

1970 No. 720 (S.55)

COURT OF SESSION SCOTLAND

SHERIFF COURT, SCOTLAND

Act of Sederunt (Variation and Recall of Orders in Consistorial Causes) 1970

Made - - - - 8th May 1970

Coming into Operation 4th July 1970

The Lords of Council and Session, by virtue of the powers conferred upon them by sections 16 and 34 of the Administration of Justice (Scotland) Act 1933(a) and section 8(4) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966(b), do hereby enact and declare as follows :—

1. All applications to the Sheriff for variation or recall of any order to which the provisions of section 8(1) and (6) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966(b) apply, shall be commenced by an initial writ under the Sheriff Courts (Scotland) Acts 1907(c) and 1913(d) and the proceedings therein shall be subject to the same rights of appeal to the Court of Session as any ordinary action in the Sheriff Court.

2. Subject to the provisions of this Act of Sederunt, every such application shall proceed as an ordinary action, and it shall not be competent for the Sheriff to direct that it be tried as a summary cause nor to shorten the *induciae*.

3. Within three days after the date of lodging the initial writ in the Sheriff court, there shall be lodged in the process of the Court of Session action in which the original order was made, a copy of the initial writ certified by the solicitor lodging the same ; provided that on cause shown the Court of Session, on a motion enrolled for that purpose, may allow such copy to be lodged late on such terms and conditions as shall appear to be just.

4. Any of the parties referred to in section 8(3) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966(b) who is entitled under said subsection to request that the application in the Sheriff Court shall be remitted to the Court of Session, may do so by a note lodged in the Sheriff Court and signed by the party desiring such a remit or by his solicitor.

5. Where such a note is lodged the Sheriff shall, at tabling of the cause, order that the application be remitted forthwith to the Court of Session and the Sheriff Clerk shall as soon as possible thereafter transmit the whole process to the Court of Session.

(a) 1933 c. 41.

(c) 1907 c. 51.

(b) 1966 c. 19.

(d) 1913 c. 28, (2 & 3 Geo. 5).

6. An application remitted to the Court of Session as aforesaid shall form part of the process of the Court of Session action in which the original order was made. The initial writ and each step of process lodged in the Sheriff Court shall be allocated a separate number of process therein. The initial writ shall be deemed to be a minute craving variation of the order, and the defender in the initial writ shall lodge answers thereto in the Court of Session within fourteen days after the date of transmission.

7. In a defended application in which no request is made for a remit to the Court of Session, the pursuer in the Sheriff Court process shall, at tabling of the cause, lodge with the process a note certifying that a certified copy of the initial writ has been lodged in the Court of Session.

8. If, in any application to which paragraph 7 hereof applies, the pursuer shall fail to lodge the note referred to in that paragraph, the cause shall be deemed not to have been tabled and it shall drop from the roll; provided that within three months the Sheriff may direct it to be again enrolled for tabling under such conditions as to notice, or re-service, or expenses, or otherwise as he shall think fit.

9. In a defended application in which no request is made for a remit to the Court of Session, the pursuer shall, at the tabling of the cause or within six days thereafter, lodge in process in the Sheriff Court each step in the Court of Session process which may be borrowed and a copy, certified by the solicitor lodging the same, of each step in the Court of Session process which may not be borrowed.

10. In the defences lodged to an application in which no request is made for a remit to the Court of Session, the defender shall be entitled to apply for variation or recall of any order to which the provisions of section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966 apply made in the action to which the application relates, and he may insist upon such application notwithstanding the abandonment of the pursuer's claim.

11. As soon as possible after any application in which no request is made for a remit to the Court of Session shall have been disposed of by the Sheriff the Sheriff Clerk shall transmit the whole Sheriff Court process to the Court of Session.

12. A process transmitted to the Court of Session as aforesaid shall form part of the Court of Session action in which the original order was made, and each step of the Sheriff Court process shall be allocated a separate number of process therein. The principal initial writ, the principal interlocutor sheets and the borrowing inventory of process shall not thereafter be borrowed from the Court of Session process.

13. This Act of Sederunt may be cited as the Act of Sederunt (Variation and Recall of Orders in Consistorial Causes) 1970 and shall come into operation on 4th July 1970.

And the Lords appoint this Act of Sederunt to be inserted in the Books of Sederunt.

J. L. Clyde,

I.P.D.

Edinburgh,
8th May 1970.

EXPLANATORY NOTE

(This Note is not part of the Act of Sederunt.)

This Act of Sederunt prescribes certain procedure in applications for variation or recall by the sheriff of those orders in consistorial causes to which section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966 applies.

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