

2008 No. 365

SHERIFF COURT

**Act of Sederunt (Sheriff Court Rules) (Miscellaneous
Amendments) (No. 2) 2008**

Made - - - - - *7th November 2008*

*Coming into force in accordance with paragraph 1(1), (2)
and (3)*

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(a) and section 11(6) of the UK Borders Act 2007(b), this instrument making provision for a purpose mentioned in section 2(2) of the European Communities Act 1972(c), and it appearing to the Lords of Council and Session that it is expedient for the reference to Regulation (EC) No. 1393/2007 of the European the Scottish Parliament and of the Council of 13th November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No. 1348/2000(d) to be construed as a reference to that instrument as amended from time to time, under and by virtue of the powers conferred by paragraph 1A of Schedule 2 to the European Communities Act 1972(e), and under and by virtue of all other powers enabling them in that behalf, and 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, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) (No. 2) 2008 and, subject to subparagraphs (2) and (3), shall come into force on 13th November 2008.

(2) Paragraph 6 shall come into force on 25th November 2008.

(3) Paragraphs 2 to 5 shall come into force on 1st December 2008.

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

(a) 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 1988 (c.32), section 2(4), the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2000 (asp 4), schedule 5, paragraph 13 and the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43 and the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2) and was extended by the Child Support Act 1991 (c.48), sections 39(2) and 49 and the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3), section 33.

(b) 2007 c.30.

(c) 1972 c.68.

(d) O.J. No. L 324, 10.12.2007, p.79.

(e) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51).

(5) In this Act of Sederunt—

“the Ordinary Cause Rules” means the Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907(a);

“the Summary Application Rules” means the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(b);

“the Summary Cause Rules” means the Summary Cause Rules in Schedule 1 to the Act of Sederunt (Summary Cause Rules) 2002(c);

“the Small Claim Rules” means the Small Claim Rules in Schedule 1 to the Act of Sederunt (Small Claim Rules) 2002(d).

Commercial actions

2. In Forms O4 and O5 in Appendix 1 of the Ordinary Cause Rules, after the paragraph commencing “**IF YOU WISH TO DEFEND THIS ACTION**” insert the following paragraph:—

“IF THE WORDS “COMMERCIAL ACTION” APPEAR AT THE HEAD OF THIS INITIAL WRIT then you should note that this action is a commercial action governed by Chapter 40 of the Ordinary Cause Rules 1993. You should also note in particular that if you lodge a notice of intention to defend you must then lodge defences within 7 days of the expiry of the period of notice. You will receive no further notification of this requirement from the court.”.

Interim Diligence

3. After rule 31.2 of the Ordinary Cause Rules insert—

“Appeals in connection with interim diligence

31.2A. An interlocutor—

- (a) loosing, restricting, varying or recalling an arrestment or an interim attachment;
- (b) recalling in whole or in part, or varying an inhibition used on the dependence of an action; or
- (c) refusing to loose, restrict or recall such arrestment, attachment or inhibition,

may be appealed to the sheriff principal, without leave of the sheriff, within 14 days after the date of the interlocutor.”.

Notice to admit

4. In rule 29.14 of the Ordinary Cause Rules (notices to admit and notices of non-admission), subparagraph (4) is omitted.

Specification of Documents

5.—(1) The Summary Cause Rules are amended in accordance with the following subparagraphs.

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- (a) 1907 c.51. Schedule 1 was substituted by S.I. 1993/1956 and amended by S.I. 1996/2167 and 2445, S.S.I. 2000/239 and 408, 2001/8 and 144, 2002/7, 128 and 560, 2003/25 and 26, 2004/197 and 350, 2005/20, 189, 638 and 648 and 2006/198, 207, 293, 410 and 509, 2007/6, 339, 440 and 463 and 2008/121 and 223.
 - (b) S.I. 1999/929, amended by S.S.I. 2000/18 and 387, 2001/142, 2002/7, 129, 130, 146 and 563, 2003/26, 27, 98, 261, 319, 346 and 556, 2004/197, 222, 334 and 455, 2005/61, 473, 504 and 648, 2006/198 and 410, 437 and 509, 2007/6, 233, 339, 440 and 463 and 2008/9, 41, 111, 223 and 335.
 - (c) S.S.I. 2002/132, amended by S.S.I. 2002/516, 2003/26 and 601, 2004/197, 2005/648, 2006/509, 2007/6, 339, 440 and 463 and 2008/121 and 223.
 - (d) S.S.I. 2002/133, amended by S.S.I. 2003/26, 2004/197, 2005/648, 2006/509, 2007/6, 339, 440 and 463 and 2008/121 and 223.

(2) For paragraph (6) of rule 34.2 (form of summons) substitute–

“(6) Where a summons includes a specification of documents in accordance with paragraph (5)(b) it shall be intimated to–

(a) in respect of an application under section 1(1) of the Administration of Justice (Scotland) Act 1972(a), any third party haver; and

(b) where necessary–

(i) the Advocate General for Scotland (in a case where the document or other property sought is in the possession of either a public authority exercising functions in relation to reserved matters within the meaning of Schedule 5 to the Scotland Act 1998, or a cross-border public authority within the meaning of section 88(5) of that Act); or

(ii) the Lord Advocate (in any other case)

and, if there is any doubt, both.”.

(3) For Form 10e in Appendix 1, substitute Form 10e set out in the Schedule to this Act of Sederunt.

UK Borders Act 2007

6. After Part XXXV of the Summary Application Rules(b) insert–

“Part XXXVI

UK BORDERS ACT 2007

Interpretation

3.36.1. In this Part–

“the Act” means the UK Borders Act 2007(c); and

“an appeal” means an appeal to the sheriff under section 11(1) of the Act.

Appeals

3.36.2.—(1) Subject to paragraph (2), an appeal must be lodged with the sheriff clerk not later than 21 days after the date the penalty notice was received by the appellant.

(2) Where the appellant has given notice of objection under section 10(1) of the Act, an appeal must be lodged with the sheriff clerk not later than 21 days after the date that notice of the Secretary of State’s decision under section 10(4) of the Act was received by the appellant.”.

Service under the EC Service Regulation

7. In rule 5.5 of the Ordinary Cause Rules (service on persons furth of Scotland)–

(a) in paragraphs (1A) and (6)(b)(d) for “the Council Regulation” substitute “the EC Service Regulation”; and

(a) 1972 c.59.

(b) Part XXXV was inserted by S.S.I. 2008/335.

(c) 2007 c.30.

(d) Rule 5.5(1A) and (6)(b) were inserted by S.S.I. 2004/197 and substituted by S.S.I. 2007/440.

(b) for paragraph (8)(a) substitute–

“(8) In this rule “the EC Service Regulation” means Regulation (EC) No. 1393/2007 of the European Parliament and of the Council of 13th November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No. 1348/2000, as amended from time to time(b).”.

8. In rule 2.12 of the Summary Application Rules (service on persons furth of Scotland)–

(a) in paragraphs (1A) and (6)(b)(c) for “the Council Regulation” substitute “the EC Service Regulation”; and

(b) for paragraph (8)(d) substitute–

“(8) In this rule “the EC Service Regulation” means Regulation (EC) No. 1393/2007 of the European Parliament and of the Council of 13th November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No. 1348/2000, as amended from time to time(e).”.

9. In rule 5.7 of the Summary Cause Rules (service on persons outwith Scotland)–

(a) in paragraphs (4) and (12)(b)(f) for “the Council Regulation” substitute “the EC Service Regulation”; and

(b) for paragraph (14)(g) substitute–

“(14) In this rule “the EC Service Regulation” means Regulation (EC) No. 1393/2007 of the European Parliament and of the Council of 13th November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No. 1348/2000, as amended from time to time.”.

10. In rule 6.5 of the Small Claim Rules (service on persons outwith Scotland)–

(a) in paragraphs (4) and (12)(b)(h) for “the Council Regulation” substitute “the EC Service Regulation”; and

(b) for paragraph (15)(i) substitute–

“(15) In this rule “the EC Service Regulation” means Regulation (EC) No. 1393/2007 of the European Parliament and of the Council of 13th November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No. 1348/2000, as amended from time to time.”.

A. C. Hamilton
Lord President
I.P.D.

Edinburgh
7th November 2008

(a) Rule 5.5(8) was inserted by S.S.I. 2004/197 and substituted by S.S.I. 2007/440.
(b) O.J. No. L 324, 10.12.2007, p. 79.
(c) Rule 2.12(1A) and (6)(b) were inserted by S.S.I. 2004/197 and substituted by S.S.I. 2007/440.
(d) Rule 5.5(8) was inserted by S.S.I. 2004/197 and substituted by S.S.I. 2007/440.
(e) O.J. No. L 324, 10.12.2007, p. 79.
(f) Rule 5.7(4) and (12)(b) were inserted by S.S.I. 2004/197 and substituted by S.S.I. 2007/440.
(g) Rule 5.5(8) was inserted by S.S.I. 2004/197 and substituted by S.S.I. 2007/440.
(h) Rule 6.5 was inserted by S.S.I. 2004/197 and substituted by S.S.I. 2007/440.
(i) Rule 5.5(8) was inserted by S.S.I. 2004/197 and substituted by S.S.I. 2007/440.

SCHEDULE

Paragraph 5(3)

Rule 34.2(5)(b)

FORM 10e

Form of order of court for recovery of documents in personal injuries action

IN THE SHERIFF COURT

in the cause (court reference no.)

SPECIFICATION OF DOCUMENTS

[A.B.] (*designation and address*),

Pursuer

against

[C.D.] (*designation and address*),

Defender

Date: (*date of posting or other method of service*)

To: (*name and address of party or parties from whom the following documents are sought to be recovered*)

You are hereby required to produce to the agent for the pursuer within seven days of the service on you of this Order:–

[*Insert such of the following calls as are required.*]

1. All books, medical records, charts, X-rays, notes and other documents of (*specify name of each medical practitioner or general practitioner practice named in summons in accordance with rule 34.2(1)(c)*), and relating to the pursuer [*or, as the case may be, the deceased*] from (*insert date*), in order that excerpts may be taken therefrom at the sight of the Commissioner of all entries showing or tending to show the nature, extent and cause of the pursuer's [*or, as the case may be, the deceased's*] injuries when he attended his doctor on or after (*specify date*) and the treatment received by him since that date.
2. All books, medical records, charts, X-rays, notes and other documents of (*specify, in separate calls, the name of each hospital or other institution named in summons in accordance with rule 34.2(1)(c)*), and relating to the pursuer [*or, as the case may be, the deceased*] from

(*insert date*), in order that excerpts may be taken therefrom at the sight of the Commissioner of all entries showing or tending to show the nature, extent and cause of all injuries from which the pursuer [*or, as the case may be, the deceased*] was suffering when he was admitted to that institution on or about (*specify date*), the treatment received by him since that date and his certificate of discharge, if any.

3. The medical records and capability assessments held by the defender's occupational health department relating to the pursuer [*or, as the case may be, the deceased*], except insofar as prepared for or in contemplation of litigation, in order that excerpts may be taken therefrom at the sight of the Commissioner of all entries showing or tending to show the nature and extent of any injuries, symptoms and condition from which the pursuer [*or, as the case may be, the deceased*] was suffering and the nature of any assessment and diagnosis made thereof on or subsequent to (*specify date*).

4. All wage books, cash books, wage sheets, computer records and other earnings information relating to the pursuer (*or, as the case may be, the deceased*) (N.I. Number (*specify number*)) held by or on behalf of (*specify employer*), for the period (*specify dates commencing not earlier than 26 weeks prior to the date of the accident or the first date of relevant absence, as the case may be*) in order that excerpts may be taken therefrom at the sight of the Commissioner of all entries showing or tending to show:–

- (a) the pursuer's [*or, as the case may be, the deceased's*] earnings, both gross and net of income tax and employee National Insurance Contributions, over the said period;
- (b) the period or periods of the pursuer's [*or, as the case may be, the deceased's*] absence from employment over the said period and the reason for absence;
- (c) details of any increases in the rate paid over the period (*specify dates*) and the dates on which any such increases took effect;
- (d) the effective date of, the reasons for and the terms (including any terms relative to any pension entitlement) of the termination of the pursuer's [*or, as the case may be, the deceased's*] employment;
- (e) the nature and extent of contributions (if any) to any occupational pension scheme made by the pursuer [*or, as the case may be, the deceased*] and his employer;
- (f) the pursuer's present entitlement (if any) to occupational pension and the manner in which said entitlement is calculated.

5. All accident reports, memoranda or other written communications made to the defender or anyone on their behalf by an employee of the defender who was present at or about the time at which the pursuer [*or, as the case may be, the deceased*] sustained the injuries in respect of which the summons in this cause was issued and relevant to the matters contained in the statement of claim.

6. Any risk assessment current at the time of the accident referred to in the summons or at the time of the circumstances referred to in the summons giving rise to the cause of action (as the case may be) undertaken by or on behalf of the defender for the purpose of regulation 3 of the Management of Health and Safety at Work Regulations 1992 and subsequently regulation 3 of the Management of Health and Safety at Work Regulations 1999 [*or (specify the regulations or other legislative provision under which the risk assessment is required)*] in order that excerpts may be taken therefrom at the sight of the Commissioner of all entries relating to the risks posed to workers [*or (specify the matters set out in the statement of claim to which the risk assessment relates)*].

7. Failing originals, drafts, copies or duplicates of the above or any of them.

(*Signature, name and business address of the agent for the pursuer.*)

NOTES

- (1) The documents recovered will be considered by the parties to the action and they may or may not be lodged in the court process. A written receipt will be given or sent to you by the pursuer, who may thereafter allow them to be inspected by the other parties. The party in whose possession the documents are will be responsible for their safekeeping.
- (2) If you claim that any of the documents produced by you are **confidential**, you must still produce such documents but may place them in a separate sealed packet by themselves, marked "CONFIDENTIAL". In that event they must be delivered or sent by post to the **sheriff clerk at (insert name of sheriff court and address)**. Any party who wishes to open the sealed packet must apply to the court by incidental application. A party who makes such an application must intimate it to you.
- (3) Subject to paragraph (2) above, you may produce these documents by sending them by registered post or by the first class recorded delivery service or registered postal packet, or by hand to (*name and address of the agent for the pursuer*).

CERTIFICATE

(Date)

I hereby certify with reference to the above order of the court in the cause (*cause reference number*) and the enclosed specification of documents, served on me and marked respectively X and Y:–

- (1) That the documents which are produced and which are listed in the enclosed inventory signed by me and marked Z, are all the documents in my possession falling within the specification.

or

That I have no documents in my possession falling within the specification.

- (2) That, to the best of my knowledge and belief, there are in existence other documents falling within the specification, but not in my possession. These documents are as follows:– (*describe them by reference to the descriptions of documents in the specification*). They were last seen by me on or about (*date*), at (*place*), in the hands of (*name and address of the person*).

or

That I know of the existence of no documents in the possession of any person, other than myself, which fall within the specification.

(Signed)

(Name and address)

EXPLANATORY NOTE

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

This Act of Sederunt makes miscellaneous amendments to the rules of procedure in the sheriff court as follows.

Paragraph 2 amends Forms O4 and O5 of the Ordinary Cause Rules by inserting a paragraph which provides information about certain procedural steps to take in relation to defending commercial actions.

Paragraph 3 amends the Ordinary Cause Rules by inserting a new rule into Chapter 31 (appeals) making provision for appeal to the sheriff principal of specified interlocutors without the requirement for leave to be obtained.

Paragraph 4 omits subparagraph (4) of rule 29.14 of the Ordinary Cause Rules relating to notices to admit and notices of non-admission.

Paragraph 5 amends the Summary Cause Rules in relation to specification of documents in actions of damages for personal injury. Existing Form 10e is replaced by a new form.

Paragraph 6 inserts a new Part XXXVI into the Summary Application Rules to make provision in relation to the period for lodging an appeal under section 11(1) of the UK Borders Act 2007.

Paragraphs 7 to 10 amend the Ordinary Cause Rules, Summary Application Rules, Summary Cause Rules and Small Claims Rules to refer to applicable procedures relating to the service of documents under Regulation (EC) No. 1393/2007 of the European Parliament and of the Council on the service in EU Member States of judicial and extrajudicial documents in civil or commercial matters.

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£5.00