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SCOTTISH STATUTORY INSTRUMENTS

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**2000 No. 387**

**Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (No. 2)  
(Administration of Justice (Scotland) Act 1972) 2000**

**Amendment of the principal Rules**

2.—(1) Part I (Administration of Justice (Scotland) Act 1972) of Chapter 3 (rules on applications under specific statutes) of the principal Rules is amended in accordance with the following paragraphs.

- (2) In rule 3.1.1, paragraph (1)—
- (a) the words from ““the Act”” to the end of that paragraph become sub paragraph (a); and
  - (b) after sub paragraph (a) so renumbered insert—  
“; and  
(b) “listed items” means a list of the documents and other property which the applicant in terms of rule 3.1.2 wishes to be made the subject of the order.”.
- (3) Rule 3.1.2 is renumbered 3.1.2(1).
- (4) After rule 3.2.1(1) so renumbered insert—  
“(2) The summary application shall contain—
- (a) the listed items;
  - (b) the address of the premises within which the applicant believes the listed items are to be found; and
  - (c) the facts which give rise to the applicant’s belief that, were the order not to be granted, the listed items, or any of them, would cease to be available for the purposes of section 1 of the Act.

**Accompanying documents**

**3.1.3** The applicant shall lodge with the summary application—

- (a) an affidavit supporting the averments in the summary application; and
- (b) an undertaking by the applicant that he—
  - (i) will comply with any order of the sheriff as to payment of compensation if it is subsequently discovered that the order, or the implementation of the order, has caused loss to the respondent or, where the haver is not the respondent, to the haver;
  - (ii) will bring within a reasonable time of the execution of the order any proceedings which he decides to bring; and
  - (iii) will not, without leave of the sheriff, use any information, documents or other property obtained as a result of the order, except for the purpose of any proceedings which he decides to bring and to which the order relates.

### **Modification of undertakings**

**3.1.4** The sheriff may, on cause shown, modify, by addition, deletion or substitution, the undertaking mentioned in rule 3.1.3.

### **Intimation and service of application**

**3.1.5.**—(1) Before granting the summary application, the sheriff may order such intimation or service of the summary application to be given or executed, as the case may be, as he thinks fit.

(2) Any person receiving intimation or service of the summary application by virtue of an order under paragraph (1) may appear and oppose the summary application.

### **Form of order**

**3.1.6** An order made under this Part shall—

- (a) be in Form 11A; and
- (b) include in addition a warrant of citation in Form 2.

### **Caution and other security**

**3.1.7** On granting, in whole or in part, the summary application the sheriff may order the applicant to find such caution or other security as he thinks fit.

### **Execution of an order**

**3.1.8** The order made in terms of rule 3.1.6 shall be served by the Commissioner in person and it shall be accompanied by a copy of the affidavit referred to in rule 3.1.3(a).

### **Duties of a Commissioner**

**3.1.9** The Commissioner appointed by the sheriff shall, on executing the order—

- (a) give to the haver a copy of the notice in Form 11B;
- (b) explain to the haver—
  - (i) the meaning and effect of the order; and
  - (ii) that he may be entitled to claim that some or all of the listed items are confidential or privileged;
- (c) inform the haver of his right to seek legal advice;
- (d) enter the premises and take all reasonable steps to fulfil the terms of the order;
- (e) where the order has authorised the recovery of any of the listed items, prepare an inventory of all the listed items to be recovered before recovering them; and
- (f) send any recovered listed items to the sheriff clerk to await the further order of the sheriff.

### **Confidentiality**

**3.1.10.**—(1) Where confidentiality is claimed for any listed item, that listed item shall, where practicable, be enclosed in a sealed envelope.

(2) A motion to have such a sealed envelope opened may be made by the party who obtained the order and he shall intimate the terms of the motion, by registered post or first class recorded delivery, to the person claiming confidentiality.

(3) A person claiming confidentiality may oppose a motion made under paragraph (2).

### **Restrictions on service**

**3.1.11.**—(1) Except on cause shown, the order may be served on Monday to Friday only, between the hours of 9am and 5pm only.

(2) The order shall not be served at the same time as a search warrant granted in the course of a criminal investigation.

(3) The Commissioner may be accompanied only by—

(a) any person whom he considers necessary to assist him to execute the order;

(b) such representatives of the applicant as are named in the order,

and if it is likely that the premises will be occupied by an unaccompanied female and the Commissioner is not female, one of the people accompanying the Commissioner shall be female.

(4) If it appears to the Commissioner when he comes to serve the order that the premises are occupied by an unaccompanied female and the Commissioner is neither female nor accompanied by a female, the Commissioner shall not enter the premises.

### **Right of haver to consult**

**3.1.12** The haver may seek legal or other professional advice of his choice and where the purpose of seeking this advice is to help him to decide whether to ask the sheriff to vary the order the Commissioner shall not commence to search for or to take any other steps to take possession of or preserve the listed items.”.

(5) In Schedule 1 of the principal Rules, after Form 11, insert the forms set out in the Schedule to this Act of Sederunt.