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SCOTTISH STATUTORY INSTRUMENTS

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**2000 No. 387**

**SHERIFF COURT**

**Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (No. 2) (Administration of Justice (Scotland) Act 1972) 2000**

*Made* - - - - *3rd November 2000*

*Coming into force* - - *20th November 2000*

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 section 1(3) of the Administration of Justice (Scotland) Act 1972(2) and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the Sheriff Courts (Scotland) Act 1971, do hereby enact and declare:

**Citation, commencement and interpretation**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (No. 2) (Administration of Justice (Scotland) Act 1972) 2000 and shall come into force on 20th November 2000.

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

(3) In this Act of Sederunt, “the principal Rules” means the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(3).

**Amendment of the principal Rules**

2.—(1) Part I (Administration of Justice (Scotland) Act 1972) of Chapter 3 (rules on applications under specific statutes) of the principal Rules is amended in accordance with the following paragraphs.

(2) In rule 3.1.1, paragraph (1)–

(a) the words from ““the Act”” to the end of that paragraph become sub paragraph (a); and

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(1) 1971 c. 58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(4) and the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 18(2).

(2) 1972 c. 59.

(3) S.I. 1999/929, to which there are amendments not relevant to this Act of Sederunt.

- (b) after sub paragraph (a) so renumbered insert–
  - “; and
  - (b) “listed items” means a list of the documents and other property which the applicant in terms of rule 3.1.2 wishes to be made the subject of the order.”.
- (3) Rule 3.1.2 is renumbered 3.1.2(1).
- (4) After rule 3.2.1(1) so renumbered insert–
  - “(2) The summary application shall contain–
    - (a) the listed items;
    - (b) the address of the premises within which the applicant believes the listed items are to be found; and
    - (c) the facts which give rise to the applicant’s belief that, were the order not to be granted, the listed items, or any of them, would cease to be available for the purposes of section 1 of the Act.

### **Accompanying documents**

**3.1.3** The applicant shall lodge with the summary application–

- (a) an affidavit supporting the averments in the summary application; and
- (b) an undertaking by the applicant that he–
  - (i) will comply with any order of the sheriff as to payment of compensation if it is subsequently discovered that the order, or the implementation of the order, has caused loss to the respondent or, where the haver is not the respondent, to the haver;
  - (ii) will bring within a reasonable time of the execution of the order any proceedings which he decides to bring; and
  - (iii) will not, without leave of the sheriff, use any information, documents or other property obtained as a result of the order, except for the purpose of any proceedings which he decides to bring and to which the order relates.

### **Modification of undertakings**

**3.1.4** The sheriff may, on cause shown, modify, by addition, deletion or substitution, the undertaking mentioned in rule 3.1.3.

### **Intimation and service of application**

**3.1.5.**—(1) Before granting the summary application, the sheriff may order such intimation or service of the summary application to be given or executed, as the case may be, as he thinks fit.

(2) Any person receiving intimation or service of the summary application by virtue of an order under paragraph (1) may appear and oppose the summary application.

### **Form of order**

**3.1.6** An order made under this Part shall–

- (a) be in Form 11A; and
- (b) include in addition a warrant of citation in Form 2.

### **Caution and other security**

**3.1.7** On granting, in whole or in part, the summary application the sheriff may order the applicant to find such caution or other security as he thinks fit.

### **Execution of an order**

**3.1.8** The order made in terms of rule 3.1.6 shall be served by the Commissioner in person and it shall be accompanied by a copy of the affidavit referred to in rule 3.1.3(a).

### **Duties of a Commissioner**

**3.1.9** The Commissioner appointed by the sheriff shall, on executing the order—

- (a) give to the haver a copy of the notice in Form 11B;
- (b) explain to the haver—
  - (i) the meaning and effect of the order; and
  - (ii) that he may be entitled to claim that some or all of the listed items are confidential or privileged;
- (c) inform the haver of his right to seek legal advice;
- (d) enter the premises and take all reasonable steps to fulfil the terms of the order;
- (e) where the order has authorised the recovery of any of the listed items, prepare an inventory of all the listed items to be recovered before recovering them; and
- (f) send any recovered listed items to the sheriff clerk to await the further order of the sheriff.

### **Confidentiality**

**3.1.10.**—(1) Where confidentiality is claimed for any listed item, that listed item shall, where practicable, be enclosed in a sealed envelope.

(2) A motion to have such a sealed envelope opened may be made by the party who obtained the order and he shall intimate the terms of the motion, by registered post or first class recorded delivery, to the person claiming confidentiality.

(3) A person claiming confidentiality may oppose a motion made under paragraph (2).

### **Restrictions on service**

**3.1.11.**—(1) Except on cause shown, the order may be served on Monday to Friday only, between the hours of 9am and 5pm only.

(2) The order shall not be served at the same time as a search warrant granted in the course of a criminal investigation.

(3) The Commissioner may be accompanied only by—

- (a) any person whom he considers necessary to assist him to execute the order;
- (b) such representatives of the applicant as are named in the order,

and if it is likely that the premises will be occupied by an unaccompanied female and the Commissioner is not female, one of the people accompanying the Commissioner shall be female.

(4) If it appears to the Commissioner when he comes to serve the order that the premises are occupied by an unaccompanied female and the Commissioner is neither female nor accompanied by a female, the Commissioner shall not enter the premises.

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**Right of haver to consult**

**3.1.12** The haver may seek legal or other professional advice of his choice and where the purpose of seeking this advice is to help him to decide whether to ask the sheriff to vary the order the Commissioner shall not commence to search for or to take any other steps to take possession of or preserve the listed items.”.

(5) In Schedule 1 of the principal Rules, after Form 11, insert the forms set out in the Schedule to this Act of Sederunt.

Edinburgh  
3rd November 2000

*RODGER OF EARLSFERRY*  
Lord President I.P.D.

SCHEDULE

Article 2(5)

FORM 11A Form of order for recovery of documents etc. under Part I of Chapter 3 of Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999

Rule 3.1.6

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

in the Summary Application

of

[A.B.] *(designation and address)*

Applicant

against

[C.D.] *(designation and address)*

Respondent

Date: *(date of interlocutor)*

To: *(name and address of party or parties or named third party haver, from whom the documents and other property are sought to be recovered)*

**THE SHERIFF** having heard the applicant and being satisfied that it is appropriate to make an order under section 1 of the Administration of Justice (Scotland) Act 1972:

**ORDERS** the Summary Application to be served upon the person(s) named and designed therein;

**APPOINTS** *(name and designation of Commissioner)* to be Commissioner of the court;

**GRANTS** commission and diligence;

**ORDERS** the Commissioner to explain to the haver on executing the order—

- (1) the meaning and effect of the order;
  - (2) that the haver may be entitled to claim that certain of the documents and other property are confidential or privileged; and
  - (3) that the haver has a right to seek legal or other professional advice of his choice,
- and to give to the haver a copy of the Notice in Form 11B of Schedule 1 to the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999.

**GRANTS** warrant to and authorises the said Commissioner, whether the haver has allowed entry or not—

- (1) to enter, between the hours of 9am and 5pm on Monday to Friday, *(or, where the court has found cause shown under rule 3.1.11(1), otherwise specify the time and day)* the premises at *(address of premises)* and any other place in Scotland owned or occupied by the haver at which it appears to the Commissioner that any of the items set out in the statement of facts in the application to the court (the “listed items”) may be located; and
- (2) unless the haver is taking legal or other professional advice on the question of having the order varied—
  - (a) to search for and take all other steps which he considers necessary to take possession of or preserve *(specify the listed items)*; and

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(b) to take possession of and to preserve all or any of the listed items and to consign them with the Sheriff Clerk at *(enter name and address of sheriff court)* to be held by him pending the further order of the sheriff,  
and for that purpose,

**ORDERS** the haver or his servants or agents to allow the Commissioner, any person whom the Commissioner considers necessary to assist him, and the Applicant's representatives to enter the premises named in the order and, unless the haver has sought legal or other professional advice on the question of having the order varied, to allow them—

- (1) to search for the listed items and take such other steps as the Commissioner considers it is reasonable to take to execute the order;
- (2) to provide access to information stored on any computer owned or used by him by supplying or providing the means to overcome any and all security mechanisms inhibiting access thereto;
- (3) to allow the Commissioner, any person whom the Commissioner considers necessary to assist him, and the Applicant's representatives to remain in the premises until such time as the search is complete, including allowing them to continue the search on subsequent days if necessary;
- (4) to inform the Commissioner immediately of the whereabouts of the listed items; and
- (5) to provide the Commissioner with a list of the names and addresses of everyone who has supplied him with any of the listed items and of the names and addresses of everyone to whom he has given any of the listed items,

and not to destroy, conceal or tamper with any of the listed items except in accordance with the terms of this order;

**FURTHER AUTHORISES** *(specify the representatives)* to be the sole representatives of the Applicant to accompany the Commissioner for the purpose of identification of the said documents and other property.

## SCHEDULE TO THE ORDER

### Undertakings given by Applicant

The Applicant has given the following undertakings:—

1. That he will comply with any order of the court as to payment of compensation if it is subsequently discovered that the order, or the implementation of the order, has caused loss to the respondent or, where the respondent is not the haver, to the haver.
2. That he will bring within a reasonable time of the execution of the order any proceedings which he decides to bring.
3. That he will not, without leave of the court, use any information, documents or other property obtained as a result of the order, except for the purpose of any proceedings which he decides to bring and to which the order relates.

*(or as modified under rule 3.1.4)*

FORM 11B Notice to accompany order in Form 11A when served by Commissioner

## IMPORTANT

### NOTICE TO PERSON ON WHOM THIS ORDER IS SERVED

1. This order orders you to allow the person appointed and named in the order as Commissioner to enter your premises to search for, examine and remove or copy the items mentioned in the order.
2. It also allows entry to the premises to any person appointed and named in the order as a representative of the person who has been granted the order and to any person accompanying the Commissioner to assist him.
3. No-one else is given authority to enter the premises.
4. You should read the order immediately.
5. You have the right to seek legal or other professional advice of your choice and you are advised to do so as soon as possible.
6. Consultation under paragraph 5 will not prevent the Commissioner from entering your premises for the purposes mentioned in paragraph 1 but if the purpose of your seeking advice is to help you to decide if you should ask the court to vary the order he will not be able to search the premises.
7. The Commissioner is obliged to explain the meaning and effect of the order to you.
8. He is also obliged to explain to you that you are entitled to claim that the items, or some of them, are protected as confidential or privileged.
9. You are entitled to ask the court to vary the order provided that—
  - you take steps to do so at once; and
  - you allow the Commissioner, any person appointed as a representative of the person who has been granted the order and any person accompanying the Commissioner to assist him, to enter the premises – but not to start the search – meantime.
10. The Commissioner and the people mentioned as representatives or assistants have a right to enter the premises even if you refuse to allow them to do so, unless—
  - you are female and alone in the premises and there is no female with the Commissioner (where the Commissioner is not female), in which case they have no right to enter the premises;
  - the Commissioner serves the order before 9am or after 5pm on a weekday or at any time on a Saturday or Sunday (except where the court has specifically allowed this, which will be stated in the order);in which cases you should refuse to allow entry.
11. You are entitled to insist that there is no-one (*or no-one other than insert name of person*) present who could gain commercially from anything which might be read or seen on your premises.
12. You are required to hand over to the Commissioner any of the items mentioned in the order which are in your possession.
13. You may be found liable for contempt of court if you refuse to comply with the order.

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## EXPLANATORY NOTE

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

This Act of Sederunt amends Part I of Chapter 3 of the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 (S.I.1999/929). Part I of Chapter 3 provides for the granting of orders under section 1 of the Administration of Justice (Scotland) Act 1972 (c. 59). This Act of Sederunt makes more detailed provision in that regard. In particular, it regulates the manner in which an order may be implemented and provides more protection for the haver.

Article 2(4) introduces the following new provisions into Part I of Chapter 3:–

rule 3.1.2(2) now specifies what the summary application shall contain and rule 3.1.3 details the documents which are to accompany the summary application;

rule 3.1.4 allows the sheriff to modify the undertaking that the applicant is to give under rule 3.1.3;

rules 3.1.5, 3.1.7 and 3.1.8 deal respectively with intimation, caution and execution;

rule 3.1.9 sets out the duties of the Commissioner, rule 3.1.10 deals with the question of confidentiality and rule 3.1.11 lays down restrictions on service, to the extent that the order may be served on Monday to Friday only, between the hours of 9am and 5pm; and

rule 3.1.12 gives the haver a right to take legal or other professional advice on the order.

Article 2(5) inserts the following forms, set out in the Schedule to this Act of Sederunt–

- (a) Form 11A, the form of the order which the sheriff will grant, which will be accompanied by a schedule that sets out the undertakings given by the applicant; and
- (b) Form 11B, the form of Notice that will be given to the haver at the time the order is served, setting out clearly his rights and obligations.