

2001 No. 143

SHERIFF COURT

Act of Sederunt (Child Support Rules) Amendment 2001

Made

30th March 2001

Coming into force

2nd April 2001

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(a) and section 40A(8) of the Child Support Act 1991(b) 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 the Sheriff Courts (Scotland) Act 1971, do hereby enact and declare:

Citation, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Child Support Rules) Amendment 2001 and shall come into force on 2nd April 2001.

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

Amendment of the Act of Sederunt (Child Support Rules) 1993

2.—(1) The Act of Sederunt (Child Support Rules) 1993(c) shall be amended in accordance with the following paragraphs.

(2) In rule 2(1) (application for a liability order), “and Form A” shall be omitted.

(3) In rule 5(1) (appeal against a deduction from earnings order), for “Form A” there shall be substituted “Form A1”.

(4) After rule 5 insert—

“Application for commitment to prison or disqualification from driving

5A.—(1) An application under section 39A(1)(d) of the Act of 1991 shall be made by summary application.

(2) Citation, where necessary, of a respondent in respect of an application under paragraph (1) shall be in Form 7.

(a) 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), and the Adults with Incapacity (Scotland) Act 2000 (asp 4), Schedule 5, paragraph 13, and was extended by sections 39(2) and 49 of the Child Support Act 1991 (c.48).

(b) 1991 c.48; section 40A was inserted by section 17(2) of the Child Support, Pensions and Social Security Act 2000 (c.19) (“the Act of 2000”).

(c) S.I. 1993/920.

(d) Section 39A was inserted by section 16(1) of the Act of 2000.

Warrant of arrest

- 5B.**—(1) The sheriff may issue a warrant for the arrest of the liable person if—
- (a) he has been cited in terms of rule 5A(2) and fails to appear in person at the hearing; or
 - (b) the sheriff otherwise considers it to be appropriate for the purpose of enabling an inquiry in terms of section 39A(3) of the Act of 1991.
- (2) A warrant issued in terms of paragraph (1) shall be in Form 8.

Evidence of means

5C. In any proceedings following an application made in terms of rule 5A(1), a statement in writing to the effect that wages of any amount have been paid to the liable person during any period, purporting to be signed by or on behalf of his employer, shall be sufficient evidence of the facts there stated.

Warrant of commitment to prison

5D. A warrant for the commitment of a liable person to prison issued in terms of section 40A(1)(a) of the Act of 1991 shall be in Form 9.

Order for disqualification from driving

5E.—(1) A disqualification order made in terms of section 40B(1)(a) of the Act of 1991 shall be in Form 10.

(2) An application in terms of section 40B(5) of the Act of 1991 for a reduction in a period of disqualification, shall be made by minute.

Renewal of application

5F. If no order is made in respect of an application under section 39A(1) of the Act of 1991 any further application under that section, including the renewal of an application, shall be made of new by summary application in terms of rule 5A(1).”.

(5) After Form 6 in the Schedule, insert the forms as set out in the Schedule to this Act of Sederunt.

Rodger of Earlsferry
Lord President
I.P.D.

Edinburgh
30th March 2001

SCHEDULE

FORM 7

Form of citation for summary application for commitment to prison or disqualification from driving

CITATION FOR SUMMARY APPLICATION

SHERIFFDOM OF (insert name of sheriffdom)

AT (insert place of sheriff court)

[A.B.], (insert designation and address), Applicant

against

[C.D.], (insert designation and address), Respondent

Court ref. No. (insert ref no.)

(Insert place and date). You [C.D.] are hereby served with this copy writ and warrant, and are required to answer it.

YOU MUST APPEAR IN PERSON AT THE HEARING.

IF YOU ARE UNCERTAIN AS TO WHAT FURTHER ACTION TO TAKE you should consult a solicitor. You may be eligible for legal aid depending on your income and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

IF YOU HOLD A LICENCE TO DRIVE A MOTOR VEHICLE YOU MUST BRING IT (INCLUDING ANY COUNTERPART TO THAT LICENCE) WITH YOU TO THE HEARING.

YOU SHOULD ALSO BRING WITH YOU DOCUMENTARY EVIDENCE OF YOUR FINANCIAL CIRCUMSTANCES AND, TO ASSIST THE COURT TO INQUIRE INTO YOUR MEANS, A COMPLETED FORM 7A ATTACHED.

IF YOU DO NOT APPEAR IN PERSON IN ANSWER TO THIS DOCUMENT THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST.

Signed (signature of sheriff officer)

or [X.Y.] (add designation and business address)

Solicitor for the Applicant

FORM 7A

Form of notice to be served on respondent to assist court to inquire into respondent's financial position

(to be completed by respondent)

Respondent's financial position

My	Weekly	Fortnightly	Monthly	My	weekly	fortnightly	monthly
Outgoings are:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	income is:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rent/mortgage	£			Wages/Pensions	£		
Heating	£			Social Security	£		
Food	£			Other	£		
Loans (HP etc)	£						
Other	£						
Total	£			Total	£		

Dependants: Children – how many Dependant relatives – how many

Here list all capital (if any) e.g. value of house; amounts in bank or building society accounts; shares or other investments:

Here list any outstanding debts:

FORM 8

Form of Warrant to Arrest

(Insert place and date)

The Sheriff,* in respect that the respondent has failed to appear at the hearing after being duly cited,

Grants Warrant to Sheriff Officers to apprehend the said **(insert name of respondent)** and to bring him before the court; Grants Warrant to Governors of HM Prisons to receive and detain the said **(insert name of respondent)** pending his appearance before the court and, in the event that such a Governor is unable to so receive and detain the said **(insert name of respondent)** because of the lateness of the hour, requests police officers to assist in the execution of this Warrant by receiving and detaining the said **(insert name of respondent)** overnight until such hour as the said **(insert name of respondent)** can be presented at a prison or brought to court; requests all competent courts in England and elsewhere to give their aid and concurrence in carrying into effect this Warrant; appoints execution to proceed upon a certified copy of this interlocutor.

(Signed)

Sheriff

* Delete as appropriate

FORM 9
Child Support Act 1991

Form of Warrant of Commitment to Prison

(Insert place and date)

The Sheriff, being satisfied—

- (i) that the Secretary of State has sought to recover an amount of child support under section 38 of the Child Support Act 1991;
- (ii) that such amount, or a portion of it, remains unpaid; and
- (iii) having inquired in the respondent's presence as to his means, that there has been wilful refusal or culpable neglect on his part,

Grants Warrant to all Sheriff Officers to apprehend and convey to the prison of **(insert place of prison)** the said **(insert name of respondent)**, and to the Governor thereof to receive and detain him for the period of **(insert period of up to six weeks)** from the date of his imprisonment or until he be sooner discharged in due course of law*.

This warrant is made in respect of—

Amount outstanding under section 38 of the Child Support Act 1991: **(insert)**

Amount in respect of the expenses of commitment: **(insert)**

Aggregate amount: **(insert)**

(Signed)

Sheriff

*Note: The period of imprisonment may be reduced as provided by regulations made under section 40A(6) of the Child Support Act 1991 where there is part payment of the amount in respect of which the warrant was issued.

FORM 10

Child Support Act 1991, Sections 39A and 40B

Form of Order of Disqualification from Holding or Obtaining a Driving Licence

(Insert place and date)

The Sheriff, being satisfied—

- (i) that the Secretary of State has sought to recover an amount of child support under section 38 of the Child Support Act 1991;
- (ii) that such amount, or a portion of it remains unpaid; and
- (iii) having inquired in the respondent's presence as to his means, that there has been wilful refusal or culpable neglect on his part,

Disqualifies the said **(insert name of respondent)** from holding or obtaining a driving licence for a period of **(insert period not exceeding two years)** unless the aggregate amount in respect of which this Order is made is paid*.

This warrant is made in respect of—

Amount outstanding under section 38 of the Child Support Act 1991: **(insert)**

Amount in respect of the expenses of the application: **(insert)**

Aggregate amount: **(insert)**

(Signed)

Sheriff

*Note: The period of disqualification may be reduced as provided by section 40B(5)(a) of the Child Support Act 1991 if part payment is made of the aggregate amount. The Order will be revoked under section 40B(5)(b) of the Child Support Act 1991 if full payment is made of the aggregate amount. An application for reduction of a period of disqualification requires to be made by way of minute in the court process.

EXPLANATORY NOTE

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

This Act of Sederunt amends the Act of Sederunt (Child Support Rules) 1993 as follows:

- (a) the correction of the reference in rules 2(1) and 5(1) to “Form A” of the Ordinary Cause Rules of the Sheriff Court by the deletion of that reference in rule 2(1) and the substitution of that reference in rule 5(1) with a reference to “Form A1”;
- (b) the insertion of new rules relating to certain provisions of the Child Support Act 1991 (“the Act of 1991”) (as inserted by the Child Support, Pensions and Social Security Act 2000) to penalise the non-payment of child support, namely—
 - (i) new rule 5A to provide for applications under section 39A(1) of the Act of 1991 to be made by summary application;
 - (ii) new rule 5B to provide for the sheriff to issue warrants for the arrest of a liable person in certain circumstances under the Act of 1991, and for the form of such warrants;
 - (iii) new rule 5C to provide for evidence of means in any applications under rule 5A;
 - (iv) new rule 5D providing the form of a warrant for the commitment of a liable person to prison under the Act of 1991;
 - (v) new rule 5E providing for the form of disqualification from driving orders under the Act of 1991; and
 - (vi) new rule 5F providing for further applications under the Act of 1991 to be made of new by summary application; and
- (c) the insertion of new forms set out in the Schedule to this Act of Sederunt—
 - (i) Form 7, the form of citation for summary application for commitment to prison or disqualification from driving;
 - (ii) Form 7A, the form of Notice to accompany Form 8, to be served on a respondent to assist the court to inquire into the respondent’s financial position;
 - (iii) Form 8, the form of warrant to arrest;
 - (iv) Form 9, the form of warrant of commitment to prison; and
 - (v) Form 10, the form of disqualification from holding or obtaining a driving licence.

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