
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 193

**Act of Sederunt (Sheriff Court Rules)
(Miscellaneous Amendments) 2011**

Citation, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) 2011 and, subject to subparagraph (2), comes into force on 4th April 2011.

(2) Paragraph 15 comes into force on 6th April 2011.

(3) A certified copy of this Act of Sederunt is to be inserted in the Books of Sederunt.

(4) In this Act of Sederunt—

“Ordinary Cause Rules” means the Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907(1);

“Small Claim Rules” means the Small Claim Rules in Schedule 1 to the Act of Sederunt (Small Claim Rules) 2002(2);

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

“Summary Cause Rules” means the Summary Cause Rules in Schedule 1 to the Act of Sederunt (Summary Cause Rules) 2002(4).

Service of documents by sheriff officers

2.—(1) The Ordinary Cause Rules are amended in accordance with the following subparagraph.

(2) In rule 5.4 (service within Scotland by sheriff officer)(5)—

(a) for paragraph (3)(b) substitute—

“(b) by leaving it at that person’s dwelling place or place of business in such a way that it is likely to come to the attention of that person.”;

(b) after paragraph (5), insert—

“(6) Where service is executed under paragraphs (1)(b) or (3), the document and the citation or notice of intimation, as the case may be, must be placed in an envelope bearing

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- (1) 1907 c.51. Schedule 1 was substituted by S.I. 1993/1956 and amended by S.I. 1996/2167 and 2445; S.S.I. 2000/239 and 408; 2001/8 and 144; 2002/7, 128 and 560; 2003/25, 26 and 601; 2004/197 and 350; 2005/20, 189, 638 and 648; 2006/198, 207, 293, 410 and 509; 2007/6, 339, 440 and 463; 2008/121, 223 and 365; 2009/107, 164, 284, 285, 294 and 402; and 2010/120, 279, 324, 340 and 416.
- (2) S.S.I. 2002/133, amended by S.S.I. 2003/26; 2004/197; 2005/648; 2006/509; 2007/6, 339, 440 and 463; 2008/121, 223 and 365; 2009/107, 164, 294 and 402; 2010/279, 340 and 416.
- (3) S.I. 1999/929, amended by S.S.I. 2000/148 and 387; 2001/142; 2002/7, 129, 130, 146 and 563; 2003/26, 27, 98, 261, 319, 346 and 556; 2004/197, 222, 334 and 455; 2005/61, 445, 473, 504 and 648; 2006/198, 410, 437 and 509; 2007/6, 233, 339, 440 and 463; 2008/9, 41, 111, 223, 335, 365 and 375; 2009/107, 109, 164, 294, 320 and 402; and 2010/324, 340 and 416.
- (4) S.S.I. 2002/132, amended by S.S.I. 2002/516; 2003/26 and 601; 2004/197; 2005/648; 2006/509; 2007/6, 339, 440 and 463; 2008/121, 223 and 365; 2009/107, 164, 294 and 402; and 2010/279, 340 and 416.
- (5) Rule 5.4 was amended by S.S.I. 2003/26.

the notice “This envelope contains a citation to or intimation from (*insert name of sheriff court*)” and sealed by the sheriff officer.”.

3.—(1) The Summary Application Rules are amended in accordance with the following subparagraph.

(2) In rule 2.11 (service within Scotland by sheriff officer)(**6**)—

(a) for paragraph (3)(b) substitute—

“(b) by leaving it at that person’s dwelling place or place of business in such a way that it is likely to come to the attention of that person.”;

(b) after paragraph (5), insert—

“(6) Where service is executed under paragraphs (1)(b) or (3), the document and the citation or notice of intimation, as the case may be, must be placed in an envelope bearing the notice “This envelope contains a citation to or intimation from (*insert name of sheriff court*)” and sealed by the sheriff officer.”.

4.—(1) The Summary Cause Rules are amended in accordance with the following subparagraph.

(2) In rule 5.4 (service within Scotland by sheriff officer)—

(a) in paragraph (1)(b)(i) for “an inmate” substitute “a resident”;

(b) for paragraph (2)(b) substitute—

“(b) by leaving it at that person’s dwelling place or place of business in such a way that it is likely to come to the attention of that person.”;

(c) after paragraph (5), insert—

“(6) Where service is executed under paragraphs (1)(b) or (2), the document and the citation or notice of intimation, as the case may be, must be placed in an envelope bearing the notice “This envelope contains a citation to or intimation from (*insert name of sheriff court*)” and sealed by the sheriff officer.”.

5.—(1) The Small Claim Rules are amended in accordance with the following subparagraph.

(2) In rule 6.4 (service within Scotland by sheriff officer)—

(a) in paragraph (1)(b)(i) for “an inmate” substitute “a resident”;

(b) for paragraph (2)(b) substitute—

“(b) by leaving it at that person’s dwelling place or place of business in such a way that it is likely to come to the attention of that person.”;

(c) after paragraph (6), insert—

“(7) Where service is executed under paragraphs (1)(b) or (2), the document and the citation or notice of intimation, as the case may be, must be placed in an envelope bearing the notice “This envelope contains a citation to or intimation from (*insert name of sheriff court*)” and sealed by the sheriff officer.”.

Service and evidence conventions

6. For “the Secretary of State for Foreign and Commonwealth Affairs” substitute “the Scottish Ministers” where it occurs in each of the following places—

rule 5.5(1)(b)(ii) of the Ordinary Cause Rules (service on persons furth of Scotland)(**7**),

(6) Rule 2.11 was amended by [S.S.I. 2003/26](#).

(7) Rule 5.5 was last amended by [S.S.I. 2008/365](#).

rule 2.12(1)(b)(ii) of the Summary Application Rules (service on persons furth of Scotland)(**8**),
rule 5.7(3)(c) of the Summary Cause Rules (service on persons outwith Scotland)(**9**),
rule 6.5(3)(c) of the Small Claim Rules (service on persons outwith Scotland)(**10**).

7. After “in the request to” insert “the Scottish Ministers or, as the case may be,” where it occurs in each of the following places—

rule 5.5(3)(a) of the Ordinary Cause Rules,
rule 2.12(3)(a) of the Summary Application Rules,
rule 5.7(8)(a) of the Summary Cause Rules,
rule 6.5(8)(a) of the Small Claim Rules.

8. For “the Foreign and Commonwealth Office” substitute “the Scottish Ministers” where it occurs in each of the following places—

rule 28.14(6) of the Ordinary Cause Rules (letters of request)(**11**),
rule 18.7(6) of the Summary Cause Rules (letter of request)(**12**).

Regulated agreements

9.—(1) The Ordinary Cause Rules are amended in accordance with the following subparagraph.

(2) In Form O3(**13**) in Appendix 1 (forms), in Part B of the Application for a Time Order under the Consumer Credit Act 1974—

- (a) after the heading of section 5 insert “(Please attach a copy of the agreement if you have retained it and insert details of the agreement where known)”;
- (b) after section 5(b) omit “(Please attach a copy of the agreement)”.

10.—(1) The Summary Application Rules are amended in accordance with the following subparagraph.

(2) In Form 5(**14**) in Schedule 1 (forms), in Part B of the Application for a Time Order under the Consumer Credit Act 1974—

- (a) after the heading of section 5 insert “(Please attach a copy of the agreement if you have retained it and insert details of the agreement where known)”;
- (b) after section 5(b) omit “(Please attach a copy of the agreement)”.

11.—(1) The Summary Cause Rules are amended in accordance with the following subparagraph.

(2) On page numbered 11 of Form 1a(**15**) in Appendix 1 (forms), in the Application for a Time Order under the Consumer Credit Act 1974—

- (a) after the heading of section 5 insert “(Please attach a copy of the agreement if you have retained it and insert details of the agreement where known)”;
- (b) after section 5(b) omit “(Please attach a copy of the agreement)”.

12.—(1) The Small Claim Rules are amended in accordance with the following subparagraph.

(**8**) Rule 2.12 was last amended by [S.S.I. 2008/365](#).
(**9**) Rule 5.7 was last amended by [S.S.I. 2008/365](#).
(**10**) Rule 6.5 was last amended by [S.S.I. 2008/365](#).
(**11**) Rule 28.14 was last amended by [S.S.I. 2003/601](#).
(**12**) Rule 18.7 was amended by [S.S.I. 2003/601](#).
(**13**) Form O3 was substituted by [S.S.I. 2009/294](#).
(**14**) Form 5 was substituted by [S.S.I. 2009/294](#).
(**15**) Form 1a was substituted by [S.S.I. 2009/294](#).

(2) On page numbered 12 of Form 1a(16) in Appendix 1 (forms), in the Application for a Time Order under the Consumer Credit Act 1974—

- (a) after the heading of section 5 insert “(Please attach a copy of the agreement if you have retained it and insert details of the agreement where known)”;
- (b) after section 5(b) omit “(Please attach a copy of the agreement)”.

Appointment or removal of a person as a guardian of a child

13.—(1) The Ordinary Cause Rules are amended in accordance with the following subparagraph.

(2) In rule 33.1 (interpretation of Chapter 33, family actions)(17), omit—

- (a) in paragraph (1)(h)(i), the word “and”;
- (b) paragraph (1)(h)(ii).

14.—(1) The Act of Sederunt (Family Proceedings in the Sheriff Court) 1996(18) is amended in accordance with the following subparagraph.

(2) Paragraph 4 (summary applications to appoint or remove guardian under Children (Scotland) Act 1995) is omitted.

Pensions Act 2008

15.—(1) The Ordinary Cause Rules are amended in accordance with the following subparagraphs.

(2) In rule 33.7 (warrants and forms for intimation)(19)—

- (a) in paragraph (1)(l) omit the word “and” where it appears at the end of that paragraph;
- (b) after paragraph (1)(m) insert—

“(n) in an action where a pursuer makes an application for an order under section 8(1)(bab) of the Act of 1985 (pension compensation sharing order)(20), to the Board of the Pension Protection Fund, and a notice of intimation in Form F12C shall be attached to the initial writ intimated to that Board; and

(o) in an action where a pursuer makes an application for an order under section 8(1)(bb) of the Act of 1985 (an order under section 12B(2) of the Act of 1985 for pension compensation)(21), to the Board of the Pension Protection Fund and a notice of intimation in Form F12D shall be attached to the initial writ intimated to that Board.”.

(3) In rule 33.51 (applications relating to orders for financial provision)(22)—

- (a) in paragraph (3)(b) omit the word “or” where it appears at the end of that paragraph; and
- (b) after paragraph (3)(b) insert—

“(ba) section 12B(4) of the Act of 1985 (recall or variation of a capital sum order)(23), or”.

(4) In rule 33A.7 (warrants and forms for intimation)(24)—

(16) Form 1a was substituted by [S.S.I. 2009/294](#).

(17) Rule 33.1 was last amended by [S.S.I. 2006/207](#).

(18) [S.I. 1996/2167](#).

(19) Rule 33.7 was amended by [S.I. 1996/2167](#) and [2445](#); [S.S.I. 2000/408](#); and [S.S.I. 2006/207](#).

(20) [1985 c.37](#). Section 8(1)(bab) was inserted by the Pensions Act 2008 ([c.30](#)), Schedule 7, paragraph 2.

(21) Section 8(1)(bb) was inserted by the Pensions Act 2008, Schedule 7, paragraph 2.

(22) Rule 33.51(3) was inserted by [S.I. 1996/245](#); and amended by [S.S.I. 2003/26](#).

(23) Section 12B was inserted by the Pensions Act 2008, Schedule 7, paragraph 6.

(24) Rule 33A.7 was inserted by [S.S.I. 2005/638](#); and amended by [S.S.I. 2006/207](#).

- (a) in paragraph (1)(j) omit the word “and” where it appears at the end of that paragraph;
- (b) after paragraph (1)(k) insert—
 - “(l) in an action where a pursuer makes an application for an order under section 8(1)(bab) of the Act of 1985 (pension compensation sharing order), to the Board of the Pension Protection Fund, and a notice of intimation in Form CP12A shall be attached to the initial writ intimated to that Board; and
 - (m) in an action where a pursuer makes an application for an order under section 8(1)(bb) of the Act of 1985 (an order under section 12B(2) of the Act of 1985 for pension compensation), to the Board of the Pension Protection Fund and a notice of intimation in Form CP12B shall be attached to the initial writ intimated to that Board.”.
- (5) In rule 33A.48 (applications relating to orders for financial provision)(**25**)—
 - (a) in paragraph (3)(b) omit the word “or” where it appears at the end of that paragraph; and
 - (b) after paragraph (3)(b) insert—
 - “(ba) section 12B(4) of the Act of 1985 (recall or variation of a capital sum order); or”.
- (6) Appendix 1 (forms) is amended as follows:—
 - (a) after Form F12B insert Form F12C and Form F12D set out in the Schedule to this Act of Sederunt; and
 - (b) after Form CP12 insert Form CP12A and Form CP12B set out in the Schedule to this Act of Sederunt.

Recall of decree

16.—(1) The Summary Cause Rules are amended in accordance with the following subparagraphs.

- (2) For rule 24.1 (recall of decree)(**26**) substitute—

“Recall of decree

24.1.—(1) A party may apply for recall of a decree granted under any of the following provisions—

- (a) rule 7.1; or
- (b) paragraph (5), (6) or (7) of rule 8.2.
- (2) The application is to be by minute in Form 30, which must be lodged with the sheriff clerk.
- (3) The application must include where appropriate (and if not already lodged with the sheriff clerk), the proposed defence or the proposed answer to the counterclaim.
- (4) A party may apply for recall of a decree in the same action on one occasion only.
- (5) A minute for recall of a decree of dismissal must be lodged within 14 days of the date of decree.
- (6) Subject to paragraphs (7) to (9), a minute for recall of any other kind of decree may be lodged at any time before the decree is fully implemented.

(25) Rule 33A.48 was inserted by [S.S.I. 2005/638](#).

(26) Rule 24.1 was amended by [S.S.I. 2007/6](#).

(7) Subject to paragraphs (8) and (9), where a charge or arrestment has been executed following the decree, the minute must be lodged within 14 days of that execution (or the first such execution where there has been more than one).

(8) Subject to paragraph (9), in the case of a party seeking recall who was served with the action under rule 5.7, the minute must be lodged—

- (a) within a reasonable time of such party having knowledge of the decree against him or her; but
- (b) in any event, within one year of the date of decree.

(9) Where the decree includes a decree for removing from heritable property to which section 216(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007⁽²⁷⁾ applies, the minute may be lodged at any time before the defender has been removed from the subjects or premises.

(10) On the lodging of a minute for recall of a decree, the sheriff clerk must fix a date, time and place for a hearing of the minute.

(11) Where a hearing has been fixed under paragraph (10), the party seeking recall must, not less than 7 days before the date fixed for the hearing, serve upon the other party—

- (a) a copy of the minute in Form 30a; and
- (b) a note of the date, time and place of the hearing.

(12) At a hearing fixed under paragraph (10), the sheriff must recall the decree so far as not implemented and the hearing must then proceed as a hearing held under rules 8.2(3) to (7) and 8.3.

(13) A minute for recall of a decree, when lodged and served in terms of this rule, will have the effect of preventing any further action being taken by the other party to enforce the decree.

(14) On receipt of the copy minute for recall of a decree, any party in possession of an extract decree must return it forthwith to the sheriff clerk.

(15) If it appears to the sheriff that there has been any failure or irregularity in service of the minute for recall of a decree, the sheriff may order re-service of the minute on such conditions as the sheriff thinks fit.”.

(3) In Appendix 1 (forms), in Forms 30 and 30a—

- (a) omit “Reason for failure to appear or be represented.”;
- (b) insert “/third party” after “pursuer/defender”; and
- (c) insert “*” before “Proposed defence/answer”.

17.—(1) The Small Claim Rules are amended in accordance with the following subparagraphs.

(2) For rule 22.1 (recall of decree)⁽²⁸⁾ substitute—

“Recall of decree

22.1.—(1) A party may apply for recall of a decree granted under any of the following provisions—

- (a) rule 8.1(3);
- (b) paragraph (6), (7) or (8) of rule 9.1; or
- (c) rule 11.1(8).

⁽²⁷⁾ 2007 asp 3.

⁽²⁸⁾ Rule 22.1 was amended by S.S.I. 2007/6.

- (2) The application is to be by minute in Form 20, which must be lodged with the sheriff clerk.
- (3) The application must include where appropriate (and if not already lodged with the sheriff clerk), the proposed defence or the proposed answer to the counterclaim.
- (4) A party may apply for recall of a decree in the same claim on one occasion only.
- (5) A minute for recall of a decree of dismissal must be lodged within 14 days of the date of decree.
- (6) Subject to paragraphs (7) and (8), a minute for recall of any other kind of decree may be lodged at any time before the decree is fully implemented.
- (7) Subject to paragraph (8), where a charge or arrestment has been executed following the decree, the minute must be lodged within 14 days of that execution (or the first such execution where there has been more than one).
- (8) In the case of a party seeking recall who was served with the action under rule 6.5, the minute must be lodged—
- (a) within a reasonable time of such party having knowledge of the decree against him or her; but
 - (b) in any event, within one year of the date of decree.
- (9) On the lodging of a minute for recall of a decree, the sheriff clerk must fix a date, time and place for a hearing of the minute.
- (10) Where a hearing has been fixed under paragraph (9), the party seeking recall must, not less than 7 days before the date fixed for the hearing, serve upon the other party—
- (a) a copy of the minute in Form 20a; and
 - (b) a note of the date, time and place of the hearing.
- (11) Paragraph (12) applies if the party seeking recall—
- (a) is not a partnership or body corporate;
 - (b) is not acting in a representative capacity; and
 - (c) is not represented by a solicitor.
- (12) The sheriff clerk must assist such party to complete and lodge the minute for recall and arrange service of the minute for recall—
- (a) by first class recorded delivery post; or
 - (b) on payment of the fee prescribed by the Scottish Ministers by order, by sheriff officer.
- (13) At a hearing fixed under paragraph (9), the sheriff must recall the decree so far as not implemented and the hearing must then proceed as a hearing held under rules 9.1(4) to (8) and 9.2.
- (14) A minute for recall of a decree, when lodged and served in terms of this rule, will have the effect of preventing any further action being taken by the other party to enforce the decree.
- (15) On receipt of the copy minute for recall of a decree, any party in possession of an extract decree must return it forthwith to the sheriff clerk.
- (16) If it appears to the sheriff that there has been any failure or irregularity in service of the minute for recall of a decree, the sheriff may order re-service of the minute on such conditions as the sheriff thinks fit.”.
- (3) In Appendix 1 (forms), in Forms 20 and 20a—
- (a) omit “Reason for failure to appear or be represented.”; and
 - (b) insert “*” before “Proposed defence/answer”.

Debt arrangement and attachment: Report of auction

18.—(1) The Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) 2002(**29**) is amended in accordance with the following subparagraph.

(2) In Form 17 in Appendix 1 (forms) of Schedule 1, for “This report is made by me (*specify name and address*) to the Sheriff at (*place*) on (*date*)” substitute—

“I, (*insert name and address*) declare that all the information contained within this report is, to the best of my knowledge, true.

(*Date*)”.

Sheriff Court Bankruptcy Rules

19.—(1) The Act of Sederunt (Sheriff Court Bankruptcy Rules) 2008(**30**) is amended in accordance with the following subparagraph.

(2) In Appendix 2 (information to be contained in the Register of Insolvencies) of the Schedule—

- (a) in section A (Sequestrations), after “Name of debtor” insert on a new line “Debtor’s date of birth (where known)”;
- (b) in section B (Protected trust deeds for creditors), after “Name and address of granter of trust deed” insert on a new line “Granter’s date of birth (where known)”;
- (c) in section C (Bankruptcy Restrictions Orders, Interim Bankruptcy Restrictions Orders and Bankruptcy Restrictions Undertakings), after “Name of debtor” insert on a new line “Debtor’s date of birth (where known)”.

Transitional and savings provision

20.—(1) Subject to subparagraph (2), the Ordinary Cause Rules, Summary Application Rules, Summary Cause Rules, Small Claim Rules, Act of Sederunt (Family Proceedings in the Sheriff Court) 1996 and Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) 2002 as they applied immediately before 4th April 2011 continue to have effect for the purpose of any action raised but not determined prior to that date.

(2) Subparagraph (1) does not apply to the changes made to the Ordinary Cause Rules by paragraph 15.

Edinburgh
10th March 2011

A. C. HAMILTON
Lord President
I.P.D.

(29) S.S.I. 2002/560 was last amended by S.S.I. 2009/403.

(30) S.S.I. 2008/119.