

1990 No. 2238 (S.193)

SHERIFF COURT, SCOTLAND

Act of Sederunt (Applications under the Social Security Act 1986) 1990

Made - - - - - *8th November 1990*

Coming into force *3rd December 1990*

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(a) 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, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Applications under the Social Security Act 1986) 1990 and shall come into force on 3rd December 1990.

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

(3) In this Act of Sederunt, “the 1986 Act” means the Social Security Act 1986(b), and, unless the context otherwise requires, words and expressions used in this Act of Sederunt which are also used in the 1986 Act shall have the meaning assigned to them by that Act.

Applications under section 24 of the 1986 Act

2.—(1) An application to the sheriff under section 24(1) of the 1986 Act (recovery of expenditure on benefit from person liable for maintenance) shall be by summary application.

(2) Where, in such an application, a sum is craved which represents or includes a personal allowance element, that element shall be identified separately in the application.

Transfer of rights under section 24A of the 1986 Act

3.—(1) The sheriff clerk, on receiving notice from the Secretary of State of a transfer of rights to an order by virtue of section 24A(3) or (7) of the 1986 Act(c), shall endorse on the interlocutor sheet a certificate as nearly as may be in accordance with the form set out in the Schedule to this Act of Sederunt.

(2) Where, following a transfer by virtue of section 24A(3) or (7) of the 1986 Act, the dependent parent or the Secretary of State requests an extract of the order originally granted, the sheriff clerk shall issue an extract with a certified copy of the latest certificate referred to in sub-paragraph (1) of this paragraph endorsed on it.

Notice to Secretary of State under section 24B(5) of the 1986 Act

4. The notice required to be given to the Secretary of State by the sheriff clerk in accordance with section 24B(5) of the 1986 Act (notice of application to vary etc a maintenance

(a) 1971 c.58.

(b) 1986 c.50.

(c) Section 24A of the Social Security Act 1986 was inserted by the Social Security Act 1990 (c.27), section 8(1).

order)(a) as read with regulation 3 of the Income Support (Liable Relatives) Regulations 1990(b), shall—

- (a) be in writing;
- (b) specify any date assigned for the hearing of the application;
- (c) be accompanied by a copy of the application; and
- (d) be sent by recorded delivery post.

Notice to Secretary of State of making of maintenance order

5. Where an order granted by the sheriff in favour of the Secretary of State under section 24(4) of the 1986 Act has been transferred to the dependent relative in accordance with section 24A(3) of that Act and a maintenance order is subsequently granted by the sheriff in favour of the dependent relative, the sheriff clerk shall forthwith notify the Secretary of State in writing and by recorded delivery post of the granting of the maintenance order.

Amendment of Ordinary Cause Rules

6. In the First Schedule of the Sheriff Courts (Scotland) Act 1907(c), after Ordinary Cause Rule 132E, insert the following rule:—

“Specification of prior maintenance orders

132F. In any proceedings in which an order for aliment or periodical allowance is sought, or is sought to be varied or recalled, by any party, the pleadings of that party shall contain an averment specifying whether and, if so, when and by whom, a maintenance order (within the meaning of section 106 of the Debtors (Scotland) Act 1987(d)) has been granted in favour of or against that party or of any other person in respect of whom the order is sought.”.

Edinburgh
8th November 1990

J.A.D. Hope
Lord President
IPD

(a) Section 24B of the Social Security Act 1986 was inserted by the Social Security Act 1990 (c.27), section 8(1).
(b) S.I. 1990/1777.
(c) 1907 c.51 (7 Edw. 7).
(d) 1987 c.18.

SCHEDULE

Paragraph 3(1)

**Form of certificate of a transfer of rights to an order by virtue of section 24A
of the 1986 Act**

(Place)

(date)

I certify that notice has today been received from the Secretary of State under section 24A of the Social Security Act 1986 of a transfer of rights under an order granted on (date) from (name and design) to (name and design) with effect from (date).

(Sgd) Sheriff Clerk [Depute]

EXPLANATORY NOTE

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

This Act of Sederunt makes provision for rules of procedure in the Sheriff Court to regulate the manner in which proceedings for recovery of benefits are pursued against liable relatives under section 24 of the Social Security Act 1986; and for a consequential amendment of the Ordinary Cause Rules of the Sheriff Court.