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STATUTORY INSTRUMENTS

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**1988 No. 2013**

**Act of Sederunt (Proceedings in the Sheriff Court  
under the Debtors (Scotland) Act 1987) 1988**

**PART II**

**EXTENSION OF TIME TO PAY DEBTS AND RELATED MATTERS**

**Notice of interest claimed**

**3.—(1)** A creditor wishing to recover interest under a decree of the sheriff court shall serve on the defender the notice referred to in sections 1(7) and 5(7) of the Act (notice claiming and specifying amount of interest), either by posting it by recorded delivery post or by having it served personally by an officer of court —

- (a) in the case of a decree requiring payment by instalments, no later than 14 days before the date on which the last instalment is due to be paid; or
- (b) in the case of a decree requiring payment by lump sum within a certain period, no later than 14 days before the last day of such period.

**Applications for variation or recall of time to pay directions or for recall or restriction of arrestments**

**4.—(1)** An application under section 3(1) of the Act for an order for variation or recall of a time to pay direction, or where appropriate, for recall or restriction of an arrestment, shall be in form 1.

(2) An application to which paragraph (1) of this rule applies shall be lodged with the sheriff clerk who shall—

- (a) fix a date for the hearing of the application (which date shall be not less than 7 days from the date of intimation made under sub-paragraph (c) of this paragraph);
- (b) obtain from the sheriff a warrant to intimate the application to the debtor and the creditor;
- (c) intimate the application and warrant to the debtor and the creditor; and
- (d) complete a certificate of intimation.

**Applications for time to pay orders**

**5.—(1)** A party who intends to apply for a time to pay order under section 5 of the Act shall complete and lodge with the sheriff clerk an application in form 2.

(2) An order by the sheriff under section 6(4) of the Act (creditor to furnish particulars of decree or other document) shall require a creditor to furnish the following information—

- (a) the date of the decree or other document;
- (b) the parties named in it;
- (c) where appropriate, the court which granted it;

- (d) details of the debt and any interest due; and
- (e) any further information, relating to the decree or other document, as the sheriff shall consider necessary to enable him to determine the application.

(3) Service by the sheriff clerk of an application under paragraph (1) of this rule, or of any *interim* order of the sheriff under section 6(3) of the Act, shall be by recorded delivery post and the sheriff clerk shall serve, in like manner and at the same time, a copy of any *interim* order upon the applicant.

(4) Where a creditor fails to comply with an order referred to in sub-paragraph (2) of this rule, any order giving him an opportunity to make representations under section 6(5) of the Act shall be intimated to him by the sheriff clerk.

(5) A creditor may, within 14 days after the date of service of an application under paragraph (1) of this rule, object to the granting of the application by lodging with the sheriff clerk the appropriate portion of form 2 or a letter specifying his objections, including any counter-proposals on it.

(6) If no written objections are received from the creditor within the time specified in paragraph (5) of this rule, the sheriff shall make a time to pay order in accordance with the application.

(7) If written objections are received from the creditor within the time specified in paragraph (5) of this rule, the sheriff clerk shall—

- (a) appoint a date for the hearing of the application;
- (b) intimate that date to the parties and a copy of the written objections to the applicant; and
- (c) advise the applicant that he may accept any counter-proposal prior to the date fixed for the hearing.

(8) Where the debtor accepts counter-proposals made by the creditor in accordance with paragraph (5) of this rule, he shall intimate his acceptance to the sheriff clerk who shall intimate the acceptance to the creditor and advise parties that the hearing of the application will not proceed; and the sheriff shall make a time to pay order in terms of the counter-proposals.

(9) The sheriff clerk shall intimate the decision of the sheriff on the application and any order relating to it to the parties by first class post and at the same time shall advise the creditor of the date when intimation was made to the debtor.

#### **Applications for variation or recall of time to pay orders, poidings or arrestments.**

6.—(1) An application under section 10(1) of the Act for an order for variation or recall of a time to pay order or, where appropriate, for recall of a poiding or for recall or restriction of an arrestment shall be in form 3.

(2) An application to which paragraph (1) of this rule applies shall be lodged with the sheriff clerk who shall—

- (a) fix a date for the hearing of the application (which date shall be not less than 7 days from the date of intimation made under sub-paragraph (c) of this paragraph);
- (b) obtain from the sheriff a warrant to intimate the application to the debtor and the creditor;
- (c) intimate the application ad warrant to the debtor and the creditor; and
- (d) complete a certificate of intimation.

(3) The sheriff may, where he considers it appropriate, make an order requiring any person in possession of a summons or other writ or who holds an execution of diligence in respect of the debt to deliver it to the court.

### **Consumer Credit Act 1974**

7.—(1) In any proceedings by a creditor or owner to enforce a regulated agreement or any related security within the meaning of the Consumer Credit Act 1974<sup>(1)</sup>, the pursuer shall lodge a copy of any existing or previous time order relating to the debt.

(2) Where a time to pay order is applied for, the applicant shall specify in his application whether a time order, within the meaning of the Consumer Credit Act 1974, relating to the debt has been made.

(3) Where a time order is applied for under the Consumer Credit Act 1974, the applicant shall specify whether a time to pay direction or order relating to the debt has been made.