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STATUTORY INSTRUMENTS

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**1988 No. 1978**

**Act of Sederunt (Amendment of Sheriff Court  
Ordinary Cause, and Summary Cause, Rules) 1988**

AMENDMENT OF ORDINARY CAUSE RULES

2. The Ordinary Cause Rules of the Sheriff Court<sup>(1)</sup> shall be amended in accordance with paragraphs 3 to 18 of this Act of Sederunt.

3. For rule 2 (application of rules to solicitors) substitute the following rule:—

**“Representation**

2.—(1) Subject to paragraph (2) of this rule, a party to any proceedings arising solely under the provisions of the Debtors (Scotland) Act 1987 shall be entitled to be represented by a person other than a solicitor or an advocate provided that the sheriff is satisfied that such person is a suitable representative and is duly authorised to represent the party.

(2) Paragraph (1) shall not apply to appeals to the sheriff principal.

(3) Where a party to any cause is represented by a solicitor, any reference in the rules to that party shall, where appropriate, be construed as a reference to the solicitor representing that party.”.

4.—(1) For paragraph (4) of rule 3 (initial writ), substitute the following paragraph:—

“(4) An article of condescence shall be included in the initial writ stating the ground of jurisdiction of the court.”.

(2) In paragraphs (6) and (7) of rule 3<sup>(2)</sup>, for the words “paragraph (2)” wherever they occur substitute the words “paragraph (5)”.

5.—(1) In paragraph (1) of rule 5 (warrant of citation)<sup>(3)</sup>, after the words “and of separation” insert the words “or an action in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender”.

(2) In paragraph (3) of rule 5, for the word “in” where it first occurs, substitute the words “subject to paragraph (4), in”.

(3) At the end of rule 5, insert the following paragraphs:—

“(4) In a summary application in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender, the warrant of citation shall be framed as nearly as may be in accordance with form B3 as set out in the Appendix to this Schedule.

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(1) 1907 c. 51 First Schedule, substituted by S.I.1983/747; relevant amending instruments are S.I. 1984/255, 921, 1986/1230 and 1946.

(2) Paragraphs (6) and (7) of rule 3 were amended by S.I. 1986/1230 and 1946.

(3) Paragraph (1) of rule 5 was amended by S.I. 1984/255 and 1986/1230

(5) In an ordinary cause in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender, the warrant of citation shall be framed as nearly as may be in accordance with form B4 as set out in the Appendix to this Schedule.

(6) In any cause in which warrant for citation in accordance with forms B3 or B4, as the case may be, is appropriate, there shall be served on the defender (along with the initial writ and warrant) a notice in accordance with form B5 (ordinary action) or B6 (summary application), as the case may be, as set out in the Appendix to this Schedule.”.

6. In rule 7(1) (period of notice after citation), for sub-paragraphs (a) and (b) substitute the following sub-paragraph:—

“(a) 21 days where the defender is resident or has a place of business within Europe;” and sub-paragraph (c) shall be relettered as sub-paragraph (b).

7.—(1) In paragraph (1) of rule 9 (form of citation and certificate)(4), after the words “or of separation” insert the words “or an action in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender”.

(2) After paragraph (2) of rule 9 insert the following paragraph:—

“(2A) In any ordinary cause in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender, citation shall be given as nearly as may be in accordance with form C2 as set out in the Appendix to this Schedule which shall be prefixed to a copy of the initial writ and warrant of citation.”.

8. For rule 13 (days of charge), substitute the following rule:—

“13.—(1) The period for payment specified in any charge following on a decree for payment granted in an ordinary cause shall be 14 days if the person on whom it is served is within the United Kingdom and 28 days if he is outside the United Kingdom or his whereabouts are unknown.

(2) The period in respect of any other form of charge in respect of an ordinary cause decree shall be 14 days.”.

9. In rule 21(1)(a) (minute for granting of decree without attendance)(5), after the words “minute under rule 34” insert the words “or an application for a time to pay direction under the Debtors (Scotland) Act 1987 or if the defender has lodged such application and the pursuer does not object thereto or to any recall or restriction of an arrestment sought therein.”.

10. After rule 21A (decree in causes in which the Hague Convention applies)(6), insert the following rules:—

**“Applications for time to pay directions in undefended causes**

**21B.—**(1) This rule applies to ordinary causes in which a time to pay direction may be applied for under the Debtors (Scotland) Act 1987.

(2) A defender in a cause which is otherwise undefended, who wishes to apply for a time to pay direction, and where appropriate, to have an arrestment recalled or restricted, may complete and lodge with the sheriff clerk the relevant part of form B5 before the expiry of the period of notice.

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(4) Rule 9 was amended by S.I. [1984/255](#) and [1986/1230](#)

(5) Rule 21(1) was amended by S.I. [1986/1946](#)

(6) Rule 21A was inserted by S.I. [1986/1946](#)

(3) Where the pursuer does not object to the defender's application, he shall minute accordingly and for decree in accordance with rule 21; and the sheriff may grant decree or other order in terms of the application and minute.

(4) Where the pursuer objects to the defender's application he shall minute accordingly and for decree in terms of rule 21; and the sheriff clerk shall thereafter enrol the cause for hearing of the defender's application and intimate the hearing to the defender and pursuer.

(5) The sheriff shall consider the application on the date fixed for hearing or at any continuation thereof and may then or after further consideration grant or refuse it as may seem to him appropriate whether or not any of the parties appear and grant decree accordingly.

### **Applications for time to pay directions in summary applications**

**21C.**—(1) This rule applies in summary applications in which a time to pay direction may be applied for under the Debtors (Scotland) Act 1987.

(2) A defender may apply for a time to pay direction and, where appropriate, for recall or restriction of an arrestment—

- (a) by appearing and making the appropriate motion at the diet fixed;
- (b) except where the period of notice has been shortened in accordance with rule 7(2), by completing and returning to the sheriff clerk at least 7 days before the diet fixed for hearing the appropriate portion of form B6; or
- (c) by application to the court at any stage in the proceedings prior to final decree being granted.”.

**11.** After rule 57 (motions), insert the following rule:—

### **“Applications for time to pay directions and for recall or restriction of arrestments in defended causes**

**57A.** In any defended cause in which it is competent to do so, the sheriff may, on a motion by the defender at any time before decree is granted, grant a time to pay direction and, where appropriate, an order recalling or restricting an arrestment.”.

**12.** In rule 64(1)(c) (amendment of pleadings: powers of sheriff), after the words “defences or answers must be lodged” insert the words—

“; provided that in any case in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender a notice in terms of form HH as set out in the Appendix to this Schedule together with form B5 shall be served on such additional or substitute defender in place of form H”.

**13.** For paragraph (2) of rule 92 (application for leave to appeal and appeal therefrom), substitute the following paragraphs:—

“(2) Where leave to appeal has been granted, an appeal shall be made—

- (a) where the appeal relates to a time to pay direction or any order connected therewith, within 14 days; or
- (b) in any other case, within 7 days,

of the granting of leave.

(3) An application for leave to appeal relating to a time to pay direction or the recall or restriction of an arrestment shall specify the question of law upon which the appeal is to proceed.”.

- 14.** In rule 99 (actions craving payment of rent)—
- (a) after “99”, insert “(1)”; and
  - (b) after paragraph (1), insert the following paragraph:—
    - “(2) There shall be served on the defender in such actions, along with the initial writ, warrant and citation, a notice in accordance with form H8 as set out in the Appendix to the Schedule.”.
- 15.** In paragraph (11)(a) of rule 130 (intimation)(7), for “14”, substitute “21”.
- 16.—**(1) In paragraph (6) of rule 138 (citation, for sub-paragraphs (a) and (b), substitute the following sub-paragraph:—
- “(a) 21 days when the defender is resident or has a place of business within Europe”; and sub-paragraph (c) shall be relettered as sub-paragraph (b).
  - (2) In paragraph (9)(a) of rule 138(8) for “14” substitute “21”.
- 17.** In paragraph (2) of rule 147 (applications for interim payment of damages), for “14” substitute “21”.
- 18.—**(1) The Appendix to the Ordinary Cause Rules shall be amended in accordance with the following sub-paragraphs.
- (2) In forms CC, C1, H1 to H7, S, S1, V1, V2 and SDA7(9), for “14” wherever they occur substitute “21”.
  - (3) In form D(10) after the word “actions” insert the following words:—
    - “in which a time to pay direction may be applied for set forth any form sent in accordance with rule 5 and in actions”.
  - (4) There shall be inserted forms B3, B4, B5, B6, C2, HH and H8 as set out in Schedule 1 to this Act of Sederunt.

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(7) Rule 130 was substituted by S.I. [1986/1230](#)

(8) Paragraph (9) of rule 138 was substituted by S.I. [1986/1230](#)

(9) Forms C1 and S1 were inserted by S.I. [1984/255](#); form CC was inserted by S.I. [1984/921](#); and forms H1 to H7, V1, V2 and SDA7 were inserted by S.I. [1986/1230](#)

(10) Form D was amended by S.I. [1986/1230](#)