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STATUTORY INSTRUMENTS

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**1993 No. 920 (S.127)**

**SHERIFF COURT, SCOTLAND**

**Act of Sederunt (Child Support Rules) 1993**

*Made* - - - - - *26th March 1993*

*Coming into force* - - - - - *5th April 1993*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 32 of the Sheriff Courts (Scotland) Act 1971(1) 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 that Act, do hereby enact and declare:

**Citation and commencement**

**1. –**

(1) This Act of Sederunt may be cited as the Act of Sederunt (Child Support Rules) 1993 and shall come into force on 5th April 1993.

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

(3) In this Act of Sederunt–

“the Act of 1991” means the Child Support Act 1991(2);

“deduction from earnings order” means an order under section 31(2) of the Act of 1991;

“liability order” means an order under section 33(2) of the Act of 1991; and

“liable person” means a person liable to make payments of child support maintenance.

(4) A reference in rules 1 to 6 of this Act of Sederunt to a numbered form is a reference to the form so numbered in the Schedule to this Act of Sederunt or a form substantially to the same effect, with such modifications as circumstances may require.

**Application for a liability order**

**2.—**(1) An application by the Secretatry of State for a liability order under section 33(2) of the Act of 1991 shall be by summary application in Form 1, and rule 3 and Form A of the Ordinary Cause Rules of the sheriff court(3) shall not apply to such an application.

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(1) 1971 c. 58; section 32 was extended by the Child Support Act 1991 (c. 48) sections 39(2) and 49.

(2) 1991 c. 48.

(3) 1907 c. 51; First Schedule, substituted by S.I.1983/747; relevant amendments are contained in S.I. 1984/255, 1986/1230 and 1946, 1988/1978 and 1992/249.

(2) The sheriff clerk shall, on receiving an application under paragraph (1) above, order the application to be served on the liable person with a notice in Form 2; and service of the application and notice shall be by a solicitor or officer of court, who shall complete an execution of service.

(3) Where the liable person wishes to object to the grant of the application he shall do so by completing Form 2 and returning it to the sheriff clerk within 21 days after the date of service of the application.

(4) The sheriff clerk, on receipt of an objection which is in accordance with paragraph (3) above, shall—

- (a) put out the cause for hearing; and
- (b) intimate the hearing to the parties.

(5) The sheriff may consider the application, and any objection which has been received, on the date fixed for hearing, or at any continuation of it, whether or not any of the parties appear.

(6) Where no objection to the grant of the application in accordance with paragraph (3) above has been received within 21 days after the date of service, the applicant may return the application, together with a duly completed execution of service, to the sheriff clerk requesting the sheriff to make a liability order.

(7) A liability order shall be in Form 3.

(8) An extract of the liability order, or other order of the sheriff, may be issued on the expiry of 14 days from the date of making of the order.

(9) An extract of the liability order shall be in Form 4.

### **Enforcement of non-Scottish liability orders within Scotland**

3. Where a liability order made by a court in England and Wales or any corresponding order made by a court in Northern Ireland is, by virtue of regulations made under section 39(1) of the Act of 1991, to be enforced in Scotland, the liability order or corresponding order shall be registered for enforcement by the sheriff clerk appending to it a docquet in the following terms:—

**(Insert name of sheriff court and date of registration)**

**This order is registered for enforcement in accordance with the Child Support Act 1991.**

*signed (signature of sheriff clerk).*

### **Service of charge following the making of a liability order**

4.—(1) Where a liability order has been made, a charge for payment under section 38 of the Act of 1991 shall be in Form 5.

(2) The period for payment specified in any charge under this rule shall be—

- (a) 14 days where the person on whom it is served is within the United Kingdom; and
- (b) 28 days where the person on whom it is served is outwith the United Kingdom or his whereabouts are unknown.

### **Appeal against a deduction from earnings order**

5.—(1) An appeal against a deduction from earnings order as provided for in regulations made under section 32(5) of the Act of 1991 shall be by summary application in Form 6, and rule 3 and Form A of the Ordinary Cause Rules of the sheriff court shall not apply to such an appeal.

- (2) The sheriff clerk, on receiving an application under paragraph (1) above, shall—
- (a) fix a date for the hearing of the appeal; and
  - (b) order service of the application on the Secretary of State.

### **Representation**

6.—(1) A party to an application for a liability order or to an appeal against a deduction from earnings order may be represented by—

- (a) an advocate;
- (b) a solicitor; or
- (c) subject to the following paragraphs of this rule, any other person (hereinafter referred to as an “authorised lay representative”), where the sheriff is satisfied that such person is a suitable representative and is duly authorised to represent the party.

(2) An authorised lay representative shall not represent a party at any diet appointed for the leading of evidence or for debate but may do all other things in the preparation and conduct of a claim as may be done by an individual who conducts his own claim.

(3) A party who is, or has been, represented by an authorised lay representative, and who would have been found entitled to expenses and outlays if he had been represented by an advocate or a solicitor, may be allowed the expenses and outlays to which a party litigant may be found entitled by virtue of the Litigants in Person (Costs and Expenses) Act 1975<sup>(4)</sup> or any enactment made under that Act.

### **Amendment**

7.—(1) The forms in the Schedule to the Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988<sup>(5)</sup> shall be amended in accordance with the following paragraphs.

- (2) In Form 37 omit the words “to three instalments” and substitute “one instalment”.
- (3) In—
  - (a) paragraph (2) of the Notes in Form 30;
  - (b) paragraph (1) of the Notes for Employer in Form 34; and
  - (c) paragraph (1) of the Notes in Form 45,

after the words “section 73 of the Act” insert the words “as amended by the Child Support Act 1991”.

Edinburgh,  
26th March 1993

*J.A.D. Hope*  
Lord President, IPD

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(4) 1975 c. 47.

(5) S.I. 1988/2013; relevant amending instrument is S.I. 1991/1920.

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

SCHEDULE

FORM 1 Form of summary application for a liability order under section 33 of the Child Support Act 1991

Rule 2(1)

SUMMARY APPLICATION  
for a liability order under section 33  
of the Child Support Act 1991

by

SECRETARY OF STATE  
(insert address)

Applicant

against

[A.B.]  
(insert full name and address of liable person)

Respondent

1. The applicant is the Secretary of State.
2. The respondent is a "liable person" within the meaning of the Act.  
The court has jurisdiction to deal with this application by virtue of (state ground of jurisdiction).
3. In terms of an assessment made by the Child Support Officer (insert address) on (insert date of assessment), the respondent is obliged to pay to the Secretary of State the sum of £ per
4. The respondent has failed to make payment(s) under the assessment and the applicant served notice(s) of arrears on the respondent on (insert date(s)). At the date of this application there remains a total of £ of maintenance unpaid. \*Additionally, there remains due by the respondent interest at the rate of % per annum for the period from (insert date) to (insert date), as detailed in the notice of arrears lodged with this application, amounting in total to £
5. It appears to the applicant that-
  - \*(a) it is inappropriate to make a deduction from earnings order against the respondent because (state reason),
  - or
  - \*(b) a deduction from earnings order was made against the respondent on (insert date) but has proved ineffective as a means of securing payment because (state reason).
6. The applicant craves the court to make a liability order against the respondent in the sum of £ , \*(including interest of £ ). In addition the applicant asks the court to award expenses to him.

Date (insert date)

signed (signature of applicant)

\*(delete as appropriate)

FORM 2 Form of notice to a liable person in an application for a liability order under the Child Support Act 1991

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

Rule 2(2)

**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).**

signed **(signature and designation of solicitor/officer of court)**

**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 the maintenance assessment and he must make the liability order if he is satisfied that the payments in question have become payable but have not been paid.

**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 £

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 fail either to return this form to the court as directed or, having returned it, fail to attend or be represented at the hearing, the application may be granted in your absence.

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

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**PART B**  
**(to be completed by**  
**liable person)**

I object to the grant of the application on the following grounds **(state grounds of objection, and provide relevant supporting information, e.g. if you claim that payments are not due, provide details of payments made).**

Date **(insert date)**

signed **(signature of liable person)**

If space is insufficient continue on a separate paper  
and attach to this form.

**FORM 3 Form of liability order under Child Support Act 1991**

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

Rule 2(7)

**(insert place and date)**

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

Amount of maintenance unpaid	£
Amount of interest on maintenance unpaid	£
Expenses	£ _____
Aggregate amount of liability order	£

Signed (signature of sheriff)  
Sheriff.

**FORM 4 Form of extract of liability order under the Child Support Act 1991**

Rule 2(9)

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 sum to the Secretary of State.

Amount of maintenance unpaid	£
Amount of interest on maintenance unpaid	£
Expenses	£ _____
Aggregate amount of liability order	£

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

Date of extract: \_\_\_\_\_ signed (signature of sheriff clerk)

**FORM 5 Form of charge for payment following the making of a liability order under the Child Support Act 1991**

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

Rule 4(1)

**CHARGE FOR PAYMENT ON A LIABILITY ORDER UNDER SECTION 33 OF THE CHILD SUPPORT ACT 1991**

*in causa*

**SECRETARY OF STATE  
(insert address)  
against**

**[A.B.]  
(insert full name and address of liable person)  
LIABLE PERSON**

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

On **(insert date)** a liability order against you was made in the sheriff court at **(insert place)** for payment of a sum of money in terms of a maintenance assessment made by the Child Support Agency on **(insert date of assessment)**.

I, **(insert name and address)**, sheriff officer, by virtue of an extract order of court in Her Majesty's name and authority and in the name and authority of the sheriff, charge you to pay the total sum due as set out below \*(together with any further interest due) within \*(14/28) days from the date of this charge. Payment should be made to **(insert details as to whom payment is to be made)**.

If you do not pay this sum within \*(14/28) days you are liable to have further action taken against you, including the pouncing and sale of articles belonging to you.

This charge is served on you today by **(state method of service)** and is witnessed by **(insert name and address of witness)**.

Date **(insert date)**

Signed **(signature of witness)**

signed **(signature of sheriff officer)**

**\*delete as appropriate**

The sum now due by you is:-	
Unpaid maintenance	£
Interest on unpaid maintenance	£
Expenses	£ _____
Aggregate amount of liability order	£
Less paid to account	£
Net aggregate amount outstanding	£ _____
Agents fee	£
Expenses of sheriff officer	£
Charge fee	£
Travelling	£
Witness fee	£
Other outlays in connection with service of charge ( <i>specify</i> )	£ _____
<b>TOTAL SUM DUE</b>	<b>£</b>

**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. A LEAFLET EXPLAINING DEBT COLLECTION PROCEDURES IS AVAILABLE FROM ALL ADVICE AGENCIES AND SHERIFF COURTS.**

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**FORM 6 Form of application for appeal against a deduction from earnings order**

Rule 5(1)

**APPEAL AGAINST A DEDUCTION FROM EARNINGS ORDER**

by

[A.B.]

**(insert full name and address of appellant)**

*Appellant*

against

**SECRETARY OF STATE FOR SOCIAL SECURITY**

**(insert address)**

*Respondent*

1. The appellant is **(insert full name and address of appellant)**.
2. The respondent is the Secretary of State for Social Security.
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 Secretary of State for Social Security. The making of the deduction from earnings order was intimated to the appellant on **(insert date)**.
5. \*(a) The appellant states that the deduction from earnings order is defective on the ground(s) that **(state reason)**,  
or  
\*(b) The appellant disputes that the following payments, which were taken into account by the Secretary of State for Social Security in making the deduction from earnings order, are earnings on the ground(s) that **(give details of payments and nature of dispute)** and accordingly appeals to the sheriff.
6. The appellant asks the court to award expenses to him.

Date **(insert date)**

signed **(signature of appellant)**

**\*(delete as appropriate)**

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**EXPLANATORY NOTE**

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

This Act of Sederunt lays down rules to govern applications for a liability order under section 33(2) of the Child Support Act 1991. It prescribes the form of application for a liability order, the form of notice to be served on the liable person along with that application, the form of liability order and of the extract liability order (Rule 2).

It makes provision for the registration for enforcement within Scotland of non-Scottish liability orders (Rule 3).

It provides for service of a charge following the making of a liability order and specifies the period for payment to be given in the charge (Rule 4).

It prescribes the form of appeal (by way of summary application) against a deduction from earnings order (Rule 5).

It makes provision as to representation in applications for a liability order and appeals against deductions from earnings orders, and sets out the consequences for expenses and outlays where representation is by an authorised lay representative in those two procedures (Rule 6).

It also makes minor consequential amendments to the forms in the Schedule to the Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988 (Rule 7).