
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 61

SHERIFF COURT

**Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment
(Land Reform (Scotland) Act 2003) 2005**

Made - - - - *4th February 2005*

Coming into force - - *9th February 2005*

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), sections 14(5), 15(3) and 28(8) of the Land Reform (Scotland) Act 2003(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 Sheriff Courts (Scotland) Act 1971, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt—

- (a) may be cited as the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (Land Reform (Scotland) Act 2003) 2005;
- (b) shall come into force on 9th February 2005; and
- (c) shall be inserted in the Books of Sederunt.

Amendment of the Summary Application Rules

2.—(1) The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(3), is amended in accordance with the following paragraph.

(2) In Chapter 3 (rules on applications under specific statutes), after Part XXVII (Antisocial Behaviour (Scotland) Act 2004)(4), insert—

(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 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 12, and the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43, and was extended by the Child Support Act 1991 (c. 48), sections 39(2) and 49.

(2) 2003 asp 2.

(3) S.I.1999/929, amended by S.S.I. 2000/148 and 387, 2001/142, 2002/7, 129, 130, 146 and 563, 2003/26, 27, 98, 261, 316, 346 and 556 and 2004/197, 222, 334 and 455.

(4) Part XXVII was inserted by S.S.I. 2004/455.

“PART XXVIII
LAND REFORM (SCOTLAND) ACT 2003

Interpretation

3.28.1. In this Part—

“the Act” means the Land Reform (Scotland) Act 2003.

Public notice of appeal against section 14(2) remedial notice

3.28.2. Where an owner of land appeals by summary application under section 14(4) of the Act against a notice served on him under section 14(2) of the Act, the owner must at the same time as, or as closely in time as practicable to, the lodging of the application, advertise by publication of an advertisement in a newspaper circulating in the area of the land details of the application including details of the notice appealed against.

Restriction on number of persons being party to section 14(4) application

3.28.3. Persons interested in the exercise of access rights over the land to which a summary application under section 14(2) of the Act relates, and persons or bodies representative of such persons, may be parties to the summary application proceedings, but the court may order that any one or more of the persons or bodies who have the same interests and no others, may take an active part in the proceedings.

Public notice and restriction on number of parties to section 15 application

3.28.4. The provisions in rules 3.28.2 and 3.28.3 above apply with necessary modifications to a summary application appealing against a notice served under section 15(2) of the Act.

Public notice and restriction on number of parties to section 28 application

3.28.5.—(1) The provisions in rules 3.28.2 and 3.28.3 above apply with necessary modifications to a summary application for a declaration under section 28(1) or (2) of the Act.

(2) A summary application under section 28(1) or (2) of the Act may be made at any time.”

Edinburgh
4th February 2005

Cullen of Whitekirk
Lord President I.P.D.

EXPLANATORY NOTE

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

This Act of Sederunt further amends the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 (“the 1999 Rules”). Article 2 inserts a new Part XXVIII into Chapter 3 of the 1999 Rules. Part XXVIII sets out the procedure in the sheriff court where an owner of land wishes to appeal against a notice served by a local authority in the exercise of its duty to uphold access rights under the Land Reform (Scotland) Act 2003 (“the Act”), and where an application is made for a declaration as to the existence and extent of access rights or rights of way.

Rule 3.28.2 provides that where an owner of land appeals by summary application under section 14(4) of the Act against a notice served on him under section 14(2) of the Act, the owner must at the same time advertise details of the application including details of the notice appealed against in a local newspaper.

Rule 3.28.3 provides that persons interested in the exercise of access rights over the land to which a summary application under section 14(2) of the Act relates, and persons or bodies representative of such persons, may be parties to the summary application proceedings, but the court may restrict the extent to which they may take an active part in the proceedings.

Rule 3.28.4 applies the procedure prescribed in rules 3.28.2 and 3.28.3 to an appeal by an owner of land against a notice under section 15(2) of the Act requiring action to remove the risk of injury to a person exercising access rights.

Rule 3.28.5 provides that the provisions in rules 3.28.2 and 3.28.3 above apply with necessary modifications to a summary application for a declaration under section 28(1) or (2) of the Act as to the existence and extent of access rights or rights of way.