
STATUTORY INSTRUMENTS

1993 No. 3128 (S.296)

SHERIFF COURT, SCOTLAND

Act of Sederunt (Summary Suspension) 1993

Made - - - - - *10th December 1993*

Coming into force - - - - - *1st January 1994*

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 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 and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Summary Suspension) 1993 and shall come into force on 1st January 1994.

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

Summary application for suspension of charge

2. Where a charge for payment has been executed on any decree to which section 5(5) of the Sheriff Courts (Scotland) Act 1907(2) applies the person so charged may apply to the sheriff in the sheriff court having jurisdiction over him for suspension of such charge and diligence.

Sist of diligence

3.—(1) On sufficient caution being found or other security given for—

(a) the sum charged for with interest and expenses, and

(b) a further sum to be fixed by the sheriff in respect of expenses to be incurred in the suspension process,

the sheriff may sist diligence, order intimation and answers, and proceed to dispose of the cause in a summary manner.

(1) 1971 c. 58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 12 and the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(4).
(2) 1907 c. 51; section 5(5) was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), section 15 and Schedule 3.

(2) The following rules of the Ordinary Cause Rules 1993⁽³⁾ shall, with the necessary modifications, apply to an applicant under paragraph 2:—

rule 27.4 (methods of finding caution or giving security)

rule 27.5 (cautioners and guarantors)

rule 27.6 (forms of bonds of caution and other securities)

rule 27.7 (sufficiency of caution or security and objections)

rule 27.8 (insolvency or death of cautioner or guarantor).

Objections

4. Where objections are taken to the competency or regularity of suspension proceedings, the decision of the sheriff on such objections may be appealed to the sheriff principal whose decision shall be final and not subject to appeal.

Savings for proceedings arising out of causes already commenced

5. Nothing in this Act of Sederunt shall affect suspension proceedings arising out of causes commenced before the date of coming into force of this Act of Sederunt, which shall proceed according to the law and practice in force immediately before that date.

Edinburgh,
10th December 1993

J.N.D. Hope
Lord President I.P.D.

⁽³⁾ The Ordinary Cause Rules 1993 are in Schedule 1 to the Sheriff Courts (Scotland) Act 1907 as substituted by the Act of Sederunt (Sheriff Court Ordinary Cause Rules) 1993 (S.I.1993/1956).

EXPLANATORY NOTE

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

This Act of Sederunt lays down rules to govern applications for suspension of a charge for payment of any sum of money arising out of any cause commencing on or after 1st January 1994. It is consequential on the coming into force of the Act of Sederunt (Sheriff Court Ordinary Cause Rules) 1993 which substitutes for the existing Ordinary Cause Rules new rules for causes commencing on or after 1st January 1994. The provisions contained in rules 108 to 110 of the existing Ordinary Cause Rules, which apply to summary suspension proceedings, are not contained in the new rules but are reenacted in this Act of Sederunt and supplemented by provisions for the finding of caution in suspension proceedings (paragraph 3(2)).

This Act of Sederunt makes provision for the person charged applying in the sheriff court for suspension of the charge and diligence (paragraph 2).

It provides for the sheriff, on caution being found, disposing of the cause (paragraph 3).

It makes provision for an appeal to the sheriff principal on certain matters and for the sheriff principal's judgment being final (paragraph 4).