
STATUTORY INSTRUMENTS

1996 No. 1534 (S.136)

SHERIFF COURT, SCOTLAND

Act of Sederunt (Requirements of Writing) 1996

Made - - - - *6th June 1996*

Coming into force - - - *1st July 1996*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 32 of the Sheriff Courts (Scotland) Act 1971(1) and of all other powers enabling them in that behalf, having approved, with modifications, draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of that Act, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Requirements of Writing) 1996 and shall come into force on 1st July 1996.

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

Interpretation

2.—(1) In this Act of Sederunt, “the Act of 1995” means the Requirements of Writing (Scotland) Act 1995(2).

(2) Unless the context otherwise requires, words and expressions used in this Act of Sederunt which are also used in the Act of 1995 have the same meaning as in that Act.

(3) Unless the context otherwise requires, a reference to a specified paragraph or form is a reference to the paragraph so specified, or the form so specified in the Schedule, in this Act of Sederunt.

Application

3.—(1) Subject to sub-paragraph (2) below, this Act of Sederunt shall apply to an application under the following provisions of the Act of 1995:—

section 4(1) or (2),

section 5(6),

(1) 1971 c. 58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 12, by the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(4) and by the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 18(2).

(2) 1995 c. 7.

paragraph 2(1) or (2) of Schedule 1,
paragraph 7 of Schedule 3,
paragraph 14 of Schedule 3.

(2) This Act of Sederunt shall not apply to an application under a provision mentioned in subparagraph (1) above which is a summary application within the meaning of section 3 of the Sheriff Courts (Scotland) Act 1907(3).

Application in commissary proceedings

4. An application to which this Act of Sederunt applies for a certificate or decree in connection with a document, made incidental to and in the course of an application for confirmation of an executor, shall be made as nearly as may be in accordance with Form 1.

Application in other proceedings

5. An application to which this Act of Sederunt applies for a certificate or decree in connection with a document, made incidental to and in the course of any proceedings other than an application for confirmation of an executor, shall be made by minute, incidental application or note, as appropriate, in those proceedings.

Intimation

6.—(1) Except where it appears to the sheriff that an application under paragraph 4 should be intimated to a person having an interest, the application shall be considered and determined by the sheriff without intimation or any period of notice.

(2) Where it appears to the sheriff that an application under paragraph 4 should be intimated, the application shall be intimated to such persons and in such manner as the sheriff shall direct.

Affidavit evidence

7. Evidence given by affidavit in an application under paragraph 4 or 5 shall be made as nearly as may be in accordance with Form 2.

Decree, interlocutor and certificate

8. Where the sheriff grants an application under paragraph 4 or 5 he shall—
- (a) where the document has been registered in the Books of Council and Session or the sheriff court books, grant decree in those terms; or
 - (b) in any other case—
 - (i) issue an interlocutor; and
 - (ii) direct the sheriff clerk to endorse a certificate on the document as nearly as may be in accordance with Form 3.

Edinburgh,
6th June 1996

Hope of Craighead
Lord President, I.P.D.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE

Paragraphs 4, 7 and 8

FORM 1 Form of application

Paragraph 4

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

APPLICATION UNDER THE REQUIREMENTS OF WRITING (SCOTLAND) ACT 1995

by

[A.B.] *(name and address)*

APPLICANT

1. The applicant is *(insert name and address of applicant and his interest in the document, e.g. executor-nominatee/dative)*.

2. This application is made *(insert details of the circumstances under which the application is made, e.g. incidental to the application by the above named executor(s) for confirmation to the estate of the deceased)*.

3. *(insert details of document and the reasons for seeking certification by the court or decree, as appropriate; e.g. "The document is a will dated (insert date of will) which bears to be signed by the deceased. No person has subscribed as a witness to the will as required by section 3(1) of the Requirements of Writing (Scotland) Act 1995. The document cannot therefore be presumed to have been subscribed by the grantor")*.

4. The applicant seeks a certificate *[or decree]* under *(insert appropriate statutory reference)* of the Requirements of Writing (Scotland) Act 1995 with respect to the aforementioned document.

(Signed)

Applicant
[or [X.Y.] *(insert name and business address)*
Solicitor for applicant]

(Date)

FORM 2 Form of affidavit

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Paragraph 7

AT (place and date) in the presence of [C.D.] (address) Justice of the Peace for (place) [or Notary Public] [or Commissioner for Oaths or other such person entitled to administer oaths (specify capacity)].

Compeared [E.F.] (name and address) who, being solemnly sworn and examined depones [or solemnly and sincerely affirms] that (insert evidence of the deponent in relation to the document and order sought, e.g. "I am well acquainted with the signature of [A.B.] (full name and address) and have seen and examined the signature on the will dated (date) and confirm that it is the signature of the said [A.B.]" [or "I was present at (place of execution) on (date of execution) and confirm that the alterations to the will were made by [A.B.] (full name and address) before execution" [or as the case may be]).

All of which is the truth as the deponent shall answer to God [or All of which is affirmed to be the truth].

Date Signed
[F.F.]
Signed
[C.D.]

The document referred to is produced herewith and signed by the deponent and the said [C.D.] as relative hereto.

FORM 3 Form of certificate of sheriff clerk

Paragraph 8

AT (insert name of sheriff court)
DATE (insert date of certificate)

By interlocutor of the sheriff dated (insert date) it is hereby certified in terms of (insert appropriate statutory reference) of the Requirements of Writing (Scotland) Act 1995 that (insert details of document and extent of certification, e.g. this will was subscribed by the granter [A.B.] or this will was subscribed on (date) and at (place)).

Signed
Sheriff clerk

EXPLANATORY NOTE

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

This Act of Sederunt makes provision for the procedure to be followed in respect of applications under the Requirements of Writing (Scotland) Act 1995 to the court for authentication of documents which do not attract the statutory presumptions about subscription of a deed. It also provides draft forms of application, affidavit and certificate.