Enforcement fee	£
Expenses	£
<hr/>	
Aggregate amount of liability order	£

(Signed)

Sheriff

Form 2–D

Rule 2(9)

Form of extract of liability order under the Child Support Act 1991

Sheriff Court:

Court Ref No:

Date of order:

Full name and address of liable person:

The sheriff has made a liability order against the above named liable person for payment of the undernoted sums to the Secretary of State for Work and Pensions.

Unpaid child support maintenance	£
Unpaid collection fees	£
Enforcement fee	£
Expenses	£
	<hr/>
Aggregate amount of liability order	£

This extract is authority for enforcement of the amount due by the means specified by the Child Support Act 1991.

Date of extract:

(Signed)

Sheriff Clerk

Enforcement fee	£
Expenses	£ _____
Aggregate amount of liability order	£
Less paid to account	£ _____
Net aggregate amount outstanding	£
Agent's fee	£
Expenses of sheriff officer	
Charge fee	£
Travelling	£
Witness fee	£
Other outlays in connection with service of charge (<i>specify</i>)	£ _____
TOTAL SUM DUE	£

IF YOU ARE UNSURE AS TO WHAT YOU SHOULD DO ON RECEIPT OF THIS CHARGE YOU SHOULD CONSULT A SOLICITOR, CITIZENS ADVICE BUREAU, OR OTHER ADVICE CENTRE IMMEDIATELY.

Form 5

Rule 5(1)

Form of application for appeal against a deduction from earnings order

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

APPEAL

under regulation 2 of the Child Support (Collection and Enforcement) Regulations 1992

by

A.B.

(insert full name and address of appellant)

against a decision of the Secretary of State for Work and Pensions to make a deduction from earnings order

1. The appellant is *(insert full name and address of appellant)*.
2. The respondent is the Secretary of State for Work and Pensions.
3. The appellant is a liable person within the meaning of section 31 of the Child Support Act 1991.
4. On *(insert date)* a deduction from earnings order was made against the appellant by the respondent. The making of the deduction from earnings order was intimated to the appellant on *(insert date)*.
5. The appellant states that the deduction from earnings order is defective on the ground(s) that *(state reason)*.

[or
5. The appellant disputes that the following payments, which were taken into account by the respondent in making the deduction from earnings order, are earnings on the grounds that *(give details of payments and nature of dispute)*.]
6. The appellant accordingly appeals to the sheriff.

7. The appellant asks the court to award expenses to the appellant.

Date (*insert date*)

(*Signed*)

[A.B.], Appellant

[*or* [X.Y.], Solicitor for Appellant]

(*insert business address of solicitor*)

Form 5A

Rule 5A(2)

**Form of citation for summary application for commitment to prison or
disqualification from driving**

CITATION

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

[A.B.], *(insert designation and address)*

Pursuer

against

[C.D.], *(insert designation and address)*

Defender

Court Ref. No. *(insert ref. no.)*

(insert place and date).

You [C.D.] are hereby served with this copy writ and warrant and are required to appear within the Sheriff Court House at *(insert address of sheriff court)* on the day of at o'clock noon.

YOU MUST APPEAR IN PERSON AT THE HEARING

IF YOU ARE UNCERTAIN AS TO WHAT FURTHER ACTION TO TAKE you should consult a solicitor. You may be eligible for legal aid depending on your income and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

IF YOU HOLD A LICENCE TO DRIVE A MOTOR VEHICLE YOU MUST BRING IT WITH YOU TO THE HEARING.

IN ORDER TO ASSIST THE COURT TO INQUIRE INTO YOUR MEANS, YOU SHOULD COMPLETE AND BRING WITH YOU THE ATTACHED STATEMENT OF YOUR FINANCIAL POSITION. YOU SHOULD ALSO BRING WITH YOU DOCUMENTARY EVIDENCE OF YOUR FINANCIAL POSITION.

IF YOU DO NOT APPEAR IN PERSON IN ANSWER TO THIS DOCUMENT THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST.

(Signed)

[E.F.], Solicitor for Pursuer

[or [X.Y.], Officer of Court]

(insert business address of solicitor or sheriff officer)

STATEMENT OF DEFENDER'S FINANCIAL POSITION

My Weekly	Fortnightly	Monthly		My Weekly	Fortnightly	Monthly
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Outgoings are:				Income is:		
Housing costs		£		Wages/Pensions		£
(rent/mortgage/ Council Tax)				Benefits		£
Electricity/gas/ heating oil		£		Other		£
Food		£				
Credit payments		£				
				Total		£
Other		£				
Total		£				

Dependent: children – how many

Dependent adult relatives – how many

Here list all capital (if any) e.g. value of house; amounts in bank or building society accounts; shares or other investments:

Form 5AA

Rule 5AA(1)

Form of application for appeal against decision of the Secretary of State that the good reasons exclusion in respect of a deduction from earnings order does not apply

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

APPEAL

under regulation 22(3A) of the Child Support (Collection and Enforcement) Regulations 1992

by

A.B.

(insert full name and address of appellant)

against a decision of the Secretary of State for Work and Pensions that the good reason exclusion in respect of a deduction from earnings order does not apply

1. The appellant is *(insert full name and address of appellant)*.
2. The respondent is the Secretary of State for Work and Pensions.
3. The appellant is a liable person within the meaning of section 31 of the Child Support Act 1991.
4. On *(insert date)* the respondent decided that there is no good reason not to use a deduction from earnings order as a method of payment.
5. The appellant appeals against the decision that there is no good reason not to make the deduction from earnings order for the following reasons *(set out reasons)*.
6. The appellant asks the court to award expenses to the appellant.

Date *(insert date)*

(Signed)

[A.B.], Appellant

[or [X.Y.], Solicitor for Appellant]

(insert business address of solicitor)

Form 5AB

Rule 5AB(1)

Form of application for appeal against a regular deduction order or a decision made on review of a regular deduction order

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

APPEAL

under regulation 25AB of the Child Support (Collection and Enforcement) Regulations 1992

by

A.B.

(insert full name and address of appellant)

against a decision of the Secretary of State for Work and Pensions to make a regular deduction order [*or a decision of the Secretary of State for Work and Pensions made on review of a regular deduction order*]

1. The appellant is *(insert full name and address of appellant)*.
2. The respondent is the Secretary of State for Work and Pensions.
3. The appellant [*or (insert name and address of liable person if not the appellant)*] is the liable person in relation to a regular deduction order under section 32A of the Child Support Act 1991 made by the respondent on *(insert date)*. The making of the order was intimated to the appellant on *(insert date)*.
- [4. On *(insert date)* the respondent reviewed the regular deduction order. The decision made on review was intimated to the appellant on *(insert date)*.]
5. The appellant is affected by the regular deduction order because *(insert grounds for claim to be affected by the order)*.

[*or*
5. The appellant is affected by the decision of the respondent on the application for review of the regular deduction order because *(insert grounds for claim to be affected by the decision)*.]
6. The appellant appeals against the making of the regular deduction order [*or the decision made on review of the regular deduction order*] for the following reasons *(set out reasons)*.

7. The appellant asks the court to award expenses to the appellant.

Date (*insert date*)

(*Signed*)

[A.B.], Appellant

[*or* [X.Y.], Solicitor for Appellant]

(*insert business address of solicitor*)

Form 5AC–A

Rule 5AC(1)

**Form of application for appeal against withholding of consent to the
disapplication of section 32G(1) or 32H(2)(b) of the Child Support Act 1991**

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

APPEAL

under regulation 25AB of the Child Support (Collection and Enforcement) Regulations 1992

by

A.B.

(insert full name and address of appellant)

against a decision of the Secretary of State for Work and Pensions to withhold consent to the
disapplication of section 32G(1) [*or* section 32H(2)(b)] of the Child Support Act 1991

1. The appellant is *(insert full name and address of appellant)*.
2. The respondent is the Secretary of State for Work and Pensions.
3. The appellant [*or (insert name and address of liable person if not the appellant)*] is the liable person in relation to an order under section 32E [*or* Section 32F] of the Child Support Act 1991 made by the respondent on *(insert date of order)*.
- [4. The appellant is a qualifying person in relation to this appeal in terms of regulation 25AB(2)(b) of the Child Support (Collection and Enforcement) Regulations 1992 because *(specify capacity in which appellant appeals where appellant is not the liable person)*.]
5. On *(insert date)* the appellant [*or (insert name of applicant)*] applied to the respondent under regulation 25N of the Child Support (Collection and Enforcement) Regulations 1992 for consent to *(specify act for which consent was sought)*. The respondent has withheld consent.
6. The appellant appeals against the decision to withhold consent for the following reasons *(set out reasons)*.

7. The appellant asks the court to award expenses to the appellant.

Date (*insert date*)

(*Signed*)

[A.B.], Appellant

[*or* [X.Y.], Solicitor for Appellant]

(*insert business address of solicitor*)

Form 5AC-B

Rule 5AC(2)

Form of application for appeal against a lump sum deduction order

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

APPEAL

under regulation 25AB of the Child Support (Collection and Enforcement) Regulations 1992

by

A.B.

(insert full name and address of appellant)

against a decision of the Secretary of State for Work and Pensions to make an order under section 32F of the Child Support Act 1991

1. The appellant is *(insert full name and address of appellant)*.
2. The respondent is the Secretary of State for Work and Pensions.
3. The appellant [*or (insert name and address of liable person if not the appellant)*] is the liable person in relation to a lump sum deduction order under section 32F of the Child Support Act 1991 made by the respondent on *(insert date of order)*.
4. The appellant is affected by the lump sum deduction order because *(insert grounds for claim to be affected by the order)*. The making of the order was intimated to the appellant on *(insert date)*.
5. The appellant appeals against the decision to make the lump sum deduction order for the following reasons *(set out reasons)*.
6. The appellant asks the court to award expenses to the appellant.

Date *(insert date)*

(Signed)

[A.B.], Appellant

[*or* [X.Y.], Solicitor for Appellant]

(insert business address of solicitor)

Form 5B

Rule 5B(2)

Form of Warrant to Arrest

(insert place and date)

The Sheriff, in respect that the defender has failed to appear at the hearing after being duly cited, Grants Warrant to Sheriff Officers to apprehend *(insert name of defender)* and to bring the said *(insert name of defender)* before the court; Grants Warrant to Governors of HM Prisons to receive and detain the said *(insert name of defender)* pending appearance before the court and, in the event that such a Governor is unable to so receive and detain the said *(insert name of defender)* because of the lateness of the hour, requests police officers to assist in the execution of this Warrant by receiving and detaining the said *(insert name of defender)* overnight until such hour as the said *(insert name of defender)* can be presented at a prison or brought to court; requests all competent courts in England and elsewhere to give their aid and concurrence in carrying into effect this Warrant; appoints execution to proceed upon a certified copy of this interlocutor.

(Signed)

Sheriff

Form 5D

Rule 5D

Form of Warrant of Commitment to Prison

WARRANT OF COMMITMENT TO PRISON UNDER SECTION 40A OF THE CHILD SUPPORT ACT 1991

(insert place and date)

The Sheriff, being satisfied—

- (a) that the Secretary of State for Work and Pensions has sought to recover an amount of child support maintenance under section 38 of the Child Support Act 1991;
- (b) that such amount, or a portion of it, remains unpaid; and
- (c) having inquired in the defender's presence as to his [*or her*] means, that there has been wilful refusal or culpable neglect on his [*or her*] part,

Grants Warrant to all Sheriff Officers to apprehend and convey (*insert name of defender*) to the prison of (*insert place of prison*) and to the Governor thereof to receive and detain the said (*insert name of defender*) for the period of (*insert period of up to six weeks*) from the date of his [*or her*] imprisonment or until he [*or she*] be sooner discharged in due course of law.

This warrant is made in respect of—

Amount outstanding under section 38 of the Child Support Act 1991, £
exclusive of collection fees and enforcement fees

Amount outstanding in respect of collection fees and enforcement fees £

Amount in respect of the expenses of commitment £

Aggregate amount £

(Signed)

Sheriff

*Note: The period of imprisonment may be reduced as provided by regulation 3 of the Child Support (Civil Imprisonment) (Scotland) Regulations 2001 where there is part payment of the amount in respect of which the warrant was issued.

Form 5E

Rule 5E

Form of Order of Disqualification from Holding or Obtaining a Driving Licence

ORDER OF DISQUALIFICATION FROM HOLDING OR OBTAINING A DRIVING
LICENCE UNDER SECTION 40B OF THE CHILD SUPPORT ACT 1991

(insert place and date)

The Sheriff, being satisfied—

- (a) that the Secretary of State for Work and Pensions has sought to recover an amount of child support maintenance under section 38 of the Child Support Act 1991;
- (b) that such amount, or a portion of it remains unpaid; and
- (c) having inquired in the defender’s presence as to his [*or her*] means, that there has been wilful refusal or culpable neglect on his [*or her*] part,

Disqualifies *(insert name of defender)* from holding or obtaining a driving licence for a period of *(insert period not exceeding two years)* unless the aggregate amount in respect of which this Order is made is paid*.

This warrant is made in respect of—

Amount outstanding under section 38 of the Child Support Act 1991, exclusive of collection fees and enforcement fees	£
Amount outstanding in respect of collection fees and enforcement fees	£
Amount in respect of the expenses of the application	£
Aggregate amount	£

(Signed)

Sheriff

*Note: the period of disqualification may be reduced as provided by section 40B(5)(a) of the Child Support Act 1991 if part payment is made of the aggregate amount. The Order will be revoked under section 40B(5)(b) of the Child Support Act 1991 if full payment is made of the aggregate amount. An application for reduction of the period of disqualification or for revocation of this order requires to be made by way of minute in the court process.”

EXPLANATORY NOTE

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

This Act of Sederunt inserts a new Schedule in the Act of Sederunt (Child Support Rules) 1993 (“the 1993 Act of Sederunt”) in place of the existing Schedule. The Schedule sets out the forms that are prescribed for the purpose of, and in connection with, various categories of application to the sheriff under the Child Support Act 1991 (“the 1991 Act”).

The changes that have been made to the prescribed forms include changes to take account of the introduction of collection fees and enforcement fees in the Child Support Fees Regulations 2014, and changes to take account of the existence of the different child support schemes operated under the 1991 Act.

The Act of Sederunt also makes a minor amendment to rule 5A of the 1993 Act of Sederunt in order to ensure consistency of language with section 39A of the 1991 Act.

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