
STATUTORY INSTRUMENTS

1998 No. 2637 (S. 128)

COURT OF SESSION, SCOTLAND

**Act of Sederunt (Rules of the Court of Session
Amendment No. 2) (Miscellaneous) 1998**

Made - - - - - *20th October 1998*

Coming into force - - - - - *1st December 1998*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 5 of the Court of Session Act 1988(1) and of all other powers enabling them in that behalf, do hereby enact and declare:—

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 2) (Miscellaneous) 1998 and shall come into force on 1st December, 1998.

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

Amendment of the Rules of the Court of Session

2.—(1) The Rules of the Court of Session 1994(2) shall be amended in accordance with the following sub-paragraphs.

(2) In Chapter 3, after rule 3.6 insert—

“Registers kept by the Court

3.6A

1.5. Any register kept by the Court, whether or not under or by virtue of these Rules, may be kept either—

(a) in documentary form; or

(b) in electronic form (that is to say in a form accessible only by electronic means).”.

(3) In Chapter 16, in rule 16.15(1)—

(a) for sub-paragraph (a) substitute—

(1) 1988 c. 36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(3) and by the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 45.

(2) S.I.1994/1443.

- “(a) in the case of —
 - (i) an arrestment to found jurisdiction (other than the arrestment of a ship), a schedule in Form 16.15-A and a certificate of execution in Form 16.15-H;
 - (ii) an arrestment of a ship to found jurisdiction, a schedule in Form 16.15-AA and a certificate of execution in Form 16.15-HH;”;
 - (b) for sub-paragraph (c) substitute—
 - “(c) in the case of an arrestment in *rem* of a ship, cargo or other maritime *res* to enforce a maritime hypothec or lien, a schedule in Form 16.15-C and a certificate of execution in Form 16.15 I”;
 - (c) for sub-paragraph (e) substitute—
 - “(e) in the case of an arrestment on the dependence of
 - (i) a cargo on board a ship, a schedule in Form 16.15-B;
 - (ii) a ship, a schedule in Form 16.15-BB, and a certificate of execution in Form 16.15-J.”;
- (4) In Chapter 41, for Part VI (appeals under section 50 of the Social Work (Scotland) Act 1968) substitute—

“PART VI

APPEALS UNDER SECTION 51 OF THE CHILDREN (SCOTLAND) ACT 1995

Application of Part II to this Part

41.28. Part II (appeals by stated case etc.) shall apply to an appeal to the court by stated case under section 51(11)(b) of the Act of 1995 subject to the following provisions of this Part.

Interpretation of this Part

41.29. In this Part—

“the Act of 1995” means the Children (Scotland) Act 1995(3) and

“the Principal Reporter” means the Principal Reporter appointed under section 127 of the Local Government etc. (Scotland) Act 1994(4) or any officer of the Scottish Children’s Reporter Administration to whom there is delegated, under section 131(1) of that Act, any function of the Principal Reporter under the Act of 1995.

Lodging of reports and statements with sheriff clerk

41.30. Where, on application being made under subsection (13) of section 51 of the Act of 1995 to state a case for the purposes of an appeal under subsection (11)(b) of that section—

- (a) it appears to the sheriff (or as the case may be to the sheriff principal) that any report or statement lodged under subsection (2), or report lodged under subsection (3), of that section in the appeal to him is relevant to any issue which is likely to arise in the stated case; and
- (b) the report or statement has been returned to the Principal Reporter,

(3) 1995 c. 36.

(4) 1994 c. 39.

the sheriff (or sheriff principal) may require the Principal Reporter to lodge the report or statement with the sheriff clerk; but on the stated case being sent to the person who applied for it, the sheriff clerk shall return the report or statement to the Principal Reporter.

Lodging etc. of reports and statements in court

41.31 .—(1) Within seven days after the date on which the case is lodged under rule 41.11(1), the Principal Reporter shall send to the Deputy Principal Clerk the principal and three copies of every report or statement which he was required, under rule 41.30, to lodge.

(2) Neither the principal nor any copy of any such report or statement shall be made available to any of the other parties unless the court otherwise orders.

(3) Subject to any such order, every such report or statement shall remain in the custody of the Deputy Principal Clerk until the appeal has been determined or abandoned; and then shall be returned by him to the Principal Reporter.

Hearing in private

41.32. The court may direct that all or any part of the appeal shall be heard in private.

Expenses

41.33.—(1) No expenses shall be awarded to or against any party in respect of the appeal.

(2) Rule 41.14(3)(b) (award of expenses in abandoned appeal) shall not apply to an appeal to which this Part applies.”.

(5) In rule 62.18(1) (interpretation), in the definition of “Community judgment”–

(a) omit the word “or” where it immediately follows sub-paragraph (b); and

(b) after sub-paragraph (c) add

“; or

(d) Article 82 of Regulation 40/94 of December 20, 1993⁽⁵⁾ regulation of the Council of the European Union: on the Community trade mark”.

(6) In rule 66.3, paragraph (2) (requirement for a certificate to be produced with the petition in an application, under section 1 of the Evidence (Proceedings In Other Jurisdictions) Act 1975⁽⁶⁾ for assistance in obtaining evidence for civil proceedings in a court furth of Scotland) shall be omitted.

(7) In the Appendix –

(a) for forms 16.15-A to 16.15-D, substitute the forms headed 16.15-A, 16.15-AA 16.15-B, 16.15-BB, 16.15-C and 16.15-D; and

(b) after form 16.15-H insert the form headed 16.15-HH,

in the Schedule to this Act of Sederunt.

Saving

3. Paragraph 2(4) of this Act of Sederunt shall not affect the application of Chapter 41 of the Rules of the Court of Session 1994 in relation to any appeal which constitutes relevant proceedings for the purposes of Schedule 3 transitional provisions and savings) to the Children (Scotland) Act 1995⁽⁷⁾.

(5) OJ.1994, 11/1.

(6) 1975 c. 34.

(7) 1995 c. 36.

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

Edinburgh
20th October 1998

Rodger of Earlsferry
Lord President, I.P.D.

SCHEDULE

Paragraph 2(7).

Rule 16.15(1)(a)(i)

FORM 16.15-A

Form of schedule of arrestment to found jurisdiction

SCHEDULE OF ARRESTMENT TO FOUND JURISDICTION

Date: *(date of execution)*

Time: *(time arrestment executed)*

To: *(name and address of arrestee)*

IN HER MAJESTY'S NAME AND AUTHORITY, I, *(name)*, Messenger-at-Arms, by virtue of a summons containing a warrant for arrestment to found jurisdiction, at the instance of *(name and address of pursuer)* against *(name and address of defender)* and signeted on *(date)*, arrest to found jurisdiction against *(name of defender)* in your hands: (i) the sum of *(amount)*, more or less, due by you to *(name of defender)* or to any other person on his [*or her*] [*or its*] [*or their*] behalf; and (ii) all moveable subjects in your hands and belonging or pertaining to *(name of defender)*.

This I do in the presence of *(name, occupation and address of witness)*.

(Signed)

Messenger-at-Arms

(Address)

NOTE

(Do not use this note where arrestment to found jurisdiction is combined with arrestment on the dependence in one schedule)

This schedule arrests in your hands debts due by you to the defender mentioned in the schedule and goods and other moveables held by you on his behalf. It does so solely for the purpose of establishing the jurisdiction of the Court of Session over the defender.

IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS DOCUMENT, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.

Rule 16.15(1)(a)(ii)

FORM 16.15-AA

Form of schedule of arrestment of ship to found jurisdiction

SCHEDULE OF ARRESTMENT OF SHIP TO FOUND JURISDICTION

Date: *(date of execution)*

Time: *(time arrestment executed)*

IN HER MAJESTY'S NAME AND AUTHORITY, I, *(name)*, Messenger-at-Arms, by virtue of a summons containing a warrant for arrestment to found jurisdiction, at the instance of *(name and address of pursuer)* against *(name and address of defender)* and signeted on *(date)*, arrest to found jurisdiction against *(name of defender)* the ship *(name)* presently lying in *(describe location)* and belonging to the defender.

This I do in the presence of *(name, occupation and address of witness)*.

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

(Signed)

Messenger-at-Arms

(Address)

NOTE

You should consult your legal adviser about the effect of this arrestment.

(The name, address and twenty-four hour contact telephone number of the agent for the party on whose behalf the arrestment was executed are to be inserted here.)

(Name of agent)

(address)

(telephone number).

Rule 16.15(1)(b) and (e)(i)

FORM 16.15-B

Form of schedule of arrestment on the dependence

SCHEDULE OF ARRESTMENT ON THE DEPENDENCE

Date: (date of execution)

Time: (time arrestment executed)

To: (name and address of arrestee)

IN HER MAJESTY'S NAME AND AUTHORITY, I, (name), Messenger-at-Arms, by virtue of

* a summons containing a warrant for arrestment on the dependence of the action at the instance of (name and address of pursuer) against (name and address of defender) signeted on (date),

* a counterclaim containing a warrant which has been granted for arrestment on the dependence of the claim by (name and address of creditor) against (name and address of debtor) and dated (date of warrant),

* an order of [Lord (name) in] the Court of Session dated (date of order) granting warrant [for arrestment on the dependence of the action raised at the instance of (name and address of pursuer) against (name and address of defender)] [or for arrestment on the dependence of the claim in the counterclaim [or third party notice] by (name and address of creditor) against (name and address of debtor)] [or to arrest in the petition of (name and address of petitioner) against (name and address of respondent), arrest in your hands (i) the sum of (amount), more or less, due by you to (defender's name) [or name and address of common debtor if common debtor is not the defender] or to any other person on his [or her] [or its] [or their] behalf; and (ii) all moveable things in your hands belonging or pertaining to the said (name of common debtor), to remain in your hands under arrestment until they are made furthcoming to (name or pursuer) [or name and address of creditor if he is not the pursuer] or until further order of the court.

This I do in the presence of (name, occupation and address of witness).

(Signed)

Messenger-at-Arms

(Address)

NOTE

This schedule arrests in your hands (i) debts due by you to (name of common debtor); and (ii) goods and other moveables held by you for him. **You should not pay any debts to him or hand over any goods or other moveables to him without taking legal advice.**

IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS DOCUMENT, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.

* Delete where not applicable.
Rule 16.15(1) (e)(ii)

FORM 16.15-BB

Form of schedule of arrestment of ship on the dependence

SCHEDULE OF ARRESTMENT OF SHIP ON THE DEPENDENCE

Date: *(date of execution)*

Time: *(time arrestment executed)*

IN HER MAJESTY'S NAME AND AUTHORITY, I, *(name)*, Messenger-at-Arms, by virtue of–

* a summons containing a warrant for arrestment on the dependence of the action at the instance of *(name and address of pursuer)* against *(name and address of defender)* signeted on *(date)*,

* a counterclaim containing a warrant which has been granted for arrestment on the dependence of the claim by *(name and address of creditor)* against *(name and address of debtor)* and dated *(date of warrant)*,

* an order of [Lord *(name)* in] the Court of Session dated *(date of order)* granting warrant [for arrestment on the dependence of the action raised at the instance of *(name and address of pursuer)* against *(name and address of defender)*] [or for arrestment on the dependence of the claim in the counterclaim [or third party notice] by *(name and address of creditor)* against *(name and address of debtor)*] [or to arrest in the petition of *(name and address of petitioner)* against *(name and address of respondent)*], arrest the ship *(name of ship)* presently lying in *(describe current location e.g. the port of X)* to remain in that *(more precisely if required)* under arrestment on the dependence of the action [or claim] until further order of the court.

This I do in the presence of *(name, occupation and address of witness)*.

(Signed)

Messenger-at-Arms

(Address)

NOTE

You should consult your legal adviser about the effect of this arrestment.

(The name, address and twenty-four hour contact telephone number of the agent for the party on whose behalf the arrestment was executed are to be inserted here.)

(Name of agent)

(address)

(telephone number),

* Delete where not applicable.

Rule 16.15(1)(c)

FORM 16.15-C

Form of schedule of arrestment in *rem* of ship, cargo or other maritime *res* to enforce maritime hypothec or lien

SCHEDULE OF ARRESTMENT IN *REM* IN ADMIRALTY ACTION IN *REM*

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

Date: *(date of execution)*

Time: *(time of arrestment executed)*

IN HER MAJESTY'S NAME AND AUTHORITY, I, *(name)*, Messenger-at-Arms, by virtue of a summons containing a warrant for arrestment *in rem* of the ship *(name of ship)* [or cargo *(describe)*] [or other maritime *res (describe)*] in an Admiralty action *in rem* at the instance of *(name and address of pursuer)* against *(name and address of defender)* and signeted on *(date)*, arrest the ship *(name)* presently lying in *(describe current location e.g. the port of X)* with her boats, furniture, appurtenances and apparelling [or cargo] [or other maritime *res*] *(describe location)*], to remain in that *(specify, more precisely if required)* under arrestment *in rem* until sold or until this arrestment is recalled or until other order of the court.

This I do in the presence of *(name, occupation and address of witness)*.

(Signed)

Messenger-at-Arms

(Address)

NOTE

You should consult your legal adviser about the effects of this arrestment.

(The name, address and twenty-four hour contact telephone number of the agent for the party on whose behalf the arrestment was executed are to be inserted here.)

(Name of agent)

(Address)

(Telephone number)

Rule 16.15(1)(d)

FORM 16.15-D

Form of schedule of arrestment *in rem* of ship to enforce non-pecuniary claim

SCHEDULE OF ARRESTMENT *IN REM* OF SHIP UNDER THE ADMINISTRATION OF JUSTICE ACT 1956, SECTION 47(3)(b)

Date: *(date of execution)*

Time: *(time of arrestment executed)*

IN HER MAJESTY'S NAME AND AUTHORITY, I, *(name)*, Messenger-at-Arms, by virtue of—

* an order of Lord *(name)* in the Court of Session dated *(date of order)* granting warrant for arrestment *in rem* under section 47(3)(b) of the Administration of Justice Act 1956 of the ship *(name of ship)* in an action,

* a summons containing a warrant for arrestment *in rem* under section 47(3)(b) of the Administration of Justice Act 1956 of the ship *(name of ship)*, at the instance of *(name and address of pursuer)* against *(name and address of defender)* and signeted on *(date)*, arrest the [ship] [or vessel] *(name)* presently lying in *(describe current location e.g. the port of X)* with her boats, furniture, appurtenances and apparelling to remain in that place *(specify, more precisely if required)* under arrestment *in rem* until this arrestment is recalled or other order of the court.

This I do in the presence of *(name, occupation and address of witness)*.

(Signed)

Messenger-at-Arms

(Address)

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NOTE

You should consult your legal adviser about the effects of this arrestment.

(The name, address and twenty-four hour contact telephone number of the agent for the party on whose behalf the arrestment was executed are to be inserted here.)

(Name of agent)

(Address)

(Telephone number)

* Delete where not applicable.

Rule 16.15(1)(a)(ii)

FORM 16.15-HH

Form of certificate of arrestment of ship to found jurisdiction

CERTIFICATE OF EXECUTION OF ARRESTMENT OF SHIP TO FOUND JURISDICTION

I, *(name)*, Messenger-at-Arms, certify that I, by virtue of a summons containing a warrant for arrestment to found jurisdiction, executed an arrestment of the ship *(name)* at the instance of *(name and address of pursuer)* against *(name and address of defender)* by affixing the schedule of arrestment to the mainmast [*or as the case may be*] of the ship *(name)* and marked the initials ER above that affixed schedule at *(place)* on *(date)*.

I did this in the presence of *(name, occupation and address of witness)*.

(Signed)

Messenger-at-Arms

(Address)

(Signed)

Witness

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session 1994 as follows:

- (a) paragraph 2(2) provides that any register kept by the Court of Session may be either in documentary or in electronic form;
- (b) paragraph 2(3) and (7) revises various forms in the Appendix and in particular provides for there to be special new forms for the arrestment of a ship to found jurisdiction, for the arrestment in *rem* of a ship and her cargo (or of some other maritime *res*) in a case where the arrestment is to enforce a maritime hypothec or lien and for the arrestment of a ship in a case where that arrestment is on the dependence of an action;
- (c) paragraph 2(4) makes provision for appeals to the Court under section 51 of the Children (Scotland) Act 1995;

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- (d) paragraph 2(5) makes an amendment to Part IV of the Rules, consequential upon the expansion of the definition of the expression “Community judgment” in the [European Communities \(Enforcement of Community Judgments\) Order 1972 \(1972 No.1590\)](#) by the [European Communities \(Enforcement of Community Judgments\) \(Amendment\) Order 1998 \(1998 No. 1259\)](#); and
- (e) paragraph 2(6) dispenses with the requirement that a certificate be produced with the petition in an application under section 1 of the Evidence (Proceedings In Other Jurisdictions) Act 1975 for assistance in obtaining evidence for civil proceedings in a court furth of Scotland.