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SCOTTISH STATUTORY INSTRUMENTS

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**2002 No. 128**

**SHERIFF COURT**

**Act of Sederunt (Ordinary Cause Rules)  
Amendment (Applications under the Protection  
from Abuse (Scotland) Act 2001) 2002**

*Made* - - - - *1st March 2002*  
*Coming into force* - - *8th March 2002*

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(1) and sections 2(1) and (5)(a) and 3(1) of the Protection from Abuse (Scotland) Act 2001(2) and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the said Act of 1971, do hereby enact and declare:

**Citation and commencement**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Ordinary Cause Rules) Amendment (Applications under the Protection from Abuse (Scotland) Act 2001) 2002 and shall come into force on 8th March 2002.

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

**Amendment of Ordinary Cause Rules**

2.—(1) The Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907(3) shall be amended in accordance with the following paragraphs.

(2) After Chapter 40 (commercial actions)(4), insert—

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(1) 1971 c. 58. Section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act (c.32), section 2(4), the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 18(2) and the Adults with Incapacity (Scotland) Act 2000 (asp 4), Schedule 5, paragraph 13, and was extended by sections 39(2) and 49 of the Child Support Act 1991 (c. 48).

(2) 2001 asp 14; see section 7 for the definition of “prescribed”.

(3) 1907 c. 51. Schedule 1 was substituted by S.I.1993/1956 and amended by S.I. 1996/2167 and 2445, and by S.S.I. 2000/239 and 408, 2001/8 and 144, and 2002/7.

(4) Inserted by S.S.I. 2001/8.

## “CHAPTER 41

### PROTECTION FROM ABUSE (SCOTLAND) ACT 2001

#### **Interpretation**

**41.1.**—(1) In this Chapter a section referred to by number means the section so numbered in the Protection from Abuse (Scotland) Act 2001.

(2) Words and expressions used in this Chapter which are also used in the Protection from Abuse (Scotland) Act 2001 have the same meaning as in that Act.

#### **Attachment of power of arrest to interdict**

**41.2.**—(1) An application under section 1(1) (application for attachment of power of arrest to interdict)—

- (a) shall be made in the crave in the initial writ, defences or counterclaim in which the interdict to which it relates is applied for, or, if made after the application for interdict, by motion in the process of the action in which the interdict was sought; and
- (b) shall be intimated to the person against whom the interdict is sought or was obtained.

(2) Where the sheriff attaches a power of arrest under section 1(2) (order attaching power of arrest) the following documents shall be served along with the power of arrest in accordance with section 2(1) (documents to be served along with power of arrest):—

- (a) a copy of the application for interdict;
- (b) a copy of the interlocutor granting interdict; and
- (c) where the application to attach the power of arrest was made after the interdict was granted, a copy of the certificate of service of the interdict.

(3) After the power of arrest has been served, the following documents shall be delivered by the person who obtained the power to the chief constable in accordance with section 3(1) (notification to police):—

- (a) a copy of the application for interdict;
- (b) a copy of the interlocutor granting interdict;
- (c) a copy of the certificate of service of the interdict; and
- (d) where the application to attach the power of arrest was made after the interdict was granted—
  - (i) a copy of the application for the power of arrest;
  - (ii) a copy of the interlocutor granting it; and
  - (iii) a copy of the certificate of service of the power of arrest and the documents that required to be served along with it in accordance with section 2(1).

#### **Extension or recall of power of arrest**

**41.3.**—(1) An application under either of the following provisions shall be made by minute in the process of the action in which the power of arrest was attached:—

- (a) section 2(3) (extension of duration of power of arrest);
- (b) section 2(7) (recall of power of arrest).

(2) Where the sheriff extends the duration of, or recalls, a power of arrest, the person who obtained the extension or recall must deliver a copy of the interlocutor granting the extension or recall in accordance with section 3(1).

**Documents to be delivered to chief constable in relation to recall or variation of interdict**

**41.4.** Where an interdict to which a power of arrest has been attached under section 1(2) is varied or recalled, the person who obtained the variation or recall must deliver a copy of the interlocutor varying or recalling the interdict in accordance with section 3(1).

**Certificate of delivery of documents to chief constable**

**41.5.** —Where a person is in any circumstances required to comply with section 3(1) he shall, after such compliance, lodge in process a certificate of delivery in Form PA1.”.

(3) In Appendix 1 (forms), after Form E1 insert Form PA1 as set out in the Schedule to this Act of Sederunt.

Edinburgh  
1st March 2002

*W DOUGLAS CULLEN*  
Lord President, I.P.D.

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SCHEDULE

Paragraph 2(3)

FORM PA1 Form of certificate of delivery of documents to chief constable

Rule 41.5

*(Insert place and date)* I, \_\_\_\_\_ hereby certify that upon the \_\_\_\_\_ day of \_\_\_\_\_ I duly delivered to *(insert name and address)* chief constable of *(insert name of constabulary)* *(insert details of the documents delivered)*. This I did by *(state method of delivery)*.

Signed

Solicitor/sheriff officer  
*(add designation and  
business address)*

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**EXPLANATORY NOTE**

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

This Act of Sederunt inserts a new Chapter (Chapter 41) into the Ordinary Cause Rules to make provision for applications in the sheriff court in respect of a power of arrest under the Protection from Abuse (Scotland) Act 2001 (“the 2001 Act”) (paragraph 2(2)). The new Chapter 41 provides as follows:–

- (a) an application for a power of arrest under section 1(1) of the 2001 Act is to be made by crave in the initial writ, defences or counterclaim in which the interdict to which it relates is applied for or, if made after the application for interdict, by motion in the action or application to which the application relates. The application requires to be intimated to the person against whom the interdict was sought or obtained (rule 41.2(1)).
- (b) rule 41.2(2) prescribes certain documents that are to be served along with the power of arrest in terms of section 2(1) of the 2001 Act.
- (c) rule 41.2(3) prescribes certain documents that are to be delivered to a chief constable in terms of section 3(1) of the 2001 Act where a power of arrest has been served.
- (d) an application to extend or recall a power of arrest (sections 2(3) and (7) respectively of the 2001 Act) is to be made by minute in the application or action to which the application relates. Where an extension or recall is granted a copy of the interlocutor granting the order is to be delivered to the chief constable in terms of section 3(1) of the 2001 Act (rule 41.3).
- (e) rule 41.4 provides that where the interdict to which the power of arrest is attached is varied or recalled a copy of the interlocutor varying or recalling the interdict is to be delivered to chief constable in terms of section 3(1) of the 2001 Act.

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- (f) rule 41.5 provides that where a person is required to deliver documents to a chief constable where a power of arrest is served, extended or recalled, or the interdict is varied or recalled, he shall after compliance lodge a certificate of delivery in Form PA1 in process.

Paragraph 2(3) and the Schedule insert the new Form PA1 into Appendix 1 to the Ordinary Cause Rules.