

**2016 No. 229**

**COURT OF SESSION**

**SHERIFF COURT**

**Act of Sederunt (Rules of the Court of Session 1994 and Sheriff  
Court Rules Amendment) (No. 2) (Miscellaneous) 2016**

*Made* - - - - *12th August 2016*

*Laid before the Scottish Parliament* *16th August 2016*

*Coming into force* - - *28th November 2016*

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 sections 103(1) and 104(1) of the Courts Reform (Scotland) Act 2014(b) 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 (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 2) (Miscellaneous) 2016.

(2) It comes into force on 28th November 2016.

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

**Amendment of the Ordinary Cause Rules 1993**

**2.**—(1) The Ordinary Cause Rules 1993(c) are amended in accordance with this paragraph.

(2) After Part II (removing) of Chapter 34 (actions relating to heritable property)(d) insert—

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(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016, schedule 1, paragraph 1(4).  
(b) 2014 asp 18.  
(c) The Ordinary Cause Rules 1993 are in schedule 1 of the Sheriff Courts (Scotland) Act 1907 (c.51). Schedule 1 was substituted by S.I. 1993/1956 and was last amended by S.S.I. 2016/215.  
(d) Chapter 34 was last amended by S.S.I. 2010/324.

“PART III  
EXECUTION OF DEEDS

**Form of application under section 87 of the Courts Reform (Scotland) Act 2014**

**34.12.** An application for an order for execution under section 87 (power of sheriff to order sheriff clerk to execute deed relating to heritage) of the Courts Reform (Scotland) Act 2014 may be made—

- (a) by a crave in the initial writ;
- (b) where no such crave has been made, by lodging a minute of amendment to the initial writ; or
- (c) where final decree has been pronounced, by lodging a minute in the process of the action to which the application relates.”.

(3) In rule 36.L1(1) (incidental hearings)(a), for “paragraph (3) or (8) of rule 36.G1 or paragraph (3) of rule 36.K1” substitute “paragraph (3) of rule 36.G1 or paragraph (4) of rule 36.K1”.

**Amendment of the Summary Cause Rules 2002**

**3.—**(1) The Summary Cause Rules 2002(b) are amended in accordance with this paragraph.

(2) After Chapter 30 (recovery of possession of heritable property) insert—

“Chapter 30A

Execution of deeds relating to heritage

**Form of application under section 87 of the Courts Reform (Scotland) Act 2014**

**30A.1.** An application for an order for execution under section 87 (power of sheriff to order sheriff clerk to execute deed relating to heritage) of the Courts Reform (Scotland) Act 2014 may be made—

- (a) by a claim in the summons;
- (b) where no such claim has been made, by incidental application to amend the summons; or
- (c) where final decree has been pronounced, by lodging a minute in the process of the action to which the application relates.”.

**Amendment of the Rules of the Court of Session 1994**

**4.—**(1) The Rules of the Court of Session 1994(c) are amended in accordance with this paragraph.

(2) After Rule 4.2 (signature of documents) insert—

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(a) Rule 36.L1 was inserted by S.S.I. 2009/285.  
(b) The Summary Cause Rules are in schedule 1 of the Act of Sederunt (Summary Cause Rules) 2002 (S.S.I. 2002/132, last amended by S.S.I. 2016/215).  
(c) The Rules of the Court of Session 1994 are in schedule 2 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443, last amended by S.S.I. 2016/102).

**“Applications under section 100 (vexatious litigation orders) of the Courts Reform (Scotland) Act 2014**

**4.2A.**—(1) This rule applies where a person (“the applicant”) who is the subject of an order under section 100 (vexatious litigation orders) of the 2014 Act seeks permission under section 101(4) of the 2014 Act to—

- (a) institute civil proceedings; or
- (b) take a specified step in specified ongoing civil proceedings (within the meaning of section 100 of the 2014 Act).

(2) The applicant may apply for permission only by letter addressed to the Deputy Principal Clerk.

(3) The application must—

- (a) state the full name and address of the applicant;
- (b) where permission is sought to institute civil proceedings, be accompanied by a copy of the document by which it is proposed to institute proceedings;
- (c) where permission is sought to take a step in ongoing proceedings—
  - (i) state the step the applicant wishes to take;
  - (ii) be accompanied by copies of any documents in the process of those proceedings which the applicant considers relevant to the permission sought;
- (d) state briefly why the applicant considers that permission should be given;
- (e) include details of any previous application under section 101 of the 2014 Act which relates to any extent to the same matter (including, in particular, the outcome of such applications).

(4) The Deputy Principal Clerk must—

- (a) in a case where the applicant has previously submitted an application under section 101 of the 2014 Act in relation to the same matter and that application has been refused, reject the application and notify the applicant accordingly;
- (b) otherwise, place the application before a Lord Ordinary.

(5) The Lord Ordinary may, without a hearing, make an order granting or refusing the permission sought.

(6) The interlocutor of the Lord Ordinary is to be sent to the applicant by letter at the address given in the application.

(7) An interlocutor of a Lord Ordinary granting permission to initiate proceedings constitutes permission to proceed without a signature under rule 4.2(5) (signature of documents).”

**Amendment of the Act of Sederunt (Sheriff Court Rules Amendment) (Personal Injury Pre-Action Protocol) 2016**

**5.**—(1) The Act of Sederunt (Sheriff Court Rules Amendment) (Personal Injury Pre-Action Protocol 2016)(a) is amended in accordance with this paragraph.

(2) In paragraph 3(2), in the inserted rule 4A.1(2), for “Appendix 3” substitute “Appendix 1B”.

(3) For paragraph 3(3), substitute “After Appendix 1A (schedule of timetable under personal injuries procedure) insert Appendix 1B as set out in schedule 2 of this Act of Sederunt”.

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(a) S.S.I. 2016/215.

(4) In schedule 2, for the heading “APPENDIX 1A”, substitute “APPENDIX 1B”.

*CJM SUTHERLAND*  
Lord President

Edinburgh  
12th August 2016

## **EXPLANATORY NOTE**

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

This Act of Sederunt amends the Ordinary Cause Rules 1993 and the Summary Cause Rules 2002 to set out the procedure for applying for an order under section 87 (power of sheriff to order sheriff clerk to execute deed relating to heritage) of the Courts Reform (Scotland) Act 2014 (“the 2014 Act”). Section 87 provides that where an action relating to heritable property is before a sheriff or it appears to a sheriff that it is necessary to make an order to implement a decree of a sheriff relating to heritable property, the sheriff may make an order which dispenses with the need for the grantor to execute the deed and directs the sheriff clerk to execute the deed. The effect of execution by the sheriff clerk is that the deed is taken to have the same effect as it would have if it had been executed by the grantor. Actions of this type are normally brought because the grantor (being the person who is under an obligation to execute the deed) of any deed cannot be found or refuses or is unable or otherwise fails to execute the deed.

This Act of Sederunt also makes a minor amendment to rule 36.L1 of the Ordinary Cause Rules to correct errors in the paragraph numbers referred to in that rule.

This Act of Sederunt also amends the Rules of the Court of Session 1994 to set out the procedure which will apply when a person who is the subject of an order under section 100 (vexatious litigation orders) of the Courts Reform (Scotland) Act 2014 seeks permission to either institute civil proceedings or take a specified step in specified ongoing civil proceedings.

Paragraph 5 corrects numbering errors in the Act of Sederunt (Sheriff Court Rules Amendment) (Personal Injury Pre-Action Protocol) 2016.

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£4.25

S201608121000 08/2016 19585

<http://www.legislation.gov.uk/id/ssi/2016/229>

ISBN 978-0-11-103232-9



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