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**STATUTORY INSTRUMENTS**

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**1985 No. 705 (S. 67)****SHERIFF COURT, SCOTLAND****Act of Sederunt (Consumer Credit Act 1974) 1985**

*Made* - - - - - *2nd May 1985*  
*Coming into Operation* *19th May 1985*

The Lords of Council and Session, under and by virtue of the powers conferred on them by sections 70(3), 73(8), 75(5) and 141(5) of the Consumer Credit Act 1974(a), section 32 of the Sheriff Courts (Scotland) Act 1971(b) and of all other powers competent to them in that behalf, do hereby enact and declare:—

*Citation and commencement*

1.— (1) This Act of Sederunt may be cited as the Act of Sederunt (Consumer Credit Act 1974) 1985 and shall come into operation on 19th May 1985.

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

*Interpretation*

2.— (1) In this Act of Sederunt, “the 1974 Act” means the Consumer Credit Act 1974.

(2) Expressions used in this Act of Sederunt which are used in the 1974 Act have the same meaning as in that Act.

*Revocation*

3. The Act of Sederunt (Sheriff Court Procedure, Consumer Credit) 1977(c) is revoked.

**PART I****ORDINARY AND SUMMARY CAUSES**

4. In a cause relating to a regulated agreement, the sheriff may, on cause shown on the motion of any party to the cause before or at proof, in relation to

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(a) 1974 c.39.  
(b) 1971 c.58.  
(c) S.I. 1977/1180.

any party to that agreement or any surety, dispense with the requirement in section 141(5) of the 1974 Act to make that party or surety a party to the cause.

5. In any cause relating to a regulated agreement brought by a person who has acquired rights or liabilities of a former creditor under the agreement by assignation or by operation of law, the requirement in section 141(5) of the 1974 Act that all parties to the regulated agreement shall be made parties to the cause shall not apply to the former creditor unless the sheriff so directs.

## PART II

### SUMMARY CAUSES

6.— (1) Where, in a summary cause to which this sub-paragraph applies, a defender has a claim against a third party who is jointly and severally liable with the defender to the pursuer in respect of the subject matter of the cause and who is not already a party to the cause or whom the pursuer is not bound to call as a defender, the defender may apply to the sheriff under rule 93 of the Act of Sederunt (Summary Cause Rules, Sheriff Court) 1976(a) (Incidental applications) for an order making the third party a party to the cause.

(2) Sub-paragraph (1) applies to a cause in which an application is made by virtue of—

- (a) section 70(3) of the 1974 Act (supplier may be made a party to proceedings against the creditor for recovery of money on cancellation of a regulated agreement);
- (b) section 73(8) of the 1974 Act (negotiator may be made a party to proceedings against the creditor for recovery of money on cancellation of a regulated agreement where goods were taken in part-exchange);  
or
- (c) section 75(5) of the 1974 Act (supplier may be made a party to proceedings against the creditor for misrepresentation or breach of contract by the supplier).

7. If an application under paragraph 6(1) is granted, the sheriff shall appoint a date on which he will regulate further procedure and shall grant warrant to the defender to serve on the third party—

- (a) a copy of the summons;
- (b) a copy of the statement of defence, which shall contain the grounds upon which it is claimed that the third party is liable; and
- (c) a notice as nearly as may be in accordance with the form set out in the Schedule to this Act of Sederunt.

8. On, or after, the date appointed for the regulation of further procedure under paragraph 7, the sheriff may—

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(a) S.I. 1976/476.

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- (a) regulate procedure; or
  - (b) grant such degree, interlocutor or order as he considers appropriate.

9. A decree or other interlocutor granted against a third party under this Part shall take effect and be extractable in the same way as a decree or other interlocutor against a pursuer or defender.

*Emslie,*  
Lord President  
I.P.D.

Edinburgh,  
2nd May 1985.

## SCHEDULE

## Para. 7(c) NOTICE TO THIRD PARTY

Third Party Notice in the case of

AB Pursuer -v- CD Defender  
and  
EF Third Party

To EF (*name and address*)

This Notice is served upon you by CD by virtue of an order granted by the Sheriff of \_\_\_\_\_ at \_\_\_\_\_ on \_\_\_\_\_ in the action raised against CD, defender, by AB, pursuer. The pursuer claims against the defender for (*describe pursuer's claim*) in respect of (*describe contract*) as more fully appears in the summons.

The defender admits [*or denies*] liability to the pursuer but [*or and*] claims that [if he is found liable to the pursuer] you are liable to relieve him wholly [*or in part*] of his liability for the reasons set out in the statement of defence enclosed herewith.

Take notice that if you wish to resist either the claim of the pursuer against the defender or the claim of the defender against you or to make an offer in settlement you are required to appear at the Sheriff Court House at (*address*) on (*day and date*) at (*time*).

If you do not appear decree may be granted against you in your absence.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ .

(*Signed*)  
Solicitor for Defender

## NOTES:

1. You may attend court in person or be represented by an advocate or a solicitor.
2. If you are ordered to pay a sum of money by instalments any failure to pay such instalments at the proper time may result in your forfeiting the right to pay by instalments and the whole amount outstanding will then become due.
3. If decree is granted against you this may, among other possible steps, lead to the arrestment of your wages and/or seizure of your possessions.

## EXPLANATORY NOTE

(*This Note is not part of the Act of Sederunt.*)

This Act of Sederunt revokes the Act of Sederunt (Sheriff Court Procedure, Consumer Credit) 1977 and makes new provision for a third party procedure in ordinary and summary causes under the Consumer Credit Act 1974. This Act of Sederunt comes into force on 19th May 1985 which is the date on which sections 70(3) (supplier may be made party to proceedings against creditor for recovery of money on cancellation of a regulated agreement), 73(8) (negotiator may be made party to proceedings against creditor for recovery of money on cancellation of regulated agreement where goods taken in part exchange), 75(5) (supplier may be made party to proceedings against creditor for breaches of contract by the supplier) and 141(5) (all parties to a regulated agreement, and any surety, to be made parties to the proceedings, except as provided by rules of court) of the 1974 Act come into force by virtue of the Consumer Credit Act 1974 (Commencement No. 8) Order 1983 [S.I. 1983/1551]. This Act of Sederunt is made in consequence of the coming into force of these provisions.



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