
STATUTORY INSTRUMENTS

1996 No. 2709 (S.211)

SHERIFF COURT, SCOTLAND

Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) (Amendment) 1996

Made - - - - *18th October 1996*

Coming into force - - *11th November 1996*

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 7(2) of Schedule 2 to the Abolition of Domestic Rates Etc. (Scotland) Act 1987(5), paragraph 2(2) of Schedule 8 to the Local Government Finance Act 1992(6), paragraph 7(8) of Schedule 7 to the Finance Act 1994(7), paragraph 5(5) of Schedule 11 to the Value Added Tax Act 1994(8), paragraph 2(2) of Schedule 10 to the Local Government etc. (Scotland) Act 1994(9), paragraph 13(2) of Schedule 5 to the Finance Act 1996(10), and of all other powers enabling them in that behalf, having approved, with modifications, 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 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) 1996 and shall come into force on 11th November 1996.

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- (1) 1947 c. 43; section 247(2) was substituted by the Debtors (Scotland) Act 1987 (c. 18) (“the 1987 Act”), Schedule 4, paragraph 1(1).
- (2) 1970 c. 9; section 63(1) was substituted by the 1987 Act, Schedule 4, paragraph 2.
- (3) 1971 c. 58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 12, by the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(4), and by the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 18(2).
- (4) 1983 c. 53; paragraph 3(3) of Schedule 1 was inserted by the 1987 Act, Schedule 4, paragraph 3.
- (5) 1987 c. 47; paragraph 7(2) of Schedule 2 was amended by the Local Government Finance Act 1988 (c. 41), Schedule 12, paragraph 36(9) and Schedule 13, Part IV.
- (6) 1992 c. 14; section 97, which gives effect to Schedule 8, is extended by Schedule 11, paragraph 11.
- (7) 1994 c. 9; paragraph 7(8) of Schedule 7 was substituted by the Finance Act 1995 (c. 4), Schedule 5, paragraph 9.
- (8) 1994 c. 23.
- (9) 1994 c. 39; section 79, which gives effect to Schedule 10, confers the power on the Secretary of State to make orders for recovery of charges by diligence by virtue of that Schedule. The power has been exercised in the Water Services Charges (Billing and Collection) (Scotland) Order 1996 S.I. 1996/325.
- (10) 1996 c. 8.

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

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

2.—(1) The Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988(11) shall be amended in accordance with the following sub-paragraphs.

(2) For rule 68(12), substitute the following rule:—

“Summary warrants

68. A summary warrant for recovery of any sum shall be in form 61 or 62, as the case may be.”

(3) In the Schedule, for forms 61(13), 62(14) and 63(15) substitute Forms 61 and 62 as set out in Schedule 1 to this Act of Sederunt.

Revocations

3. The Acts of Sederunt mentioned in Schedule 2 to this Act of Sederunt are revoked to the extent specified in the third column of that Schedule.

Edinburgh,
18th October 1996

Rodger of Earlsferry
Lord President, I.P.D.

(11) S.I. 1988/2013, amended by S.I. 1991/1920, 1992/2964, 1994/3086 and 1995/1876.

(12) Rule 68 was amended by S.I. 1992/2964, S.I. 1994/3086 and S.I. 1995/1876.

(13) Form 61 was substituted by S.I. 1991/1920, paragraph 2(4) and amended by S.I. 1992/2964.

(14) Form 62 was substituted by S.I. 1991/1920, paragraph 2(4).

(15) Form 63 was substituted by S.I. 1991/1920, paragraph 2(4) and amended by S.I. 1994/3086 and S.I. 1995/1876.

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

SCHEDULE 1

Paragraph 2(3)

FORM 61 SUMMARY WARRANT FOR THE RECOVERY OF

Rule 68

(insert type of sum due e.g. Rates, Community Charge, Council Tax etc)

under *(insert section and statute under which sum due)*

(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 pounced articles and, for any of those purposes, to open shut and lockfast places.

Note:- This form to be used where statute provides for 10 *per cent* surcharge to be added.

FORM 62 SUMMARY WARRANT FOR THE RECOVERY OF

Rule 68

(insert type of sum due e.g. Car Tax, Value Added Tax, etc.)

under *(insert section and statute under which sum due)*

(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 recovery of the amount remaining due and unpaid by each person specified in the application 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 pounced articles and, for any of those purposes, to open shut and lockfast places.

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SCHEDULE 2

Paragraph 3

ACTS OF SEDERUNT REVOKED

<i>Statutory Instrument Year and Number</i>	<i>Title of Act of Sederunt</i>	<i>Extent of Revocation</i>
1991/1920	Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) (Amendment) 1991	Paragraph 2(4)
1992/2964	Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) (Amendment) 1992	The whole Act of Sederunt
1994/3086	Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) (Amendment) 1994	The whole Act of Sederunt
1995/1876	Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) (Amendment) 1995	The whole Act of Sederunt

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 general provision for enforcement action for non-payment of monies by summary warrant procedure rather than separate provision dependent on the legislative basis of such recovery, as at present.