
STATUTORY INSTRUMENTS

1991 No. 1920 (S.162)

SHERIFF COURT, SCOTLAND

**Act of Sederunt (Proceedings in the Sheriff Court under
the Debtors (Scotland) Act 1987) (Amendment) 1991**

Made - - - - 22nd August 1991

Coming into force - - 16th September 1991

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 247(2) of the Local Government (Scotland) Act 1947((1)), section 63(1) of the Taxes Management Act 1970((2)), section 32 of the Sheriff Courts (Scotland) Act 1971((3)), paragraph 3(3) of Schedule 1 to the Car Tax Act 1983((4)), paragraph 6(5) of Schedule 7 to the Value Added Tax Act 1983((5)), paragraph 7 of Schedule 2 to the Abolition of Domestic Rates Etc. (Scotland) Act 1987((6)) and of all other powers enabling them in that behalf, having approved, with modifications, draft rules submitted to them by the Sherrif Court Rules Council in accordance with section 34 of the Sheriff Courts (Scotland) Act 1971, do hereby enact and declare:

Citation and commencement

1. –

(1) This Act of Sederunt may be cited as the Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) (Amendment) 1991 and shall come into force on 16th September 1991.

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

Amendment of Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988

2. –

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- (1) 1947 c. 43; section 247(2) was substituted by paragraph 1(1) of Schedule 4 to the Debtors (Scotland) Act 1987 (c. 18).
(2) 1970 c. 9; section 63(1) was substituted by paragraph 2 of Schedule 4 to the Debtors (Scotland) Act 1987 (c. 18).
(3) 1971 c. 58; section 32 was amended by paragraph 12 of Schedule 2 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73) and by section 2(4) of the Civil Evidence (Scotland) Act 1988 (c. 32); and was extended inter alia by section 97 of the Debtors (Scotland) Act 1987 (c. 18).
(4) 1983 c. 53; paragraph 3(3) was inserted by paragraph 3 of Schedule 4 to the Debtors (Scotland) Act 1987 (c. 18).
(5) 1983 c. 55; paragraph 6(5) was inserted by paragraph 4 of Schedule 4 to the Debtors (Scotland) Act 1987 (c. 18).
(6) 1987 c. 47; paragraph 7 of Schedule 2 was amended by paragraph 36(9) of Schedule 12 to, and Part IV of Schedule 13 to the Local Government Finance Act 1988 (c. 41).

(1) The Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988((7)) shall be amended in accordance with the following sub-paragraphs.

(2) For rule 45, substitute the following rule:–

“Notice to debtor prior to service of current maintenance arrestment

45.—(1) Intimation to a debtor under a maintenance order required by section 54(1)(a) of the Act prior to service of a current maintenance arrestment shall be given by intimating to him a notice in form 37 together with a copy of the relevant maintenance order.

(2) The notice referred to in paragraph (1) of this rule shall contain–

- (a) the name and address of the creditor and of the debtor;
- (b) details of the making, registration or confirmation of the maintenance order;
- (c) guidance as to the manner in which payment may be made; and
- (d) a statement of the consequences of failure to comply with the maintenance order.

(3) Intimation in accordance with this rule shall–

- (a) where the debtor resides in the United Kingdom, be by recorded delivery post; and
- (b) where the debtor resides outside the United Kingdom, be by any competent method of service appropriate to that place.

(4) The creditor shall prepare a certificate that intimation has been made in accordance with this rule and shall retain the certificate while the current maintenance arrestment is in force.

(5) Where, in the exercise of his powers under section 24B of the Social Security Act 1986((8)), the Secretary of State seeks to enforce a maintenance order on behalf of a claimant, the following notice shall be appended to form 37:–

“The Secretary of State for Social Security (“the creditor”) intends to enforce this maintenance order under the powers conferred on him by section 24B of the Social Security Act 1986.”.”.

(3) For form 37, substitute form 37 set out in the Schedule to this Act of Sederunt.

(4) For forms 61, 62 and 63, substitute forms 61, 62 and 63 set out in the Schedule to this Act of Sederunt.

Edinburgh,
22nd August 1991

J.A.D. Hope
Lord President, IPD

(7) S.I.1988/2013.

(8) 1986 c. 50; section 24B was inserted by section 8(1) of the Social Security Act 1990 (c. 27).

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SCHEDULE

paragraph 2(3) and (4)

FORM 37 *The Debtors (Scotland) Act 1987* Intimation to debtor in terms of section 54(1)(a)

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

Rules 45(1) and 45(5)

To *(name and address of debtor)*

Take note that a maintenance order, in which you are ordered to make payments to *(name and address)* was [granted/made/registered/confirmed] on *(date)* by/in *(name of court)*. A copy of the order is attached. [Here insert reference to enforcement by Secretary of State for Social Security if appropriate]

Date Signed
[Creditor/Solicitor/Sheriff Officer/Authorised lay representative]

GUIDANCE ABOUT THE PAYMENT OF MAINTENANCE

(You should read this section carefully)

WHAT CAN HAPPEN IF YOU DO NOT MAKE REGULAR PAYMENTS?

If you do not make regular payments and get into arrears amounting in value to 3 instalments of maintenance, a document called a Current Maintenance Arrestment Schedule (referred to here as an arrestment) may be sent to your employer.

The arrestment will instruct your employer to make deductions from your net earnings on every pay day, and pay these sums over to the creditor (i.e. the person to whom the payment of maintenance is due).

The arrestment of your earnings will remain in force for so long as you are employed by your current employer or until the arrestment is recalled or abandoned by the creditor or ceases to have effect.

If an arrestment is sent to your employer you have the right to apply to the sheriff for the order to be recalled. If the sheriff is satisfied that you are unlikely to default in paying maintenance again he may recall the order.

HOW CAN YOU PAY MAINTENANCE?

To avoid the risk of an arrestment it is best to make arrangements to pay the maintenance regularly. This can be done in various ways, including

- by cash payment
- by standing order through a bank or building society
- by personal cheque
- by bank giro credit

Probably the simplest way to make payments is by standing order. This will also provide you with a clear record of payments made. Any bank or building society will give you further advice on this.

WHERE CAN YOU GET ADVICE?

FURTHER ADVICE MAY BE OBTAINED BY CONTACTING ANY CITIZENS ADVICE BUREAU, OTHER LOCAL ADVICE CENTRE, SHERIFF CLERK OR SOLICITOR

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PAYMENT ARRANGEMENTS

The debtor : (name and address)
The creditor : (name and address)
*Creditor's agent : (name and address)

To the debtor: Take note that payment of sums due under this maintenance order should be sent to * the creditor at the above address/the account number referred to below/the creditor's agent at the above address.

* PAYMENT TO BANK, BUILDING SOCIETY OR OTHER ACCOUNT

To the debtor: Payment should be made direct to the following account-

ACCOUNT NUMBER:
SORT CODE:
NAME OF BANK, BUILDING SOCIETY, ETC:
ADDRESS:

(Details to be inserted by or on behalf of the creditor)

To debtor: If it is not possible for payment by standing order to start on the due date you must ensure that payment is made direct to the creditor until such time as the standing order comes into operation.

Do not delay in making payments while you are making arrangements with your own bank or building society. Otherwise you may inadvertently breach the terms of the court order. This could result in a current maintenance arrestment order being served on your employer.

* Delete as appropriate.

FORM 61

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

Rule 68(1)

SUMMARY WARRANT FOR THE RECOVERY OF

1. Rates under section 247 of the Local Government (Scotland) Act 1947.
2. Community charges under paragraph 7 of Schedule 2 to the Abolition of Domestic Rates Etc. (Scotland) Act 1987.

(Place and date)

The Sheriff having considered the application dated *(date)* by *(name and address of applicant)* along with certificate produced and it being stated in the application that an action has not been commenced for the recovery of any amount due, Grants a Summary Warrant authorising recovery of the amount remaining due and unpaid by each person specified in the application along with a surcharge of 10 *per cent* of that amount by:-

- (a) a pouncing and sale in accordance with Schedule 5 to the Debtors (Scotland) Act 1987;
- (b) an earnings arrestment;
- (c) an arrestment and action of furthcoming or sale;

and Grants Warrant to enter premises in the occupancy of any person specified in the application in order to execute a pouncing or sale or the removal and sale of the pounced articles and, for any of those purposes, to open shut and lockfast places.

FORM 62 SUMMARY WARRANT FOR THE RECOVERY OF RATES UNDER SECTION 250 OF THE LOCAL GOVERNMENT (SCOTLAND) ACT 1947

Rule 68(2)

(Place and date)

The Sheriff having considered the application dated *(date)* by *(name and address of applicant)* and being satisfied that the person specified in the application has removed/is about to remove/that there is reason to suspect his removal from the land and heritages referred to in the application, Grants a Summary Warrant authorising the recovery of the amount remaining due and unpaid by such person by:-

- (a) a pouncing and sale in accordance with Schedule 5 to the Debtors (Scotland) Act 1987;
- (b) an earnings arrestment;
- (c) an arrestment and action of furthcoming or sale;

and Grants Warrant to enter premises in the occupancy of any person specified in the application in order to execute a pouncing or sale or the removal and sale of the pounced articles and, for any of those purposes, to open shut and lockfast places.

FORM 63

SUMMARY WARRANT FOR THE RECOVERY OF

1. Tax under section 63 of the Taxes Management Act 1970.
2. Car tax under paragraph 3(3) of Schedule 1 to the Car Tax Act 1983.
3. Value Added Tax under paragraph 6(5) of Schedule 7 to the Value Added Tax Act 1983.

(Place and Date)

The Sheriff having considered the application dated *(date)* by *(name and address of applicant)* along with certificate produced, Grants a Summary Warrant authorising the recovery of the amount remaining due and unpaid by each person specified in the application by:-

- (a) a poinding and sale in accordance with Schedule 5 to the Debtors (Scotland) Act 1987;
- (b) an earnings arrestment;
- (c) an arrestment and action of furthcoming or sale;

and Grants Warrant to enter premises in the occupancy of any person specified in the application in order to execute a poinding or sale or the removal and sale of the poinded articles and, for any of those purposes, to open shut and lockfast places.

EXPLANATORY NOTE

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

This Act of Sederunt amends the Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988 to make provision for further information and guidance to be intimated to debtors prior to enforcement of their debts by means of a current maintenance arrestment and to provide revised forms of summary warrant.