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STATUTORY INSTRUMENTS

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**1990 No. 661 (S.81)**

**SHERIFF COURT, SCOTLAND**

**Act of Sederunt (Amendment of Sheriff Court Ordinary Cause, Summary Cause, and Small Claim, Rules) 1990**

*Made* - - - - *16th March 1990*

*Coming into force* - - *9th April 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<sup>(1)</sup> and of all other powers enabling them in that behalf, do hereby enact the following Act of Sederunt which embodies with modifications draft rules submitted by the Sheriff Court Rules Council under section 34 of the said Act of 1971:

**Citation and commencement**

**1.**—(1) This Act of Sederunt may be cited as the Act of Sederunt (Amendment of Sheriff Court Ordinary Cause, Summary Cause, and Small Claim, Rules) 1990 and shall come into force on 9th April 1990.

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

**Amendment of the Ordinary Cause Rules**

**2.**—(1) The Ordinary Cause Rules of the sheriff court<sup>(2)</sup> shall be amended in accordance with the following sub-paragraphs.

(2) After rule 13 (days of charge)<sup>(3)</sup>, insert the following rule:—

**“Service of charge where defender’s address is unknown**

**13A.**—(1) Where a defender’s address is unknown to the pursuer, a charge shall be deemed to have been served on the defender if it is served on the sheriff clerk of the sheriff court district where the defender’s last known address is located and is displayed by the sheriff clerk on the walls of that court for the period of the charge.

(2) On receipt of such a charge the sheriff clerk shall display it on the walls of court.

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<sup>(1)</sup> 1971 c. 58.

<sup>(2)</sup> 1907 c. 51; First Schedule, substituted by S.I. 1983/747; relevant amending instruments are S.I. 1988/614 and 1978.

<sup>(3)</sup> Rule 13 was substituted by S.I. 1988/1978.

(3) The period specified in the charge shall run from the first date on which it was displayed on the walls of court and it shall remain displayed for the period of charge.

(4) On the expiry of the period of charge the sheriff clerk shall endorse a certificate on the charge certifying that it has been displayed in accordance with this rule and shall thereafter return it to the officer of court by whom service was effected.”.

(3) After rule 107 (evidence of notice to remove), insert the following rule:–

**“Applications under Part II of the Conveyancing and Feudal Reform (Scotland) Act 1970**

**107A.**—(1) An application or counter-application to the sheriff under Part II of the Conveyancing and Feudal Reform (Scotland) Act 1970(4) shall be brought–

- (a) as an ordinary cause, where any other remedy is craved; or
- (b) as a summary application, where no other remedy is craved.

(2) An interlocutor of the sheriff disposing of an application or counter-application under paragraph (1) shall be final and not subject to appeal except as to a question of title or as to any other remedy granted.”.

(4) After rule 132E (applications for interdict or interim interdict)(5), insert the following rule:–

**“Referral to Family Conciliation Service**

**132F.** In any cause where the custody of, or access to, a child is in dispute the sheriff may, at any stage in the proceedings where he considers it appropriate to do so, refer the parties to a specified Family Conciliation Service.”.

**3.** In paragraph 3(2) of the Act of Sederunt (Summary Cause Rules, Sheriff Court) 1976(6) after the word “Rules” where it first occurs, insert “13A,”.

**Amendment of the Small Claim Rules**

**4.** In Appendix 2 to the Act of Sederunt (Small Claim Rules) 1988(7) insert the following at the beginning of the list of rules:–

“rule 13A (service of charge where defender’s address is unknown).”.

**Repeal**

**5.** Sub-sections (2) and (3) of section 29 of the Conveyancing and Feudal Reform (Scotland) Act 1970 are hereby repealed.

Edinburgh  
16th March 1990

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

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(4) 1970 c. 35.

(5) Rule 132E was inserted by S.I. 1988/614.

(6) S.I. 1976/476; relevant amending instruments are S.I. 1983/747, 1986/1966 and 1989/436.

(7) S.I. 1988/1976.

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## EXPLANATORY NOTE

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

This Act of Sederunt amends the Ordinary Cause Rules, the Summary Cause Rules, and Small Claim Rules, of the sheriff court.

Paragraph 2(2) provides for the manner of service of a charge where a defender's address is unknown in new rule 13A in the Ordinary Cause Rules.

Paragraph 2(3) provides for a new rule 107A in the Ordinary Cause Rules which allows other remedies to be craved where an application or counter-application is made under Part II of the Conveyancing and Feudal Reform (Scotland) Act 1970. Any such application seeking other remedies will be brought as an ordinary cause. Where no other remedy is craved the application will be brought (as at present) as a summary application. Sub-sections (2) and (3) of section 29 of the 1970 Act are repealed by paragraph 5 but the effect of these provisions, subject to the modification described, is restated in the new rule in paragraph 2(3).

Paragraph 2(4) provides a new rule 132F in the Ordinary Cause Rules for referral by the sheriff to a Family Conciliation Service where the custody of or access to a child is in dispute.

Paragraphs 3 and 4 apply new rule 13A (in paragraph 2(2) in this Act of Sederunt) to the Summary Cause Rules and the Small Claim Rules respectively.